The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, September 21, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

Chairman Smith called the meeting to order at 9:25 a.m. and gave the invocation. He then asked if there were any matters to bring before the Board.

Mr. Kelley stated that he would make a motion that the Board vacate its decision from September 21, 1989 to schedule the Julie Campagna Appeal and Sunrise Day School Special Permit Amendment to be heard together in November. He suggested that the school file a new Special Permit. Mr. DiGiulian seconded the motion.

Prior to the vote being taken, Mrs. Thonen noted that a motion to reconsider must first be made before the Board could take action. Mr. Kelley then made a motion for reconsideration and Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Ribble not present for the vote.

Mr. Kelley again stated his original motion.

Chairman Smith stated that he would take responsibility for the error as it had been a ruling from the Chair.

A discussion took place among the Board members as how to proceed as the applicant had also filed an appeal with respect to the Zoning Administrator's decision to revoke the existing Special Permit.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the Board to table any further discussion until she could talk with William Shoup, Assistant Zoning Administrator.

Mrs. Thonen made a motion to table the discussion. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Ribble not present for the vote.

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Page 1, September 21, 1989, (Tape 1), Scheduled case of:

9:00 A.M. KOREAN EVANGELICAL CHURCH OF WASHINGTON, SP 89-P-023, application under Sect. 3-303 of the Zoning Ordinance to allow removal of a dwelling and shed, use of existing dwelling for church purposes, construction of parking and building additions to existing church and related facilities, located at 3460 Annandale Road, on approximately 1.3070 acres of land, zoned R-3, Providence District, Tax Map 60-1((1))36, 37, 46A. (DEF. FROM 7/27/89 TO BE HEARD CONCURRENT WITH VC 89-P-100)

9:00 A.M. KOREAN EVANGELICAL CHURCH OF WASHINGTON, VC 89-P-100, application under Sect. 18-401 of the Zoning Ordinance to allow existing church building to be expanded and to remain 27.1 feet from the front lot line (30 ft. min. required by Sect. 3-307), located at 3460 Annandale Road, on approximately 1.3070 acres of land, zoned R-3, Providence District, Tax Map 60-1((1))37, 36, 46A. (CONCURRENT WITH SP 89-P-023)

Lori Greenlief, Staff Coordinator, explained that the notices in the Variance application of the church was not in order, therefore staff suggested that the Board defer both cases so that they could be heard simultaneously.

William L. Schmidt, 6564 Loisdale Court, Suite 315, Springfield, Virginia, attorney for the applicant, came forward. He explained that the person who had originally been working on the applications had returned to Seoul, Korea creating some confusion on the church's part with respect to the notices.

Following a discussion between the Board and staff regarding the Board's caseload, it was the consensus of the Board to schedule an additional meeting on November 16, 1989 and to schedule both applications on that day. Ms. Greenlief suggested scheduling the cases for 9:00 a.m. Hearing no objection, the Chair so ordered.

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Page 1, September 21, 1989, (Tape 1), Scheduled case of:

9:20 A.M. BREAD OF LIFE LUTHERAN CHURCH, SP 89-S-010, application under Sect. 3-103 of the Zoning Ordinance to allow a Church and related facilities and Nursery School, located in the 8400 block of Pohick Road on approximately 5.2 acres of land, zoned R-1, Springfield District, Tax Map 98-1((1))34. (DEF. FROM 8/1/89 IN ORDER FOR STAFF TO REVIEW ADDITIONAL INFORMATION SUBMITTED BY APPLICANT)

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that this case had been deferred from an earlier public hearing for additional information relating to intensity. She added that staff still believes that the request is too intense for the subject site and that there are still design problems with respect to the transportation issues.

The Board questioned staff as to the specific design problems. Ms. Bettard called the Board's attention to the letter received by staff from the Office of Transportation (OT)

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which notes the proposed median along Pohick Road presents a potential safety hazard and that there is still a problem with the location of the island at the entrance on Pohick Road. She stated that she believed that staff had addressed these concerns in development condition number 14.

In closing, Ms. Bettard stated that the applicant cannot meet the transitional screening that requirement, therefore staff recommended denial of the request.

Steve Gleason, Planner with Greenhorne and O'Mara, 11211 Waples Mill Road, Fairfax, Virginia, came forward to represent the applicant.

In response to questions from the Board, Mr. Gleason explained that he had just received a copy of the letter but had anticipated OT's position and had worked with staff to come up with a development condition which would address those concerns.

Following a discussion among the Board members with respect to whether or not the plats were acceptable, Mrs. Thonen suggested that the Board proceed with the public hearing and then make a decision regarding the plats. She noted the letter from the Gambill Homeowners Association who supported the request but did ask that the church lot not be used for commuter parking unless the church had approval from the BZA.

Mr. Gleason began his presentation by introducing Ken Martin, Pastor of the Church, and Mike Mahaffey, Planner with Greenhorne and O'Mara. He continued by stating that the applicant agreed with all development conditions except condition number 2. He added that the church is requesting approval of both phases at this time because staff based their analysis on both phases.

In response to comments from the Board with respect to condition number 2, Ms. Bettard explained that it was not a typographical error and that staff was recommending that only Phase I be granted if it was the intent of the Board to grant the applicant's request.

Mr. Gleason noted that the only outstanding issue is the intensity and added that the applicant is proposing a FAR of 0.79, which is lower than what is allowed under the current zoning, and that the church has reduced the number of seats from 460 to 400.

In response to questions from the Board, Mr. Martin, Pastor of the Church, came forward and explained that the multipurpose room would be constructed under Phase I and be used as a sanctuary until such time as Phase II is completed. When Phase II is completed, the multipurpose room will be used only as a fellowship hall and not at the same time as services are being conducted in the sanctuary.

There were no speakers to address the request and Chairman Smith asked staff for closing comments.

Ms. Bettard again noted that staff recommended denial of the request and believes that the use will have an adverse impact on the surrounding neighborhood.

Mr. DiGiulian made a motion to grant the request subject to the development conditions with the following revisions:

"2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application for Phase I and Phase II, as qualified by these development conditions.

19. The parking lot shall not be used as a commuter parking lot. If the applicant wishes to use it as a commuter parking lot in the future then the Special Permit will have to be amended.

20. The transitional screening plantings should be something that the applicant and County Arborist can agree upon other than white pines."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-010 by BREAD OF LIFE LUTHERAN CHURCH, under Section 3-103 of the Zoning Ordinance to allow a church and related facilities and nursery school, on property located at 8400 block of Pohick Road, Tax Map Reference 98-1((1))34, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.2 acres of land.
4. The applicant has worked hard to make this application work.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application for Phase I and Phase II, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity shall be limited to 400 in the main area of worship.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 of the Zoning Ordinance and shall be a maximum of 119 spaces. All parking shall be on site.

7. The hours of operation of the school shall be limited to 8:30 a. m. until 4 p. m. weekdays and the maximum daily enrollment shall be limited to a total of 99 students, with a maximum of 50 in attendance at any one time.

8. Transitional Screening 1 (25') shall be provided on all boundaries except on the northern portion of the property where the driveway abuts the lot line, a 6 foot high planted row of evergreen hedges ten feet (10') on center shall be provided between the drive and the property line to screen the lights of vehicles from the affecting adjacent property. In addition, between the BMP pond and the Phase 2 parking area landscaping shall be provided as shown on the Schematic Landscape Plan dated August 15, 1989 to provide screening on this portion of the site, to screen the parking area and the pond from adjacent properties. Transitional Screening 1 shall be provided along the remaining portion of this lot line.

   In addition to Transitional Screening 1, landscaping shall be provided on the southeast side as shown on the revised Schematic Landscape Plan dated August 15, 1989. The 8 foot asphalt trail may be allowed as shown on the Special Permit plat within this screening yard. Existing vegetation which is suitable for Transitional Screening 1 shall be utilized to fulfill the transitional screening 1 requirements, subject to the County Arborist approval. If supplemental plantings are required to fulfill Transitional Screening 1 requirement, the size, type, quantity, and location of these plants shall be approved by the County Arborist.

   Along the western lot line, the 4 foot sidewalk required by the Fire Marshal, shall be allowed within the required Transitional Screening yard.

9. Parking lot landscaping shall be provided in accordance with the Public Facilities Manual (PFM) as determined by the Department of Environmental Management (DEM). Foundation plantings, the purpose of which shall be to soften the visual impact of the buildings and amount of impervious surfaces, shall be provided as generally shown on the Schematic Landscape Plan dated August 15, 1989, subject to the approval of the County Arborist. The type, quantity, size and location of these plantings shall be approved by the County Arborist and shall be included on the landscape plan.

10. A sediment basin shall be constructed in the location of the storm water management BMP as shown on the special permit plat and shall be installed as the first step of the construction process. All erosion and sediment controls shall be designed to prevent sediment from moving off site and adversely impacting the adjacent private pond.

11. A stormwater management Best Management Practices (BMP) pond shall be provided in the location shown on the special permit plat and shall meet or exceed PFM standards for the same. The BMP should be designed to provide additional volume peak shaving benefits that will reduce post-development two and ten year frequency stormwater runoff flows below pre-development levels.

12. Limits of clearing and grading shown on the special permit plat shall be substantially adhered to. If approved by the Director, DEM, no clearing shall be allowed within the designated right-of-way until such time as the road construction is imminent. Vegetation within the designated play area shall be selectively cleared at the discretion of the property owner and the County Arborist with the intent being to preserve the majority of the healthy vegetation and trees in that area.

13. A right turn acceleration and deceleration lane on Gambrill Road shall be provided at the site entrance as determined by DEM and VDOT. All entrances shall meet VDOT entrance standards.

14. The site entrance on Pohick Road shall be provided as shown on the revised plat dated July 31, 1989 subject to VDOT approval, including right-in and right-out turn lanes, paved and striped island areas, street widening on the south side of Pohick and a 4 foot wide raised divider designed to VDOT specifications. If VDOT does not approve this right in and right out turn lane, the entrance shall be closed.

15. Right-of-way to 45 feet (45') from existing centerline of Pohick and Gambrill Roads necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary access easements a maximum of 15 feet (15') in width after dedication shall be provided to facilitate these improvements.

16. Any proposed lighting of the parking areas shall be in accordance with the following:

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

    The lights shall focus directly onto the subject property.

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

17. A tree preservation plan shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible, consistent with the Special Permit Plat, substantial individual trees or stands of trees.

18. Noise attenuation measures shall be implemented in order to achieve a maximum interior noise level of 45 dBA Ldn and as determined by DEM and in accordance with the attached guidelines.

19. The parking lot shall not be used as a commuter parking lot. If the applicant wishes to use it as a commuter parking lot in the future then the Special Permit will have to be amended.

20. The transitional screening plantings shall be something that the applicant and County Arborist can agree upon other than white pines.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1989. This date shall be deemed to be the final approval date of this special permit.

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9:40 A.M. HARVEY & CAROL AUSTIN, VC 89-D-065, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 9.4 feet from side lot line (20 ft. min. side yard required by Sect. 3-107), located at 1168 Chain Bridge Road, on approximately 0.938 acres of land, zoned R-1, Dranesville District, Tax Map 31-1((5))(2)10A.

Lori Greenlief, Staff Coordinator, presented the staff report.

Larry E. Becker, Esq., Leiding & Becker, P.C., 1427 Dolley Madison Boulevard, McLean, Virginia, came forward to represent the applicants. He stated that the house was very old and that the applicants have seven children and would like to enlarge the dining area.

There were no speakers to address the request and no staff closing comments. Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-065 by HARVEY AND CAROL AUSTIN, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 9.4 feet from side lot line, on property located at 1168 Chain Bridge Road, Tax Map Reference 31-1((5))(2)10A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 0.938 acres of land.
4. The lot is extremely narrow with exceptional shape at the time of the Ordinance.
5. There will be undue hardship to the applicant if not granted.
6. The addition will not encroach into the side yard any more than the existing 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:

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 6, September 21, 1989, (Tape 1), Scheduled case of:

10:00 A.M. MICHAEL JEFFREY DUDA AND DEBORAH DOROHOW, VC 89-C-080, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 10 feet from side lot line such that side yards total 16.2 feet (24 ft. total min. side yard required by Sects. 6-106 and 3-207), located at 3103 Nestlewood Drive, on approximately 9,708 square feet of land, zoned PDH-2, Centreville District, Tax Map 35-1((4))(11)2.

Lori Greenlief, Staff Coordinator, presented the staff report.

Mrs. Harris asked if the sanitary sewer easement ran all the way down the property and Ms. Greenlief replied that was correct.

The applicant, Michael Jeffrey Duda, 3103 Nestlewood Drive, Herndon, Virginia, came forward and stated that he and his wife had purchased the house in June 1988, that the garage will protect the vehicles from vandalism, and that this is the only place to construct the garage.

In response to questions from the Board, Mr. Duda replied that it would not be beneficial to construct a one car garage as they would constantly be rotating the cars. He added that there are no objections from the neighbors and that the materials used to construct the garage will match the existing house.

As there were no speakers to address the request, and no staff closing comments, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-080 by MICHAEL JEFFREY DUDA AND DEBORAH DOROHOW, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 10 feet from side lot line such that side yards total 16.2 feet, on property located at 3103 Nestlewood Drive, Tax Map Reference 35-1((4))(11)2, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 9,708 square feet of land.
4. The lot is exceptionally narrow with unusual topographic conditions.
5. This is the only place to construct the garage.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1989. This date shall be deemed to be the final approval date of this variance.

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008

10:15 A.M. GUNSTON PLAZA ASSOCIATES LIMITED PARTNERSHIP, VC 89-V-077, application under Sect. 18-401 of the Zoning Ordinance to allow construction of building to 30 feet from one street line and 30.5 feet from the other on a corner lot (40 ft. min. front yard req. by Sect. 4-307), located at 9388 Richmond Highway, on approximately 0.8992 acres of land, zoned C-3, Mt. Vernon District, Tax Map 108-3((2))9, pt. 10.

Lori Greenlief, Staff Coordinator, presented the staff report. She added that the property was the subject of both a rezoning and special exception approval in June 1989. Ms. Greenlief pointed out that any hardship had been created due to the design of the building and if the size of the building was reduced the applicant could construct without a variance.

In response to questions from the Board, Ms. Greenlief explained that the special exception was to allow an institution for the indigent, orphans and the like.

Marilyn DeLuca, General Partner of Gunston Hill Plaza, 6 Pigeon Hill Drive, Sterling, Virginia, came forward. She clarified that the facility would house people who are not nursing home patients, nor eligible for housing for the elderly, but do need assistance in day to day living and that the facility will eventually house 67 residents. Ms. DeLuca added that the goal of the facility is to allow the residents to maintain their independence and their dignity.

With respect to the design of the facility, she explained that the design stage took about eight months and the design was arrived at through meetings with the Lorton Community and the Lorton-Route 1 South Task Force. She stated that the zoning was changed from C-4 to C-3 at the request of the Board of Supervisors and that the heavily landscaped wall will continue along Route 1, also at the request of the Board of Supervisors.

Ms. DeLuca explained that access to the site will be a right-in/right-out off of Lorton Road and through an ingress/egress easement in between the two boundaries of the center and this facility. She added that the Office of Transportation (OT) and the Virginia Department of Highways (VDOT) had a distinct interest in alleviating any access to the parcel off of Route 1 as Lorton Road and Route 1 are heavily traveled and anything that would obstruct sight distance or traffic flow is detrimental. Ms. DeLuca stated that there will be no more than 20 trips per day because all the amenities that the residents will require will be at their door step, there will be a walkway provided for them to the shopping center, and any commuting will be done by van.

In response to questions from the Board, Ms. DeLuca replied that the hardship is with respect to the location of the parking. The building could be moved back to accommodate the parking in the front, and be in direct defiance of the Lorton-Route 1 South Task Force, or keep the parking in the back of the building and maintain the aesthetics which is so important to the County. She explained that the facility will accommodate 27 single rooms and 20 semi-private rooms with the sizes of the rooms varying from 275 square feet to 420 square feet with full bathrooms. Ms. DeLuca stated that the cost of the rooms per day will be from $43.00 to $75.00 per day which are less than nursing home rates and that there will also be units voluntarily set aside for State assisted patients.

With respect to a question from the Board as to why the building could not be moved back, Ms. DeLuca explained that the expense of the development and the vast road improvements has to be justified, therefore this is the smallest facility that can be constructed in order for the applicant to "break even."

Following a discussion among the Board as to whether or not the applicant met the standards, Mr. DiGiulian stated that he believed that the lot had an irregular shape and unusual condition as it has frontage on two roads, and an unusual situation because the applicant had bought the property believing that it was larger then it is. Several members agreed with his comments.

Chairman Smith called for speakers in support of the request and Mickey Sullivan, 7605 Deveris Drive, Lorton, Virginia, came forward. She stated that she was a member of the Federal Lorton Communities and a member of the Route 1 Study Task Force and submitted a position paper into the record. Ms. Sullivan stated that she had visited the applicant's other facility in Sterling and asked the Board to grant the request.

There were no speakers in opposition to the request.

In response to a question from Chairman Smith, Mr. Greenlief replied that it had been noted at the special exception public hearing that the applicant would need a variance.

Chairman Smith closed the public hearing.

Mr. Kelley made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-077 by GUNSTON PLACE ASSOCIATES LIMITED PARTNERSHIP, under Section 18-401 of the Zoning Ordinance to allow construction of building to 30 feet from one street line and 30.5 feet from the other on a corner lot, on property located at 9388 Richmond Highway, Tax Map Reference 108-3((2))9, pt. 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 September 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is C-3.
3. The area of the lot is 0.8992 acres of land.
4. The lot has exceptional shape.
5. There is an extraordinary situation as there are two front yards.

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

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

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

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

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

1. This variance is approved for the location and the specific structure shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

010

3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-1 with Mrs. Harris voting nay; Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 10, September 21, 1989, (Tape 2), Scheduled case of:

10:30 A.M. TUCKAHOE RECREATION CLUB, INC., SPA 82-D-055-3, application under Sect. 8-901 to renew waiver of the dustless surface, located at 1814 Great Falls Street, on approximately 8.2679 acres of land, zoned R-3, Dranesville District, Tax Map 40-1((1))1, 2; 40-2((1))1B.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that the use was established in 1955 and the waiver of the dustless surface was first granted in 1984 and expired this year. She stated that staff recommended approval of the request as there are no outstanding issues and called the Board's attention to the numerous letters in support of the request.

Harry C. Eisenbeiss, 1804 Baldwin Drive, McLean, Virginia, came forward and stated that the parking lot has been there since 1955 without any problems and asked the Board to grant the request. Mr. Eisenbeiss did voice objection to the club having to come back every five years to renew the waiver.

In response to questions from the Board regarding the applicant's objection, Ms. Greenlief called their attention to Appendix 3 of the staff report which noted that waivers could only be granted for a period of five years.

There were no speakers to address the request and no staff closing comments. Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-D-055-3 by TUCKAHOE RECREATION CLUB, INC., under Section 8-901 of the Zoning Ordinance to renew waiver of the dustless surface, on property located at 1814 Great Falls Street, Tax Map Reference 40-1((1))1, 2; 40-2((1))1B, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 8.2679 acres of 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 Sections 8-903 and 8-915 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these 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. A Non-Residential Use Permit shall be obtained through established procedures, and this special permit shall not be valid until this has been accomplished.

5. Transitional Screening 1 shall be required and maintained between the backboard paving area and the southern lot line of Lot 1B so as to screen the courts and backboard from the residential dwelling to the south and to absorb any noise that might be emitted from these courts.

6. Transitional Screening may be modified to allow a five (5) foot walkway within the 25 foot screening strip provided the remainder of the 25 foot screening strip is planted in accordance with Article 13 of the Zoning Ordinance.

7. The barrier shall be as shown on the plat submitted with this application.

8. The hours of operation for the facility shall be limited to the following:

o Indoor Pool Hours	8:00 a.m. to 10:00 p.m.
o Outdoor Pool Hours	9:00 a.m. to 9:00 p.m.
o Tennis Courts to the north	9:00 a.m. to 10:00 p.m.
o Tennis Courts to the south	9:00 a.m. to 9:00 p.m.
Backboard	9:00 a.m. to 8:00 p.m.

No loudspeakers shall be used in conjunction with swimming meets or practices prior to 9:00 a.m. or after 9:00 p.m.

9. All loudspeakers, noise and lights shall be confined to the site. The lights for the northerly tennis courts shall be on an automatic timer which turns off at 10:00 p.m.. The lights for the southerly tennis courts shall be on an automatic timer which turns off at 9:00 p.m.

10. The minimum number of parking spaces shall be 125. The maximum number shall be 230 including the grassed overflow parking area.

11. After-hour parties for each swimming pool shall be governed by the following:

    - Limited to six (6) per season.
    - Limited to Friday, Saturday and pre-holiday evenings.
    - Shall not extend beyond 12:00 midnight.
    - Shall request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.
    - Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

12. There shall be a maximum of four swimming meets a year which shall be allowed to begin at 8:00 a.m. subject to the applicant obtaining prior written permission from the Zoning Administrator.

13. The grass over the gravel in the overflow parking area shall be maintained to prevent the emission of dust from the surfaces.

14. A waiver of the dustless surface requirement shall be granted for a period of five (5) years from the approval date of this special permit.

15. The maximum number of memberships shall be 3,250 (individual).

These conditions incorporate all applicable conditions of previous approvals.

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.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 29, 1989. This date shall be deemed to be the final approval date of this special permit.

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10:45 A.M. JOHN F. AND LAURA A. KING, VC 89-M-079, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing screened porch 10 feet from side lot line (20 ft. min. side yard required by Sect. 3-107), located at 3029 Sylvan Drive, on approximately 48,789 square feet of land, zoned R-1, Mason District, Tax Map 50-4((21))52.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The co-applicant, Laura A. King, 3029 Sylvan Drive, Falls Church, Virginia, came forward and stated that this request would allow them to enclose and winterize an existing screened porch which is situated off the kitchen. Mrs. King added that the house was built in 1940, they purchased the house in 1960, and as they are now retired they plan to make the house their permanent residence.

There were no speakers to address the request and no staff closing comments. Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-079 by JOHN F. AND LAURA A. KING, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing screened porch 10 feet from side lot line, on property located at 3029 Sylvan Drive, Tax Map Reference 50-4((21))52, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 48,789 square feet of land.
4. This property has extreme narrowness and exceptional shape.
5. Strict application of the standards will produce a undue hardship on the applicants.
6. The variance will be in harmony with the Ordinance.
7. The structure will line up with the existing dwelling.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 21, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 13, September 21, 1989, (Tape 1), Scheduled case of:

11:00 A.M. BELL ATLANTIC MOBILE SYSTEMS INC. APPEAL, A 89-C-006, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that special exception approval is required for a telecommunication facility in the PRC District where such use is not indicated on the approved development plan, located at 11810 Sunrise Valley Drive, zoned PRC, Centreville District, Tax Map 17-3((3))1. (DEFERRED FROM 6/27/89 - NOTICES) (INTENT TO DEFER TO 9/26/89 AT 12:15 A.M. - NOTICES)

Chairman Smith noted that the notices were not in order in this case.

In response to a question from Mrs. Thonen, Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the first notice problem was due to the appellant listing the incorrect property address and this time was there was confusion on staff's part as to whether or not the notices had already been done. Staff thought they had been done and they had not, thus the notice package was not sent to the applicant.

Mrs. Thonen made a motion to defer A 89-C-006 to September 26, 1989 at 12:15 p.m. suggested by staff.

Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley not present for the vote.

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The Board recessed at 11:30 a.m. and reconvened at 12:08 p.m.

The Board went into Executive Session in order to meet with Counsel with respect to the Calvary Memorial Appeal. Upon the Board's return from Executive Session, Mrs. Thonen 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. DiGiulian seconded the motion which passed unanimously.

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Page 13, September 21, 1989, (Tapes 2 and 3), Scheduled case of:

11:15 A.M. CALVARY MEMORIAL PARK, INC. T/A FAIRFAX MEMORIAL PARK APPEAL, A 89-A-007, to appeal decision of the Director, Department of Environmental Management denying site plan waiver to allow construction of addition to existing office building, located at 9900 Braddock Road, zoned R-1, Annandale District, Tax Map 69((1))1 and 12. (DEFERRED FROM 7/6/89 IN ORDER FOR BZA TO RETAIN COUNSEL)

Chairman Smith stated that this appeal had been deferred from July 6, 1989 in order that the Board of Zoning of Appeals could retain Counsel. He then introduced Brian McCormack, attorney with the law firm of Dunn, McCormack, MacPherson, and Maxfield, 3925 University Drive, Fairfax, Virginia.

Michael Doherty, attorney with the law firm of Barham and Radigan, P. O. Box 266, Arlington, Virginia, came forward to represent the appellant. He asked that the special permit file, SPA 81-A-022-4; memorandum and attachments including a verbatim of the prior BZA public hearing; the letter from Michelle Brickner, with the Department of Environmental Management, dated March 22, 1989, which is the subject of the appeal; and a response letter from the appellant's attorney dated March 28, 1989, all be entered into the record.

Chairman Smith asked if there were any objections.

Karen Harwood, with the County Attorney's Office, represented staff, and objected only to the appellant's letter dated March 28, 1989 because she believed that it might be construed as an expansion of the original appeal.

The Board asked Mr. McCormack for guidance. He stated that he understood staff's argument and that State Code stipulates that the appellant state the grounds for appeal and therefore should be held to the grounds set forth in the original appeal and should not be allowed to enlarge the appeal. Mr. McCormack noted that the Statute does not specifically say that the grounds originally stated are the only ones that the BZA can consider. Because this case had been pending for several months, it was his belief that this information would not prejudice staff, therefore could be entered into the record.

Ms. Harwood disagreed with Mr. McCormack's comments and that because the State Code stipulates that a petition must be filed within thirty (30) days and that it was staff's opinion that it is a matter of jurisdiction.

Mr. McCormack agreed that the appeal must be filed within thirty (30) days but argued that the BZA did have the authority to review additional information.

In response to comments from Mr. Hammack, Mr. Doherty explained that the County itself raised the notice issue and that the letter that staff objected to was submitted to staff prior to the filing of the appeal.

Mr. DiGiulian made a motion to accept all documents requested by the appellant's attorney into the record. Mr. Hammack seconded the motion which carried by a vote of 6-1 with Chairman Smith voting nay.

Mr. Doherty began his presentation and stated that this appeal involved the construction of a trail on the appellant's property. He stated that in December 1988 the appellant appeared before the BZA and requested an expansion of the existing office on the cemetery property. At that time the BZA determined that the appellant would not be required to construct trails with respect to that expansion and recommended to the Department of Environmental Management (DEM) that this requirement not be enforced. When the appellant filed for the site plan waiver, DEM determined that the trail requirement must be met. Mr. Doherty stated that the grounds for requesting the BZA to reverse DEM's decision were based upon the constitution, the legality of the decision, and the Zoning Ordinance.

With respect to the constitution, he stated that his arguments were set forth in a memorandum to the BZA, therefore he would not dwell on that point. He added that there had been a line of decisions out of the Virginia Supreme Court and the Fairfax County Circuit Court which stated that the County cannot require public improvements that are not related to the specific application.

Under the legality point, Mr. Doherty stated that he believed that DEM's decision was not a lawful one because the Courts have ruled that public improvements cannot be required, if they do not relate to the specific application.

Mr. Doherty called the BZA's attention to the last page of Attachment 7 which addressed trails as they relate to the Comprehensive Plan and who is required to provide trails. He noted that the appellant does not fall within any of the categories listed.

In closing, Mr. Doherty asked that the BZA reverse DEM's decision and order DEM to issue a site plan waiver.

In response to questions from the Board, Mr. Doherty explained that the initial site plan waiver application had been filled out by the superintendent at the cemetery. He added that the owner of the land is Cavalry Memorial Park Incorporated and they are the ones requesting the site plan waiver.

Michelle Brickner, Chief, Site Review Branch, Department of Environmental Management, introduced other members of staff who were present, Irving Birmingham, Director, Department of Environmental Management; Karen Harwood, with the County Attorney's Office; and, Paul Kraucunas, Deputy Director, Design Review Division, Department of Environmental Management.

Mr. Doherty asked that the BZA allow him to cross examine any witness called by staff. Chairman Smith explained that this was not a trail but that Mr. Doherty could address any issues raised by staff during rebuttal.

Ms. Brickner stated that her comments would be very brief and address only those set forth in the staff report as it was staff's belief that any issues raised by the appellant in April were outside the thirty (30) day time limitation, any legal or constitutional questions would be addressed by Ms. Harwood. She stated that the appellant had filed an appeal based on the contention that DEM's decision to deny the site plan waiver request because certain public improvements had not been provided was unlawful. In the appellant's April 21, 1989 statement, it was noted that the BZA had waived the requirement at the time the special permit was granted. She noted that development condition number 4 of the special permit stipulates that the applicant comply with Article 17, Site Plan Ordinance, which requires the submission of site plan for special permit uses and the appellant chose to submit a waiver of the site plan. Under Article 17, the Director, DEM, may only approve a site plan waiver when it is demonstrated that the use will not require specified improvements or such improvements would be made without the formal site plan. With respect to the subject property, it is staff's belief that additional improvements are required under Article 17, namely the trail along Burke Station Road and Braddock Road, thus the Director had no option but to deny the request. In closing, Ms. Brickner stated that it is staff's position that the BZA did not waive the trail improvements only that the BZA did not make it a condition of the special permit.

Ms. Harwood added that not only did the BZA not waive the site plan but had no authority to waive it, the BZA had merely declined to impose it as part of the conditions for the approval. She stated that it is DEM's responsibility to enforce Article 17, not the BZA. Regarding the constitutional argument, Ms. Harwood stated that the Circuit Court is the body to hear constitutional questions, not the BZA. She argued that DEM is simply enforcing the Ordinance and the appellant does not like the Ordinance, therefore he claims it is unconstitutional.

In response to questions from the Board with respect to constitutional rights, Ms. Harwood stated that the Supreme Court has not spoken to Ordinances of this State. With respect to the Cupp case referred to by the appellant, she stated that she and Mr. McCormack had litigated the Cupp case which had involved a special exception for the expansion of a plant nursery and that staff had recommended a condition for extensive road improvements on Route 7. The Supreme Court ruled that where there is a road like Route 7 carrying 35,000 trips per day, and the request does not generate enough of an impact to warrant the road improvements, the County cannot require such improvements be made by the applicant. Because of the many expansions made by Calvary Memorial Park over the years and the cumulative effect of those expansions, staff believes that it is now appropriate to ask for the trail although it may not have done so in the past.

With respect to a question from the Board as to why these issues were not presented at the public hearing, Mr. Birmingham replied that the trail had not been part of the application. He added that staff had not pursued the issue at that time as they believed that it could be addressed at time of site plan.

Following a discussion between Mr. Kelley and Ms. Harwood as to whether or not Ms. Harwood was telling the BZA that they should ignore Supreme Court rulings, Mrs. Thonen noted that she believed that the discussion was getting out of hand and that no attorney would tell someone not to pay attention to Supreme Court rulings. Ms. Harwood again commented that the BZA was not the body that judged whether or not Ordinance provisions are legal. Mrs. Thonen disagreed. Mr. Hammack noted that he believed that the BZA had the responsibility to determine whether or not applications of the Ordinance have been done in a lawful and constitutional fashion.

In response to questions from the Board, Mr. Birmingham explained that the trail was a public improvement that was required on that particular piece of property. Until some means of taking care of that public improvement had been put forth, a waiver would not have been granted. He added that an individual homeowner is not required to submit a site plan, only a grading plan. Ms. Brickner noted that Sect. 1, Article 17, states that the Director, DEM, can grant a waiver if there are no public improvements as set forth in Sect. 2, Article 17.

Ms. Harwood noted that Sect. 17-201, Part 2, says that when a trail is shown on the Comprehensive Plan the property owner must construct the trail. Mr. DiGiulian and Mr. Hammack disagreed.

The Board and Ms. Harwood discussed whether or not the appeal should be before the BZA. Mrs. Thonen noted that the applicant must exhaust all means before going to the Circuit Court.

Following comments from the Board as to why trials should be part of the conditions if the BZA has no authority to delete a trail, Ms. Harwood suggested that the BZA should consider approaching the Board of Supervisors with regard to a change in the Zoning Ordinance giving the BZA the power to waive a trail.

In response to the questions from the Board, Ms. Brickner replied that the applicant had not submitted information to staff which would justify the waiver of the trail requirement. Ms. Harwod stated that the applicant could have requested that the Comprehensive Plan be amended to delete the trail.

With respect to the definition of who should construct trails, Mr. Birmingham explained that anyone involved in a site plan is considered a developer. Ms. Harwood stated that this is a commercial business and the appellant is requesting an expansion of that business which requires a site plan and common sense says that is a developer.

Chairman Smith noted that the appellant could have appealed the decision to the County Executive or the Board of Supervisors and that he believed that this should have gone to the County Executive.

In response to questions from the Board, Ms. Brickner replied that the County Executive is the only person who can waive a requirement when a public improvement is required. Mr. Birmingham noted that in some instances he can recommend to the County Executive that a trail be waived. Ms. Brickner stated that the applicant had never requested a waiver of the trail requirement until now.

The Board questioned why DEM had consistently waived the site plan in the past and asked why they had not chosen to waive it this time. Ms. Brickner explained that based upon the information provided by the applicant that the trails were going to be provided by the Virginia Department of Highways and Transportation (VDOT), the waivers were granted. Ms. Harwood added that perhaps the appellant had not pursued the waiver prior to May 10, 1977, therefore staff would not have any record of the waiver and it is not reflected in the staff report.

Chairman Smith asked Mr. Birmingham for closing comments.

Mr. Birmingham stated that Ms. Brickner had acted based upon the requirements of the Ordinance as there was a public improvement required, therefore the site plan waiver was not approved.

Chairman Smith called for speakers in support of staff.

Mr. Doherty objected to the speakers. Chairman Smith indicated that it was the Board's policy to allow speakers on both sides to speak.

Gordon Lawrence, Coordinator with the School Safety Office, 6800-B Industrial Road, Springfield, Virginia, came forward and addressed the need for the trail.

Mr. Hammack stated that need was not the issue before the Board today and commented that this information should have been brought out at the public hearing. Mrs. Thonen agreed.

Carol Lamborn, with the Department of Public Works, 3930 Pender Drive, Fairfax, Virginia, came forward. She stated that she was at the public hearing and had expressed the need for the trail at that time.

Mr. Kelley objected to the testimony and stated that he did not believe that it was relevant to the case. Mrs. Harris noted that she believed that it was relevant because the Comprehensive Plan had the basic premise that it is for the public benefit and the speakers are trying to show that.

Ms. Lamborn stated that there is a proposed walkway from the school sidewalk program that provides a safe access to neighboring Woodson High School. She added that the proposed scope is approximately 600 feet of 6 foot walkway on the west side of Calvary Memorial Gardens from the entrance of Burke Station Road, north to the neighboring subdivision connecting to the existing walkways. Ms. Lamborn noted that this had been listed as priority one for the FY 1990 School Sidewalk Program, therefore indicated a necessity to get the walkway constructed.

In response to questions from the Board, Ms. Lamborn stated that this a generally funded walkway out of General Funds approved by the Board of Supervisors.

Ms. Harwood stated an objection to the Board cutting off testimony regarding the issue of need for the trail when members of the Board had engaged in similar discussion earlier. Chairman Smith noted for the record that it had not been a decision of the Chair. It was the consensus of the Board to call the speakers back to the podium for additional testimony.

Mr. Lawrence came back to the podium and stated that the trail in question affected both Frost Intermediate and Woodson High School. He added that currently there are two bus runs transporting approximately 80 students so the construction of the trail and sidewalk would be cost beneficial to the school board.

In response to questions from the Board, Mr. Lawrence stated that he would like to see the trail and sidewalk constructed in order to benefit the school. He added that the school submitted the request in May 1987 and had been unaware of the appellant's request. Mr.

Lawrence explained that the project was put in the County budget for FY 1989 for design and land acquisition and has been proceeding along that course but that he did not know if it had come to condemnation at this time.

Chairman Smith asked Ms. Lamborn if she had any additional comments and she indicated that she did not. Mrs. Thonen noted for the record that the speakers had indicated that they had no further comments.

Mr. Hammack called Ms. Lamborn back to the podium and asked her to indicate whether or not she believed that there was any nexus between the appellant's request for the expansion of an existing office building and the trail requirement. She replied that she merely implemented the design and was not in a position to reply to the nexus issue. She stated that Public Works had forwarded a memorandum to the Zoning Evaluation Division dated September 1, 1989 supporting the request that trails be installed and that if the sidewalk is constructed on the other side of Burke Station Road the children will have to cross at a dangerous intersection.

Mr. Doherty waived rebuttal.

In response to questions from the Board, Mr. Doherty agreed that the application form in 1988 did indicate that there was a trail shown on the Comprehensive Plan, but also noted that the appellant had indicated that VDOT was constructing the sidewalk.

Mr. Birmingham added that VDOT is constructing a sidewalk along Braddock Road but not along Burke Station Road.

The Board asked Mr. McCormack if he had additional comments. Mr. McCormack stated that he was Counsel for the Board and did not see the Board as an adversary, therefore he did not see himself as an advocate.

Chairman Smith closed the public hearing.

Mr. Hammack made a motion to uphold the appellant and made a finding that the Director, DEM, had erred in his application of the Ordinance by refusing a site plan waiver. He stated that he was satisfied after reviewing the State Code and the Zoning Ordinance that the Board had the right to hear the appeal and that staff had not voiced any objection until this hearing. Mr. Hammack added that he based his motion on Par. 1, Sect. 17-103 of the Site Plan Ordinance, and based on the testimony of the Director, that the use was not even considered and the County never made any pretext that the use would not generate any additional traffic. The Director simply stated that the trail was shown on the map, therefore they do not have the authority to waive the site plan under those circumstances and the trail must be constructed. He stated that he believed that the Board must consider the Supreme Court rulings and that this type of improvement should have some sort of nexus or be required by the expansion of the use. Mr. Hammack stated that his motion was not that the Ordinance was unconstitutional but did not believe that the Ordinance had been properly applied and that the waiver should have been granted.

Mr. DiGiulian seconded the motion.

Mrs. Harris stated that this case had caused her a great deal of concern and that under the parameters that DEM had to work with they had no choice but to require the site plan, therefore she could not support the motion.

A discussion took place among the Board members with respect to the motion and the testimony that had been presented by staff regarding the Comprehensive Plan and the trail requirement. With respect to that discussion, Mr. Birmingham stated that if this request had gone to the County Executive he would have recommended that the trail be constructed. He explained that if a public improvement is required on the Plan, then he has no choice but to require a site plan.

Mrs. Harris noted that the Board was asking staff to go against the Plan.

Mr. Kelley stated that he would support the motion and that he believed that the site plan should be in strict conformance with the special permit approval.

Mr. DiGiulian stated that he interpreted the Zoning Ordinance in such a way that it gives the Director, DEM, the right to consider the use prior to making a decision regarding a waiver of the site plan.

Chairman Smith stated that he would not support the motion as he believed that the Director had acted properly and responsibly to enforce the Zoning Ordinance. He added that the appellant had other areas of appeal or could have asked that the trail be vacated.

Mrs. Thonen stated that she had changed her decision because she believed that the Board had the right to hear an appeal with respect to any Director's decision.

Mr. Hammack stated that there had been times when the Board would not reverse this type of decision and that it would be appropriate to be under site plan waiver and that the Board was only considering this one case.

Chairman Smith stated that if the Board acted to reverse this decision he believed that the Board would be acting judgmental. He then called for the vote and the motion carried by a vote of 5-2 with Chairman Smith and Mrs. Harris voting nay.

Mr. Doherty asked that the Board order the Director, DEM, to waive the site plan and the Board refused.

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Page 18, September 21, 1989, (Tape 3), Information Item:

Sunrise Country Day School

Chairman Smith noted that a motion had been tabled earlier in the hearing so that staff could contact the Zoning Administrator's Office. He asked if staff had been able to do so.

Jane Kelsey, Chief, Special Permit and Variance, explained that staff had been informed by the appellant's attorney, Harold Miller, that he would be out of town on November 28, 1989, therefore he would need be requesting a deferral. William Shoup, Assistant Zoning Administrator, has told staff that he has not been able to talk to Mr. Miller about filing a new special permit.

Mr. Kelley suggested that the Board defer any further action on this until September 26, 1989 to allow staff time to contact Mr. Miller.

Hearing no objection, the Chair so ordered.

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Page 18, September 21, 1989, (Tape 3), After Agenda Item:

St. Matthew's United Methodist Church, SPA 80-A-087-2
Additional Time

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff was recommending that the applicant be given an additional eighteen (18) months making the new expiration date June 22, 1991.

Mr. Ribble made a motion to accept staff's recommendation. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mrs. Thonen not present for the vote.

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Page 18, September 21, 1989, (Tape 3), After Agenda Item:

Creative Play School, SP 89-V-046
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the applicant is requesting that the application be heard within thirty to forty-five days. She stated that because of the staffing time involved and the preparation of the staff report it would be extremely difficult to expedite the public hearing. Ms. Kelsey noted that the application is currently scheduled for November 28, 1989 and staff does not support the request for an out of turn hearing.

Mr. Kelley asked if the case could be scheduled for November 16, 1989. Ms. Kelsey replied that it could if it was the Board's desire to schedule the case for that day.

Mr. Kelley then made a motion to schedule the application for November 16, 1989 at a time to be set by staff. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 18, September 21, 1989, (Tape 3), After Agenda Item:

Burke Presbyterian Church, SP 89-S-047
Out of Turn Hearing

Mrs. Thonen asked staff if this case could be scheduled for November 16th.

Jane Kelsey, Chief, Special Permit and Variance Branch, agreed that the case could be scheduled for November 16th but noted that it would require a quick turnaround on staff's part.

Page 19, September 21, 1989, (Tape 3), (BURKE PRESBYTERIAN CHURCH, SP 89-S-047, continued from Page 18)

Mrs. Harris asked if this school had been operating since 1983 without a special permit. Ms. Kelsey stated that she could not respond as staff had just received the application.

Ms. Kelsey noted that Sunrise Country Day School would also be on November 16th and that this would also require staff to do a quick turnaround.

Mrs. Thonen moved to deny the request. Mrs. Harris seconded the motion.

Following further discussion among the Board, Mrs. Thonen made a substitute motion to defer action on this request until September 26, 1989. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley not present for the vote.

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Page 19, September 21, 1989, (Tape 3), After Agenda Item:

Approval of August 1, 1989 Minutes

Mrs. Thonen moved to approve the August 1, 1989 Minutes as submitted by staff. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley not present for the vote.

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Page 19, September 21, 1989, (Tape 3), After Agenda Item:

Approval of Resolutions

Mrs. Thonen moved to approve the Resolutions of September 14, 1989 as submitted by staff. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley not present for the vote.

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Page 19, September 21, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 2:25 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: October 31, 1989 APPROVED: November 14, 1989

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, September 26, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

Chairman Smith called the meeting to order at 9:37 a.m. and gave the invocation. There were no matters to bring before the Board.

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Page 21 September 26, 1989, (Tape 1), Scheduled case of:

9:00 a.m. THE GULICK GROUP, VC 89-C-049, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision into twelve (12) lots, proposed corner Lot 11 having a lot width of 135 feet (175 ft. min. lot width required by Sect. 3-106), located at 1177, 1187, 1197 Stuart Road, on approximately 13.39 acres of land, zoned R-1, Centreville District, Tax Map 11-2((18)), 7A, and 7B. (DEF. FROM 7/25/89 AT APPLICANT'S REQUEST)

Upon questions from Chairman Smith, Bernadette Bettard, Staff Coordinator, confirmed that the applicant had requested withdrawal of the case and submitted the related correspondence.

Mrs. Thonen moved to grant the request. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Ribble and Mr. Kelley not present for the vote.

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Page 21 September 26, 1989, (Tape 1), Scheduled case of:

9:20 A.M. SAINT MARK CATHOLIC CHURCH, SPA 81-C-081-3, application under Sect. 3-103 of the Zoning Ordinance to amend S-81-C-081 for church and related facilities to permit parking lot additions, located at 9970 Vale Road, on approximately 19.6 acres of land, zoned R-1, Centreville District, Tax Map 37-4((1))42. (DEF. FROM 7/25/89 AT APPLICANT'S REQUEST)

Lori Greenlief, Staff Coordinator, presented the staff report and recommended approval of the application with the development conditions contained in Appendix 1.

Patrick Via, with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, Box 547, Fairfax, Virginia, represented Saint Mark Catholic Church. Mr. Via explained that the application is for an additional 208 parking spaces. He stated that the original application which was presented to the Board in October, 1988 had been modified to eliminate the problems that were of concern to staff and to the neighbors.

In response to questions from the Board, Mr. Via said 35 feet transitional screening would be installed at the rear of the parking lot but the corner picnic area would remain at 25 feet with no modifications. Mr. Via, again, pointed out that the application had been modified to eliminate the citizen opposition and stated that three letters of support have been submitted. He explained that the hill area on the northern side would be buffered and that drainage would be addressed by the construction of two storm management ponds. Mr. Via stated that the applicant's engineer and the Office of Transportation believe that traffic should flow adequately.

There being no speakers and staff having no further comments, Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant the request with the conditions contained in the staff report dated July 20, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-C-081-3 by SAINT MARK CATHOLIC CHURCH, under Section 3-103 of the Zoning Ordinance to permit parking lot additions, on property located at 9970 Vale Road, Tax Map Reference 37-4((1))42, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 19.621694 of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-303 the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity in the main area of worship shall be limited to a total of 1,000 seats with a corresponding minimum of 250 parking spaces. There shall be a maximum of 477 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements.

6. Transitional Screening and barriers shall be provided as follows:

   - Transitional Screening 1 within a thirty-five foot wide screening yard shall be provided along the northern lot line in the area of the parking lot. The remaining vegetation along the northern lot line shall be deemed to satisfy the transitional screening requirements.

   - Transitional Screening 1 (25 feet) shall be provided between the parking lot and the sanitary sewer easement along the southeastern lot line in the area of the parking lots.

   - The existing screening along the remainder of the southeastern lot line, the western lot line and the southwestern lot line shall be deemed to satisfy the transitional screening requirements.

   The barrier requirement shall be waived along all lot lines. All new plantings required under this condition shall be subject to review and approval of the County Arborist with respect to size, type, location and quantity.

7. The existing stormwater detention pond to the west of the church shall be reconstructed to meet Best Management Practices stormwater management facility standards as set forth in Part 4 of Article 6 of the Public Facilities Manual as determined by the Department of Environmental Management. The proposed stormwater management pond shown as "Future Storm Water Management Area, if required" on the special permit plat shall be required and shall be constructed to meet the Best Management Practices standards referenced above as determined by the Department of Environmental Management.

8. The travel lane which leads to the rear parking area shall be closed when the play area is in use for scheduled activities.

9. Interior parking lot landscaping shall be provided as shown on the special permit plat dated Dec. 1987 and revised June 30, 1989 and as approved by the County Arborist.

10. A left turn, which is designed to the satisfaction of the Virginia Department of Transportation shall be provided into the site.

11. A right turn deceleration lane shall be provided which is designed to the satisfaction of the Virginia Department of Transportation.

12. Right-of-way to forty-five (45) feet from centerline along the site's frontage on Vale Road shall be dedicated to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever comes first. An ancillary easement, fifteen (15) feet in width, shall be provided to facilitate improvements of the road. Additional dedication shall be provided as deemed necessary by the Department of Environmental Management for the provision of a right turn lane.

13. If light poles are installed in the new parking areas, they shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall be focused directly onto the subject property.
    - Shields, shall be installed, if necessary, to prevent light from projecting beyond the church property.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 7 - 0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 23 September 26, 1989, (Tape 1), Scheduled case of:

9:40 A.M. SAINT MARK COPTIC ORTHODOX CHURCH, SP 89-S-013, application under Sect. 3-C03 of the Zoning Ordinance to allow church and related facilities, located at 11821 Braddock Road, on approximately 3.1 acres of land, zoned R-C and WS, Springfield District, Tax Map 67-1((4))34. (DEFERRED FROM 6/27/89 TO ALLOW APPLICANT TO MEET NOTICE REQUIREMENT. DEF. FROM 7/25/89 FOR ADDITIONAL INFORMATION)

Bernadette Bettard, Staff Coordinator, presented the staff report and explained that the applicant had revised the plat by increasing the screening on the southern end of the property to 42 feet, on the western side of the property to 15 feet, reduced the seating capacity to 300, and reduced the parking spaces to 94. Ms. Bettard noted that the Department of Public Works (DPW) has submitted a letter to staff addressing the sewer system. The letter from DPW stated that "future expansions, additions, or modifications to the church may not be permitted, operation of a day school at the church is prohibited, and activities which are likely to generate large volumes of wastewater are prohibited." The letter was entered into the record. She explained that although the applicant has modified the plan staff is still concerned about the intensity of the project, the bulk of the building, and the screening of the property. Staff therefore recommends denial of the request as they do not believe that the application meets the general standards.

In response to questions from the Board, Ms. Bettard explained that the intensity is measured by impervious surfaces, the bulk of the building and the intent and character of the area. She noted the proposed development is at the maximum 1.0 FAR for the R-C zoning district.

Mrs. Thonen suggested that staff and the applicant work together to reduce the size of the building. She noted that the size of the church would be much larger than the size of other churches in the area and also questioned the height of the dome.

In response to the Board's questions, Jane Kelsey, Chief, Special Permit and Variance Branch, noted that spires are tall and thin, therefore they are excluded from the height limitation. She explained that staff recommended the height of the bulk portion of the building be no more than 35 feet to 45 feet in order to be consistent with the residential character of the area.

Ms. Kelsey noted that the building as proposed does not exceed the maximum FAR. She went on to explain that although it does not exceed the technical requirement of the Zoning Ordinance, staff reviews all applications to see if the applicant's request is compatible with the Comprehensive Plans recommendation for the area.

In response to Chairman Smith's remarks, Ms. Bettard noted the screening of the site ranges from 26 to 42 feet.

Patrick Via, with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, Box 547, Fairfax, Virginia, represented Saint Mark Coptic Church. Mr. Via referred to the letter he had sent

to the Board. He explained that the sewerage problem addressed at the previous hearing in July, 1989, had been solved and presented a letter of approval from the Department of Public Works. Mr. Via stated that the applicant has accepted the transportation improvements, and the additional buffering required, but believes the historic design of the building should not be modified. He said that most of the structure will have a height of 41 feet, the dome part has a height of 54 feet.

In response to Mrs. Thonen question on the height of the dome, Mr. Via explained that there will be two domes, one dome 41 feet high and the other dome 54 feet high.

Mrs. Thonen expressed concern about the size of the building. She said the building, having a width of 60 feet and a length of 164 feet, is about three times as large as any church in the area.

Mr. Via said that the applicant preferred not to reduce the size of the building, but to build the structure as presented to the Board. He noted that the other churches in the area are very old. He further explained that the new homes being built in this area are very large and he believes this will be the case when the area around the church is developed.

In response to Mrs. Harris question, Mr. Via again said that the applicant did not want to reduce the size of the building. He stated that the entire structure may have to be redesigned if the building were reduced in size.

Mr. Hammack mentioned the conditions contained in the letter of September 13, 1989. He asked if the conditions which prohibit future expansion, additions, modifications, a day schools, or activities which generate a large volumes of waste water, were acceptable to the applicant.

Mr. Via replied that the applicant does not have any problem accepting these conditions. He went on to ask that the following development conditions be changed: number 7, which required transitional screening "3" be changed to transitional screening "1"; number 14, the building height be allowed to be changed from "35" feet to "54" feet.

In response to Mrs. Harris concern about the transitional screening, Mr. Via said, the church building would be in existence and would have no impact on the development of the area.

There being no speakers, and staff having no further comments, Chairman Smith closed the public hearing.

Mr. DiGuilian moved to grant the request subject to the development conditions contained in Appendix 1 of the staff report addendum, dated September 21, 1989 with the following modifications. Condition number 7, "transitional screening 1", shall replace "transitional screening 3", conditions 8 thru 11 to remain the same. Because the conditions in the report were misnumbered with conditions 12 and 13 missing, the condition numbered 14 shall be renumbered 12 and shall read, "that the maximum building height shall be 29 feet and the maximum height of the dome shall be 54 feet." The remaining conditions shall be renumbered 13 thru 17 shall remain the same.

In response to a question from Ms. Kelsey, Mr. DiGuilian said condition number 12 shall read "that the dome shall not exceed 54 feet".

Mrs. Thonen expressed reservations about the request, she stated that the proposed structure is too large, and with the sewerage problems which prohibit wedding receptions, day care, or any activities that generate a large volume of waste water, the bulk of the building could be reduced.

Mrs. Harris also expressed the same reservations as Mrs. Thonen, and also stated that she is concerned about the screening and believes that the bulk of the church would not be buffered with the proposed screening. She believes that the structure is too intense for the soil in this area and also the believes that the area should be developed in accordance with the Comprehensive Plan.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-013 by SAINT MARK COPTIC ORTHODOX CHURCH, under Section 3-C03 of the Zoning Ordinance to permit church and related facilities, on property located at 11821 Braddock Road, Tax Map Reference 67-1((4))34, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is 3-C03.
3. The area of the lot is 3.1142 acres of land.
4. The applicant has provided the screening required by the Ordinance.
5. The layout for the structure has been well planned.
6. There is no citizen opposition.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-006 and 8-303 of the Zoning Ordinance.

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

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

2. This approval is granted for the buildings and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.

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 use shall be subject to the provisions set forth in Article 17, Site Plans.

5. The maximum seating capacity for the church use shall be limited to a total of 300 seats.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 94 spaces. All parking shall be on site.

7. Transitional Screening 1, consisting of a 25 foot screening yard, shall be provided on all boundaries of the property except on the eastern boundary where Barrier H is required and along the front of the site where a landscaping plan shall be submitted for approval by the County Arborist. This plan shall completely screen the circular driveway and soften the visual impact of the structure from the streetscape. The circular drive may be redesigned if necessary to accommodate sufficient screening. All structures shall be relocated to the extent necessary to provide the transitional screening yard provided the structure is no closer to the front and side lot lines than shown on the plat submitted with this application. Existing vegetation shall be used to satisfy this requirement with the supplementation of evergreen plantings to obtain the equivalent effectiveness of Transitional Screening 1. The size, type and location of the supplemental plantings shall be approved by the County Arborist to assure the equivalent of Transitional Screening 1.

8. Parking lot landscaping shall be provided in accordance with the Public Facilities Manual as determined by the Department of Environmental Management (DEM). Foundation plantings, the purpose of which shall be to soften the visual impact of the buildings and amount of impervious surfaces shall be provided. The type, size and location of these plantings shall be approved by the County Arborist and shall be included on the aforementioned landscape plan.

9. Structural Best Management Practices shall be provided for stormwater management in accordance with the Public Facilities Manual standards for commercial developments in the Water Supply Protection Overlay District and as approved by DEM.

10. Right-of-way to 60 feet from existing centerline of Road necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary access easements shall be provided to facilitate these improvements.

11. Any proposed lighting of the parking areas shall be in accordance with the following:

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

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

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

12. The building height should not exceed 29 feet and the maximum height of the dome should not exceed 54 feet.

13. The applicant shall submit a geotechnical engineering study to the Department of Environmental Management, if determined necessary by DEM, for approval by DEM and shall implement recommendations as required by DEM.

14. If DEM, in coordination with the Soil Science Office, determines that a potential health risk exists from asbestos contamination, the applicant shall: (1) ensure that all construction personnel are alerted to this potential health risk and (2) commit to appropriate construction techniques, as determined by DEM, to minimize this risk. Such techniques may include, but are not necessarily limited to, dust suppression measures during all blasting and drilling activities, covered transport of removed materials, and appropriate disposal of removed materials.

15. A right-turn deceleration lane shall be provided into the site's entrance. The design and length shall be determined by the Virginia Department of Transportation.

16. The use of the property shall be limited to a church only, with no operation of a child care center, nursery school or school of general education permitted. Due to potential problems to the sewage system, the applicant shall understand that future expansions, additions, or modifications to the Church may not be permitted.

17. The activities which may generate large volumes of wastewater shall be prohibited as agreed to by the applicant. If problems to the sewage system shall occur as the result of any such activities, the applicant shall be responsible for the resolution of any such problems.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date of* the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion. The motion carried by a vote of 4 - 3 with Mrs. Thonen, Mrs. Harris and Mr. Hammack voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 26, September 26, 1989, (Tape 1), Scheduled case of:

10:00 A.M. KNOLLWOOD BAPTIST CHURCH, SPA 82-S-028-4, application under Sect. 6-303 to amend S 82-S-028 for church and related facilities to permit continuation of use of three trailers, located at 10000 Coffer Woods Road, on approximately 5.00 acres of land, zoned PRC, Springfield District, Tax Map 78-3((1))40.

Bernadette Bettard, Staff Coordinator, presented the staff report and recommended approval of this request for a five year period.

In response to questions from the Board, Floyd Harris, 9630 Burke View Avenue, Burke, Virginia, represented the applicant and stated that they hoped to build a permanent structure within five years.

Ben D. Nolan, II, 9750 South Park Circle, Fairfax Station, Virginia, a member of Knollwood Baptist Church, stated that the trailers have been leased with an option to buy. He asked for a full five year extension for the trailers.

Chairman Smith called for any other speakers in support of the application, there being none, he called for any speakers in opposition to the request.

Crawford J. Reed, 10378 Frank Court, Manassas, Virginia, representing Burke Centre Conservancy, the Homeowner's Association. Mr. Reed stated that the Burke Centre Conservancy maintains architectural control of the entire community and noted that the Conservancy had not been notified of the public hearing. He explained that a representative of the Conservancy appeared before the Board at the original hearing and requested the permits to install the trailers be held in abeyance until approval from the Conservancy has been obtained. The Board did honor the request and Knollwood Baptist Church made substantial modification to their plans in order to lessen the impact of the structures. He said the additional landscaping agreed upon has not been provided, the trailers are sitting on cinder blocks, and the skirting has not been done. Mr. Reed explained, that the Burke Centre Conservancy was told that the trailers would be removed at the expiration of the original two year permit, and had not been notified of the request for extension. Mr. Reed asked the Board to hold any decision in abeyance until Knollwood Baptist Church has made the appropriate applications to the Burke Centre Conservancy.

In response to Mr. Hammack questions, Mr. Reed explained that the Architectural Review Board made an exception to the trailers despite community opposition. The Conservancy agreed upon a two year temporary period and does not consider a seven year period to be a temporary arrangement. Mr. Reed said that the neighborhood council meetings had cooperated with the church and had agreed upon the design, color, staining, skirting, and landscaping.

Mr. Hammack expressed concerns about the notice requirements and Burke Center Conservancy not having the opportunity to evaluate the request and asked that the hearing be continued.

Ms. Kelsey stated that the Real Estate Assessment address for the property was Burke Centre Conservancy, 10100 Wards Grove Court, Burke, Virginia 22015, and they were sent notification on September 1, 1989.

In response to questions from the Board, Mr. Reed stated that the Conservancy had moved to a new address approximately two and one half years ago.

Ms. Kelsey suggested that Mr. Reed contact Real Estate Assessments to have the address changed. She explained that it is a requirement of the Code that the last known property owner whose address appears in Real Estate Assessments be notified. Ms. Kelsey stated that the Burke Centre Conservancy envelope came back as "not deliverable as addressed, unable to forward." She further noted that the notice requirement had been met because the applicant tried to notify the Conservancy at the last known address as listed in Real Estate Assessments.

There being no further speakers in opposition, Chairman Smith asked Mr. Harris for rebuttal.

Mr. Harris stated that the screening has been done but that the trailers have not been skirted. He explained that hemlock trees had been planted to screen between the houses and the church.

In response to questions from the Board, Mr. Harris said that there are thick woods behind the trailers. He was not sure if the red cedars were actually planted around the trailers as shown on his plat.

There being no further speakers and staff having further comments, Chairman Smith closed the public hearing.

Mrs. Thonen moved to defer the case so that the applicant could comply with the conditions that were agreed upon in the original application and to meet with the Burke Centre Conservancy.

Mrs. Harris seconded the motion.

Ms. Kelsey suggested November 16, 1989 at 9:20 a.m. Hearing no objections Chairman Smith so ordered.

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Page 27 September 26, 1989, (Tape 1), Scheduled case of:

10:15 A.M. LEHNDORFF TYSONS JOINT VENTURE & LORD AND TAYLOR, SP 89-P-034, application under Sect. 8-901 of the Zoning Ordinance to allow additional sign area and different arrangement of sign area distribution for a regional shopping center, located at Tysons Corner Shopping Center, on approximately 78.6453 acres of land, zoned C-7, Providence District, Tax Map 29-4((1))35, 39; 39-2((1))2, 5.

Chairman Smith remarked that the notices were not in order and asked staff for a new hearing date.

Staff suggested October 24, 1989 at 11:15 a.m.

Mrs. Thonen moved to grant the request. Mr. Diguilian seconded the motion. The vote carried by a vote of 5-0 with Mr. Kelley and Mr. Hammack absent for the vote.

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Page 28 September 26, 1989, (Tape 1), Scheduled case of:

10:30 A.M. DIFFERENT DRUM, INC., SP 89-V-036, application under Sects. 3-303 & 8-901 of the Zoning Ordinance to allow private school of general education, and waiver of the dustless surface, located at 2818 Bass Court, on approximately 48,348 square feet of land, zoned R-3, Mt. Vernon District, Tax Map 102-3((7))2.

Lori Greenlief, Staff Coordinator, presented the staff report and recommended approval of the application with the development conditions contained in Appendix 1. She said that the school would serve twenty-five students who would be brought to the site in vans and be bused to other areas for active recreation. Ms. Greenlief explained that although the Comprehensive Plan calls for the preservation and enhancement of the residential neighborhoods in Gum Springs, staff believes that the use will not have adverse impact on the neighborhood. Ms. Greenlief noted that one petition in opposition had been received from the neighbors.

Richard Hobson, an attorney with McGuire, Woods, Battle, and Booth, 8280 Greensboro Drive, McLean, Virginia, represented the applicant. Mr. Hobson explained that the applicant is currently operating the school in a rented building on Telegraph Road. He said that a new school is needed because the present building is in poor condition. Different Drum, Inc. owns the property which is not on a main thoughfare and abuts a public park. He noted that the school has limited it's student body to twenty-five and the students are bused in vans from Alexandria and Fairfax County. The transportation analysis indicated that the school can be served by the existing streets with no conflict in traffic patterns. Mr. Hobson brought the Board's attention to the six letters of support.

Mr. Hobson asked that proposed development condition number 9 be modified so that the applicant has one year to the date of occupancy to complete the condition. He also requested that proposed condition number 13 be
modified to "five, one year extensions" rather that "three, one year extensions." He said that the applicant would also like a small sign on the building, if acceptable to the Board.

The President of Different Drum, Inc., Pat Brown, 5207 Tamar Woods Court, Fairfax, Virginia, spoke in support of the school. She explained that the school serves the communities of Alexandria and Fairfax County by giving handicapped children an appropriate education. Mrs. Brown said she believes that Different Drum will be a good neighbor and will also give the students an opportunity to graduate from high school.

Mr. Ribble and Mr. Kelley submitted a letter in opposition, that had been hand delivered to their respective homes the night before.

Chairman Smith called for any other speakers in support of the application.

The Executive Director of United Communities Ministries, Sharon Kelso, 8176 Fernlake Court, Alexandria, spoke in support of Different Drum, Inc. She explained that the school serves the special needs of the students and the school is an asset to the community.

Clyde Saunders, Jr., 3211 Napper Road, Alexandria, Virginia, said that he believes the community has become a dumping ground. Mr. Saunders went on to explain that within a two to three mile radius there are three trailer parks; several thrift stores, one high rise with another one under construction, and a high consecration of low income housing. He further noted that Fairfax County is negotiating a subsidized boarding house at the north of Gum Spring. He said that he lived in the community to be near his family and friends even though he was financially able to live just about anywhere in Fairfax County.

In response to questions from Mrs. Thonen, Mr. Saunders explained that the current 1988 study done in the Gum Spring area recommended that the area remain residential. He went on to say that the Adam's Trailer Park site is being rezoned. The current development proposal has asked for one hundred and seventy-one townhouse, three condominiums, three stories high, and four single family homes, the proposal was rejected on the August 26, 1989.

In response to Mr. Ribble's questions, Mr. Saunders said that his mother lived adjacent to the property and has had problems with the current lessees of the property. He explained that his family and neighbors believe that Different Drum, Inc. should be responsible for the conduct of their tenants.

In response to questions from Mr. Kelley, Mr. Saunders said that there were five other homes on the circle. He confirmed that all the residents on the court were opposed to the school site.

The following spoke in opposition to the request. President of the Gum Springs Civic Association, Rev. Thomas Brown, 2914 Dunbar Street, Alexandria, Virginia; Clyde Saunders, Sr., 2814 Bass Court, Alexandria, Virginia; Ben Simmons, 2819 Bass Court, Alexandria, Virginia; Eric Swinson, 2815 Bass Court, Alexandria, Virginia; and Mae Garvin, 2819 Bass Court Alexandria, Virginia.

They explained that the community wants to remain stable and residential. The neighbors are concerned with the conduct of the present tenants of Different Drum, Inc. They believe that the tenants were not adequately screened. The citizens said people in the neighborhood have worked hard to rid the area of drug pushers and want a nice area to raise their families. The community would like to promote home ownership and community pride.

At this time Jill Aubry, Fairfax County Public School, 10310 Layton Hall Drive, Fairfax, Virginia, stood up and asked to speak in support of the school. Chairman Smith allowed her to do so. Ms. Aubry explained that there are very few day school in the Fairfax County in which to place handicapped students. She said, there are only two schools within Fairfax County for adolescents who are learning disabled or emotionally disturbed therefore she would like to support the school site.

The Director of the school, Robin Harviel, 10658 Canterberry Road, Fairfax Station, Virginia, spoke in rebuttal. Ms. Harviel explained that there are only seven full time teachers and that the students are bused in vans and believes the traffic will not create a problem. She expressed her belief that the school would be an asset to the community and a good neighbor.

Mrs. Thonen said that she understood the community's concern and believes the area has been saturated with outreach programs. She questioned whether Ms. Harviel would support a school of this type moving into her neighborhood.

In response to Mr. Kelley's questions, Ms. Harviel explained that the students are not allowed to drive. When questioned about the ten cars that were parked at the present school site on the previous day, she said that they probably had visitors. Ms. Harviel stated that the present tenants of the house are not affiliated with Different Drum Inc.

Mr. Hobson returned to the podium to speak in rebuttal. He submitted that the application meets the requirements of the Ordinance, the use is in harmony with the Comprehensive Planning. Mr. Hobson said the exterior of the building would not be changed, fencing and screening would be installed, and that traffic would not be a problem. He stated that he believes that the school would be a good neighbor and at the same time serve the community.

With staff having no comments, Chairman Smith closed the Public Hearing.

Mrs. Harris moved to deny the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-V-036 by DIFFERENT DRUM, INC., under Sections 3-303 and 8-901 of the Zoning Ordinance to permit a private school of general education, on property located at 2818 Bass Court, Tax Map Reference 102-3((7))2, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 48,348 square feet of land.
4. The use of the property would not be compatible with the neighborhood.
5. The stable residential nature of the neighborhood should be protected.
6. The use of the property would be too intense for the neighborhood.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses and the additional standards for this use as contained in Sects. 8-006, 8-303 and 8-307 of the Zoning Ordinance.

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

Mr. Kelley seconded the motion. The motion carried by a vote of 5 - 1 with Chairman Smith voting nay and Mr. DiGiulian not being present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1989.

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Page 30 September 26, 1989, (Tape 1), Scheduled case of:

10:45 A.M. JOHN L. KVASNICKA, VC 89-S-081, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 3.6 feet from side lot line such that side yards total 14.9 feet (8 ft. min., 24 ft. total min. side yards required by Sect. 3-207), located at 9208 Cutting Horse Court, on approximately 10,559 square feet of land, zoned R-2(C), Springfield District, Tax Map 88-2((6))59.

Denise James, Staff Coordinator, presented the staff report and explained that the request has been revised to request a lesser variance of 5.8 feet from the side lot line. Ms. James noted that the application did not have to readvertised because the variance was less than originally advertised.

The applicant, John Kvasnicka, 9208 Cutting Horse Court, Springfield, Virginia stated that the property is unusually pie shaped. He went on to add that he needs a garage for his car, boat, and woodwork equipment. Mr. Kvasnicka explained that the adjacent house has no window on the first level and that the view from the windows on the second level would not be blocked.

In response to questions from the Board, Mr. Kvasnicka explained that the extra five feet is needed because it is part of the roof line.

Chairman Smith called for speakers in support or in opposition and having no reply asked staff for closing comments. Staff having no further comment, Chairman Smith closed the public hearing.

Mr. Ribble moved to grant the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-081 by JOHN L. KVASNICKA, under Section 3-207 of the Zoning Ordinance to allow construction of garage addition to dwelling to 5.6 feet from the side lot line, on property located at 9208 Cutting Horse Court, Tax Map Reference 88-2((6))59, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 10,559 square feet of land.
4. The applicant has satisfied the nine standards.
5. The lot is pie shaped with converging lot lines toward the rear.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval* date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A building permit shall be obtained prior to any construction.

Mr. Hammack seconded the motion. The motion carried by a vote of 5 - 1 with Chairman Smith voting nay and Mr. DiGiulian being absent from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 31 September 26, 1989, (Tape 1), Scheduled case of:

11:00 A.M. ROBERT H. DAVIES, VC 89-M-082, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage and room additions to dwelling to 8.6 feet from side and 20.6 feet from rear lot lines, respectively (15 ft. min. side yard, 25 ft. min. rear yard required by Sect. 3-207), located at 3437 Slade Run Drive, on approximately 13,889 square feet of land, zoned R-2, Mason District, Tax Map 60-2((30))75.

Denise James, Staff Coordinator gave the staff report.

In response to questions from the Board, Ms. James explained that the house on Lot 73 is approximately 30 feet back from the shared property line, and the dwelling on lot 76 is approximately 15.1 feet from the shared property line.

The applicant, Robert H. Davis, 3437 Slade Run Drive, Falls Church, Virginia stated that because of the shape of the property he could not add anything onto the structure without a variance. He explained that the neighbor to his rear had added a two car garage, and the neighbor to the side had added fourteen feet to the back of his house.

In response to questions from the Board, Mr. Davis said that the garage would be 20 feet wide and 30 feet deep. He explained that he would like the extra length for storage area. Mr. Davis noted that the garage would not be even with the new addition.

Chairman Smith called for speakers in support or in opposition and having no reply asked staff for closing comments. Staff having no further comment, Chairman Smith closed the public hearing.

It was the consensus of the Board that the garage and the addition should have an even line and that applicant should submit a plat showing the exact dimensions of the proposed structure, and lot.

Mr. Kelley moved to grant the request in-part with the development conditions contained in Appendix 1 of the staff of September 19, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-082 by ROBERT H. DAVIES, under Section 3-207 of the Zoning Ordinance to allow construction of garage and room additions to dwelling to 8.6 feet from side and 20.6 feet from rear lot lines, **(THE BOARD GRANTED A GARAGE TO BE EVEN WITH THE PROPOSED NEW ADDITION)** on property located at 3437 Slade Run Drive, Tax Map Reference 60-2((30))75, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 13,889 square feet of land.
4. The applicant has satisfied the nine standards for a Variance.
5. The request is reasonable and would create a hardship for the applicant if not granted.
6. The applicant must submit a revised plat limiting the length of the garage so that it will be even with the new 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.

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A building permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 6 - 0 with Mr. DiGiulian being absent for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 33 September 26, 1989, (Tape 1), Scheduled case of:

11:15 A.M. JOSEPHINE CARONIA SEEBER, VC 89-C-085, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 16.5 feet from a contiguous pipestem driveway (25 ft. min. front yard req. by Sect. 2-416), located at 13227 Pleasant Glen Court, on approximately 8,569 square feet of land, zoned R-3, Centreville District, Tax Map 25-3((9))318.

Denise James, Staff Coordinator gave the staff report.

The applicant, Josephine Seeber, 13227 Pleasant Glen Court, Herdon, Virginia stated that all but four of the 328 lots at Bradley Farms have two car garages. She went on to explain that on her lot the builder would have had to apply for a variance to build a two car garage because the pipestem serves three homes.

In response to questions from the Board, Ms. Seeber said that she had purchased the home in December 1986. She explained that when she bought the home from the builder, he had told her that the original contract on the structure called for a one car garage. Ms. Seeber noted that the original contract fell through and the home was under construction when she contracted for it. Ms. Seeber said the builder did not tell her that a variance would be needed in order to build a two car garage and it was only after she tried to enlarge the garage that she became aware of the problem. When asked about the twenty-four foot dimensions of the garage, she said that all the garages in the neighborhood are twenty-four feet. Ms. Seeber mentioned that her car and several cars in the neighborhood had been vandalized. She also noted that the Architectural Review Board at Bradley Farms had approved the proposed addition.

Chairman Smith called for speakers in support or in opposition and having no reply asked staff for closing comments. Staff having no further comment, Chairman Smith closed the public hearing.

Mr. Hammack moved to deny the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-085 by JOSEPHINE CARONIA SEEBER, under Section 2-416 of the Zoning Ordinance to permit construction of garage addition to dwelling to 16.5 feet from a contiguous pipestem driveway, on property located at 13227 Pleasant Glen Court, Tax Map Reference 25-3((9))318, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 26, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 8,569 square feet of land.
4. The applicant has not satisfied the nine standards for a Variance.
5. The request has not satisfied the Board that physical conditions exist which preclude reasonable use of 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**.

Mrs. Thonen seconded the motion. The motion carried by a vote of 6 - 0 with Mr. DiGiulian not being present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 4, 1989.

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Page 34 September 26, 1989, (Tape 1), Scheduled case of:

11:30 A.M. MR. & MRS. JOSEPH E. AND ANNE LEONARD, VC 89-M-084, application under Sect. 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 2.6 feet from side lot line (10 ft. min. side yard req. by Sects. 3-207 and 2-412), located at 5206 Redwing Drive, on approximately 20,026 square feet of land, zoned R-2, Mason District, Tax Map 72-3((21))14.

Denise James, Staff Coordinator gave the staff report.

Arif Hodzic, Hodzic Architects, 4300 Evergreen Lane, Annandale, Virginia represented the applicant. Mr. Hodzic gave the Board a letter of support that was signed by five adjacent homeowner. He explained that the house is located on an irregular shaped lot which has very steep terrain. He added that on the left side of the lot, and in the rear of the lot, the land is too steep to use. He noted that because of this problem the variance is necessary.

In response to questions from Chairman Smith, he explained that the carport could not be located on the other side of the house without doing extensive work because of the twelve foot grade.

Mr. Bodzic explained, in answer to Mr. Hammack's question, that there is an existing retaining wall and that no additional retaining walls will be needed.
He also noted that the carport will cover the existing driveway and no paving would be necessary.

Chairman Smith called for speakers in support or in opposition and hearing no reply asked staff for closing comments. Staff having no further comment, Chairman Smith closed the public hearing.

Mr. Kelley moved to grant the motion with the conditions contained in Appendix 1 of the staff report dated September 19, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

MOTION TO GRANT FAILED

IN Variance Application VC 89-M-084 by MR. AND MRS. JOSEPH E. AND ANNE LEONARD, under Section 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 2.6 feet from side lot line, on property located at 5206 Redwing Drive, Tax Map Reference 72-3((21))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 September 26, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 20,026 square feet of land.
4. The applicant has met the nine standards for a Variance
5. Exceptional topographic conditions exist on the property.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A building permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion **FAILED** for a lack of four (4) affirmative votes needed to pass a Special Permit or Variance. The vote was 3 - 3 with Mr. Kelley, Mr. Ribble, Mr. Hammack voting aye, and Ms. Harris, Mrs. Thonen, Chairman Smith voting nay. Mr. 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 October 4, 1989.

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Page 36 September 26, 1989, (Tape 1), Scheduled case of:

11:45 A.M. HUNTER DEVELOPMENT APPEAL, A 89-S-009, application under Sect. 18-103 of the Zoning Ordinance to appeal Zoning Administrator's determination regarding development potential of appellant's property, on approximately 10.7 acres of land, zoned RC, Springfield District, Tax Map 66-3((1))39 and 65-2((1))pt. 24. (DEFERRED FROM 9/14/89 - POSTING)

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the Board to defer the application because the posting was not properly done and suggested October 19, 1989 at 10:45 a.m.

Chairman Smith called for anyone in the room interested in this applicant, hearing no response he called for a motion.

Mrs. Thonen moved to grant the request. Mr. Hammack seconded the motion. The vote carried by a vote of 6-0 with Mr. Digiulian absent for the vote.

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Page 36 September 26, 1989, (Tape 1), Scheduled case of:

12:15 A.M. BELL ATLANTIC MOBILE SYSTEMS INC. APPEAL, A 89-C-006, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that special exception approval is required for a telecommunication facility in the PRC District where such use is not indicated on the approved development plan, located at 11810 Sunrise Valley Drive, zoned PRC, Centreville District, Tax Map 17-3((3))1. (DEFERRED FROM 6/27/89 - NOTICES) (DEFERRED FROM 9/21/89 - NOTICES)

The Zoning Administrator, Jane Gwinn, explained to the Board that she had originally ruled that a Special Exception with approval was required. Ms. Gwinn said she had since researched this case more thoroughly and had changed her decision and believes that this facility should not be permitted in the proposed location.

In response to questions from the Board, Ms. Gwinn stated that she had informed Mr. Stearn of her decision verbally on September 20, 1989 and had given him the written ruling on September 21, 1989. She noted that the applicant has an option to appeal the decision within thirty days.

The applicant's representative, Frank W. Stearns, 11320 Random Hills Road, Fairfax, Virginia, stated that he believed the case should be heard based upon the fact that they maintain the "use by right."

Page 37 September 26, 1989, (Tape 1), (BELL ATLANTIC MOBILE SYSTEMS INC. APPEAL, A 89-C-006, continued from Page 36)

After a lengthy discussion, the Board asked that the case be deferred so that Jane Gwinn and Mr. Stearn would have time to properly research this case. The Board requested a written report from both parties in advance of the new hearing date.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested November 16, 1989 at 9:40 a.m.

Chairman Smith called for a motion.

Mrs. Thonen moved to grant the request. Mrs. Harris seconded the motion. The vote carried with a vote of 6 - 0.

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Page 37 September 26, 1989, (Tape 3), After Agenda Item:

Burke Presbyterian Church Preschool, SP 89-S-047
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the school is still operating. She went on to explain that when the applicant inquired if she could increase the enrollment, it was determined that the preschool did not have a Special Permit.

Mrs. Harris made a motion to deny the request. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. DiGiulian not present for the vote.

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Page 37 September 26, 1989, (Tape 3), After Agenda Item:

Barbara Grayson, VC 89-P-128
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that Ms. Grayson's request would cause no staffing problems.

Chairman Smith suggested November 16, 1989.

Ms. Harris made a motion to grant the request. Mr. Ribble seconded the motion which carried by a vote of 6 - 0 with Mr. DiGuilian not present for the vote.

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Page 37 September 26, 1989, (Tape 3), After Agenda Item:

Juliana Campagna T/A Sunrise Country Day School, A 89-D-010
Out of Turn Hearing

The Board discussed the Campagna Appeal that the Board had tabled at a previous hearing.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that a Special Permit had been filed, but she did not know if the application met the submission requirements.

Following a lengthy discussion and several motions the Board decided to hear the Appeal on November 16, 1989 at 10:00 a.m. and the Special Permit on November 16, 1989 at 10:30 a.m.

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As there was no other business before the Board, the meeting was adjourned at 1:3 p.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED November 16, 1989

APPROVED November 28, 1989

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, October 3, 1989. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Paul Hammack; John DiGiulian, Vice Chairman, and Robert Kelley. John Ribble was absent from the meeting.

Chairman Smith called the meeting to order at 8:00 p.m. and led the invocation. He asked if any of the Board members had any matters to bring before the Board.

Mrs. Thonen announced the time limit for each speaker by stating that the applicant has 10 minutes, individual speakers have 3 minutes, and civic association representatives have 5 minutes. She stated that the time limitations would be strictly adhered to due to the number of people in the audience.

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Page 39, October 3, 1989, (Tape 1), Scheduled case:

8:00 P.M. WORD OF LIFE ASSEMBLY OF GOD BY REV. WENDEL COVER, PASTOR, SPA 81-A-078-2, application under Sect. 3-303 of the Zoning Ordinance to amend SP 81-A-078 for a church and related facilities to permit revision to size and configuration of the approved sanctuary addition, located at 5225 Backlick Road, on approximately 12.42 acres of land, Lee District, zoned R-3, Tax Map 71-4((1))40-C.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report and handed out revised development conditions. She stated that staff recommended denial of the request.

Mr. Hammack noted that it appeared to him that the applicant had reduced the number of seats but had enlarged the actual size of the church. He pointed out that the previously approved footprint showed a structure 120 x 120 and the new footprint was for a structure approximately 141 x 141. He added that the architect had computed the footprint to be approximately 25,000 square feet as compared to 14,400 square feet, a difference of approximately 10,000 square feet.

Mrs. Thonen asked staff how much land was usually required for a public school of general education. Ms. Kelsey replied that she would research and find out since public schools are not special permit uses and she was not familiar with the requirements.

Chairman Smith stated that he believed the ratio was 2 acres per 600 students, but he was not positive.

Ms. Kelsey stated that the applicant was willing to plant what had been requested in the punch list that had been prepared by staff and the County Arborist's office.

Ms. Kelsey then noted the changes in the development conditions by stating: 1) the seating capacity has been reduced to 2,340 from 2,360; 2) condition 8, first bullet, revise to read "Arborist recommended removing the additional hedge that it would not grow well with the amount of trees; second bullet, revise the fourth line to read "screening yard along Edsall Road and Backlick Road shall be maintained between the resultant lot lines after dedication and the parking areas. The plantings are to go behind the sign."; third bullet, "additional screening to go behind the tot lot." Ms. Kelsey added that the last bullet on the condition 2 had been added, and the applicant did not agree. She explained that this condition requires that the building be shifted back 10 feet in order to provide 10 feet for foundation plantings around the building. The purpose of this condition is to try to alleviate the visual impact of the size and the bulk of the building. With respect to the parking lot lighting, the condition that addresses that should be revised to include some additional sentences to state that no hot spot lighting shall be provided.

Mrs. Thonen wanted assurance that the lighting would be shielded and be contained within the boundaries of the property. She also wanted to know what was around the tot lots and if the applicant planned to construct a fence.

Mrs. Harris asked if the foundation plantings were the same as those previously requested with the submission of the footprint for the building of 120 x 120.

Patrick Via, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, Box 547, Fairfax, Virginia, represented the applicant. Mr. Via stated the applicant had been before the BZA in 1985 for an approval of a building with 2,360 seats and 592 parking spaces on 12.65 acres. The applicant has attempted to comply with each development condition requested by the County and noted that the previous approval allowed the applicant to phase the landscaping as the building went up. With that in mind, the applicant has provided landscaping which they believed to be adequate. Mr. Via stated that this new application is requesting a building with 2,340 seats and 585 parking spaces on the same size lot. He showed the BZA a new plat with what is now proposed. Mr. Via added that the citizens are basically concerned with the screening and added that there has been a new punch list which called for additional screening requirements, with which the applicant will comply. The applicant has agreed to construct road improvements, although the turn lane has been taken away from the Office of Transportation when it was realigned. The previous footprint was approximately 14,400 square feet and the present footprint is approximately 25,000 square feet. Of the footprint area, 4,840 square feet is the increase in the sides with the

remaining area of the footprint coming in the area closest to the existing buildings with the bulk in that particular location. The proposed FAR is approximately the same as the previously approved application.

At the conclusion of Mr. Via's remarks, G. T. Ward, architect with the firm of Ward Hall Associates, 12011 Lee Jackson Memorial Highway, Fairfax, Virginia, came forward.

Mr. Hammack asked how the building could be expanded by 10,000 square feet and the architect still come up with almost the same square footage as before. Mr. Ward explained that to try and fit the seating capacity into the 120 x 120 building would have required two balconies, by increasing the size to 140 x 140 only one balcony would be required.

Mr. Via restated that the church is in harmony with the existing area.

Mr. DiGiulian wanted to know what the total footprint increase would be from the 1985 approval. Mr. Via replied 1,100 square feet.

Chairman Smith called for speakers in support of the application. There being none he called for speakers in opposition.

Matt Abrams, 7017 Braddock Mews Place, Springfield, Virginia, spoke on behalf of the Braddock Mews Homeowners Association, and stated that the Association had met with the church and stated their dissatisfaction with the size of the building and with the church being located at such a congested intersection. The Association believed the proposed church was too big to be put in a residential neighborhood and would like to make certain that the applicant agreed to meet the screening requirements stipulated by the Arborist. Mr. Abrams also wanted to point out that there was a stained glass window, 14 x 24 feet, which the Association believed was inappropriate to be located at that intersection.

During rebuttal, Mr. Via addressed the development conditions by stating: condition 8, bullet 2, no structure or fences shall be permitted in this area <u>except along the ballfield</u> to be added; bullet 6, all trees to be 6 feet in height. The Arborist had recommended that some be 5 feet. He recommended that the bullet be revised to read that "all plantings be 6 feet in height or as recommended by the Arborist."; bullet 7, applicant has agreed to work with Arborist to add foundation plantings but did not agree with the building being moved back 10 feet. Condition number 11, the applicant was hoping the Office of Transportation would realign the road as previously done to include the turning lane, but if not the applicant agreed to do whatever was necessary. Condition number 14, third paragraph, Mr. Via asked for a clarification with respect to the backlighting on the stained glass window. He added that the applicant had attempted to be a good neighbor.

Mr. Ward stated that the arch is higher than the 45 feet the church would be and stated that the church could not easily be moved back the 10 feet requested by the BZA.

Mrs. Thonen suggested the architect cut 10 feet off the Backlick side and the Edsall side of the building to satisfy the requirement. Mr. Ward asked if the Board would accept a 5 foot cutback. Mrs. Thonen informed him that if he wanted it approved by the BZA he would have to cut it down by 10 feet.

Mr. Hammack wanted to know why, by deleting one balcony, the building height had not been reduced. Mr. Ward stated that it was needed for balance and with no windows other than the stained glass window the height was necessary.

There being no further questions, Chairman Smith closed the public hearing.

Chairman Smith, on behalf of the BZA, told Mr. Via that at least 5 feet of screening around the building would be required. Mrs. Thonen informed the Chairman that she did not believe 5 feet was sufficient and that at least 10 feet was required. Mr. Via informed the BZA that the applicant was willing to defer the decision on this case and to resubmit a revised plat to address the Board's concerns.

Mrs. Thonen made the motion to defer decision to a date agreeable to both the BZA and the applicant. This would allow the architect time to submit a revised plat reducing the size of the building in order to provide foundation plantings. Mr. Hammack seconded the motion.

Mrs. Thonen stated that her concern was the bulk of the building and suggested that perhaps the building could go down further in the ground and that she wanted to see a reduction in the size of the main large building.

Mrs. Harris stated that she had problems with increasing the building at all from the previous footprint.

Mr. Hammack stated that he wanted to see foundation plantings around the site and a reduction to the building by reducing the sides 10 feet.

Mrs. Thonen reemphasized the 10 feet reduction on the Backlick and Edsall sides.

Chairman stated he would agree to a 5 foot reduction.

The motion carried by a vote 6-0 with Mr. Ribble absent from the meeting. The new date for the hearing was set for December 5, 1989 at 8:00 p.m.

Chairman Smith stated the public hearing was closed and that no additional testimony would be heard except from Mr. Abrams, Mr. Via and Mr. Ward, the ones who spoke at this hearing.

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Page 41, October 3, 1989, (Tape 1), Scheduled case:

8:20 P.M. HAZELTON LABORATORIES AMERICA, INC., A 89-D-003, to appeal Zoning Administrator's decision that appellant's special exception application, SE 87-D-089, was improperly accepted and changes are necessary in order for the request to be a proper application, on property located at 9200 Leesburg Pike, on approximately 123.84 acres of land, zoned R-1, Dranesville District, Tax Map 19-4((1))16, 16A, and 31.

Jane Gwinn, Zoning Administrator, presented the staff report of the appeal of her decision from January, 1989 and the staff report from April 7, 1989. She stated that this case had been deferred several times, the last time being July at which time the appellant filed an amended application. By letter dated October 2, 1989, the Zoning Administrator informed Mr. Hobson that the amended application could not be accepted and by letter dated October 3, 1989, Mr. Hobson tried to amend his appeal to include the Zoning Administrator's decision of October 2. He also stated that Hazelton Laboratories wished to pursue its appeal of the Zoning Administrator's decision of January 6, 1989 as supplemented by her letter dated October 2, 1989. The Zoning Administrator stated that she did not believe it could be properly heard due to the fact that it was a new decision and would require a new application to be filed, an additional fee paid, advertising, and then brought before the BZA for public hearing.

Chairman Smith stated that the only issue before the Board was to set a date for this hearing and no additional issues should be brought forth at this time.

Richard Hobson, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, stated that the issue being brought forth was whether or not the Zoning Administrator could require, as a condition of processing the application, that the owner be required to be a joint applicant with the lessee. Mr. Hobson objected to that issue and stated he could file an appeal of the Zoning Administrator's letter of October 2, 1989. According to Mr. Hobson, the Zoning Administrator did not have the authority to do what she did regarding the original decision in January, 1989.

Mrs. Harris said that in reading the Zoning Ordinance it required endorsement by the landowner rather than them being joint applicants on the application and that nowhere in the correspondence does it say that the Zoning Administrator requests that they be joint applicants, only have the endorsement.

Mr. Hobson read from Ms. Gwinn's correspondence of January 6, 1989, third paragraph, page one, which stated "that in order for this application to be accepted, a revised application must be submitted with both Hazelton Laboratories and Karloid as the applicants."

Mrs. Harris stated that the Zoning Administrator had merely requested some form of written statement which indicated endorsement of the application by the property owner.

Mr. Hobson stated he did not believe that required Karloid to join the application. He said that they had signed under protest as they did not think the entire 123 acres needed to a part of the application.

Mr. Hammack asked Mr. Hobson about an exhibit attached to the letter he had submitted concerning Section 15.1-496 of the Code of Virginia which stated that a tenant can make an application. The letter also stated in the next sentence that such application shall be made to the Zoning Administrator in accordance with rules adopted by the Board of Supervisors which seemed to qualify since the information came from the Zoning Ordinance which was adopted by the Board.

According to Mr. Hobson the statute did not require them to be a joint applicant only that the owner endorse the application. The owner objected to putting the entire property in the application. Mr. Hobson stated that he believed that a lease purchaser has the right to be heard on the amount of the property they have contracted to purchase.

Mr. Hammack asked staff why an endorsement was necessary if there was a contract on the property.

Ms. Gwinn informed Mr. Hammack this application was filed as an amendment to a permit in the name of Karloid and that was why she had required endorsement by the owner of the property.

Mr. Hobson commented that they are requesting a special exception to amend and replace all previous permits. The plat, which was required by staff, was for 123 acres which Karloid signed under protest and Karloid is now a joint applicant.

Mr. DiGiulian asked the Zoning Administrator if a new special exception application on the 47 acres was filed by the contract purchaser, would she require an endorsement by the owner? Ms. Gwinn stated that in her letter to Hazelton Laboratories the contract purchaser was still required to have endorsement of the property owner.

The Chairman then asked if there were any other speakers on this application.

Mr. Hobson requested that the Board make a decision on this application and assured the Board that his client would abide by that decision.

Chairman Smith then closed the public hearing.

Mrs. Thonen made a motion to uphold the Zoning Administrator's decision on this case. Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mr. Ribble being absent from the meeting. This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1989.

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Page 42, October 3, 1989, (Tape 2), Scheduled case:

Little River Pines Civic Association, Inc. Appeal

Jane Gwinn, Zoning Administrator, wanted the BZA to be aware that the application was filed in the name of Little River Pines Civic Association, Inc. and stated that she questioned whether the Association constituted an aggrieved person under the Virginia Code and was entitled to file an appeal before the Board of Zoning Appeals. She added that she could not find any evidence that the Association owns any property in Fairfax County and she also believed the Association was trying to appeal something beyond the scope of the Board of Zoning Appeals. If the BZA should accept the appeal, Ms. Gwinn stated that she believed the scope of the appeal should be reduced.

Mr. DiGiulian made a motion that the Board of Zoning Appeals not accept the appeal as it was not properly filed and the appellant is not a proper appellant. Mr. Hammack seconded the motion. The motion carried by a vote of 6-0 with Mr. Ribble being absent from the meeting.

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Page 42, October 3, 1989, (Tape 2), Scheduled case:

8:40 P.M. SOUTH RUN REGENCY APPEAL, A 89-S-011, Appeal Zoning Administrator's determination that tennis court lights are in violation of a condition of Special Permit SP 84-S-064, located at 9908 South Park Circle, on approximately 9.78 acres of land, zoned R-1, Springfield District, Tax Map 88-3((1))G.

William E. Shoup, Deputy Zoning Administrator, stated his determination was that the tennis court lights violate Special Permit, SP 84-P-063, approved in 1984. He stated that development condition number 9 required that the lights be low density and directed entirely onto the tennis courts and not project beyond the tennis court area. Mr. Shoup added that the lights are impacting the residents on Rambling Ridge Court.

Mrs. Thonen said she had been to a house adjacent to the tennis courts one time and the lights were shining just on the tennis courts and then another time when she was there they had been redirected and were spilling onto the adjacent areas.

Mr. Shoup informed the Board that Hazel/Peterson had someone come and adjust the lights and they had not been adjusted correctly and that is when a complaint had been made and Zoning Enforcement had issued the violation.

The appellant, Ken Winslow, 9831 S. Park Circle, Fairfax Station, Virginia, President of South Run Regency Homeowners Association, represented the community and stated the Association wished to cooperate with Fairfax County.

Charles Mattox, 7103 Lake Tree Drive, Fairfax Station, Virginia, said in 1987 due to a realignment of the lights numerous shadows were cast on the courts and as a result the tennis committee deemed them not suitable for play at night for safety purposes. The committee had made numerous attempts to find contractors to alleviate this problem but they would like some specifications from the County that would pass inspection. As a result of all the efforts, the tennis committee requested a Zoning Inspector come to the property while the lights were being readjusted and then check the realignment of the lights while everyone was present. After the realignment, the tennis committee believed the Zoning Inspector was satisfied with the adjustment and believed the lights were in compliance until they received a letter of violation 40 days after the realignment. Mr. Mattox asked that the BZA forego a decision until the Association had received some quantifiable standards that they could meet from the

County. He added that according to the County there are no standards available.

In response to a question from Mr. Hammack, Mr. Mattox explained that the Association had louvers over the lights to control the lighting but that still did not seem to work.

Mary Connolly, 9908 Shady Slew Court, Fairfax Station, Virginia, a resident of South Run, informed the Board the Association had gotten some estimates on landscaping hoping that would help but the Association is not in a position to put out $10,000 or more for something that may or may not help.

Lynn Rothstein, 7510 Lee Chapel Road, Fairfax Station, Virginia, a resident of South Run, Lot 10B, directly across from the tennis courts, stated her property gets no illumination from the tennis court lighting, but South Run Recreation Center has lights that illuminate her house even with a tree buffer.

Ray Pelletier, 9928 S. Park Circle, Fairfax Station, Virginia, member of South Run Board of Trustees, did not believe there has been any complaints from his neighbors. He wanted to know the criteria for measuring lighting. He believed there should be some specific design criteria that are not subjective and that developers would be required to follow.

John Stephenson, 9709 Rambling Ridge Court, Fairfax Station, Virginia, stated that he had been present when the lights were readjusted and it was the determination at that point that the lights were satisfactory. He would like the County to tell the Association exactly what to do and they would comply.

Nancy Converse, 9744 Rolling Ridge Road, Fairfax Station, Virginia, expressed frustration because the contractors say they cannot guarantee a readjustment of the lighting because they are not sure what the County requires.

Jerry Buck, 9910 Shady Slope Court, Fairfax Station, Virginia, agreed that the lights need to be redirected to allow the maximum light on the tennis court for safety purposes, as well as keep them from flowing off the tennis courts.

Mr. Shoup reiterated that staff is concerned about the lighting and that the Zoning Inspector, after seeing the lighting on May 8, still believes the lights are in violation.

Mr. DiGiulian made a motion to uphold the determination of the Zoning Administrator that the lights of the South Run tennis courts are in violation of SP 84-S-063. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting. This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1989.

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Page 43, October 3, 1989, (Tape 3), After Agenda Item:

Galloway United Methodist Church, SP 88-P-001
Additional Time

Mr. DiGiulian made a motion to grant the applicant an additional eighteen (18) months. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting. The new expiration date is October 20, 1990.

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Page 43, October 3, 1989, (Tape 3), After Agenda Item:

Revised Plat for Unity of Fairfax Church
of the Daily Word, SPA 73-P-007-2

Dennis James, Staff Coordinator, submitted a memo to the Board of Zoning Appeals informing them of various changes in the footprint. Jane Kelsey, Chief, Special Permits and Variance Branch, showed the BZA the new plat. Staff suggested to Mrs. Travesky that she come back before the BZA with a plat like the one previously submitted to the BZA in order to obtain approval.

Marie Travesky, 3900 Jermantown Road, Fairfax, Virginia, agent for the applicant, informed the BZA that the building had not changed in dimension, the triangle between the two buildings was in fact a canopy and the trailer size had changed and the standard building size was 2 feet longer and 2 feet wider.

It was the decision of the Chair that the applicant submit new plats.

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Page 44, October 3, 1989, (Tape 3), After Agenda Item:

Approval of Resolutions

Following a discussion among the Board with respect to the proper procedure regarding the two reconsideration requests, it was the consensus of the Board to approve the Resolutions prior to taking action on the requests.

Mrs. Thonen made a motion to approve the Resolutions of September 26, 1989 as submitted by staff. Mr. DiGiulian seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 44, October 3, 1989, (Tape 3), After Agenda Item:

Request for Reconsideration
Mr. & Mrs. Joseph E. & Anne Leonard, VC 89-C-084

Eddie Hodsick, 4300 Evergreen Lane, Annandale, Virginia, spoke on behalf of the applicants and stated that he believed that the application had not been handled fairly.

Mrs. Thonen made a motion to deny the reconsideration. Mr. DiGiulian seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Mrs. Thonen then made a motion to waive the 12-month waiting period. Mr. DiGiulian seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 44, October 3, 1989, (Tape 3), After Agenda Item:

Request for Reconsideration
Josephine Caronia Seeber, VC 89-C-085

Mr. DiGiulian made a motion to deny the request for reconsideration of VC 89-C-085. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Mr. DiGiulian then made a motion to waive the 12-month waiting period in VC 89-C-085. Mrs. Harris seconded the motion.

Both Mrs. Thonen and Mr. Hammack indicated that they could not support the motion to grant the applicant a waiver of the 12-month time limitation because the applicant was not present in the Board Room to make such a request.

Mr. DiGiulian called for the question and the motion carried by a vote of 4-2 with Mrs. Thonen and Mr. Hammack voting nay; Mr. Ribble was absent from the meeting.

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Page 44, February 13, 1990 (Tape 1), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 12:15 p.m.

Alicia Caperton Hale
Alicia Caperton, Substituting for the
Clerk, Board of Zoning Apeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: March 22, 1990 APPROVED: March 27, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, October 10, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

Chairman Smith called the meeting to order at 9:18 a.m. and gave the invocation. In response to Chairman Smith's questions with respect to Board matters, Mrs. Thonen stated that she would like staff to compile all Board policies and prepare a package to be given to all Board members. The other members agreed.

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Page 45, October 10, 1989, (Tape 1), Scheduled case of:

9:00 A.M. NELSON AND MARTHA GETCHELL APPEAL, A 89-D-004, to appeal Zoning Administrator's determination regarding the calculation of the maximum permitted FAR for a structure located on a split zoned lot, located at 718 Walker Road, zoned C-5 and C-8, Dranesville District, Tax Map 13-1((1))1. (DEFERRED FROM 5/9/89 AT APPLICANT'S REQUEST. DEFERRED FROM 7/6/89 AT APPLICANT'S REQUEST)

Chairman Smith noted that the appellant was requesting another deferral. Mrs. Thonen stated that she was opposed to another deferral and added that she would like to proceed with the public hearing and then the appellant could proceed with the filing of a rezoning application.

Lynn Strobel, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich, Lubeley, P.C., 950 North Glebe Road, Suite 300, Arlington, Virginia, came forward and argued for the deferral. She stated that the appellant was trying to work with the community and with Supervisor Richards' office to arrive at a suitable alternative.

Chairman Smith commended the appellant for working with Supervisor Richards and the citizens but pointed out that those discussions were not relevant to the appeal. He asked the Board as to what they would like to do regarding the request for a deferral.

Mrs. Thonen made a motion to deny the request for a deferral. Mr. DiGiulian seconded the motion.

Mr. Hammack asked if any Board member had been contacted by Supervisor Richards' office with respect to the ongoing negotiations. None of the Board members indicated that they had been contacted, but Mrs. Harris noted that a representative from the Great Falls Citizens Association was present.

Mr. Kelley stated that he would like to hear staff's comments. Jane Gwinn, Zoning Administrator, noted that she had no position with respect to the deferral. She added that she believed that the most appropriate course of action for the appellant was the filing of a rezoning application.

Following further discussion among the Board members regarding the deferral, Mrs. Harris asked Chairman Smith to call the Great Falls Citizens Association representative to the podium.

Richard Peters, Co-Chairman of the Planning and Zoning Committee, Great Falls Citizens Association, came forward. He stated that he had attended a meeting with Supervisor Richards, the appellant, and the contract purchaser last week. Mr. Peters added that during that meeting the contract purchaser had indicated that he believed that this appeal would be withdrawn today.

In response to questions from Mr. Hammack regarding the negotiations, Mr. Peters explained that he had been involved in discussions, not negotiations, with respect to the size of the proposed building and that he had reviewed the proposed plans. He added that the citizens would like the proposed building to be in keeping with the character of the surrounding area. Mr. Peters noted that the Association did not support or oppose the request for deferral.

There was a motion on the floor to deny the deferral request and Chairman Smith called for a vote. The motion carried by a vote of 5-1 with Mr. Kelley voting nay; Mr. Ribble not present for the vote.

Jane Gwinn, Zoning Administrator, explained that the appellant's property is split zoned, C-5 and C-8. The issue involved is the appellant's proposal to locate the proposed building on the C-8 portion of the property and the parking on the C-5 portion of the property and combining the two properties in order to achieve the maximum FAR. She referenced her memorandum to the BZA dated October 3, 1989 and stated that the FAR for the building would be calculated based on a combination of the land area zoned C-8 at the .7 FAR permitted by the C-8 District and the land area zoned C-5 at the .5 FAR permitted by the C-5 District. This would result in a building located within a C-8 District with an FAR greater than the .7 permitted by that district.

In response to questions from Mr. Hammack with respect to a similar case ruled on in 1984 by the previous Zoning Administrator, Ms. Gwinn replied that the property involved in that case was zoned C-6 and I-5 and it had been the owner's intent to use the lesser FAR of the districts and what resulted was a building located in a zoning district, which building

exceeded the FAR for the district. She added that in her opinion that had been an incorrect interpretation based on the Zoning Ordinance provisions which have not been amended.

Ms. Strobel came back to the podium. She stated that the appellant did not wish to proceed with the public hearing nor had she been given the authority to proceed, therefore she requested that the appeal be withdrawn.

Mr. Hammack made a motion to allow the withdrawal of the appeal. Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 46, October 10, 1989, (Tape 1), Scheduled case of:

9:20 A.M. BETHLEHEM LUTHERAN CHURCH, SP 89-M-033, application under Sect. 3-103 of the Zoning Ordinance to allow addition of a pavilion, dumpster pad and parking spaces to existing church and related facilities, located at 8922 Little River Turnpike, on approximately 3.64 acres of land, zoned R-1, Mason District, Tax Map 58-4((1))61. (CONCURRENT WITH SPA 82-M-031-1. DEF. FROM 8/1/89 IN ORDER FOR THE APPLICATION TO BE RE-ADVERTISED AND RE-POSTED AS SET FORTH IN THE ZONING ORDINANCE.)

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that this application had been deferred from an earlier public hearing because of a posting problem. She then proceeded with the staff report and noted that revised plats had been submitted showing the deletion of a light pole and that the dumpster pad and additional parking spaces had been withdrawn from the application. She called the Board's attention to a partial verbatim transcript from the previous public hearing which the Board had requested be made a part of this public hearing. Ms. Kelsey added that the church had also submitted a request for a modification to the screening requirement along with letters from the adjacent property owners.

The Board took a few minutes to review the letters submitted to them with respect to the screening.

In closing, Ms. Kelsey stated that staff recommended approval of the request subject to the development conditions contained in the staff report.

In response to questions from the Board with respect to the transitional screening, Ms. Kelsey explained that once the Board of Zoning Appeals approves a special permit the applicant submits a plan to the County Arborist who tells the applicant whether or not the proposal meets the transitional screening requirements.

Nadine Jones, 8911 Glade Hill Road, Fairfax, Virginia, came forward to represent the church and asked the Board to waive the Transitional Screening 1 requirement. She stated that the church would provide additional screening in order to meet the County requirements but would also like to be allowed to work with the adjacent homeowners. Ms. Jones submitted additional photographs to the Board showing the existing vegetation on the site.

Chairman Smith asked Ms. Jones if she agreed with staff's recommendations regarding the screening. Ms. Jones stated that the church would not like to add the fence in addition to the screening because on the west side of the property is a paved parking lot and the church would not want to remove that lot. Ms. Kelsey interjected that staff would have no objection to revising the conditions to reflect that the transitional screening yard be modified in the location of the existing parking lot.

A discussion took place among the Board, staff, and the applicant regarding the screening. Mr. Kelsey stated that staff had no objections to a waiver of the barrier requirement and apologized to the Board that this had not been addressed in the development conditions.

Chairman Smith called for speakers in support of the request and Sheldon Haselbarth, 9113 Platt Place, Fairfax, Virginia, came forward. Mr. Haselbarth stated that he had discussed the transitional screening with the adjacent homeowners and they had indicated to him that they would not like to see a lot of screening added.

The Board pointed out that there were also letters in the file requesting that more trees be planted in addition to those submitted by the applicant. Mrs. Thonen commented that she believed that the church would benefit more by letting the County Arborist guide them.

In response to a question from Mr. Hammack regarding changes to the development conditions, Ms. Kelsey replied that condition number 8 should be revised by adding a sentence to read, "A modification shall be permitted to allow the existing parking lot within the transitional screening yard" and a new condition stating that "the barrier requirement shall be waived."

There were no speakers in opposition to the request, nor any further staff comments, and Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant the request subject to the development conditions contained in the staff report revised as suggested by staff.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-M-033 by BETHLEHEM LUTHERAN CHURCH, under Section 3-103 of the Zoning Ordinance to allow addition of a pavilion to existing church and related facilities, on property located at 8922 Little River Turnpike, Tax Map Reference 58-4((1))61, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 3.64 acres of 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 Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions. The parking lot shown on the plat is not approved. (The applicant submitted a revised plat removing proposed parking lot.)

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 make available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions. A revised plat shall be submitted removing the proposed parking lot from the plat. (The applicant submitted a revised plat.)

5. The maximum seating capacity for Bethlehem Lutheran Church shall be 175 as shown on the site plan.

6. The nursery school shall have a maximum daily enrollment of not more than 75 children. The nursery school is permitted to operate in two sessions, (morning and afternoon) Monday through Friday. The hours of operation are 9:15 AM to noon and 1:00 PM to 3:45 PM.

7. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 59 spaces.

8. Transitional Screening 1 (25') shall be provided along lot lines adjoining residential properties. The existing vegetation may be used to satisfy this requirement provided the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist. A modification of Transitional Screening 1 is permitted along the front property line provided landscaping of the building and driveway from adjacent residential properties and street system is provided which will soften the visual impact as determined by the County Arborist. A modification shall be permitted to allow the parking lot within the transitional screening yard. The barrier requirement shall be waived.

9. Any proposed lighting of the parking areas and the one (1) lighted pole near the pavilion shall be in accordance with the following:

   - The combined height of the light standards and fixtures shall not exceed twelve (12) feet. (The applicant submitted a revised plat showing the removal of the lighted pole.)

   - The lights shall focus directly onto the subject property.

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

10. The pavilion shall be used for church and child care uses only and shall not be rented to other non-profit organizations.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

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.

Mrs. Harris seconded the motion. The motion carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 48, October 10, 1989, (Tape 1), Scheduled case of:

9:30 A.M. CARMEN J. MANDICH, VC 89-P-055, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage and room additions to dwelling to 10.4 feet from side lot line and 18.9 feet from rear lot line (12 ft. min. side yard; 25 ft. min. rear yard required by Sect. 3-307), located at 9122 Maywood Lane, on approximately 11,455 square feet of land, zoned R-3, Providence District, Tax Map 58-2((10))76. (DEF. FROM 7/27/89 AT THE APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that the notice requirement had not been met by the applicant.

Chairman Smith noted that this was the second time that the applicant had failed to prepare the notices.

Mrs. Thonen made a motion to defer the case to December 21, 1989 at 9:00 a.m. Hearing no objection, the Chairman so ordered.

The Board also requested staff to inform the applicant that this would be the last deferral and if the notice requirement for the December public hearing was not met the case would be withdrawn for lack of interest.

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Page 48, October 10, 1989, (Tape 1), Scheduled case of:

9:45 A.M. GEORGE RAYMOND HOWARD, VC 89-A-087, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport 7.1 feet from side lot line such that side yards total 19.8 feet (8 ft. min., 20 ft. total min. side yard required by Sect. 3-307), located at 5409 Francy Adams Court, on approximately 16,549 square feet of land, zoned R-3(C), Annandale District, Tax Map 68-3((5))228.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, George Raymond Howard, 5409 Francy Adams Court, Fairfax, Virginia, came forward. He stated that other variances have been granted in the neighborhood, that he planned only to enclose an existing carport, and that he believed the request would enhance the neighborhood.

In response to questions from the Board, Mr. Howard replied that the materials used to enclose the carport would match those on the existing dwelling.

There were no speakers to address the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant subject to the development conditions contained in the staff report dated October 3, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-087 by GEORGE RAYMOND HOWARD, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport 7.1 feet from side lot line such that side yards total 19.8 feet, on property located at 5409 Francy Adams Court, Tax Map Reference 68-3((5))228, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 18, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 16,549 square feet of land.
4. The applicant has met the nine (9) standards necessary for a variance.
5. The applicant will only be enclosing an existing carport.
6. There is no other place to construct a garage.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5-1 with Chairman Smith voting nay; Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 50, October 10, 1989, (Tape 1), Scheduled case of:

9:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-S-071, application under Sect. 18-401 to allow subdivision into four (4) lots, proposed Lot 4 having a lot width of 135 feet (150 ft. min. width req. by Sect. 3-106), located at 10137 Burke Lake Road, on approximately 4.43 acres of land, zoned R-1, Springfield District, Tax Map 87-2((1))14. (DEF. FROM 9/7/89 AT APPLICANT'S REQUEST)

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that staff recommended denial of the request because staff believed that the request would set a bad precedent and because standards 2 through 7 had not been met for reasons set forth in the staff report.

In response to questions from the Board with respect to land dedication, Ms. Bettard replied that the applicant was proposing to dedicate land for the Fairfax County Parkway. She added that right-of-way dedication was not sufficient reason for granting a variance as the applicant could subdivide into a lesser number of lots without a variance.

Regarding stormwater management, Ms. Bettard stated that she could not respond to the question but that Laura Bachle, with the Planning Division, Office of Comprehensive Planning, was present and could possibly address the Board. Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that Ms. Bachle was present to assist staff on a later case and was not prepared to address questions on this case. Ms. Kelsey explained that it is staff's policy that if there is going to a stormwater management pond it should be located on an outlot.

David O'Brien, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, 3110 Fairview Park Drive, Falls Church, Virginia, came forward to represent the applicant. Mr. O'Brien stated that the project was initially designed to accommodate the County's transportation goals of providing land for the Fairfax County Parkway and the applicant has volunteered to do so.

Mr. DiGiulian questioned Mr. O'Brien as to whether or not the applicant could achieve the four lot subdivision if they had not volunteered to dedicate the land to the County. Mr. O'Brien replied that was correct.

Mr. O'Brien continued by stating that the property is uniquely shaped with frontage on both Burke Lake Road and Pohick Road. He stated that there is roughly 173 feet of frontage on Burke Lake Road, which is sufficient under the R-1 Zoning District, and enough frontage on Pohick Road to create three more lots. He added that when the dedicated land is removed it reduces the frontage on Burke Lake Road to approximately 83 feet, which is below the minimum lot width requirement for lots, and shifts the focus of the development principally onto Pohick Road. As it stands now, the frontage along Pohick Road would be adequate to accommodate four lots with each individual lot meeting the lot width requirements, but the County is also requesting dedication along Pohick Road and the end result is that the proposed subdivision falls 15 feet short of meeting the required minimum lot width for Lot 4. Mr. O'Brien disagreed with staff that the applicant had not satisfied standards 2 through 7.

In response to questions from the Board regarding dedication, Mr. O'Brien replied that the four lots could be achieved even with the dedication of land for the Fairfax County Parkway if it were not for the required dedication on Pohick Road. He used the viewgraph to show where the 15 feet would be lost.

Mrs. Thonen noted that John Herrington, with the Office of Transportation (OT), was present in the Board room and perhaps he could address the issue of dedication reducing the frontage on Pohick Road. Mr. Herrington explained that the frontage would be reduced due to the dedication but could not say by how much.

Mr. O'Brien continued by addressing the development conditions and called the Board's attention to the handout which he had distributed with suggested revisions to conditions 6, 7, and 8. With respect to condition number 7, he used a graphic board to show the layout of the proposed lots and stated that Burke Lake Road would be realigned with some of the properties being abandoned or vacated and that the property to the west would have a paved road with a right-of-way access onto Pohick. Mr. O'Brien added that it was his understanding that condition 7 was intended only as a temporary measure and perhaps Mr. Herrington could address that decision.

Mr. Kelley noted that he would like to hear from Mr. Herrington at this time regarding condition 7. Mr. Herrington agreed that until such time as the public road is realigned, either through the Parkway or intersection project, the lots will have access on an arterial and that OT preferred to have access consolidated at a minimum number of points.

Mr. O'Brien asked that the condition be revised to reflect that this was only a temporary measure. Under condition 8, he noted that he had merely added additional language to address the Parkway dedication also.

There were no speakers to address the application, either in support or in opposition, and Chairman Smith asked staff for closing comments.

Ms. Bettard stated that Laura Bachle, with the Environmental Planning Division, would respond to the applicant's comments regarding condition number 6 regarding the BMP's.

Ms. Bachle explained that because the subject property is located in the Burke Lake Watershed area it is a major concern to staff because of the sedimentation. She noted that a regional stormwater facility may be located on the other side of the drainage divide and suggested that condition number 6 remain and that the decision be left up to DEM. Mr. DiGiulian stated that if the condition remains DEM would require that it be done but if it is deleted then DEM has the option to waive it.

Following a discussion among the Board members with respect to condition number 6, some of the members indicated that they did not see the connection between condition number 6 and the regional stormwater facility.

Chairman Smith asked if Ms. Bettard had any further comments. She stated that the proposed density exceeds that recommended by the Comprehensive Plan and that the applicant does not have to develop the site into four lots.

There were no further discussion and Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant in accordance with the development conditions contained in the staff report dated October 3, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-071 by STANLEY MARTIN COMMUNITIES, INC., under Section 18-401 of the Zoning Ordinance to allow subdivision into four (4) lots, proposed Lot 4 having a lot width of 135 feet, on property located at 10137 Burke Lake Road, Tax Map Reference 87-2((1))14, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.43 acres of land.
4. The lot has an exceptional shape at the time of the effective Ordinance and extraordinary situation, which is the requirement for dedication along Pohick Road and the Fairfax County Parkway.

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

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

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

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

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

1. This variance is approved for the subdivision of one lot into four lots as shown on the plat submitted with this application.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless this subdivision has been recorded among the land records of Fairfax County, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval of this variance. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. The driveway to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

4. A geotechnical study shall be prepared by, or under the direction of a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved by DEM prior to submittal of the construction plans and approved measures shall be incorporated into the subdivision plan as determined by DEM and implemented as required by DEM.

5. A tree preservation plan shall be submitted to the County Arborist for review and approval prior to clearing and grading of the site in order to preserve to the greatest extent possible existing, mature vegetation, especially between residential structures and the proposed Fairfax County Parkway, so as to provide visual amenity, air quality and noise protection.

6. Right-of-way in the amount of 30 feet from the centerline of Pohick Road and right-of-way for the Fairfax County Parkway, not to exceed the boundaries as shown on the plat submitted with this application, shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements. Adequate sight distance shall be assured prior to subdivision approval.

7. All dwellings shall be constructed so as to achieve a maximum interior noise level of 45 dBA Ldn and a maximum exterior level of 65 dBA Ldn shall be provided for at least a portion of the lot near the dwelling, such as the patio, and shall comply with the attached guidelines for acoustical treatment of residential structures impacted by noise levels of between 65 to 70 dBA Ldn and 70 to 75 dBA Ldn.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 53, October 10, 1989, (Tape 2), Scheduled case of:

10:00 A.M. STEVEN L. ANDREWS, VC 89-M-086, application under Sect. 18-401 of the Zoning Ordinance to allow construction of room additions to dwelling and garage to 5.5 feet from side lot line, and chimney addition to 3.5 feet from side lot line (12 ft. min. side yard required for room addition, 9 feet min. side yard for chimney required by Sects. 3-307 and 2-412), located at 6704 Kerns Road, on approximately 21,929 square feet of land, zoned R-3, Mason District, Tax Map 60-2((15))252.

Denise James, Staff Coordinator, presented the staff report.

In response to a question from Mr. Ribble, Mrs. James replied that the house on the abutting lot is approximately 40 feet from the shared lot line.

The applicant, Steven L. Andrews, 6704 Kerns Road, Falls Church, Virginia, came forward and referenced the statement of justification submitted with the application. He added that this was the only location to construct the additions because of an existing easement on the other side of the lot and noted that there were plans to move the easement closer to the existing house.

There were no speakers to address the application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-086 by STEVEN L. ANDREWS, under Section 18-401 of the Zoning Ordinance to allow construction of room additions to dwelling and garage to 5.5 feet from side lot line, and chimney addition to 3.5 feet from side lot line, on property located at 6704 Kerns Road, Tax Map Reference 60-2((15))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 October 10, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 21,929 square feet of land.
4. The applicant meets the nine (9) standards required for a variance.
5. There is an extraordinary situation in that the lot has a sanitary sewer easement on one side which will be moved closer to the applicant's house.

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

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

F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A building permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5-1 with Chairman Smith voting nay; Mrs. Harris not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 54, October 10, 1989, (Tape 2), Scheduled case of:

10:15 A.M. TRIANGLE DEVELOPMENT COMPANY, VC 89-P-050, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision into two (2) lots, proposed Lot 1 having a lot width of 23.29 feet and proposed Lot 2 having a lot width of 28.12 feet, (70 ft. min. lot width required by Sect. 3-406), located at 8437 Idylwood Road, on approximately 2.41 acres of land, zoned R-1 and R-4, Providence District, Tax Map 39-3((1))7 and 12.

Denise James, Staff Coordinator, presented the staff report.

In response to questions from the Board, Mrs. James stated that perhaps the applicant could better explain why the land had been withdrawn from the rezoning application. She added that density was not an issue in this case and staff believes that this could be precedent setting as there are other similar lots in the area. Staff does not believe this application meets the standards for a variance for reasons set forth in the staff report.

Ken Sanders, 3905 Railroad Avenue, #200N, Fairfax, Virginia, attorney for the applicant came forward. He explained that it is the County's policy not to approve a rezoning application if a variance is required.

Mrs. Thonen asked if the applicant had tried to consolidate the land and Mr. Sanders replied that they had.

Mr. Sanders continued by stating when working with the citizens and County staff it became apparent that the surrounding neighbors did not want anything done that would allow Idlywood Road to become a cut thru. Because of those concerns, the applicant eliminated this parcel from the rezoning and the Board of Supervisors then rezoned the remainder of the property without requiring the inner connection of Idylwood Road. The applicant was asked to design lots which would prohibit the future connection of Idylwood Road which left this parcel. He added that the applicant could request a rezoning in order to develop up to six lots but the applicant chose to develop two lots making larger lots then required by the zoning district. Mr. Sanders stated that the subject property is two parcels, one of which lines up on Idlywood Road and the other touches a small section of Idlywood Road where the pipestem drive is planned. Mr. Sanders stated that the applicant could not get a reasonable use of the property without a variance and the neighborhood fully supports the request.

In response to questions from Mrs. Thonen with respect to the pipestem, Mr. Sanders explained that the pipestem would be a private road.

In addressing the development conditions, Mr. Sanders asked that condition number 7 be revised so that the applicant would not have to construct an onsite runoff pond and contribute a pro rata share to the Department of Public Works. Regarding condition number 8, he noted that the applicant does not own the land on which Idlywood Road terminates, therefore cannot provide turnarounds as requested by staff.

There were no speakers to address the request and Chairman Smith asked staff for closing comments.

Ms. James stated that staff would have been remiss had they not addressed the turnaround issue as it had not been proffered to at the time of the original rezoning.

As there was no further discussion, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant subject to the development conditions contained in the staff and revised as suggested by the applicant and agreed to by staff.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-050 by TRIANGLE DEVELOPMENT COMPANY, under Section 18-401 of the Zoning Ordinance to allow subdivision into two (2) lots, proposed Lot 1 having a lot width of 23.29 feet and proposed Lot 2 having a lot width of 28.12 feet, on property located at 8437 Idylwood Road, Tax Map Reference 39-3((1))7 and 12, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1 and R-4.
3. The area of the lot is 2.41 acres of land.
4. This request can very well be substantiated as the land is land-locked and if the variance is not granted the Board would be imposing a hardship on the applicant.
5. The request will not be detrimental to the neighborhood.
6. The applicant has worked with the neighborhood in order to alleviate a cut through.

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

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

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

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

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

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

1. This variance is approved for the subdivision of one lot into two (2) lots as shown on the plat submitted with this application.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless this subdivision has been recorded among the land records of Fairfax County, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval of this variance. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. Only one (1) entrance to both lots shall be allowed from Idylwood Road. The driveway easements shall be recorded with deeds to the property to ensure future access to these lots via a common driveway.

4. The driveway to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

5. A soils survey shall be conducted for the site. At the request of the Director, Department of Environmental Management, (DEM), a geotechnical study shall be provided at the time of subdivision plan review for approval by DEM and all findings of the study shall be implemented as requested by DEM.

6. Prior to site plan approval, a tree preservation plan shall be submitted for review and approval by the County Arborist for the purpose of identifying, locating and preserving individual mature, large and/or specimen trees and tree save areas on the site. Preliminary rough grading shall not be permitted on site prior to County Arborist approval for a tree preservation plan.

7. Storm water management shall be implemented as required by DEM and may include, but is not limited to, provision of an on-site storm water detention pond or contribution of a pro rata share to the McHenry Heights M00083 drainage project.

Mrs. Thonen and Mr. Ribble seconded the motion. The motion carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 56, October 10, 1989, (Tape 2), Scheduled case of:

10:30 A.M. CHURCH OF GOD OF PROPHECY, SPA 77-L-218-1, application under Sects. 3-103 and 8-901 of the Zoning Ordinance to amend S-218-77 for a church and related facilities to permit addition of a parsonage to existing facilities and waiver of the dustless surface, located at 6409 Telegraph Road, on approximately 2.9477 acres of land, zoned R-1, Lee District, Tax Map 82-3((1))52.

Denise James, Staff Coordinator, presented the staff report. She stated that the applicant is requesting an amendment to an existing special permit in order to construct a parsonage and to allow the existing gravel surfaces to remain. In closing, Mrs. James stated that the

applicant has addressed all of staff's concerns, therefore staff recommended approval of the request in accordance with the development conditions contained in the staff report dated October 3, 1989.

L. J. Dotson, pastor of the church, 7001 Vantage Drive, Alexandria, Virginia, came forward. He agreed with the staff report and asked that the Board waive the eight day waiting period.

Mr. Kelley asked if the church agreed with the development conditions and Mr. Dotson replied in the affirmative.

There were no speakers, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Kelley made a motion to grant in accordance with the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 77-L-218-1 by CHURCH OF GOD OF PROPHECY, under Sections 3-103 and 8-901 of the Zoning Ordinance to amend S-218-77 for a church and related facilities to permit addition of a parsonage to existing facilities and waiver of the dustless surface, on property located at 6409 Telegraph Road, Tax Map Reference 82-3((1))52, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.94 acres of land.
4. The application is in compliance with the General Standards.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-915 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity for the Church of God of Prophecy shall be limited to a total of 172.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 43 spaces. An additional two spaces shall be provided for the parsonage. All parking shall be on site. Handicapped parking spaces shall be located in accordance with the County Code.

7. Transitional Screening 1 (25') shall be provided along the northern lot line between the existing fence and the natural existing vegetation shown along the northern lot line on the plat in order to screen the parking lot from adjacent residential properties. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist. Existing vegetation along the site frontage on Telegraph Road and along the eastern and southern boundaries shall be deemed to satisfy the transitional screening requirement.

8. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Ordinance.

9. The barrier requirement shall be waived except for the fencing as noted on the plat.

10. Right-of-way to 32 feet from existing property line along Telegraph Road necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements to 15 feet behind the right-of-way dedication shall be provided to facilitate these improvements.

    The parking lot aisle widths shall conform to PFM standards unless waived by the Department of Environmental Management.

11. Any proposed new lighting of the parking areas shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall focus directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

12. A tree preservation plan and limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees.

13. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire five years from the date of the final approval of the application.

    - Speed limits shall be kept low, generally 10 mph or less.
    - The areas shall be constructed with clean stone with as little fines material as possible.
    - The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.
    - Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
    - During dry seasons, water shall be applied to control dust.
    - Runoff shall be channeled away from and around driveway and parking areas.
    - The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris and Mr. Ribble seconded the motion. The motion carried by a vote of 6-0 with Mr. Hammack not present for the vote. The Board also waived the eight-day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 10, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 59, October 10, 1989, (Tapes 2-3), Scheduled case of:

10:45 A.M. BETHLEHEM BAPTIST CHURCH, SPA 82-V-072-1, application under Sect. 3-203 of the Zoning Ordinance to amend S-82-V-072 for a church and related facilities to permit addition of land area, construction of new building and additional parking, located at 7836 Fordson road, on approximately 4.3041 acres of land, zoned R-2, Mount Vernon District, Tax Map 102-1((1))65, 67A, and 68A.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that staff's primary concern is to ensure that the project is compatible with the residential community, which is a goal of both the Comprehensive and Conservation Plans. Staff believes that the proposed new church, in its current form, is not compatible with structures and uses which surround it. Further, it is staff's opinion that from a land use perspective the proposal does not meet all of the general standards for special permit approval, therefore, staff recommends denial of SPA 82-V-072-1.

In response to questions from the Board, Ms. Bettard replied that she believed that the new plan just submitted by the applicant will address the bulk plane issue. She stated that staff had not had time to review the new plan in depth but that the applicant has indicated that the only change is the location of the tower.

The Board expressed their displeasure regarding the late submission of the revised plan which had not allowed sufficient time for the Board nor staff to review the plan.

As there was no further discussion with respect to the screening, Chairman Smith called the applicant's representative forward.

Robert Easter, 6911 Richmond Highway, Alexandria, Virginia, architect for the church came forward. He explained that the plan submitted to the Board just prior to the public hearing was a return to the original plat, the only modification being the reduction of the height of the building/steeple to 45 feet. Mr. Easter added that the plan does meet all the bulk regulations.

He then proceeded with background of the church by stating that the church was established in 1865, making it one of the oldest black congregations in Fairfax County, and it is one of the largest major property holders of the Gum Springs Community. The church will be maintained on site as a historical monument and the new addition will be used as a sanctuary. Mr. Easter stated that the major issue is intensity. He noted that the Zoning Ordinance, under R-2 zoning, stipulates certain limitations and the church is well within each of those as follows: the steeple on the addition will be 36 feet in height and the roof above the steeple will be no higher than 41 feet; the remainder of the building will not exceed 39 feet; the church is only requesting 24,555 square feet; the church is providing 35 percent open space; 15 percent interior parking lot landscaping; 51 feet front setback off of Sherwood Hall Lane and 88 feet off of Fordson Road; and 32 feet side setback off Sherwood Hall Lane. He continued by stating that the church has also taken measures to ensure that the design of the building conforms to the residential character of the surrounding area by making the addition a one-story structure with the only portion of the structure having a high roof being the sanctuary. Mr. Easter stated that the applicant is willing to lower the roof more if the Board so desires and will use gable roofs to minimize the actual roof height towards Fordson Road. He noted that the predominant use surrounding the site is not residential and the ones recently developed were not developed with single family dwellings. (Mr. Easter used the viewgraph to show the surrounding uses.)

In response to questions from the Board regarding condition number 13, Laura Bachle, with the Planning Division, Office of Comprehensive Planning, stated that the geotechnical review is referenced in case it is needed. She clarified that the BZA would have to recommend that the review be done. Ms. Bachle stated that oil and grit separators are needed because of the size of the parking lot and the soil is the type that will not filter the pollutants.

A lengthy discussion took place among the Board members regarding the oil and grit separators and whether or not the decision to require them should be left to the discretion of DEM.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff believed that the issue had been adequately addressed in Appendix 6 of the staff report.

Ms. Bachle stated that staff believed that in this particular case the soil was possibly not capable in this instance of filtering the pollutants and the oil and grit separators were needed.

Chairman Smith asked Mr. Easter if the church agreed with condition number 13. Mr. Easter stated that the church had no problem with the condition and understood that the

environmental concern should be addressed and it was not the intent of the church to adversely impact the community.

Following further discussion among the Board with respect to the oil and grit separators, Mr. Hammack stated that if he made the motion he had no intention of allowing condition number 13 to remain which would require the church to provide the oil and grit separators.

In response to questions from the Board regarding access to the site, Mr. Easter replied that this had been discussed with the Office of Transportation and the church had agreed to keep the exit on Sherwood Hall Lane and to provide a chain barrier across the access on week days. He added that it will be a right turn only onto Sherwood Hall Lane.

Mr. DiGiulian asked Mr. Easter to continue with his comments of the development conditions that had been previously interrupted. Mr. Easter began by addressing condition number 10 and asked that the wording be changed to reflect that the church will dedicate a sidewalk to the County; number 11, delete the last bullet; agreed with conditions 14 and 15; number 16, change the height to 45 feet; and agreed with the remainder of the conditions.

With respect to the Board's concerns regarding the intensity and on site parking, Mr. Easter agreed and noted that the church was currently holding more than one service on Sunday now to accommodate the parishioners. He assured the Board that all parking would be on site.

Chairman Smith called for speakers in support of the motion.

Joseph Bunton, member of the Gum Springs Historical Society, came forward and outlined the history of the church and stated that Samuel K. Taylor, a refugee from the Civil War, had been instrumental in establishing the church.

Sally Pullen, President of the Gum Springs Community Development Corporation/Saunders B. Moon, spoke in support of the building request. She stated that for the past 104 years the church has been actively involved in the community.

Kenneth King, 3006 Sherwood Hall Lane, Alexandria, Virginia, son of the adjacent property owner, Mildred King, came forward and stated that he had been a member of the church for 40 years, his mother has been a member for 50 years. He asked the Board to grant the request and allow the church to expand to meet the needs of the community.

Rev. Thomas H. Brown, President of Gum Springs Civic Association, and a member of the church since 1960 and spoke on behalf of the entire community and supported the church's request. Mr. Brown stated that the congregation has grown with standing room only during their Sunday services. He asked the Board to grant the request.

Anthony A. Parrish, 7834 Fordson Road, Alexandria, Virginia, pastor of the church, came forward and asked the Board to grant the request. He stated that the church needed a larger area to accommodate the present parishioners as well as those new to the community.

Chairman Smith called for speakers in opposition to the request and staff closing comments. Hearing no reply, he closed the public hearing.

Mr. Hammack made a motion to grant the request subject to revised development conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-V-072-1 by BETHLEHEM BAPTIST CHURCH, under Section 3-203 of the Zoning Ordinance to amend S-82-V-072 for a church and related facilities to permit addition of land area, construction of new building and additional parking, on property located at 7836 Fordson Road, Tax Map Reference 102-1((1))65, 67A, and 68A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 10, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 4.3041 acres of land.

4. The applicant has satisfied the Board's concern that it is a too intense development for the site as you have to look at what is around the church. It is a little larger than some the Board has acted on but not as large as others the Board has acted on. Notwithstanding staff's recommendation for denial, the use can meet the standards with certain modifications to the proposed development conditions.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Plat No. 4 submitted at the time of the public hearing with the optional tower location being deleted and is approved with these development conditions.

5. The maximum seating capacity for the sanctuary shall be limited to a total of 800.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 229 spaces. All parking shall be on site.

7. Transitional Screening and landscaping shall be provided as shown on Plat No. 4.

8. The applicant shall provide the stormwater management facility and related pipe alignment shall be located as determined by the Department of Public Works and Environmental Management and the applicant shall allow access, maintenance and inspection by the appropriate County agencies. The adequacy of the on-site stormwater management facility shall be approved by the Department of Public Works prior to site plan approval.

9. The barrier requirement shall be waived, except for the barrier shown on the Plan No. 4.

10. Right-of-way to 26 feet from existing centerline of Fordson Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. The church will construct a sidewalk and provide a one (1) foot maintenance strip along the Sherwood Hall frontage and dedicate the sidewalk and maintenance strip to the County after completion.

11. Any proposed new lighting of the parking areas shall be in accordance with the following:

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

    - The lights shall focus directly onto the subject property.

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

    - If any high intensity lighting is installed on the property, it shall not impact on any nearby properties.

12. A tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site. The parking lot shall incorporate grassed areas, trees and plantings to provide infiltration of stormwater and shade.

    Foundation plantings in the area adjacent to the church building and additional plantings within the ten (10) foot strip parallel to Fordson Road shall be planted to reduce the visual impact of the structure as approved by the County Arborist.

13. A geotechnical study shall be prepared by, or under the direction of a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved by DEM and implemented as required by DEM if required by DEM.

14. The applicant shall ensure that interior noise levels do not exceed 50 dBA Ldn in accordance with the following guidelines.

    A. In order to achieve a maximum interior noise level of 45 dBA Ldn, all units located between 65-70 dBA Ldn highway noise impact contours shall have the following acoustical attributes:

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

    2. Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade, they shall have the same laboratory STC rating as walls.

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

    4. In order to achieve a maximum exterior noise level of 65 dBA Ldn, noise attenuation structures such as acoustical fencing, walls, earthern berms or combinations thereof shall be provided for those outdoor recreation areas including rear yards that are unshielded by topography or built structures. If acoustical fencing or walls are used, they shall be architecturally solid from ground up with no gaps or openings. The structure employed must be of sufficient height to adequately shield the impacted area from the source of the noise.

15. The height of the proposed structures shall be limited to 39 feet with the steeple being allowed to be 45 feet in height.

16. The church structure shall conform to all bulk regulations of the Zoning Ordinance.

17. The applicant shall redesign the site plan so that the main access to the site is limited to Fordson Road, and the entrance on Sherwood Hall Lane shall only be used on Sundays and then egress shall be limited to right turns only.

18. The 15 foot right-of-way shall be vacated between Sherwood Hall Lane and parcel 102-1((1))65 through parcel 102-1((1))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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 18, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 63, October 10, 1989, (Tape 1), Scheduled case of:

Unity Church of Fairfax

Jane Kelsey, Chief, Special Permit and Variance, stated that staff had received new plats for the Unity Church of Fairfax which reflected the revision with respect to the parkos. She added the size of the parkos has been revised to reflect the same size as shown on the approved plat. She added that the Chairman needed only to sign the plats.

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Page 63, October 10, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 1:18 p.m.

Betsy S. Hurt
Betsy S. Hurt, Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: November 16, 1989 APPROVED: November 28, 1989

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, October 19, 1989. The following Board Members were present: Vice Chairman, John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; and John Ribble. Chairman Smith and Mary Thonen were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:45 a.m. and Mr. Hammack gave the invocation. There were no matters to bring before the Board.

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Page 65 October 19, 1989, (Tape 1), Scheduled case of:

9:00 a.m. DONALD JAGET AND PATRICIA JAGET, VC 89-V-105, application under Sect. 18-401 of the Zoning Ordinance to allow the construction of an 8.07 foot high deck to within 7.6 feet of the side lot line and to allow construction of a handicap ramp to within 3.4 feet of the side lot line such that side yards total 10.56 feet (8 ft. min. side yard required, 20 ft. min. total side yards required by Sects. 6-106, 3-307, and 2-412), located at 8416 Rainbow Bridge Lane, on approximately 6,607 square feet of land zoned PDH-3, Mount Vernon District, Tax Map 98-1((4))237.

Greg Riegle, Staff Coordinator, presented the staff report.

John Ellis, with the Fairfax County Department of Housing and Community Development, represented the applicants and explained that the lot configuration imposed a hardship on the construction of a handicap ramp. Mr. Ellis said that Mr. Jaget is restricted to a wheelchair and cannot enter or leave his home on his own accord without a ramp. He presented a number of letters of support from the community.

Vice Chairman DiGiulian called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mr. Hammack made a motion to grant the request with the conditions contained in the staff report dated October 12, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-105 by DONALD JAGET AND PATRICIA JAGET, under Section 18-401 of the Zoning Ordinance to allow the construction of an 8.07 foot high deck to within 7.2 feet of the side lot line and to allow construction of a handicap ramp to within 3.4 feet of the side lot line, on property located at 8416 Rainbow Bridge Lane, Tax Map Reference 98-1((4))237, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is PDH-3.
3. The area of the lot is 6,607 square feet of land.
4. The applicant has satisfied the nine standards.
5. The width of the lot is narrow.
   The neighbors support the applicant.
6. The request is reasonable and would create a hardship for the applicant if not granted.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Ribble not being present for the vote, and Chairman Smith and Mrs. Thonen being absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final October 26, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 66 October 19, 1989, (Tape 1), Scheduled case of:

9:15 A.M. LARRY D. MOWRY, VC 89-D-088, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a detached garage/workshop to 19.0 feet from the side lot line (20 ft. min. side yard required by Sects. 3-107 and 10-104), located at 1307 Altamira Court, on approximately 40,046 sq. ft. of land, zoned R-1, Dranesville District, Tax Map 29-1((7))8.

Vice Chairman DiGiulian noted that a request for deferral had been received from the applicant.

In response to Vice Chairman DiGiulian, Mr. Mowry stated that he had requested a deferral in order to change the proposed location of the structure.

In response to Mr. Hammack's question, Jane Kelsey, Chief, Special Permit and Variance Branch, said that the application would have to be readvertised and suggested a deferral date of November 28, 1989 at 12:00 noon.

Mr. Hammack made a motion to defer the application to the suggested date and time.

Vice Chairman DiGiulian asked if there was anyone present who wished to speak to this request. Hearing no reply, he closed the public meeting.

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9:30 A.M. MICHAEL L. OREM, VC 89-A-090, application under Section 18-401 of the Zoning Ordinance to allow construction of a carport addition to dwelling to 5.6 feet from a side lot line (7 ft. min. side yard required by Sects. 3-307 and 2-412), located at 8113 Bullock Lane, on approximately 10,800 sq. ft. of land, zoned R-3, Annandale District, Tax Map 70-4((8))(5)11.

Greg Riegle, Staff Coordinator, presented the staff report.

The applicant, Michael L. Orem, 8113 Bullock Lane, Springfield, Virginia, stated that he was requesting the variance so that his wife and baby would be sheltered by the carport in bad weather. He went on to explain that he is a merchant marine and is away from home for long periods of time. Mr. Orem noted that the chimney extends into the area where the car would be parked and stated that the carport would enhance the architectural design of the existing house.

In response to Mr. Hammack question's, Mr. Orem said the chimney would extend eighteen inches into the proposed carport and that if the chimney had not been placed in the driveway he would not need a variance.

Vice Chairman DiGiulian called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mrs. Harris made a motion to grant the request with the conditions contained in the staff report dated October 12, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-090 by MICHAEL L. OREM, under Section 18-401 of the Zoning Ordinance to allow construction of a carport addition to dwelling to 5.6 feet from a side lot line, on property located at 8113 Bullock Lane, Tax Map Reference 70-4((8))(5)11, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,800 square feet of land.
4 There is narrowness to the property.
5. The request is reasonable and would create a hardship for the applicant if not granted.
6. The request would not be detrimental to the area.

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Hammack seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Ribble not being present for the vote, and with Chairman Smith and Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 26, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 68 October 19, 1989, (Tape 1), Scheduled case of:

9:45 A.M. HOWARD L. BONTZ, SP 89-V-038, application under Sect. 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements based on error in building location to allow a 12 ft. high shed to remain 3.0 feet from a rear lot line (12 ft. min. rear yard required by Sect. 10-104), located at 3809 Great Neck Court, on approximately 21,801 square feet of land, zoned R-2, Mt. Vernon District, Tax Map 110-2((9))9.

Greg Riegle, Staff Coordinator, presented the staff report. Mr. Riegle explained that the applicant had told staff that he had started to build the shed in good faith and had been unaware that a permit was required. Mr. Riegle noted the applicant had obtained a permit for an existing shed and staff had been unable to determine if the applicant had indeed acted in good faith.

In response to Mrs. Harris' question, Mr. Riegle stated that the shed had not been completed and was just a shell.

The applicant, Howard L. Bontz, 3809 Great Neck Court, Alexandria, Virginia, addressed the Board and said that because his old shed was falling apart he started to build a new one. A County inspector was in the neighborhood and told him that he could not build the shed without a permit. He stopped construction immediately and when he applied for a permit was told he would need a Special Permit. He said that he has nineteen large oak trees in his backyard and would have to remove some of them in order to build the shed in any other location. Mr. Bontz stated the property adjacent to the yard is owned by the Mount Vernon Ladies Association and that they supported the request.

Vice Chairman DiGiulian called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mr. Kelley made a motion to grant the request with the conditions contained in the staff report dated October 12, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-V-038 by HOWARD L. BONTZ, under Section 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements based on error in building location to allow a 12 foot high shed to remain 3.0 feet from a rear lot line, on property located at 3809 Great Neck Court, Tax Map Reference 110-2((9))9, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 21,801 square feet of land.
4. The non-compliance was done in good faith.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific shed shown on the plat included with this application and is not transferable to other land.

2. A building permit and all the necessary inspections shall be obtained prior to the completion of construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Ribble not being present for the vote, and Chairman Smith and Mrs. Thonen being absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 26, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 69 October 19, 1989, (Tape 1), Scheduled case of:

10:00 A.M. FREDERIC C. KANE, JR., VC 89-A-091, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a sunroom addition to dwelling to 12.8 feet from rear lot line 25 ft. min. rear yard required by Sect. 3-207) and stairway/ramp to dwelling to 11.5 feet from rear lot line (20 ft. min. rear yard required by Sects. 3-207 and 2-412), located at 5204 Faraday Court, on approximately 10,526 sq. ft. of land, zoned R-2 (C), Annandale District, Tax Map 68-4((6))887.

Greg Riegle, Staff Coordinator, presented the staff report.

In response to a question from Mrs. Harris, Mr. Riegle stated that the dwelling on Lot 1398 is situated 60 feet from the shared lot line.

The applicant, Frederic C. Kane, Jr., 5204 Faraday Court, Fairfax, Virginia, addressed the Board and explained that the lot is an inverted trapezoid, with a narrow front and a wide back. He noted that the neighbor's property to the rear of his lot has a 10 foot drop, therefore would not have a view of the deck.

In response to Mrs. Harris' question, Mr. Kane said that there are hemlock trees, dogwood, maple, and oak trees in his yard and assured her that no vegetation would be disturbed due to the construction of the addition.

Vice Chairman DiGiulian called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mr. Hammack made a motion to grant the request with the conditions contained in the staff report dated October 10, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-091 by FREDERIC C. KANE, JR., under Section 3-207 of the Zoning Ordinance to allow construction of a sunroom addition to dwelling to 12.8 feet from rear lot line and stairway/ramp to dwelling to 11.5 feet from rear lot line, on property located at 5204 Faraday Court, Tax Map Reference 68-4((6))887, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2 developed cluster.
3. The area of the lot is 10,526 square feet of land.
4. The applicant has satisfied the nine standards.
5. The lot is very shallow with a long lot line to the rear.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A building permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Ribble not being present for the vote, and Chairman Smith and Mrs. Thonen being absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 71 October 19, 1989, (Tape 1), Scheduled case of:

10:15 A.M. GEORGE EDIGER WOODWARD, VC 89-A-089, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to 2.7 feet from side lot line such that side yards total 15 ft. (8 ft. min., 24 ft. total min. side yards required by Sect. 3-207), located at 9519 Stevebrook Road, on approximately 13,507 sq. ft. of land, zoned R-2 (developed cluster), Annandale District, Tax Map 69-1((4))60A.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Walter Howard, 508 Mansfield, Silver Spring, Maryland, asked to represent Mr. Woodward in this application.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that Mr. Howard was not on the affidavit, therefore could not represent the applicant.

The applicant, George Woodward, 9519 Stevebrook Road, Fairfax, Virginia addressed the Board and explained the proposed addition would not encroach on the neighboring property. He went on to state that he had all the neighbors approval except for one property owner who lives in Alabama.

In response to questions from the Board, Mr. Woodward explained that the property owner in opposition to the request has not lived in the area for twenty years. He said the addition would be enclosed and built with similar materials to those on the existing structure in order to enhance the neighborhood.

Vice Chairman DiGiulian called for any speakers in support of the application, and hearing no reply he called for speakers in opposition.

Judy Hazzard, 9513 Stevebrook Road, Fairfax, Virginia, spoke on behalf of the owner of the properties at 9513 and 9514 Stevebrook Road. She stated that the property owner was concerned that Mr. Woodward would have to remove trees and shrubs in order to construct the addition.

The applicant spoke in rebuttal and explained that no trees or shrubs would be disturbed for the addition and he would agree to landscaping the area.

Vice Chairman Digiulian closed the public hearing.

Mrs. Harris made a motion to grant the request subject to the development conditions contained in Appendix 1 of the staff report dated October 10, 1989, and an additional condition that adequate screening be done.

Mr. Ribble seconded the motion.

After discussion, it was the Board's decision that the addition should be five feet from the property line and that shrubbery should be planted.

Mrs. Harris amended her motion to read that the garage should be no closer than five feet from the property line.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that the County Arborist be contacted for advice as to what type of shrubs should be planted in order to screen the garage.

Ms. Harris made a motion that the Board defer the case for "decision only" until October 31, 1989.

Mr. Ribble seconded the motion. The motion carried by a vote of 5 - 0 with Chairman Smith and Mrs. Thonen being absent from the meeting.

The Board stated that no additional testimony would be taken at the October 31, 1989 hearing and that the applicant did not have to return for the hearing unless he chose to do so.

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Page 71 October 19, 1989, (Tape 1), Scheduled case of:

10:30 A.M. SLEEPY HOLLOW PRESCHOOL, INC. & ST. ALBAN'S CHURCH, SPA 81-M-008-1, application under Sect. 3-203 of the Zoning Ordinance to amend S-81-M-008 for a church related facilities nursery school to reduce maximum number of students to 99 and permit continuation of the use without term, located at 7800 Columbia Pike on approximately 6.0 acres of land, zoned R-2(C), Mason District, Tax Map 60-4((1))10.

Bernadette Bettard, Staff Coordinator, presented the staff report. Ms. Bettard explained that page 4 of appendix 5 had been left out of the staff report and was being given to the Board at this time. She also noted that in development condition number 14, the last sentence should read, "condition number twelve as stated above." Ms. Bettard said that staff recommended approval subject to development conditions stated in the staff report.

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In response to a question from Mr. Ribble, Jane Kelsey, Chief, Special Permit and Variance Branch, explained that staff recommended "the use without term" because the child care center has been in existence for a long time and has operated without violation.

Mr. Ribble stated that he was reluctant to grant "the use without term", because of the changing conditions in the neighborhood.

Edward J. Walinsky, 7308 Statewest Drive, Annandale, Virginia represented St. Alban's Church and stated that the only issue that has not been remedied is the fence requirement. Mr. Walinsky said that he did not believe that the play area should be fenced and went on to explain that the Fairfax County Health Department said that fencing was not needed. Mr. Walinsky noted that he did not agree with staff that the traffic on Columbia Pike was a safety hazard because the children were well protected from the street. He noted that heavy vegetation, a steep hill, and the building were barriers and that the staff of the school were very alert and would stop any child trying to leave the play area. He said that the neighbors oppose a fence and have not complained about noise from the school. Mr. Walinsky expressed concern about the fence attracting vandals and stated that he believed a fence would become a refuge for loiters.

The Director of St. Alban's Church, Father Bruce Gray, 6800 Columbia Pike, Alexandria, Virginia, addressed the Board and reflected that the school has been in existence for seventeen years. He said that the school has been an asset to the community with adequate classrooms and spacious, safe grounds. He asked that the requirement for a fence be deleted and stated that the adjoining neighbors have expressed the same desire.

In response to a question from Mrs. Harris, he said that the wooden fence would be six feet high and that it would detract from the open, spacious grounds.

Mr. Hammack expressed concern about the safety of the children and explained that fencing was usually one of the minimum requirements imposed on all day care center.

The administrator of Sleepy Hollow Preschool, Jean Porter, addressed the Board and stated she felt the rope system across the driveway was adequate and that both the parents and teachers had signed a document stating that they were satisfied with this arrangement. She emphasized the fact that she polled fifteen neighbors and all are against the construction of a fence.

Vice Chairman DiGiulian called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mr. Ribble made a motion to grant the request with the revised development conditions contained in the staff report and modified as reflected in the Resolution.

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FAIRFAX COUNTY, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-M-008-1 by SLEEPY HOLLOW PRESCHOOL, INC. AND SAINT ALBAN'S CHURCH, under Section 3-203 of the Zoning Ordinance to amend S-81-M-008 for a church related facilities nursery school to reduce maximum number of students to 99 and permit continuation of the use without term, on property located at 7800 Columbia Pike, Tax Map Reference 66-3((1))39, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 1989; and

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

1. That Saint Alban's Church is the owner of the land and Sleepy Hollow Pre-School is the lessee.
2. The present zoning is R-2.
3. The area of the lot is 6.000 acres of 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 Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity for the sanctuary shall be limited to a total of 252.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 82 spaces and a maximum of 102 spaces. All parking shall be on site.

7. The maximum daily enrollment of students in the nursery school shall not exceed 99 students, with no more than 50 in attendance at any given time.

8. Hours of operation for the nursery school shall be limited to those requested, 8:00 a.m. to 3:45 p.m., Monday thru Friday.

9. The number of employees shall be limited to four teacher's aide and three teachers.

10. Transitional Screening 1 (25') shall be provided on the northern and western lot lines. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1. The size, location, quantity and type shall be approved by the County Arborist.

11. Transitional Screening 1 shall be provided along the eastern lot line, west of the sanitary sewer easement and to the northern end of the circular, asphalt drive; it may be waived along the remainder of the lot line. The existing vegetation may be used to satisfy the requirement north of the circular driveway if the vegetation is supplemented to be equivalent to Transitional Screening 1. The size, location, quantity and type shall be approved by the County Arborist.

12. Transitional Screening 1 shall be provided along the southern lot line, where it may be modified in the area of the cemetery and to allow for landscape plantings to soften the visual impact of the building. The size, location, quantity and type shall be approved by the County Arborist.

13. The barrier requirements shall be waived provided the proposed fence shown on the plat is installed and the parking area next to the play area is roped off in accordance with the plat attached to a letter submitted by Jeanne Porter.

14. Any proposed new lighting of the parking areas shall be in accordance with the following:

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

    The lights shall focus directly onto the subject property.

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

15. This permit shall be granted for a period of five years.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion. The motion carried by a vote of 5 - 0 with Chairman Smith and Mrs. Thonen being absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 26, 1989. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 11:15 a.m. and reconvened at 11:30 a.m.

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Page 74 October 19, 1989, (Tape 2), Scheduled case of:

10:45 A.M. HUNTER DEVELOPMENT APPEAL, A 89-S-009, application under Sect. 18-103 of the Zoning Ordinance to appeal Zoning Administrator's determination regarding development potential of appellant's property, on approximately 10.7 acres of land, zoned R-C, Springfield District, Tax Map 66-3((1))39 and 65-2((1))pt. 24.

William E. Shoup, Deputy Zoning Administrator, presented the staff report. Mr. Shoup explained that there are two issues. The first issue involves the Zoning Administrator's determination that the three subject parcels are not individually developable lots. The second issue involves her determination that there is no density credit or FAR credit for land previously dedicated for widening of public streets.

Mr. Hammack stated that he was concerned that in 1978 these parcels were the subject of rezoning applications and were subject to proffers. The County stated that the land should not be divided into more than four lots, contain no open space, and also included a commitment to realign Twin Lakes Drive. He stated that he believed the County took formal action in 1978 and therefore had a commitment to realign the road. Mr. Hammack added that he believed the County has now taken the position that the road has been realigned and the applicant now wants the density credit. He went on to ask if the land had not been part of the rezoning application in 1978, would the County have had to realign the road.

In response to Mr. Hammack's question, Mr. Shoup said the land had been part of the rezoning application and has been retained in the RE-1 zoning category. He did not know if any density credit had been given in connection to the rezoning application to any other land. He stated that in regard to this property, the Board would have to specifically address the issue to give advance density credit. He went on to add that the Ordinance requires that the Board specifically approve density.

Francis A. McDermott, P.O. Box 1147, Fairfax, Virginia, an attorney with Hunton and Williams, represented the applicant. He stated that the case is a combination of one provision of the Zoning Ordinance absolutely defeating the purpose and intent of another provision of the Zoning Ordinance. Mr. McDermott said that the applicant has lived up to his part of the bargain but that Fairfax County has not. Mr. McDermott noted that a very basic principle of law is that Ordinance provisions must be read to compliment each other and not to undermine or defeat each other.

A letter addressed to Chairman Smith, dated October 19, 1989 and signed by Mr. McDermott was read into the Record. The letter outlined Mr. McDermott's legal position on the Appeal. (The October 19, 1989 letter is contained in the file).

In response to questions from Mrs. Harris, Mr. McDermott explained that at the time the property was zoned the density credit ordinance provision did not exist. He said that within the past year it has become a practice to include the proffer provision for advance density credit. Mr. McDermott stated when the land was subdivided into the two - five acre parcels that the land had not been dedicated for the road. He further stated that the subdivision took place in June 1985 and the "right of way" dedication took place in November 1985.

Mrs. Harris inquired as to whether the land had been proffered at the time it was subdivided and Mr. McDermott replied that it had. He then proceeded to state that at the time of the proffer the land was zoned RE-1 with an entitlement of up to four lots and the downzoning to R-C took away that right by one-half.

Mrs. Harris expressed her understanding of the applicants position but noted that the rezoning did affect a number of other properties.

Mr. McDermott argued that when a property owner had entered into a contract with Fairfax County and Fairfax County's side of the contract is removed, then the property owner has no obligation to honor the contract.

Mr. Hammack asked if the actual road dedication took more land than was initially proffered, and if the loss of that land made the Appeal necessary. Mr. McDermott replied that the Appeal would still have been necessary without the additional land dedication.

Vice Chairman DiGiulian called for speakers in support of the appellant.

Manning (Mike) Mahaffee, 11211 Waples Mill Road, Fairfax, Virginia, an architect with Greenhorne and O'Mara, Inc., addressed the Board and explained that he had been involved with the project for quite some time. Mr. Mahaffee briefed the Board on the history of negotiations with Fairfax County. He presented the actual public improvement plan, which showed the "left hand turn" requirement and the lot line, and stressed that the plans had been approved and dedicated before construction of the subdivision started.

In response to Mrs. Harris' question with regard to any other advanced density credit in Little Rocky Run, Mr. Mahaffee said that there had been no other requests. He explained that when the rezoning was done it was specifically stated that there would be no more than 2.5 units per acres east of Little Rocky Run and gave an overall density of 2.9 for the entire development which took into account the gross area of the site.

Mrs. Harris asked if there had been a transfer of credit from any area when the rezoning took place in 1977. Mr. Mahaffee noted that he was not the engineer of record because the land was not owned by Hunter Development Company.

Vice Chairman DiGiulian called speakers in support of the Zoning Administrator. There being none, he asked Mr. Shoup for any comments.

Mr. Shoup addressed the similarities of the West Park Associates Appeal and the Hunter Appeal. He expressed his belief that the 1982 rezoning to the R-C District, and the issue of doing more road improvements than what was proffered, did not pertain to the present appeal. He expressed concern about the site plans of other subdivisions that were submitted by the applicant and, explained that although he has had no opportunity to review the plans, he did not believe that they related to the Hunter Appeal. He emphasized that the issues involved were that the given land area was rezoned in 1982 and is subject to the new zoning ordinance requirements. He also stated that with respect to the lot size there is no provision that would allow the Zoning Administrator to give credit with respect to lot size for land area that had been dedicated.

Mr. Hammack expressed concern about the rezoning in 1978 which had proffered four lots based on gross area, yet the Zoning Administrator says that no density credit was given. He asked if this was not a density credit given by implication or operation of the re-subdivision process and questioned if a density credit was in fact given. Mr. Hammack asked if there was any place in the Code which states that an applicant has to put an advanced density credit on a plat, and if so was that a practice in 1978 or in 1982. He said he was concerned that part of the reason for the Zoning Administrator's position is that the present practice is that density credit must be shown on the plat and he expressed his concern as to whether or not this was the practice 11 years ago.

Mr. Shoup replied that he doubted that 11 years ago when the land was rezoned that the proffer should be construed as granting advanced density credit. He went on to explain the proffer stated that the parcels should not be divided into more than four lots and was in recognition of the existing zoning.

Mr. Hammack stated that the realignment of the road was taken into consideration at the same time as well as development of the west side of Union Mill Road. He stated that he believed that had the land not been included as part of the parcel when rezoning took place, then the lot could have been divided into 10 lots. Mr. Hammack went on to say that in effect the parcel got a negative density credit in order to allow greater density on the west side.

Mrs. Harris remarked that the letter the Board had received from Eugene D. Foster explained that the parcel was originally included but that the neighborhood opposition to higher density was so intense that the 10 acre parcel was removed.

Mr. Hammack replied that as part of the application the Fairfax County Board of Supervisors accepted it with a proffer attached to it.

In response to questions from Mr. Hammack, Mr. Shoup explained that at the time the rezoning was done, Fairfax County was operating under a different Zoning Ordinance in which the land was regulated by lot size and not by density. He emphasized that the issue goes back to the dedication shown on the November 1985 plat which showed no request for density credit. Mr. Shoup added that there is no Zoning Ordinance definition for "density credit" but it is a term commonly used in the administration of density provisions.

Mr. Hammack said he believed that the County Board of Supervisors, by its actions on the original rezoning, has given a density credit. He went on to ask for the definition of "advance density credit" and Mr. Shoup explained that there was none. He believed that Mr. Hammack was confusing the issue by going back to the 1978 rezoning which was not relevant.

Mr. Hammack then stated that had the applicant tried to develop the parcel into ten lots, the County would have said no because the applicant had agreed to a proffer. Mr. Shoup agreed that the proffer would have restricted the applicant to four lots.

Mrs. Harris commented that maybe in 1978 there was some density discussion which resulted in compensation being given for putting in the road and now the applicant would like to be compensated again.

Mr. Shoup noted that when a parcel is rezoned and in later years someone wants to subdivide the lot, you cannot disregard the present Zoning Ordinance requirements. He went on to discuss the issue that the parcel does not meet the minimum lot size requirements.

Mr. Hammack stated that they had the lot size requirements when it was rezoned. Mr. Shoup replied that there was a lot size requirement when it was rezoned and when they did the deed of subdivision in 1985, but then they came back and reduced the land area of the lots putting them below the minimum lot size requirement. Mr. Hammack argued that this was because of their compliance with the proffer. Mr. Shoup noted that this was proffered in the rezoning and this does not exempt any applicant from meeting the minimum lot size.

Mr. Hammack asked if there anything in the Ordinance that requires density credit to be shown on a plat. He went on to state that part of the Zoning Administrator's decision was based on the fact that nothing was shown on the plat.

Mr. Shoup replied that there is no Zoning Ordinance requirement to make specific notations on the plat but that the Zoning Administrator uses notations as a practical tool in addressing subdivisions.

Vice Chairman DiGiulian called for Mr. McDermott to speak in rebuttal.

Mr. McDermott stated that he would like to clarify, for the record, a statement in Mr. Foster's letter. He called the Board's attention to attachment 4 of the staff report. He pointed out that the proffer accepted with the rezoning included the RE-1 parcel and that it was retained as RE-1, therefore Mr. Foster's letter is incorrect.

Mr. McDermott stated that the property could not have been rezoned without the landowner's agreement. He went on to explain that the area to the west of Union Mill Road was submitted in the application requesting 610 units, the area to the eastern side of Union Mill Road was submitted requesting 8 units on the 10 acres. It was further compromised at the time the proffer was accepted and the zoning accomplished to reduce the request for 8 units down to 4 units with the 10 acres still within the zoning case. He said that the applicant compromised by agreeing to reduce the number of lots, he could do by right, from 10 lots to 8 lots and then to the 4 lots. Mr. McDermott said that when the property was zoned to permit the 4 lots, including the dedication the appellant made a commitment to build and dedicate for a public improvement and understood that there will be 4 lots. The credit for it is in the ultimate density permitted by the rezoning which was 610 units on the west side and 4 on the east side. He noted that now the County wants to give the applicant only one 1 lot on the east side, even though at the time of dedication he did it hand and hand and contemporaneous with a subdivision plat for the whole piece and a deed of division that created the two five acre lots, literally seven months before the dedicated plat was recorded creating the street right of way. Mr. McDermott pointed out the differences of the West Park case and the Hunter case. He said that there was a factual distinction both in terms of subdivision plan and development.

Mrs. Harris asked if the 4 lot subdivision had been included in the 610 lot subdivision submission. Mr. McDermott explained that the original subdivision plan had 610 lots and 4 lots and had been approved as recently as 1988 by the County. He submitted a copy of the approval to the Board.

Mr. Mahaffee presented to the Board a copy of the preliminary plans for Spring Stone Estates dated July 6, 1984. He explained that the plan was revised to become the *second* section of Little Rocky Run. He went on to say that in this plan and in any of the subsequent approved plans, 4 lots were shown east of Union Mill Road.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked that the plats submitted by the applicant become part of the public record.

Mr. McDermott reiterated his earlier comments.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack said he believed that the issue was for 2 lots and that the density determination was made at the time of the rezoning. In connection with the larger parcel to the west, the ten acres on the east side of Union Mill Road was given a density determination by virtue of that proffer that said no more than 4 lots shall be developed. The 4 lots were then down zoned to 2 lots and that is what the appellant is requesting. The Zoning Administrator's ruling that what was once 4 developable lots is now no more than 1 developable lot was because of the effects of the road realignment and the downzonings. He said that the practice from 1978 until recently has been that an applicant does not have to show any advance density credit or density credit on the site development plans. Mr. Hammack said he believed that there was a density determination in that there were 2 developable lots and that was a density credit by operation of law. Mr. Hammack said he believed that the Zoning Administrator erred in this determination and made a motion to uphold the appellant.

Mr. Kelley seconded the motion. He stated that he believed that the appellant and the County had made a deal under the existing practice at that time, and in effect the appellant had been given a density credit.

Mrs. Harris said she believed that the applicant knew at the time the property was subdivided into 2 five acre lots that there was already a dedication that was slated for the property. When the property was zoned to 5 acres, the land was already promised to realign Twin Lakes Drive at the time it was zoned for 4 lots and that the land on Union Mill and Twin Lakes Drive was already gone. That was part of the compromise reached when the area was rezoned, thus she could not support the motion.

Mr. Hammack replied that one of the facts the Zoning Administer relied on was that the density had not been shown on the plat. He did not believe that this was a valid reason.

Vice Chairman DiGiulian called for a vote. The motion carried by a vote 4 - 1 with Mrs. Harris voting nay; Chairman Smith and Mrs. Thonen absent from the meeting.

The decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 1989. This date shall be deemed to be the final approval date of this Appeal.

Ms. Kelsey asked that all the plans submitted to the Board be given to the Clerk.

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Page 77 October 19, 1989, (Tape 2), After Agenda Item:

Approval of October 10, 1989 Resolutions

Mr. Kelley made a motion to approve the Resolutions as submitted. Mrs. Harris seconded the motion which carried by a vote of 4 - 0. Mr. Hammack was not present for the vote; Chairman Smith and Mrs. Thonen were absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, told the Board that the large number of new cases which must be heard within the ninety day requirement has created a scheduling problem. Ms. Kelsey made several scheduling suggestions and asked the Board for their opinion. The Board agreed to a meet on Thursday, January 11, 1990 if necessary.

However, the Board advised Ms. Kelsey to contact the applicants and try to get their agreement to be heard on January 18, 1990 which would only be 8 days out of the 90 day limitation.

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Page 77 October 19, 1989, (Tape 2), After Agenda Item:

McLean Presbyterian Church, SPA 85-D-034-2, Out of Turn Hearing

Mr. Hammack made a motion to deny the out of turn hearing request for SPA 85-D-034-2. Mrs. Harris seconded the motion which carried by a vote of 4-1 with Mr. Kelley voting nay. Chairman Smith and Mrs. Thonen were absent from the meeting.

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Page 77 October 19, 1989, (Tape 2), After Agenda Item:

St. Matthew's United Methodist Church, SPA 80-A-087-3, Out of Turn Hearing

Mrs. Harris made a motion to grant the request and to hold the public hearing on December 21, 1989. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman Smith and Mrs. Thonen were absent from the meeting.

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Page 77 October 19, 1989, (Tape 3), After Agenda Item:

Jane Kelsey, Chief, Special Permits and Variance Branch, stated that at the previous meeting the Board had directed her to bring back within a week policies the Board of Zoning Appeals had adopted. She then presented copies to the Board and asked them to review and readopt at a later hearing if they so desired.

The Board agreed and stated they wanted all members present for this readoption.

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Page 77 October 19, 1989, (Tape 3), After Agenda Item:

Jane Kelsey, Chief, Special Permits and Variance Branch, informed the Board that parking

would be very limited on October 24, 1989 as Chairman Moore, Supervisor Pennino, and Supervisor Bulova would be using their assigned spaces.

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Page 78 October 19, 1989, (Tape 3), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 1:30 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED January 30, 1990

APPROVED February 6, 1990

078

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, October 24, 1989. The following Board Members were present: Paul Hammack, Acting Chairman; Martha Harris; Mary Thonen; Robert Kelley; and John Ribble. Chairman Daniel Smith and Vice Chairman John DiGiulian were absent from the meeting.

Mr. Hammack opened the meeting at 9:15 a.m. with the invocation.

Mr. Ribble moved to appoint Mr. Hammack Acting Chairman. Mr. Kelley seconded the motion which passed by a vote of 4-0 with Chairman Smith and Mr. DiGiulian absent from the meeting and Mrs. Thonen not present for the vote.

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Page 79, October 24, 1989, (Tape 1), Scheduled case:

9:00 A.M. JEFFREY AND PAULA KAISER, VC 89-M-029, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a detached garage to 5.6 feet from a side lot line (15 ft. min. side yard required by Sect. 3-207), located at 3503 Beta Place on approximately 24,985 square feet of land, zoned R-2, Mason District, Tax Map 59-4((9))71. (DEFERRED FROM 6/22/89 FOR REVISION OF APPLICATION. DEF. FROM 9/14/89 FOR NOTICES.)

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

Jeffrey Kaiser, 3503 Beta Place, Annandale, Virginia, the applicant, appeared before the Board and explained his request as outlined in the statement of justification submitted with the application. He presented a letter in support from a neighbor.

There being no speakers either in support or in opposition, nor any staff closing comments, Acting Chairman Hammack closed the public hearing.

Mrs. Harris moved to grant VC 89-M-029 subject to the development conditions contained in Appendix 1 of the staff report dated September 14, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-029 by JEFFREY AND PAULA KAISER, under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage to 5.6 feet from a side lot line, on property located at 3503 Beta Place, Tax Map Reference 59-4((9))71, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 24,985 square feet of land.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0-1 with Mrs. Thonen abstaining; Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 80, October 24, 1989, (Tape 1), Scheduled case:

9:15 A.M. SHARON J. STULL, VC 89-M-094, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling 6 feet from side lot line (10 ft. min. side yard required by Sect. 3-407), located at 3120 Wayne Road, on approximately 7,200 square feet of land, zoned R-4, Mason District, Tax Map 50-4((17))283.

Mr. Kelley moved to defer the public hearing on VC 89-M-094 to December 21, 1989 at 9:15 a.m.

Mrs. Harris seconded the motion which passed by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 80, October 24, 1989, (Tape 1), Scheduled case:

9:30 A.M. FRIENDS OF FAIRFAX STATION, INC., SP 89-S-040, application under Section 8-901 of the Zoning Ordinance to modify the dustless surface requirement, located at 11120/11123 Fairfax Station Road, on approximately 5.0 acres of land, zoned R-C and WS, Springfield District, Tax Map 76-2((1))9.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

L. Fred Bruney, 12515 Paradise Spring Road, Clifton, Virginia, appeared before the Board on behalf of the applicant and explained the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers either in support or in opposition, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Ribble moved to approve SP 89-S-040 subject to the development conditions contained in Appendix 1 of the staff report dated October 19, 1989.

Mrs. Harris seconded the motion which passed by a vote of 4-0 with Mr. Kelley not present for the vote with Chairman Smith and Mr. DiGiulian absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-040 by FRIENDS OF FAIRFAX STATION, INC., under Section 8-901 of the Zoning Ordinance to modify the dustless surface requirement, on property located at 11120/11123 Fairfax Station Road, Tax Map Reference 76-2((1))9, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 5.0 acres of 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 Sections 8-903 and 8-915 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for one (1) entrance driveway and gravel parking lot and is not transferable to other land.*

2. This approval is granted for the modification of the dustless surface for the one (1) entrance and driveway and parking lot shown of the plat submitted with this application, except as qualified below. Any additional gravel surfaces shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval shall constitute a violation of the conditions of the Special Permit.*

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*

4. A Non-Residential Use Permit for the use shall be obtained through established procedures, and this special permit shall not be valid until this has been accomplished.

5. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines.* The waiver of the dustless surface shall expire five (5) years from the date of the final approval date.

   - Speed limits shall be kept low, generally 10 mph or less.
   - The areas shall be maintained with clean stone with as little fine material as possible.
   - The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring.
   - Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
   - During dry seasons, water shall be applied to control dust.
   - Runoff shall be channeled away from and around driveway and parking areas.
   - The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

7. The use shall be subject to all applicable provisions of the Water Supply Protection Overlay District.*

8. The one (1) entrance driveway to the property shall be paved with a dustless surface from Fairfax Station Road to the property line and twenty-five (25) feet into the site.*

9. The two (2) handicapped parking spaces as indicated on the plat submitted with this application shall be paved with a dustless surface.*

10. This approval is for the location of the driveway and parking spaces as shown on the final site plan approved by the Board of Supervisors in accordance with conditions approved under SE 83-S-058.

11. There shall be an annual inspection to ensure compliance with the conditions of this permit, the applicable provisions of the Zoning Ordinance and Chapter 103 of the Fairfax County Code, Air Pollution Control.*

12. This approval is for a period of five (5) years.*

13. The development conditions approved under Special Exception SE 83-S-058 remain in full force and effect and are not superseded by the approval of the subject application and proposed development conditions.

The above conditions incorporate all applicable conditions of the previous special permit approvals for the church. The asterisk designates 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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 82, October 24, 1989, (Tape 1), Scheduled case:

9:45 A.M. JAMES C. AND DEIRDRE DOLAN DOUGLAS, VC 89-C-093, application under Sect. 18-401 of the Zoning Ordinance to allow addition to dwelling to 14.4 feet from rear lot line (25 ft. rear yard required by Sect. 3-507), located at 13601 Angelica Court, on approximately 7,644 square feet of land, zoned R-5, Centreville District, Tax Map 34-2-((5))9A.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report.

Deirdre Dolan Douglas, 13601 Angelica Court, Chantilly, Virginia, the applicant, appeared before the Board and explained her request for a deferral.

Mr. and Mrs. William Bailey, 13609 Clary Sage Drive, Chantilly, Virginia, appeared before the Board in support of the applicant's request for a deferral.

Chairman Smith called the Board's attention to a letter received from the homeowners association supporting the deferral in order to allow time for the architectural review committee to review the request.

There being no speakers in opposition to the request, nor any staff closing comments, Acting Chairman Hammack closed the public hearing.

Mr. Kelley moved to defer the public hearing on VC 89-C-093 to January 23, 1989 at 9:00 a.m. Mrs. Thonen seconded the motion which passed by a vote of 3-2 with Mrs. Thonen, Messrs. Hammack and Kelley voting aye; Mrs. Harris and Mr. Ribble voting nay. Chairman Smith and Mr. DiGiulian were absent from the meeting.

Mr. Ribble stated that he could not support the motion because almost every case might affect covenants which are a private and legal issue not an issue before the Board.

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10:00 A.M. KHALID M. AND ZAHIDA P. CHAUDRY, SP 89-D-037, application under Sects. 3-307 and 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements based on error in building location to allow dwelling to remain 21.9 feet from a rear lot line (25 ft. min. rear yard required by Sect. 3-307), located at 1310 Browns Mill Court, on approximately 8,809 square feet of land, zoned R-3 (developed cluster), Dranesville District, Tax Map 5-4((7))12.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which recommended approval.

Thomas D. Rust, Esquire, 3998 Fair Ridge Drive, Fairfax, Virginia, appeared before the Board on behalf of the applicant and explained the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers either in support or in opposition to the request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mr. Kelley moved to grant SP 89-D-037 subject to the development conditions contained in Appendix 1 of the staff report dated October 19, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-M-037 by KHALID M. AND ZAHIDA CHAUDRY, under Sects. 3-307 and 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements based on error in building location to allow dwelling to remain 21.9 feet from a rear lot line, on property located at 1310 Browns Mill Road, Tax Map Reference 5-4((7))12, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

The Board has determined that:

A. The error exceeds ten (10) percent of the measurement involved, and

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, and

C. Such reduction will not impair the purpose and intent of this Ordinance, and

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

E. It will not create an unsafe condition with respect to both other property and public streets, and

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

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 approval is granted for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 84, October 24, 1989, (Tape 1), Scheduled case:

10:15 A.M. ROBERT E. DIEBOLD AND BARBARA F. LIVELY-DIEBOLD, VC 89-D-092, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a detached garage to 15 feet from side lot line and 45 feet from front lot line (20 ft. min. side yard required by Sect. 3-107 and accessory structures not allowed in front yard by Sect. 10-104), located at 7908 Lewinsville Road, on approximately 0.523 acres of land, zoned R-1, Dranesville District, Tax Map 29-2((2))11.

Gregory Riegle, Staff Coordinator, presented the staff report.

Robert E. Diebold, 7908 Lewinsville Road, McLean, Virginia, the applicant, appeared before the Board and explained his request as outlined in the statement of justification submitted with the application.

There were no speakers either in support or in opposition to the request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mrs. Thonen stated that she did not believe that the applicant had met the standards as there are other places on the property to construct a garage. She then made a motion to deny VC 89-D-092.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-092 by ROBERT E. DIEBOLD AND BARBARA F. LIVELY-DIEBOLD, under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage to 15 feet from side lot line and 45 feet from front lot line, on property located at 7908 Lewinsville Road, Tax Map Reference 29-2((2))11, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 0.523 acres of land.
4. The applicant has not met the standards.
5. There are other locations on site to construct the garage.

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**.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1989.

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Page 86, October 24, 1989, (Tape 1), Scheduled case:

10:30 A.M. DAVID SAPENOFF AND KAREN SAPENOFF, SP 89-C-039, application under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 20.8 feet from rear lot line, (25 ft. min. rear yard required by Sect. 3-307), located at 13135 Lazy Glen Court, on approximately 11,383 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-3((7))134.

Gregory Riegle, Staff Coordinator, presented the staff report which recommended approval.

Bernadette A. Fritschie, 10385 Main Street, Fairfax, Virginia, attorney for the applicants appeared before the Board and explained the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers either in support or in opposition to the request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mrs. Harris moved to grant SP 89-C-039 subject to the development conditions contained in Appendix 1 of the staff report dated October 19, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-C-039 by DAVID SAPENOFF AND KAREN SAPENOFF, under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow dwelling to remain 20.8 feet from rear lot line, on property located at 13135 Lazy Glen Court, Tax Map Reference 25-3((7))134, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

The Board has determined that:

A. The error exceeds ten (10) percent of the measurement involved, and

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, and

C. Such reduction will not impair the purpose and intent of this Ordinance, and

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

E. It will not create an unsafe condition with respect to both other property and public streets, and

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

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 approval is granted for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 86, October 24, 1989, (Tape 1), Scheduled case:

10:45 A.M. DALLAS ROSENBERRY, VC 89-S-095, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling 7.3 feet from side lot line (20 ft. min. side yard required by Sect. 3-C07), located at 8104 Crestridge Road, on approximately 1.7478 acres of land, zoned R-C and WS, Springfield District, Tax Map 95-2((5))6B.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Dallas Rosenberry, 8104 Crestridge Road, Fairfax Station, Virginia, the applicant, appeared before the Board and explained his request as outlined in the statement of justification submitted with the application.

There were no speakers either in support or in opposition to the request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mr. Ribble moved to grant VC 89-S-095 subject to the development conditions contained in Appendix 1 of the staff report dated October 16, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-095 by DALLAS ROSENBERRY, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling 7.3 feet from side lot line, on property located at 8104 Crestridge Road, Tax Map Reference 95-2((5))6B, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 1.7478 acres of land.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1989. This date shall be deemed to be the final approval date of this variance.

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088

11:00 A.M. WILLIAM AND DALE WHITESELL, VC 89-D-096, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a room addition to dwelling to 7 feet from front lot line (40 ft. min. front yard required by Sect. 3-107) and to allow a swimming pool in the minimum required front yard (prohibited by par. 10, Sect. 10-104). located at 811 Whann Avenue, on approximately 74,398 square feet of land, zoned R-1, Dranesville District, Tax Map 21-2((2))12.

Bernadette Bettard, Staff Coordinator, presented the staff report.

William Whitesell, 811 Whann Avenue, McLean, Virginia, the applicant, appeared before the Board and explained his request as outlined in the statement of justification submitted with the application.

Elizabeth Mears, 835 Whann Avenue, McLean, Virginia, spoke in support of the application.

Mr. and Mrs. Albert Mumma, Jr., 816 Whann Avenue, McLean, Virginia, owners of Lot 27, stated that they were in support of the concept in the application but opposed the location of the proposed swimming pool.

Hans Adler, 6656 Hollin, McLean, Virginia, owner of Lots 10 and 11, spoke in opposition to the request.

There were no speakers either in support or in opposition to the request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mrs. Thonen moved to deny VC 89-D-096.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-096 by WILLIAM AND DALE WHITESELL, under Section 18-401 of the Zoning Ordinance to allow construction of a room addition to dwelling to 7 feet from front lot line, on property located at 811 Whann Avenue, Tax Map Reference 21-2((2))12, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 74,398 square feet of land.

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

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

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

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

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

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

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

Mrs. Thonen made a motion to grant the applicants a waiver of the 12-month time limitation for refiling a new application if they so desired. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 1, 1989.

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Page 89, October 24, 1989, (Tape 2), Scheduled case:

11:15 A.M. LEHNDORFF TYSONS JOINT VENTURE & LORD AND TAYLOR, SP 89-P-034, application under Sect. 8-901 of the Zoning Ordinance to allow additional sign area and different arrangement of sign area distribution for a regional shopping center, located at Tysons Corner Shopping Center, on approximately 78.6453 acres of land, zoned C-7, Providence District, Tax Map 29-4((1))35, 39; 39-2((1))2, 5. (DEFERRED FROM 9/26 - NOTICES)

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which recommended approval.

M. Langhorne Keith, Esquire, 8300 Greensboro Drive, McLean, Virginia, appeared before the Board on behalf of the applicant and explained the applicant's request as outlined in the statement of justification submitted with the application.

There were no speakers either in support or in opposition to the request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mrs. Harris moved to grant SP 89-P-034 subject to the development conditions contained in Appendix 1 of the staff report dated October 19, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-P-034 by LEHNDORFF TYSONS JOINT VENTURE & LORD AND TAYLOR, under Section 8-901 of the Zoning Ordinance to allow additional sign area and different arrangement of sign area distribution for a regional shopping center, on property located at Tysons Corner Shopping Center, Tax Map Reference 29-4((1))35, 39 and 39-2((1))2 and 5, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is C-7.
3. The area of the lot is 78.6453 acres of 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 Sections 8-903 and 8-912 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land. Approval of sign numbers 65, 66 and 69 are granted to both Lord and Taylor and Lehndorff Tysons Joint Venture. Approval of the remainder of the signs is granted to Lehndorff Tysons Joint Venture only.

2. This approval is granted for the following 905.78 of new signage. The numbers below refer to those which appear on the plat submitted with application dated February 25, 1988 and revised October 12, 1989:

Number 44	17.50 square feet
Number 45	4.7 square feet
Number 46	17.50 square feet
Number 47	4.7 square feet
Number 51	33.68 square feet
Number 52	4.7 square feet
Number 56	4.7 square feet
Number 57	4.7 Square feet
Number 58	4.7 square feet
Number 59	17.5 square feet
Number 60	4.7 square feet
Number 61	4.7 square feet
Number 62	4.7 square feet
Number 63	40.0 square feet
Number 64	40.0 square feet
Number 65	261.6 square feet
Number 66	261.6 square feet
Number 68	40.0 square feet
Number 69	54.1 square feet
Number 70	40.0 square feet
Number 71	40.0 square feet

This special permit is granted for the replacement and new signage indicated by location and size on the special permit plat submitted with this application dated February 25, 1988 and revised October 12, 1989, as qualified by these conditions. This condition shall not preclude directional signs under 2.0 square feet in size and refacing and maintenance of existing signs. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit. This condition shall not preclude the approval of additional sign permits in accordance with Article 12 for signs which would be allowed by right within Tysons Corner Shopping Center.

3. Sign permits shall be obtained for all signs.

4. Illumination of the signs shall be in conformance with the performance standards for glare as set forth in Part 9 of Article 14 of the Zoning Ordinance.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the signs are erected, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting. Mr. Ribble made a motion to waive the eight-day waiting period. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 24, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 91, October 24, 1989, (Tape 2), Scheduled case:

10:15 A.M. GEORGE EDIGER WOODWARD, VC 89-A-089, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to 2.7 feet from side lot line such that side yards total 15 ft. (8 ft. min, 24 ft. total min. side yards required by Sect. 3-207), located at 9519 Stevebrook Road, on approximately 13,507 sq. ft. of land, zoned R-2 (developed cluster), Annandale District, Tax Map 69-1((4))60A. (DEF. FROM 10/19/89 FOR DECISION ONLY.)

Bernadette Bettard, Staff Coordinator, presented the requirements for screening as recommended by the County Arborist.

The Board members reviewed a letter from the applicant requesting a reopening of the public hearing and reconsideration of the application.

Mrs. Harris stated that she had asked for additional screening to be placed within the five foot setback off the property line and this case had been deferred from October ~~19~~, 1989 in order for the County Arborist to have an opportunity to determine the best type of plants to use. Since that time, the County Arborist had given the Board two alternatives that would serve the purpose of shielding the garage from the adjacent property. She added that she had noted that this is an unusual shaped lot and the Board had granted the request in part. Mrs. Harris then made a motion that the applicant plant the four Leyland Cyprus trees, 6 feet in height, between the garage and the side lot line.

Mr. Ribble seconded the motion which passed by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

Mrs. Thonen moved to reopen the case for a discussion of the request for reconsideration. Mrs. Harris seconded the motion which passed by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

George E. Woodward, 9519 Stevebrook Road, Fairfax, Virginia, the applicant, appeared before the Board and explained the reasons for his request for reconsideration as set forth in his letter to the Board.

Mrs. Harris moved to deny the request for reconsideration of VC 89-A-089.

Mr. Ribble seconded the motion which passed by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

Mrs. Thonen moved to grant the applicant's request to waive the 12-month waiting period for filing new application. Mrs. Harris seconded the motion which passed by a vote of 3-1 with Mr. Ribble voting nay; Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 91, October 24, 1989, (Tape 2), After Agenda Item:

Saint Matthews Out of Turn Hearing

The Board reviewed a letter from Supervisor Bulova concerning Saint Matthews' request for an out-of-turn hearing. The Board granted the request by unanimous vote of those members present.

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As there was no other business to come before the Board, the meeting was adjourned at 12:14 p.m.

Judy Finney/Clerk
Judy Finney, Substituting for the Clerk
to the Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED January 9, 1990

APPROVED January 18, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, October 31, 1989. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Paul Hammack; and John Ribble. John DiGiulian, Vice Chairman, and Robert Kelley were absent from the meeting.

Chairman Smith called the meeting to order at 9:24 a.m. and asked if any of the Board members had any matters to bring before the Board.

Mr. Ribble welcomed Chairman Smith back as he had missed the last two meeting due to illness.

Mrs. Thonen asked the Clerk to prepare a resolution sending the Board's well wishes to Geri Bepko, Deputy Clerk, as she has been absent from the office since July 3rd due to a back injury.

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Page 93, October 31, 1989, (Tape 1), Scheduled case:

9:00 A.M. JOHN REDMOND, JR. AND SARA L. REDMOND, VC 89-D-098, application under Sect. 18-401 of the Zoning Ordinance to allow construction of porch addition to dwelling to 10 feet from side lot line such that side yards total 18.9 feet (8 feet min. side yard, 24 feet total side yard required by Sect. 3-207), located at 6202 Nethercombe Court, on approximately 12,910 square feet of land, zoned R-2 (developed cluster), Dranesville District, Tax Map 31-3((29))40.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Redmond replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, John Redmond, Jr., 6202 Nethercombe Court, McLean, Virginia, came forward. He explained that in 1971 when the house was constructed the builder made a mistake in siting the house which resulted in the need for a Variance, which was granted. He added that the proposed porch will only be 7/10 of 1 foot closer to the side lot line then the existing house.

In response to questions from Mrs. Harris with respect to the hardship standard, Mr. Redmond replied that he and his wife would just like to construct a porch on the front of the house. He added that he would prefer not to shorten the length of the porch as there is an existing overhang that he would like to eliminate by constructing the porch the full length of the house.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to deny the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-098 by JOHN REDMOND, JR. AND SARA L. REDMOND, under Section 18-401 of the Zoning Ordinance to allow construction of porch addition to dwelling to 10 feet from side lot line such that side yards total 18.9 feet, on property located at 6202 Nethercombe Court, Tax Map Reference 31-3((29))40, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 12,910 square feet of land.
4. There are very strict parameters for granting a Variance and the applicants have not shown that a hardship exists.
5. The applicants can construct without a Variance.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1989.

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Page 94, October 31, 1989, (Tape 1), Scheduled case:

9:30 A.M. CURTIS JOSEPH AND DOROTHY D. ZANE, VC 89-D-097, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure and expansion of a carport for a garage addition to dwelling to 3.0 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), located at 1731 Susquehannock Drive, on approximately 10,624 square feet of land, zoned R-3, Dranesville District, Tax Map 30-3((17))10.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Zane replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Curtis Joseph Zane, 1731 Susquehannock Drive, McLean, Virginia, stated that it was very inconvenient having two cars parked outside in the weather. He added that he did not believe that the request would set a precedent as there are two car garages in the neighborhood, the request would improve the neighborhood and not be detrimental, and that there is no objections from the neighbors.

In response to questions from Mrs. Harris, Mr. Zane explained that he was merely requesting to expand an existing carport and that the materials used to enclose the carport would match those on the existing house.

The Board members discussed the possibility of constructing a garage in the rear of the lot. The co-applicant, Dorothy Zane, came forward and stated that she believed that the neighbors would object to a garage being constructed in the rear of the lot.

Mr. Ribble asked staff if there was any record of other variances being granted in the neighborhood. Mrs. Greenlief replied that her research had not indicated any other variances.

Mrs. Thonen stated that she believed that the garage would be too close to the property line. The Board discussed the possibility of allowing construction to 5.0 feet from the property line and the applicant agreed.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant-in-part the request and allow the applicant to construct to within 5.0 feet from the property line.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-097 by CURTIS JOSEPH AND DOROTHY ZANE, under Section 18-401 of the Zoning Ordinance to allow enclosure expansion of a carport for a garage addition to dwelling to 3.0 (**THE BOARD GRANTED 5.0**) feet from side lot line, on property located at 1731 Susquehannock Drive, Tax Map Reference 30-3((17))10, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,624 square feet of land.
4. The applicant agreed to reduce the Variance by two (2) feet.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 96, October 31, 1989, (Tape 1), Scheduled case:

9:45 A.M. ROBERT W. MOORE, VC 89-D-103, application under Sect. 18-401 of the Zoning Ordinance to allow the enclosure of an existing carport to be located 10.3 feet from the side lot line (12 ft. min. required by Sect. 3-307), located at 1823 Baldwin Drive, on approximately 17,827 square feet of land, zoned R-3, Dranesville District, Tax Map 40-1((25))16.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Moore replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and called the Board's attention to a letter in support of the request from the Tuckahoe Recreation Club.

Mrs. Thonen commented that the carport was already too close to the property line. Mrs. Greenlief explained that open carports can extend into the side yard. Chairman Smith added that from the photographs contained in the file it appeared that the carport was already enclosed.

The applicant, Robert Moore, 1823 Baldwin Drive, McLean, Virginia, explained that the carport had been like it is today since 1964 when the house was built. He added that the distance from the lot line would not change.

There were no speakers to address this application and Chairman Smith asked for staff closing comments.

Mrs. Greenlief noted that the original plat in 1963 showed the carport 12.1 feet from the property line and that the survey had also stated 12.1 feet from the lot line.

As there was no further discussion, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the request subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-103 by ROBERT W. MOORE, under Section 18-401 of the Zoning Ordinance to allow the enclosure of an existing carport to be located 10.3 feet from the side lot line, on property located at 1823 Baldwin Drive, Tax Map Reference 40-1((25))16, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 17,827 square feet of land.

4. The applicant has met the nine standards for a Variance, in particular that an extraordinary situation exists on the property whereby the house was situated, along with the carport, at the time it was built. The survey at that time showed 12.1 feet from the side lot line when in fact it was 10.3 feet from the side lot line.
5. The applicant is requesting to enclose only one corner of the structure.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 97, October 31, 1989, (Tape 1), Scheduled case:

Virgilio Marquina and Evelin M. Marquina, SPA 80-A-017-1
Out-of-Turn Hearing

Mrs. Thonen noted that a letter had been received from the applicants which stated that they were planning to purchase an existing day care center and had requested an out-of-turn

hearing to ensure that there is no time lapse. She asked staff if it could be scheduled as she would hate to see the school close.

Lori Greenlief, Staff Coordinator, explained that the notice packages had already been mailed for the December public hearings. She added that although it is for a change in permittee only it would have to undergo a thorough staff review because the last review occurred in 1980.

Mrs. Thonen made a motion to grant the out-of-turn hearing as she would not like to see the school close. Mrs. Harris noted that staff has indicated that the review process cannot be completed.

The motion failed for the lack of a second. Mrs. Harris made a motion to deny the request for an out-of-turn hearing because there is not sufficient time to allow staff to review the case so that it could be scheduled for a December public hearing. Mr. Ribble seconded the motion which passed by a vote of 3-1 with Mrs. Thonen voting nay. Mr. Hammack was not present for the vote. Mr. DiGiulian and Mr. Kelley was absent from the meeting.

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Page 98, October 31, 1989, (Tape 1), Scheduled case:

Approval of October 24, 1989 Resolutions

Mrs. Harris made a motion to approve the Resolutions as submitted by staff. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mr. Kelley absent from the meeting.

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Page 98, October 31, 1989, (Tape 1), Scheduled case:

Little River Pines Appeal

Chairman Smith called the Board's attention to a letter from Swanee and Len Busic, adjacent property owners to the subject property, requesting to join in the appeal of Little River Pines. He noted that the request was not made within the thirty (30) day time period.

Mrs. Thonen made a motion to not accept the request as it was not timely filed. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mr. Kelley absent from the meeting.

Mrs. Greenlief stated that Mr. and Mrs. Busic were also requesting a clarification as to why the Board had previously ruled that Little River Pines was not an aggrieved party. Chairman Smith explained that under Virginia Code an aggrieved party constitutes a property owner, which the Homeowners Association was not.

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Page 98, October 31, 1989, (Tape 1), Scheduled case:

10:00 A.M. SHARON BECKER DANE, VC 89-S-048, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport for an attached garage 10.3 feet from a side lot line, such that side yards total 22.8 feet (8 ft. min., 24 ft. total min. side yard required by Sect. 3-207), located at 7002 Spaniel Road, on approximately 12,248 square feet of land, zoned R-2(C), Springfield District, Tax Map 88-2((6))131. (DEFERRED FROM 9/7/89 - NOTICES)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Dane replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, Sharon Becker Dane, 7002 Spaniel Road, Springfield, Virginia, read her written statement of justification contained in the staff report into the record.

In response to questions from the Board, Ms. Dane replied that the neighbors on Lot 130 had no objections to the request and that the materials used to construct the addition would match those on the existing house.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant the request subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-048 by SHARON BECKER DANE, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport for an attached garage 10.3 feet from a side lot line, such that side yards total 22.8 feet, on property located at 7002 Spaniel Road, Tax Map Reference 88-2((6))131, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 24, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2(C).
3. The area of the lot is 12,248 square feet of land.
4. The lot is pie shaped and the house is placed at the most narrow part of the lot.
5. This is a minimal Variance and the addition will not be constructed to the lot line.
6. The request will be in harmony with the spirit and intent of the Zoning Ordinance.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shows on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 100, October 31, 1989, (Tape 1), Scheduled case:

10:15 A.M. BA VAN NGUYEN, VC 89-M-101, application under Sect. 18-401 of the Zoning Ordinance to allow an addition to the dwelling to be 11.2 feet from the side lot line and to allow a second story addition to the existing dwelling to be 11.2 feet from one side lot line and 7.4 feet from the other side lot line (12 ft. min. side yard required under Sect. 3-307), located at 3537 Gordon Street, on approximately 13,200 square feet of land, zoned R-3, Mason District, Tax Map 61-4((3))(G)12 and pt. 11.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Nguyen's son, Ton Nguyen, replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and called the Board's attention to sixteen letters in opposition to the request received by staff.

The applicant's son, Ton Nguyen, 3537 Gordon Street, Falls Church, Virginia, referenced the statement of justification submitted with the application.

Mrs. Thonen asked if the applicant had read the letters in opposition and Mr. Nguyen replied that he had.

In response to questions from the Board, Mr. Nguyen explained that his parents were trying to keep their family together by adding four more bedrooms and one more bath in the second story addition. He stated that the family consisted of eight members and that there are only five cars parked at the house.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request and the following came forward: Barry Caron, 3433 Washington Drive, Falls Church, Virginia, President, Courtlin Park Civic Association; and, Nancy Burnett Greenstein, 3534 Gordon Street, Falls Church, Virginia.

The speakers stated that they understood the applicant's desire to keep the family together but added that they believed that an addition of this size was much too intense for the neighborhood and might set an undesirable precedent.

Mrs. Greenlief called the Board's attention to additional photographs that she had taken during her site visit.

Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to deny the request.

Mr. Ribble stated that he believed that to grant the request would change the entire character of the neighborhood and that the request would not be harmony with the neighborhood.

Mrs. Harris stated that she did not believe that standards 6 and 9 had been met because the family can use the dwelling in its present state.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-101 by BA VAN NGUYEN, under Section 18-401 of the Zoning Ordinance to allow an addition to the dwelling to be 11.2 feet from the side lot line and to allow a second story addition to the existing dwelling to be 11.2 feet from one side lot line and 7.4 feet from the other side lot line, on property located at 3537 Gordon Street, Tax Map Reference 61-4((3))(G)12 and pt. 11, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,200 square feet of land.
4. In this day and time of affordable housing it can be understood why the applicant wants to enlarge the house, but this request would be the same as rezoning the property and to increase the bedrooms from three to eight is to too intense. It is a long, narrow lot and to grant this would be a big mistake and the applicant has not satisfied the hardship 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;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorizati/n of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1989.

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Page 101, October 31, 1989, (Tape 1), Scheduled case:

10:30 A.M. DENNIS L. DRESS, VC 89-A-099, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing deck for a screened porch 14 feet from the rear lot line (25 ft. min. required by Sect. 3-307), located at 10914 Rippon Lodge Drive, on approximately 10,422 square feet of land, zoned R-3 (cluster), Annandale District, Tax Map 68-3((11))23.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Dress replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

The applicant, Dennis L. Dress, 10914 Rippon Lodge Drive, Fairfax, Virginia, stated that he had built the deck three years ago and at that time had constructed the deck in such a way that it could be enclosed at a later date. He added that the deck is not visible to the other lots because the lot behind his lot is heavily wooded, the property is located on a cul-de-sac, the lot is exceptionally shallow, the deck cannot be enclosed without a variance, the request would not be detrimental to the adjacent properties, and the request is in harmony with the character of the neighborhood.

In response to questions from Mr. Ribble with respect to the owner of the property directly behind the applicant's, Mr. Dress explained that the property is owned by an individual who has been trying to rezone the property but thus far has not been successful. He added that the owner of the land has no objections to the request.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the request subject to the development conditions contained in the staff report.

Mrs. Harris stated that she did not believe that the applicant had shown a hardship.

Mrs. Thonen commented that she believed that the hardship was caused by the house being set so far back on the lot.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-099 by DENNIS L. DRESS, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing deck for a screened porch 14 feet from the rear lot line, on property located at 10914 Rippon Lodge Drive, Tax Map Reference 68-3((11))23, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 10,422 square feet of land.
4. The applicant has met the nine standards, in particular that there is exceptional shallowness.
5. The applicant will not be moving anything closer to the rear lot line, only enclosing an existing deck.
6. The neighbor who would be most affected supports the request.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion which **FAILED** by a vote of 2-2 with Mrs. Thonen and Mr. Ribble voting aye; Chairman Smith and Mrs. Harris voting nay; Mr. Hammack not present for the vote; Mr. DiGiulian and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1989.

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Page 103, October 31, 1989, (Tape 1), Scheduled case:

10:45 A.M. MILTON E. AND LILLIAN S. MITLER, VC 89-M-106, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to an existing garage to 11.4 feet of the side lot line (15 ft. min. side yard required by Sect. 3-207), located at 3420 Mansfield Road, on approximately 17,800 square feet of land, zoned R-2, Mason District, Tax Map 61-1((11))992.

Chairman Smith noted that staff had indicated that this application could not be heard because the notices were not in order. He asked staff for a date and time for the deferral.

Lori Greenlief, Staff Coordinator, suggested January 9, 1990 at 8:00 p.m.

Hearing no objection, the Chair so ordered.

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Page 103, October 31, 1989, (Tape 1), Scheduled case:

11:00 A.M. ROBERT ARLEDGE APPEAL, A 89-D-012, to appeal the Zoning Administrator's decision that appellant is in violation of Par.1 of Sect. 8-004 by not complying with Condition #3 of Special Permit SP 85-D-062 for a structure located at 6022 Orris Street, zoned R-1, Dranesville District, Tax Map 31-2((22)) 2-A.

Chairman Smith noted that a request for a deferral had been received from the appellant's attorney.

John Cahill, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, came forward. Mr. Cahill explained that the appellant has filed a special permit amendment and would like to defer the appeal until such time as the special permit amendment has been scheduled. He added that the appeal will become moot if the special permit amendment is granted.

Lori Greenlief, Staff Coordinator, explained to the BZA that staff had not yet received the special permit application. She suggested January 30, 1989 at 11:00 a.m. as a deferral date and time.

Hearing no objection, the Chair so ordered.

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Page 104, October 31, 1989, (Tape 1), Scheduled case:

11:30 A.M. WOODLAND ASSOCIATES LIMITED PARTNERSHIP APPEAL, A 89-D-013, application under Sect. 18-301 to appeal the Zoning Administrator's decision that density credit under Sect. 2-308 of the Zoning Ordinance is not permitted for land to be dedicated for Wood Oak Drive, on property located on the South side of Dulles Airport Access Road west of Monroe Street, zoned I-4, Centreville District, Tax Map 16-3((1))25; 16-4((1))4, 5.

Chairman Smith called the Board's attention to a letter received from the appellant requesting a withdrawal.

Mrs. Thonen made a motion to allow the appellant to withdraw the appeal. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

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Page 104, October 31, 1989, (Tapes 1 and 2), Scheduled case:

12:00 noon TERRY MILLER, SP 89-M-043, application under Sect. 3-403 of the Zoning Ordinance to allow a child care center, located at 4401 Carrico Drive, on approximately 35,230 square feet of land, zoned R-4, HC, and SC, Mason District, Tax Map 71-1((5))3A, pt. 4.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Miller replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant is requesting approval to operate a day care center with 94 students, 18 parking spaces, and a maximum of 15 employees. The applicant proposes a resubdivision to accommodate the use and requests that the Board waive the transitional screening requirement along the southern boundary. Mr. Riegle stated that the major issues stem from the fact that the application does not provide adequate amounts of screening and buffering needed to make the use compatible with the surrounding development. Staff is also concerned that measures have not been taken to keep the noise and pollution from Little River Turnpike from impacting the site, thus adversely impacting the children. In closing, Mr. Riegle stated that staff cannot support the requested waiver of the 25 foot transitional screening yard nor can staff support the child care center as staff does not believe that the applicant has met the standards for this Special Permit use. Staff's primary concern is the intensity on 2 lots of this size with inadequate screening.

In response to questions from the Board regarding the resubdivision, Mr. Riegle explained that the resubdivision has to be reviewed by the Department of Environmental Management (DEM). He noted that staff had conditioned the special permit to be contingent on DEM's approval. Mr. Riegle added that the applicant owns both lots and the proposed day care center will be located on a portion of the two lots with the northern portion omitted, if the resubdivision is approved.

Mr. Miller stated that he and his wife have owned the property since 1981 and there is about an acre and a half of land. For the last three years, he and his wife have struggled to come up with a plan that would be compatible with the neighborhood. Mr. Miller stated that approximately three years ago they had an engineering study done and attempted to develop the land into commercial townhouses which met with a lot of opposition from the neighbors. Following the withdrawal of that proposal, his wife became interested in the day care business because of the urgent need for such facilities. He stated that he and his wife presently live on the site and would like to continue to do so. The proposed building would have three walls to shield it from Route 236, a waist high wall, an exterior walkway wall, and then the building wall. He stated that he believes that the site plan process will mitigate many of staff's concerns with respect to the protection of the children.

In response to questions from the Board, Mr. Miller replied that he would encourage car pooling and will eventually purchase buses to transport the children back and forth. He stated that he and his wife would prefer not to extend the house to include the day care.

The Board and staff discussed the screening around the play area. Mr. Riegle stated that the size of the play area is adequate provided that not all children are on the play area at the same time.

Page 105, October 31, 1989, (Tapes 1 and 2), (TERRY MILLER, SP 89-M-043, continued from Page 104)

Mr. Miller told the Board that he and his wife have visited several day care centers in the area and did not believe that their request is unique. He stated that the ratio of the play area in relation to the building size is well within the standards.

Following further discussion among the Board, it was the consensus of the Board members present to continue the public hearing until such time as the applicant had resolved the resubdivision issue.

Lori Greenlief, Staff Coordinator, suggested January 30, 1990 at 9:00 a.m.

Mrs. Harris made a motion to defer to the date and time suggested by staff. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

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Page 105, October 31, 1989, (Tape 2), Scheduled case:

12:30 P.M. THE TRUSTEES OF THE FULL GOSPEL FIRST KOREAN CHURCH OF WASHINGTON, SP 89-M-041, application under Sect. 3-203 of the Zoning Ordinance to allow church and related facilities located at 6401 Lincolnia Road, on approximately 2.86 acres of land, zoned R-2, Mason District, Tax Map 72-1((1))59.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mittereder replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Denise James, Staff Coordinator, presented the staff report and stated that there are no outstanding issues associated with the application, the applicant agrees with staff's recommended development conditions, and staff recommends approval. She suggested that the last sentence of condition number 10 be revised by deleting the word "access" and the last sentence of condition number 11 be revised to read if determined "feasible" by VDOT.

In response to questions from Mrs. Harris, Mrs. James replied that Brookside Drive is going to be shifted further south. If the applicant is required to realign its entrance with Brookside, it is possible that its entrance might interfere with the drainage project and with the sewer easement that is already on the property.

Mr. Mittereder agreed with staff's comments and with the development conditions.

Chairman Smith called for speakers in support of the application and hearing no reply called for speakers in opposition to the request. The following citizens came forward: Kevin M. Howe, 4317 Brookside Drive, Alexandria, Virginia; and, William E. Martin, 4300 Braddock Road, Alexandria, Virginia.

The citizens were concerned over the proposed development making an existing drainage problem worse. They asked that measures be taken by the church to prevent this from happening.

During rebuttal, Mr. Mittereder stated that invitations were mailed to three civic associations which abut the subject property and whose names had been obtained from Supervisor Davis' office. He stated that this meeting was held so that the applicant could address any concerns that the citizens might have with respect to drainage problem. Mr. Mittereder agreed that there is a problem and the church has retained another civil engineer who has double checked all the grading and the proposed stormwater management pond to ensure that any runoff generated by this development would be contained on site. He stated that DEM is proposing a triple culvert at the point where the water flows across Braddock Road and the church has indicated that they would contribute funds towards that drainage improvement. The church has already contributed a pro rata share of funds needed for downstream improvements. Mr. Mittereder added that the church has retained a new landscape architect to improve the design and to come up with one that will maintain as many of the trees and wetlands as possible which front on Mr. Martin's property.

In response to questions from Mrs. Harris regarding the drainage, Mrs. James replied that this application has been submitted to the Environmental Planning Branch and they had not recommended the use of vegetative infiltration strips. She stated that much of the site will be left in its natural state and will serve a similar purpose as the vegetation infiltration strips. Mrs. James added that DEM will determine in detail a way to slow down the flow of water across the parking lot at the time of site plan review.

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

Mr. Hammack made a motion to grant the request subject to the revised development conditions as suggested by staff.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-M-041 by THE TRUSTEES OF THE FULL GOSPEL FIRST KOREAN CHURCH OF WASHINGTON, under Section 3-203 of the Zoning Ordinance to allow church and related facilities, on property located at 6401 Lincolnia Road, Tax Map Reference 72-1((1))59, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 31, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 2.86 acres of land.
4. Was concerned about the retention of stormwater on site but have to believe that the Department of Environmental Management is in a much better position to evaluate runoff during their review. The BZA should not deny this application based on that. Cannot in good conscience make a motion to deny this application when the opposition cannot show how much water is coming off 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 Section 8-303 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity for Full Gospel First Korean Church of Washington shall be limited to a total of 250.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 68 spaces. All parking shall be on site.

7. Transitional Screening 1 (25') shall be provided around the western, southern and eastern lot lines as shown on the Landscape Plan dated September 29, 1989. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist. Screening shall be provided along the northern lot line as shown on the Landscape Plan and shall be supplemented by additional plantings in the form of an evergreen hedge, 3 feet in height, along the 10 foot planting strip shown in front of the parking area along the northern lot line. The Landscape Plan shall be submitted to the County Arborist for review and approval to ensure that an appropriate mix of evergreen and deciduous plantings are provided and to ensure that the intent of Transitional Screening 1 is met.

8. The barrier requirement shall be waived except for the fencing shown on the special permit plat.

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9. Stormwater management shall be implemented as required by the Department of Environmental Management to retain stormwater runoff on site, and may include, but is not limited to, the provisions of an on-site stormwater detention pond as shown on the plat, and/or contribution to off-site drainage projects downstream or other measure as deemed appropriate by DEM and the Department of Public Works (DPW) to alleviate flooding problems related to this site and the adjacent Braddock Road culvert.

10. Right-of-way to 35 feet from existing centerline of Braddock Road and to 45 feet from the centerline of Lincolnia Road necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements as determined by the County.

11. Right turn deceleration lanes shall be provided into the site from Braddock and Lincolnia Roads in accordance to Virginia Department of Transportation (VDOT) specifications. An acceleration lane shall be provided from the site entrance on Lincolnia Road to the Braddock Road intersection in accordance with VDOT specifications. Equivalent funds in lieu of construction shall be placed in escrow as requested by VDOT and DEM. The entrance to the site on Braddock Road shall be aligned with Brookside Drive if determined feasible by VDOT and DEM.

12. The existing dwelling on the site shall be removed at such time as construction of the church sanctuary and activity wing is complete, or at such time as the right-of-way reserved to implement road improvements is needed, or prior to the issuance of a non-residential use permit, whichever occurs first.

13. A trail within a public access easement shall be provided along Braddock Road in accordance with the Countywide Trails Plan and Article 17 of the Zoning Ordinance.

14. Any proposed new lighting of the parking areas shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall focus directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility or off the property.

15. No outside public speakers or public address system shall be permitted.

16. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.

17. A current soil survey shall be submitted to the Department of Environmental Management in order to determine the extent of the mixed alluvial soils on the site. No construction shall be permitted in mixed alluvial soils except for the construction of a stormwater management 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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 31, 1989. This date shall be deemed to be the final approval date of this special permit.

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As there was no other business to come before the Board, the meeting was adjourned at 1:10 p.m.

Betsy S. Hewitt
Betsy S. Hewitt, Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: November 16, 1989

APPROVED: November 28, 1989

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, November 14, 1989. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Paul Hammack; John DiGiulian, Vice Chairman, and Robert Kelley. John Ribble was absent from the meeting.

Chairman Smith called the meeting to order at 8:00 p.m. There were no Board matters.

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Page 109, November 14, 1989, (Tape 1), Scheduled case:

8:00 P.M. F. RICHARD EMERY AND KATHRYN J. EMERY, VC 89-P-102, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling 17.34 feet from rear lot line (25 ft. min. required by Sect. 3-207), located at 3310 Mantua Drive, on approximately 15,273 square feet of land, zoned R-2, Providence District, Tax Map 59-1((24))31.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Emery confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

David Papeal, 11572 Embers Court, Reston, Virginia, represented the Emery's, and said there is a severe slope across the site from the north to the south. The area in the rear of the lot has a rather severe slope around the addition but flattens out towards the house. The front is also a rather steep slope coming up. The only flat part is where the addition will be located. The floor area of the addition is approximately 500 square feet. Mr. Papeal also stated the application has been reviewed by the neighbors and there have been no negative replies.

Chairman Smith asked for any speakers in support or opposition and there being none he closed the public hearing.

Mr. DiGiulian made a motion to deny the application for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-102 by F. RICHARD EMERY AND KATHRYN J. EMERY, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling 17.34 feet from rear lot line, on property located at 3310 Mantua Drive, Tax Map Reference 59-1((24))31, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,273 square feet of land.
4. The applicant can build 80 percent or more of the floor area that he is requesting without a variance.
5. The applicant needs a variance for roughly a triangular half of the farthest projection in the back of the property.
6. With the existing dwelling, deck and carport, the applicant has covered the property about to the maximum.

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.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Mr. Hammack not present for the vote; Mr. Ribble absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 22, 1989.

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Page 110, November 14, 1989, (Tape 1), Scheduled case:

8:15 P.M. BO RIM SA BUDDHISM CORPORATION, SP 89-S-025, application under Sects. 3-C03 and 8-901 of the Zoning Ordinance to allow place of worship and related facilities in existing building, with waiver of the dustless surface requirement, located at 5300 Ox Road, on approximately 45,332 square feet of land, zoned R-C, WSPOD, Springfield District, Tax Map 68-3((1))6A.

Chairman Smith called the attorney representing the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Gayle B. Matthews, attorney representing the applicant, confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. He said that there are no outstanding issues and staff recommended that the church be integrated with Fairfax Covenant Church. Specifically, Fairfax Covenant Church is requesting an easement to allow the site to be accessed at a consolidated point at Route 123. Mr. Riegle added that staff had received a letter from Fairfax Covenant Church voicing their support of the application. Staff recommended approval subject to the development conditions in Appendix 1 of the staff report and recommended that a five (5) year term be placed on the use. Mr. Riegle pointed out that this time limitation would allow for a possible rereview of the development conditions in the event Fairfax Covenant Church does not establish their use, specifically regarding transportation issues.

Gayle B. Matthews, Ltd., 108 E. Broad Street, Falls Church, Virginia, attorney for owner/applicant stated this is a very small church with very little activity. Mr. Matthews added that if the shed located on the rear of the property is in violation it would either be relocated or removed. He added that the applicant does not see the need for the five (5) year expiration because they are proposing to access into the existing road.

Staff had no objection to amending the condition on the shed. Mr. Riegle explained that the reason it was listed as a possible violation was because they could not get any height measurements on it. Staff also stated the Office of Transportation had been concerned about direct access onto Ox Road from this site.

The Chairman asked for speakers in support or in opposition of the application.

Dave Desannoy, 10910 Rippon Lodge Drive, stated that he received a letter from Mr. Matthews regarding this application. He added that he was not in opposition or support of the application, but just wanted to know the limitations required. Chairman Smith suggested that Mr. Desannoy read a copy of the staff report as he believed that it might answer some of his questions.

There being no additional speakers Chairman Smith closed the public hearing.

Mrs. Harris made a motion to approve this application for a place of worship with the modification of the dustless surface requirement and have the limitation of only 15 people with no future growth, no disturbance of the existing vegetation, and to use existing buildings and that conditions be adopted with the following changes: conditions #1 - #5 remain the same; condition #6 to state "the shed, if in violation, to be within the setback requirements or be removed"; conditions #7, 8, 9 remain the same; conditions 10 and 11 be changed to read: "#10 contribution of a pro rata share based on seating capacity for the construction of a right-turn lane"; and, #11 contribution of a pro rata share based on seating capacity toward the signalization approvement or modifications; and delete condition #16.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-025 by BO RIM SA BUDDHISM CORPORATION, under Sections 3-C03 and 8-901 of the Zoning Ordinance to allow a place of worship and related facilities in existing building, with waiver of the dustless surface requirement, on property located at 5300 Ox Road, Tax Map Reference 68-3((1))6A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C.
3. The area of the lot is 45,332 square feet of land.
4. The church will fit into the area very well using existing buildings and having a limitation of only 15 people.
5. The existing vegetation will not be changed in any way.
6. There may be a limitation of no future growth.
7. The applicant agrees with the development conditions.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 3-C03 and 8-901 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. Seating capacity for Bo Rim Sa Temple shall be limited to 15 people.

6. The shed, if in violation, shall be moved to be within the setback requirements or removed.

7. To the greatest extent possible individual trees or stands of trees shall be preserved as deemed feasible by the County Arborist. This tree preservation shall include the large tree shown to exist in the center of the circle driveway.

8. Sufficient land and access easements as determined necessary by VDOT and DEM shall be provided along the northern boundary of the site to allow for construction of the consolidated access proposed with SP 87-S-075. Ancillary easements shall be provided to facilitate these improvements.

9. At such time as a consolidated point of access is achieved the applicant shall close the existing point of access to Route 123.

10. Contribution of a pro-rata share based on seating capacity toward the construction of a right turn lane serving the consolidated Route 123 entrance shall be provided by the applicant as determined necessary by DEM and VDOT.

11. Contribution of a pro-rata share based on seating capacity toward the signalization improvements or modifications at the consolidated Route 123 entrance shall be provided by the applicant as determined necessary by DEM and VDOT.

12. The gravel surfaces shall be maintained in accordance with Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire five years from the date of the final approval of the application.

    - Speed limits shall be kept low, generally 10 mph.
    - The areas shall be constructed with clean stone with as little fines material as possible.
    - The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure. Routine maintenance shall prevent this from occurring with use.
    - Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed.
    - Runoff shall be channeled away from and around driveway and parking areas.
    - The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

13. Any proposed lighting on the site shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall focus directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

14. There shall be no outdoor loudspeakers or other outdoor noise generating devices associated with this use.

15. Any signs associated with this use shall conform to Article 12, Signs.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 22, 1989. This date shall be deemed to be the final approval date of this special permit.

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8:30 P.M. McLEAN POST 8241 VETERANS OF FOREIGN WARS, VC 89-D-078, application under Sect. 18-401 of the Zoning Ordinance to allow addition to a building of a public benefit association to 7.8 feet from side lot line and 25.1 feet from front lot line, as approved in VC 87-D-012, expired (20 ft. min. side yard, 40 ft. min. front yard required by Sect. 3-107), located at 1051 Springhill Road, on approximately 40,480 square feet of land, zoned R-1, Dranesville District, Tax Map 20-4((1))71. (CONCURRENT WITH SE 89-D-054)

Chairman Smith called the attorney for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hansbarger confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lorrie Kirst, Staff Coordinator, with the Rezoning and Special Exception Branch, Office of Comprehensive Planning, presented the staff report because she was also the coordinator for the Special Exception that went to the Board of Supervisors. Ms. Kirst stated that the Special Exception, SE 89-D-054, had been approved on October 30, 1989 by the Board of Supervisors with respect to development condition number 13. Ms. Kirst stated that if the variances are not granted that the special exception becomes null and void.

William H. Hansbarger, 301 Park Avenue, Falls Church, Virginia, attorney representing the applicant, reaffirmed the affidavit. Mr. Hansbarger presented some petitions to BZA from area residents in favor of the application. He presented a brief history of the previous application that had been approved and stated that adherence to the Zoning Ordinance would put undo hardship on the applicant.

There being no additional speakers and no additional staff comments, Chairman Smith closed the public hearing.

Mr. Kelley made the motion to approve the application with the conditions contained in Appendix 2 of the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-078 by McLEAN POST 8241 VETERANS OF FOREIGN WARS, under Section 18-401 of the Zoning Ordinance to allow addition to a building of a public benefit association to 7.8 feet from side lot line and 25.1 feet from front lot line, as approved in VC 87-D-012, expired, on property located at 1051 Springhill Road, Tax Map Reference 20-4((1))71, 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 14, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 40,480 square feet of land.

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

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

Page 114, November 14, 1989, (Tape 1), (McLEAN POST 8241 VETERANS OF FOREIGN WARS, VC 89-D-078, continued from Page 113)

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5-1 with Mrs. Harris voting nay; Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 22, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 114, November 14, 1989, (Tape 1), Scheduled case:

8:45 P.M. D.R.W. LIMITED PARTNERSHIP APPEALS, A-88-C-011 and A 88-C-012, Department of Environmental Management's decisions refusing to approve geotechnical reports and issue Residential Use Permits for nine (9) lots in Section 2 of the Chantilly Farms Subdivision, zoned R-3, Centreville District, Tax Map 45-1((6))49 and 50; 35-3((6))51, 71, 72, 73, 79, 80, 81. (DEFERRED FROM 3/21/89 AT APPLICANT'S REQUEST. DEFERRED FROM 6/22/89 AT APPLICANT'S REQUEST)

Patrick Via, P.O. Box 547, Fairfax, Virginia, attorney for the applicant, requested a deferral of this application to March 1990 to give the applicant time to resolve the issue.

Jane Kelsey, Chief, Special Permits and Variance Branch, suggested a date of Thursday, March 22, 1990 at 9:00 a.m.

Mrs. Thonen made a motion to defer this application to March 22, 1990 at 9:00 a.m. Hearing no objections, the Chairman so ordered.

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Page 114, November 14, 1989, (Tape 1), After Agenda Item:

Mobil Oil Corporation, VC 87-M-036
Additional Time

Mrs. Thonen made a motion to grant additional time for this application. The motion was seconded by Mr. Hammack and carried by a vote of 5-0 with Mr. DiGiulian not present for the vote and Mr. Ribble absent from the meeting. The new expiration date will be September 22, 1990.

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Page 115, November 14, 1989, (Tape 1), After Agenda Item:

Rebecca Ann Crump, SP 84-S-079
Additional Time

Mrs. Thonen made a motion to grant additional time for this application. The motion was seconded by Mrs. Harris and carried by a vote of 5-0 with Mr. DiGiulian not present for the vote and Mr. Ribble absent from the meeting. The new expiration date will be July 16, 1990.

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Page 115, November 14, 1989, (Tape 1), After Agenda Item:

Approval of Minutes from July 25, 1989 Meeting

Mrs. Thonen made a motion to approve the minutes as submitted. The motion was seconded by Mr. Hammack and carried by a vote of 5-0 with Mr. DiGiulian not present for the vote and Mr. Ribble absent from the meeting.

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Page 115, November 14, 1989, (Tape 1), After Agenda Item:

Approval of Minutes from September 21, 1989 Meeting

Mrs. Thonen made a motion to approve the minutes. The motion was seconded by Mr. Hammack and carried by a vote of 5-0 with Mr. DiGiulian not present for the vote and Mr. Ribble absent from the meeting.

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Page 115, November 14, 1989, (Tape 1), After Agenda Item:

Bell Atlantic Appeal

Mrs. Thonen made a motion to reschedule the Bell Atlantic Appeal to December 7, 1989 at 9:00 a.m. The motion was seconded by Mrs. Harris which carried by a vote of 5-0 with Mr. DiGiulian not present for the vote and Mr. Ribble absent from the meeting.

Mrs. Thonen made a motion to change the meeting time to 10:00 a.m. rather than 9:00. The motion was seconded by Mr. DiGiulian. Vote 3-3. Motion failed.

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Mr. DiGiulian made a motion for the Board to go into Executive Session for consultation with legal counsel and briefings by staff members regarding specific legal matters requiring provision of legal advice by counsel pursuant to Virginia Code §2.1-344A7 in SPA 89-D-010 and SP 89-D-048. The motion was seconded by Mr. Hammack which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

The Board went into Executive session for approximately 45 minutes and returned to continue in the public hearing.

Mr. Hammack 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 into Executive Session were heard, discussed, or considered by the Board during the Executive Session.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Staff suggested that A 89-D-010 be rescheduled to December 7, 1989 at 9:00 a.m. Mrs. Harris made a motion to intend to reschedule the case to the above date. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Staff also suggested that application SP 89-D-048 be rescheduled for December 7, 1989 at 9:30 a.m. due to the fact that it was posted incorrectly. Mrs. Thonen made a motion to intend to reschedule the case to the above date. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned.

Alicia Caperton/Clerk
Alicia Caperton, Substituting for the
Clerk to the Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith Chairman
Board of Zoning Appeals

SUBMITTED: April 19, 1990 APPROVED: April 24, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, November 16, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

Chairman Smith called the meeting to order at 9:30 a.m. and gave the invocation. There were no matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 117 November 16, 1989, (Tape 1), Scheduled case of:

9:00 A.M. KOREAN EVANGELICAL CHURCH OF WASHINGTON, SP 89-P-023, application under Sect. 3-303 of the Zoning Ordinance to allow removal of a dwelling and shed, use of existing dwelling for church purposes, construction of parking and building additions to existing church and related facilities, located at 3460 Annandale Road, on approximately 1.3070 acres of land, zoned R-3, Providence District, Tax Map 060-1((1))36, 37, 46A. (DEF. FROM 7/27/89 TO BE HEARD CONCURRENT WITH VC 89-P-100. DEF. FROM 9/21/89 TO BE HEARD CONCURRENT WITH VC 89-P-100)

9:00 A.M. KOREAN EVANGELICAL CHURCH OF WASHINGTON, VC 89-P-100, application under Sect. 18-401 of the Zoning Ordinance to allow existing church building to be expanded and to remain 27.1 feet from the front lot line (30 ft. min. required by Sect. 3-307), located at 3460 Annandale Road, on approximately 1.3070 acres of land, zoned R-3, Providence District, Tax Map 60-1((1))37, 36, 46A. (CONCURRENT WITH SP 89-P-023. DEFERRED FROM 9/21/89 - NOTICES)

Chairman Smith noted that the two applications would be heard concurrently and one plat would be used if both applications were approved. If one application is approved, then the plat would show only the approved application.

Chairman Smith called William L. Schmidt, 6225 Brandon Avenue, Suite 275, Springfield, Virginia, agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate; Mr. Schmidt confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. Ms. Greenlief said that staff recommended that 25 feet of screening be provided and six parking spaces be deleted. Staff recommended approval of this application subject to the proposed development conditions contained in the staff report.

Mr. Schmidt said that the applicant was willing to comply with the staff's recommendations. He noted that the applicant had met with the neighbors to discuss any issues of concern and had agreed upon drainage improvements that would benefit the area.

In response to questions from the Board, Mr. Schmidt said that the applicant would agree to Transitional Screening 1 (25') and would submit new plats reflecting this agreement.

Chairman Smith noted for the record that William Schmidt was no relation to him. He then called for speakers in support or in opposition to the request and hearing no reply asked for staff's closing comments.

Ms. Greenlief noted that a policy decision had changed staff's recommendation to permit the expiration time for Special Permits from eighteen (18) months to twenty-four (24) months and the imposed development conditions should reflect that change.

Staff having no further comments, Chairman Smith closed the public hearing.

Chairman Smith stated that separate motions would be needed for the applications.

Mrs. Thonen made a motion to grant SP 89-P-023 request with the conditions contained in the staff report dated July 20, 1989. She stated that the expiration time on Page 3 of Appendix 1 should be changed from eighteen (18) months to "twenty-four (24) months" and that new plats must be submitted.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-P-023 by KOREAN EVANGELICAL CHURCH OF WASHINGTON, under Section 3-303 of the Zoning Ordinance to permit removal of a dwelling and shed, use of existing dwelling for church purposes, construction of parking and building additions to existing church and related facilities, on property located at 3460 Annandale Road, Tax Map Reference 60-1((1))36,37,46A, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 1,307 acres of land.
4. The applicant must submit a revised plat to remove six parking spaces and concrete slab so as to provided 25 feet of screening.
5. The applicant has cooperated with staff in order to meet the standards.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-003 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity in the main area of worship shall be limited to a total of 110 seats with a corresponding minimum of 28 parking spaces. There shall be a maximum of 55 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements.

6. Transitional Screening 1 (25 feet) shall be provided along all lot lines. The existing dwelling on Lot 46A shall be allowed to protrude into the transitional screening yard as shown on the plat. Any existing vegetation in these areas, if deemed worthy by the County Arborist, shall be utilized in the transitional screening yard. The six parking spaces shown parallel to Masonville Drive on the special permit plat shall be removed from the plat to provide 25 feet of transitional screening. In addition, the asphalt and concrete areas south of the existing church shall be removed. The County Arborist shall be review and approve the size, type, location and quantity of all the above plantings. The barrier requirement along the southern and eastern lot lines shall be waived.

7. A tree preservation plan shall be reviewed and approved by the County Arborist which shows at a minimum, the preservation of the 30 inch maple in the southwest corner of the site, the existing evergreens along the Annandale Road frontage and the maple in the northwest corner of the site if that is on the applicant's property. In addition, other mature trees deemed worthy by the County Arborist shall be preserved.

8. Shade trees, the type and size to be reviewed and approved by the County Arborist, shall be provided within the islands in the parking lot. The purpose of these plantings shall be to provide visual relief from the parking lot and provide shade.

9. A soils evaluation study shall be submitted to the Department of Environmental Management at the time of site plan review.

10. The existing curb cuts along Annandale Road shall be replaced with curb and gutter to match that which is existing along the road frontage.

11. The underground detention area along the northern edge of the parking lot shall be provided and shall be designed to the satisfaction of the Department of Environmental Management.

12. A solid wood fence, four feet in height, shall be provided along the northern and western edge of the parking lot. The fence shall be located between the edge of pavement and the transitional screening plantings.

13. If the well is accessible, it shall be ensured that the abandoned well is capped in accordance with Health Department standards.

14. The width and design of the entrance off of Masonville Drive shall meet Virginia Department of Transportation standards.

15. A six foot wide, Type I trail shall be provided along the site's frontage of Annandale Road within a public access easement.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 5 - 0. Mr. Ribble and Mr. Hammack were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 24, 1989. This date shall be deemed to be the final approval date of this special permit.

Chairman then called for a motion for the Variance Application.

Mrs. Thonen made a motion to grant VC 89-C-100 with the conditions contained in the staff report dated September 14, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-100 by KOREAN EVANGELICAL CHURCH OF WASHINGTON, under Section 3-307 of the Zoning Ordinance to permit existing church building to be expanded and to remain 27.1 feet from the front lot line, on property located at 3460 Annandale Road, Tax Map Reference 60-1((1))37,36,46A, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.3 acres of land.
4. The applicant must submit a revised plat to remove six parking spaces and concrete slab so as to provided 25 feet of screening.
5. The applicant has cooperated with staff in order to meet the standards.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 5 - 0. Mr. Ribble and Mr. Hammack were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 24, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 120 November 16, 1989, (Tape 1), Scheduled case of:

9:20 A.M. KNOLLWOOD BAPTIST CHURCH, SPA 82-S-028-4, application under Sect. 6-303 to amend S 82-S-028 for church and related facilities to permit continuation of use of three trailers, located at 10000 Coffer Woods Road, on approximately 5.00 acres of land, zoned PRC, Springfield District, Tax Map 78-3((1))40. (DEFERRED FROM 9/26/89 TO ALLOW APPLICANT TIME TO MEET WITH ARB FOR BURKE CENTRE CONSERVANCY)

Chairman Smith called Ben D. Nolan, II, 9750 South Park Circle, Fairfax Station, Virginia, the applicant's representative, to the podium and asked if the affidavit

before the Board was complete and accurate. Mr. Nolan confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and confirmed that the applicant had met with the Burke Centre Conservancy and had provided the pictures Mrs. Harris had requested.

Mr. Nolan addressed the Board and said that the applicant had met with the Burke Centre Conservancy and with the members of the community to discuss their concerns. He added that the required skirting was done on September 30, 1989, and noted that the area is well screened and submitted pictures which indicated that the trailers are not visible until you enter the parking lot of the church. He said that the County Arborist had visited the site and had approved of the landscaping.

Chairman Smith called for speakers in support to the request.

Charles Evans, 5954 Dopers Landing, Burke Centre, a member of Knollwood Baptist Church, explained that the classrooms are essential in order to give the youth a Christian education and asked the Board to grant the request.

There being no speakers in opposition to the request, staff having no comments, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant the request with conditions contained in the staff report of September 19, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-S-028-4 by KNOLLWOOD BAPTIST CHURCH, under Section 6-303 of the Zoning Ordinance to permit continuation of the use of three trailers, on property located at 10000 Coffer Woods Road, Tax Map Reference 78-3((1))40, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 16, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is PRC.
3. The area of the lot is 5.0 acres of land.
4. The applicant has provided adequate screening and the land is well buffered.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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.

5. The maximum seating capacity for Knollwood Baptist Church shall be limited to a total of 168.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 48 spaces. All parking shall be on site.

7. Transitional Screening 1 (25') shall be provided along all lot lines except along the northern lot line where the existing parking lot and driveway are located two (2) feet from the side lot line. The planting requirement shall be modified to supplement the existing vegetation where necessary as determined by the County Arborist. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist.

9. The temporary use of the three (3) trailers shall be no longer that five (5) years from the date of approval of this Special Permit Amendment. Continued use beyond 5 years shall require a special permit amendment.

10. The barrier requirement shall be waived except that a fence may be provided along the western lot line.

11. The limits of clearing and grading shall be retained as shown on the plat. The area within the limits of clearing not occupied by trailers or walkways shall be landscaped with grass.

    A tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of tree which may be impacted by construction on the site.

12. Any proposed new lighting of the parking areas shall be in accordance with the following:

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

    The lights shall focus directly onto the subject property.

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

13. The trail leading to park land on the northwestern corner of the lot shall not be removed.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5 - 0. Mr. Ribble and Mr. Hammack were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 24, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 123 November 16, 1989, (Tape 1), Scheduled case of:

9:40 A.M. BELL ATLANTIC MOBILE SYSTEMS INC. APPEAL, A 89-C-006, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that special exception approval is required for a telecommunication facility in the PRC District where such use is not indicated on the approved development plan, located at 11810 Sunrise Valley Drive, zoned PRC, Centreville District, Tax Map 17-3((3))1. (DEFERRED FROM 6/27/89 - NOTICES. DEFERRED FROM 9/21/89 - NOTICES. DEFERRED FROM 9/26/89 FOR ADDITIONAL INFORMATION)

Mrs. Thonen noted for the record that the Board at their November 14, 1989 had issued an intent to defer A 89-C-006. She then made a motion to defer the appeal to December 7, 1989 at 9:00 a.m. Mr. Digiulian seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack and Mr. Ribble not present for the vote.

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Page 123 November 16, 1989, (Tape 2), After Agenda Item:

Living Savior Lutheran Church - SPA 86-S-023-01, Additional Time
5540 Ox Road
68-3((1))50, 50A

Mrs. Harris made a motion to grant the applicant an additional two (2) months in order to commence construction. Mr. Kelley seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack and Mr. Ribble not present for the vote. The new expiration date is January 17, 1990.

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Page 123 November 16, 1989, (Tape 2), After Agenda Item:

Lutheran Church of the Abiding Presence - SPA 84-S-003-2, Additional Time
6304 Lee Chapel Road
78-3((1))22

Mrs. Harris made a motion to grant the applicant an additional twelve (12) months in order to commence construction. Mr. Kelley seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack and Mr. Ribble not present for the vote. The new expiration date is December 24, 1990.

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Page 123 November 16, 1989, (Tape 2), After Agenda Item:

Saint Gabriel's Day Care
Poor Sisters of Saint Joseph, SPA 80-M-078-2, Additional Time
4319 Sano Street
72-2((1))20

Mrs. Harris made a motion to grant the applicant an additional six (6) months in order to commence construction. Mr. Kelley seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack and Mr. Ribble not present for the vote. The new expiration date is May 18, 1990.

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The Board recessed at 10:00 a.m. and reconvened at 10:20 a.m.

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Page 123 November 16, 1989, (Tape 1), Scheduled case of:

10:10 A.M. BARBARA GRAYSON, VC 89-P-128, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling to 21 feet from the rear lot line and stoop to 15 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-407 and 5 ft. max. extension permitted by Sect. 2-412), located at 2810 Liberty Avenue, on approximately 3,375 square feet of land, zoned R-4, Providence District, Tax map 50-2((9))48, pt. of 49. (OTH GRANTED)

Chairman Smith noted that a request for deferral had been received from the applicant's representative.

Mrs. Thonen made a motion to defer VC 89-P-128 to December 7, 1989 at 10:20 a.m. Mrs. Harris seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack and Mr. Ribble not present for the vote.

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10:20 A.M. LORAN M. AND PRISCILLA P. ADAMS, VC 89-D-104, application under Sect. 18-401 of the Zoning Ordinance to allow the reduction of side yard requirement to allow room addition to dwelling to 13.5 feet from side lot line (20 ft. min. required by Sect. 3-107), located at 800 Lawton Street, on approximately 22,039 square feet of land, zoned R-1, Dranesville District, Tax Map 21-2((3))16.

Chairman Smith called the applicant, Loran M. Adams, 800 Lawton Street, McLean, Virginia to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Adams confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Mr. Adams explained that although his lot is zoned R-1, he only has 22,039 square feet and said that he could not build without a variance.

In response to questions from the Board, Mr. Adams said that because of plumbing and lighting considerations, the architect had to design the addition with a small section jetting out. He noted that the lower section of the addition would be used as a master bedroom and bath and the upper section would be left unfinished. He stated that the neighbors most affected supported the request and the addition would be 33.5 feet from her home. Mr. Adams added that his lot is a one half acre lot in an area that was rezoned to one acre lots and that this had caused his difficulty.

Mr. DiGiulian reflected that the applicant's lot has an 115 feet lot width in an area that requires 150 feet minimum width.

In response to questions from Mr. Kelley, Mr. Adams explained that because of the layout of his home, the architect advised that the addition be built in this location.

Chairman Smith called for speakers in support or in opposition and hearing no reply asked staff for closing comments. Staff having no further comment, Chairman Smith closed the public hearing.

Mr. DiGiulian moved to grant the motion with the conditions contained in Appendix 1 of the staff report dated November 9, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-104 by LORAN M. AND PRISCILLA P. ADAMS, under Section 3-107 of the Zoning Ordinance to allow the reduction of side yard requirement to allow room addition to dwelling to 13.5 feet from side lot line, on property located at 800 Lawton Street, Tax Map Reference 21-2((3))16, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,039 square feet of land.
4. The applicant has satisfied the nine standards.
5. The lot is exceptionally small and narrow.

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shows on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5 - 0. Mr. Ribble and Mr. Hammack were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 24, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 125 November 16, 1989, (Tape 1), Scheduled case of:

10:30 A.M. JULIE CAMPAGNA APPEAL, A 89-D-010, application under Sect. 18-300 of the Zoning Ordinance to appeal Zoning Administrator's revocation of special permit for private school of general education with summer day camp, located at 1616 Hunter Mill Road, on approximately 5 acres of land, zoned R-E, Dranesville District, Tax Map 18-3((3))1.

Mrs. Thonen noted for the record that the Board at their November 14, 1989 public hearing had indicated an intent to defer. She then made a motion to defer the request to December 7, 1989 at 9:30 a.m. Mr. DiGiulian seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack and Mr. Ribble not present for the vote.

Harold Miller, 11715 Bowman Green Drive, Reston, Virginia, with Miller and Bucholtz, P.C., represented the applicant and agreed to the deferral. Mr. Miller stated that he would also agree to the deferral if the Special Permit application was heard on the same day.

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The Board recessed at 10:40 a.m. and reconvened at 11:25 a.m. with Vice Chairman DiGiulian conducting the meeting as Chairman Smith had left the meeting because of illness.

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11:00 a.m. JULIANA CAMPAGNA T/A SUNRISE COUNTRY DAY SCHOOL, SP 89-D-048, application under Sects. 3-E03 and 8-915 of the Zoning Ordinance for private school of general education with summer day camp, nursery school and child care center, increasing maximum daily enrollment to 99, changing operating hours to 6:30 a.m.-6:30 p.m., Monday-Friday, increasing parking spaces to 21, other structural and use additions, and waiver of dustless surface requirement, located at 1616 Hunter Mill Road, on approximately 5.00 acres of land, zoned R-E, Dranesville District, Tax Map 18-3((3))1.

Mrs. Thonen noted for the record that the Board at their November 14, 1989 public hearing had indicated an intent to defer. She then made a motion to defer the request to December 7, 1989 at 10:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack and Mr. Ribble not present for the vote.

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11:30 a.m. LA PETITE ACADEMY, INC., SP-89-V-042, application under Sect. 3-103 of the Zoning Ordinance to allow child care center, nursery school, and private school of general education located at 8808 Redman Street/8803 Hooes Road, on approximately 62,043 square feet of land, zoned R-1, Mt. Vernon District, Tax Map 97-2((2))35,36.

Vice-Chairman DiGiulian called Phillip W. Leber, with McGuire, Woods, Battle and Booth, 8280 Greensboro Drive, Suite 900, P. O. Box 9346, McLean, Virginia, agent for the applicant, to the podium. He asked if the affidavit before the Board was complete and accurate and Mr. Leber confirmed that it was. Vice-Chairman DiGiulian then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the applicant had cooperated with staff and had made significant improvements to the proposal, however the unresolved issue of intensity lead staff to believe that the school would be detrimental to the residential character of the neighborhood, therefore staff recommended denial.

In response to questions from the Board, Mr. Riegle confirmed that the Fairfax Parkway would be adjacent to the site. He explained that the applicant had reduced the number of students. He added that staff still believed that 99 students was still too intense for this residential neighborhood.

Mr. Leber addressed the Board and said that there would be no restriction as to age of the children. He explained that school age children would be brought by their parent early in the morning and then La Petite would provide van service to and from school. Mr. Leber said the applicant had cooperated with staff to try to alleviate the intensity issue and had reduced the enrollment from 175 to 99, and had reduced the size of the building. He added that although previously opposed, the community has expressed strong support for this request. He stated that the applicant has the intent to be a good neighbor and to provide a useful service for the community.

In response to concerns voiced by Mrs. Harris, Mr. Leber said that the traffic generated would be great but the community's need for a good day care center is greater. He added that the structure would be well screened and compatible with the neighborhood. Mr. Leber explained that the economical consideration prohibits lowering the number of enrollment.

Vice-Chairman DiGiulian called for speakers in support to the request.

The Secretary of South Run Creek Coalition, Neil McBride, 8105 Winter Blue Court, Springfield, Virginia, spoke in support of the application and stressed the neighborhood's desire for a quality child care center. He said the site is located on a relatively isolated parcel which is adjacent to the future planned intersection of the Fairfax County Parkway and believed the traffic would not adversely effect the area.

Newington Forest Board Secretary, Donna Sheridan, 8201 Southrun Road, Springfield, Virginia, addressed the Board and said that the area had a vital need for good child care facilities and believed that La Petite is well planned and would be an asset to the community.

There being no further speakers, and staff having no comments, Vice-Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant the request with conditions contained in the Staff Report of November 9, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-V-042 by LA PETITE ACADEMY, under Section 3-107 of the Zoning Ordinance to permit child care center, nursery school, and private school of general education, on property located at 8808 Redman Street/8803 Hooes Road, Tax Map Reference 97-2((2))35,36, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 62,043 square feet of land.
4. The applicant has worked to meet staffs concerns.
5. The school will benefit 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 Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum daily enrollment for the child care center shall be limited to 99 students.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 of the Zoning Ordinance and shall be a maximum of 30 spaces. All parking shall be on site.

7. The maximum number of employees on site at any one time shall be eleven (11).

8. The hours of operation for this facility shall be between 6:30 a.m. and 7:00 p.m.

9. Transitional Screening 1 (25 feet) shall be provided along all lot lines. The existing vegetation may be used to satisfy these requirements if the vegetation is supplemented to the satisfaction of the County Arborist to provide plantings equivalent to Transitional Screening 2. (This Condition was changed subsequently in the hearing to the wording above.)

10. Landscaping and building foundation plantings shall be provided on all sides of the proposed building in order to enhance the visual appearance of the building. A Landscape Plan shall be submitted to the County Arborist for review and approval prior to clearing and grading of the site. The Landscape Plan shall include a tree preservation plan which preserves to the greatest extent possible individual trees or stands of trees as determined feasible by the County Arborist.

11. The portion of the outdoor play area located within the required front yard shall be removed.

12. Noise attenuation measures shall be provided in accordance with the following standards:

A. In order to achieve a maximum interior noise level of 45 dBA Ldn, structural components shall have the following acoustical attributes:

1. Exterior walls, shall have a laboratory sound transmisson class of at least 45, and

2. Doors and windows shall have a laboratory sound transmission class of at least 37. If windows constitute more than 20% of any facade they shall have the same laboratory sound transmission class rating as walls.

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

4. In areas of outdoor recreation, in order to achieve a maximum exterior noise level of 65 dBA Ldn, acoustical fencing shall enclose the play area. The fencing shall be at least 6 feet in height as determined by DEM. If acoustical fencing is used, it shall be architecturally solid from the ground up with no gaps or openings. The structure employed must be of sufficient height to adequately shield the impacted area from the source of the noise.

13. Right of way to 35 feet from existing centerline of Hooes Road necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever comes first. Ancillary easements to 15 feet behind the right-of-way shall be provided to facilitate these improvements.

14. Right of way to 26 feet from existing centerline of Redman Street necessary for future road improvement shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever comes first. Ancillary easements to 15 feet behind the right-of-way shall be provided to facilitate these improvements.

15. Frontage improvements to 19 feet from centerline along Redman Street shall be provided by the applicant as determined by The Virginia Department of Transportation (VDOT) and DEM.

16. A counter-clockwise traffic circulation pattern and appropriate signage to implement this circulation pattern shall be provided if VDOT allows the westernmost entrance to remain. However, this westernmost entrance shall be closed if determined necessary by VDOT.

17. Any proposed lighting of the parking areas shall be in accordance with the following:

- The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
- The lights shall focus directly onto the subject property.
- Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

18. Stormwater Management shall be provided in the form of an underground detention pipe which shall be secured so that children cannot access it, as may be acceptable to the Director, DEM. If this method is not acceptable to DEM a vegetative filter strip shall be provided along the southeast corner of the site to slow stormwater runoff and filter out pollutants before discharging it off-site. The filter shall be designed in conformance with the methods recommended by the Metropolitan Washington Council of Governments in chapter 9 of the 1987 publication entitled Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs or other methods approved by DEM.

19. If required by DEM a geotechnical engineering study shall be prepared by, or under the direction of a geotechnical engineer experienced in soil foundation engineering and shall be submitted and approved by DEM prior to the submittal of the construction plan and approved measures shall be incorporated into the site plan as determined by DEM.

20. Soils on the site shall be tested for hydrocarbons and other contaminants. Any contaminated soil shall be removed.

1. Any signs associated with this use shall conform to Article 12, Signs.

22. There shall be no outdoor bells, horns or loudspeakers associated with this use.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval* date of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5 - 0. Mr. Hammack abstained from the vote and Chairman Smith 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 24, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 129 November 16, 1989, (Tape 1), Scheduled case of:

11:45 A.M. CREATIVE PLAY SCHOOL, INC., SP 89-V-046, application under Sect. 4-803 and 7-601 of the Zoning Ordinance to allow existing child care center to increase enrollment, construct a building addition, and to allow a recreation area within the minimum front yard, located at 8331 Washington Avenue, on approximately 15,043 square feet of land, zoned C-8 and HC, Mount Vernon District, Tax Map 101-4((8(D)5. (CONCURRENT WITH VC 89-V-109)

11:45 A.M. CREATIVE PLAY SCHOOL, INC., VC 89-V-109, application under Sect. 18-401 of the Zoning Ordinance to allow existing building to remain 33 feet from a front lot line of a corner lot and 34.1 feet from the other front lot line of a corner lot (40 ft. min. required by Sect. 4-807), located at 8331 Washington Avenue, on approximately 15,043 square feet of land, zoned C-8 and HC, Mount Vernon, Tax Map 101-4((8))(D)5. (CONCURRENT WITH SP 89-V-046)

Lori Greenlief, Staff Coordinator, informed the Board that staff and the applicant had worked together to resolve screening concerns and that concessions made by the applicant had made readvertising necessary.

The applicant, Ralph Smalley, 406 Skyhill Road, Alexandria, Virginia, asked the Board to hear the application at this time.

It was the Board's consensus that readvertising would be necessary.

Mrs. Thonen made a motion to defer the applications to December 7, 1989 at 10:30 a.m. Mrs. Hammack seconded the motion which carried by a vote of 6 - 0 with Chairman Smith not present for the vote.

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Page 129 November 16, 1989, (Tape 1), Scheduled case of:

LA PETITE ACADEMY, INC., SP-89-V-042

With respect to a case heard earlier in the public hearing, Greg Riegle, Staff Coordinator, informed the Board that the La Petite Academy approved plat showed 25 feet of transitional screening and in the development conditions in Appendix 1 staff had asked for 35 feet. Thus, the applicant has requested a clarification for a change to the development conditions.

Mrs. Thonen moved to reopen La Petite Academy, Inc., SP 89-V-042 . Mrs. Harris seconded the motion which carried by a vote of 6 - 0 with Chairman Smith not present for the vote.

In response to questions from Mrs. Harris, Mr. Riegle said that the screening on the plat was adequate.

Mrs. Thonen moved to correct condition number 9 in Appendix 1 from "35 feet" to "25 feet". Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: February 13, 1990

APPROVED: February 22, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, November 28, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Paul Hammack; and John Ribble. Mary Thonen and Robert Kelley were absent from the meeting.

Chairman Smith called the meeting to order at 9:40 a.m. and gave the invocation. There were no matters to bring before the Board and it was the consensus of the Board to take action on the after agenda items.

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Page 131, November 28, 1989, (Tape 1), After Agenda Item:

St. Mary of Sorrows Church, SPA 77-A-041
Additional Time
68-4((1))2

Mrs. Harris made a motion to grant the applicant in SPA 77-A-041 an additional six (6) months in order to commence construction. The new expiration date is April 1, 1990.

Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. DiGiulian not present for the vote; Mrs. Thonen and Mr. Kelley absent from the meeting.

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Page 131, November 28, 1989, (Tape 1), After Agenda Item:

Janet Hall, VC 88-M-024
Additional Time
61-1((1))518

Mr. Hammack made a motion to grant the applicant in VC 88-M-024 an additional twelve (12) months in order to commence construction. The new expiration date is December 3, 1990.

Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. DiGiulian not present for the vote; Mrs. Thonen and Mr. Kelley absent from the meeting.

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Page 131, November 28, 1989, (Tape 1), After Agenda Item:

Approval of Minutes from September 7, 1989, September 26, 1989, October 10, 1989, and October 31, 1989 BZA Hearings

Mr. Hammack moved to accept the Minutes as submitted by staff. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. DiGiulian not present for the vote; Mrs. Thonen and Mr. Kelley absent from the meeting.

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Page 131, November 28, 1989, (Tape 1), Scheduled case:

9:30 A.M. DENNIS J. OPPMAN, VC 89-L-107, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.6 feet from side lot line and 22.1 feet from rear lot line (12 ft. min. side yard, 25 ft. min. rear yard required by Sect. 3-307), on property located at 5214 Dalton Road, on approximately 10,560 square feet of land, zoned R-3, Lee District, Tax Map 71-4((5))(22)83.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Oppman replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Dennis J. Oppman, 5214 Dalton Road, Springfield, Virginia, stated that the lot is extremely narrow and shallow and that the placement of the house on the lot prohibits the use of the entire lot. He added that he looked at several plans but chose not to construct a two story addition because his wife suffers from acute asthma. Mr. Oppman noted that there are no objections from the neighbors.

In response to questions from Mr. Hammack, Mr. Oppman explained that there is an enclosed porch on the back of the house which prohibits construction there. He added that the addition would consist of a bedroom, bath, utility room, and storage room. With respect to the existing carport, Mr. Oppman stated that the carport would be enclosed to enlarge the kitchen.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Hammack made a motion to deny the request for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-107 by DENNIS J. OPPMAN, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 7.6 feet from side lot line and 22.1 feet from rear lot line, on property located at 5214 Dalton Road, Tax Map Reference 71-4((5))(22)83, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,560 square feet of land.
4. A medical justification cannot be taken into consideration when granting a variance.
5. The applicant could perhaps reconfigure the addition.
6. The lot is neither shallow nor narrow.

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.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. DiGiulian not present for the vote; Mrs. Thonen and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 6, 1989.

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Page 133, November 28, 1989, (Tape 1), Scheduled case:

9:45 A.M. THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, SP 89-S-045, application under Sect. 3-C03 of the Zoning Ordinance to allow a church and related facilities, on property located at 15101 Lee Highway, on approximately 6.9726 acres of land, zoned R-C and WS, Springfield District, Tax Map 64-2((3))23.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Jones replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that the applicant is the contract purchaser and is requesting approval to construct a church with a 300 seat capacity which will be used for services on Sunday between the hours of 9:00 a.m. and 5:00 p.m. as well as other activities which are described on page 1 of the staff report.

Mrs. Greenlief then noted that the plat being distributed to the Board was not the same as the one contained in the staff report and added that the applicant would address the revisions. She then stated that staff had not had time to review the revised plat as it was submitted to staff on November 27th in a preliminary form.

She then outlined staff's rationale for denial by stating that based on the amount of the proposed impervious surface, the amount of land which the applicant proposes to clear in order to construct the structure, the high floor area ratio (FAR), and the high usage of the site, staff recommended denial of the request and noted that the details of staff's rationale were outlined in the staff report.

In response to questions from the Board, Mrs. Greenlief replied that she and Jane Kelsey, Branch Chief, had looked at the plat but that staff as a whole had not met and reviewed the revised plat. She stated that staff was concerned about intensity with respect to the size of the building and the amount of parking had not been reduced on the revised submission but the applicant had increased the screening along both side lot lines.

Wayne Jones, 6416 Foggy Hills Way, Clifton, Virginia, represented the applicant and apologized for the late submission of the revised plat. He explained that the revisions were done following meetings held last week with the Western Fairfax County Citizens Association and the Gate Post Estates Homeowners Association and that the revised plat addressed many of their concerns.

With respect to background of the project, Mr. Jones stated that the church would be for the residents of Centreville with an average attendance of 200 to 250 every Sunday who presently have to travel to Manassas to attend services. The church has been looking for an appropriate site for several years and this is the first time in all those years that the church has found a piece of land that they believe is large enough to meet their needs. He stated that the church has been designed to minimize the impact on the neighborhood. (Mr. Jones used a display board to show the design of the proposed church.)

In order to address the concerns of the citizens, Mr. Jones stated that the church has been moved slightly off center which will allow all the traffic to pass on one side of the church which will impact only one family who has granted an easement to the church for an access road. There is a 40 foot tree save all the way around the property with an additional 10 feet of buffering in the parking area. There will be a 6 foot board-on-board fence at the 40 foot tree lane and landscaping on the outside of the fence to soften the visual impact. With respect to the access road, he stated that there is a cross-over on the Wynkoop's property adjacent to the church property. He added that part of the intersection eastbound has already been improved by the Centreville Baptist Church who has constructed a deceleration lane and improved the cross-over. The applicant proposes to improve the cross-over westbound by entering the Wynkoop property by an easement for a service road into the proposed site. (Mr. Jones placed a copy of an agreement between the applicant and Wynkoops into the record.)

In summary, Mr. Jones stated that the site is approximately 7 acres and of that 4.3 acres will be undeveloped. He stated that staff was concerned with the parking and the buffering and the church has addressed the buffering issue. With respect to the parking, he stated that the Mormon Headquarters Building Committee will not allow them to construct the church with less than 225 spaces. They recommend 250 to 275 spaces. Mr. Jones stated that staff had recommended that the church purchase another 12 to 18 acres but it was not economically feasible for the church. He stated that twice a year there will be a multi-congregational meeting that will be attended by the State Presidency and at that time the overflow parking will be needed.

In response to questions from the Board, Mr. Jones replied that the churches are designed to hold a congregation of 300 and when the congregation exceeds 300 then the congregation is split into two which meet at different times during the day. He added that there are two separate offices for bishops, as well as offices for the State Presidency because the church would be centrally located. Mr. Jones pointed out that the activities held at the church in the evenings will not impact the traffic congestion.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request. The following came forward: Dick Frank, 6720 White Post Road, Centreville, Virginia, Vice President of Gate Post Estates Citizens Association, member of the Land Use Committee, West Fairfax County Citizens Association, and President, West Fairfax County Citizens Association; Marjoria A. Brown, 7411 Carver Road, Gainesville, Virginia; Julie Walker, 15054 White Post Road, Centreville, Virginia.

The citizens believed that the request is too intense for the site and would negatively impact the surrounding neighborhood.

Marv Baker, 7140 Sontag Way, Springfield, Virginia, real estate agent working with the church, came forward and stated that he had been working with the church for approximately two years trying to located a piece of property that the church could afford to purchase in the Centreville area.

During rebuttal, Mr. Jones stated that the concerns brought out by the citizens have been incorporated into the revised plats. He added that the church would be within the allowable FAR and would be designed to fit into the residential character of the area. Mr. Jones then addressed the development conditions.

Chairman Smith asked staff for closing comments. With respect to comments by Mr. Jones regarding the development conditions, Mrs. Greenlief explained that at the time Centreville Baptist Church was approved there was not a requirement for a pro rata contribution to the regional pond, insofar as a condition.

Mr. Jones then agreed to make the proposed temporary pond on the site a permanent pond.

Mrs. Greenlief continued by stating that the approved FAR for Centreville Baptist Church was .069.

In response to questions from the Board regarding access to the site, Mrs. Greenlief replied that both churches would be using the one median break.

Mr. Hammack made a motion to deny the SP 89-S-045 for the reasons set forth in the Resolution.

Mrs. Harris stated that she would support the motion as she also believed that the use was too intense for the site.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-045 by THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, under Section 3-C03 of the Zoning Ordinance to allow a church and related facilities, on property located at 15101 Lee Highway, Tax Map Reference 64-2((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 November 28, 1989; and

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

1. That the applicant is the contract purchaser.
2. The present zoning is R-C and WSPOD.
3. The area of the lot is 6.9726 acres of land.
4. The applicant has tried to address the transportation problems but has not been successful with respect to the median break and viability of future access.
5. The request is not in compliance with the Comprehensive Plan.
6. The building is a very intense use of the property. The applicant has a building which will be 26,314 square feet and this is a substantial amount of impervious surfaces which we must be concerned about in the Water Supply Overlay District area for the County as a whole.
7. The church across the street from the subject property was granted and developed at a different time and the Board has to analyze each application separately.

The church has addressed the screening requirement of the community but all of the concerns raised by staff have not been addressed. Although screening is now of less concern, there is the traffic, the vehicle trips as compared to a single family dwelling which would be only ten vehicle trips per day. There are other things that have not been satisfied in this application, but the basic reasons remain transportation, impervious surface and intensity of development.

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 and the additional standards for this use as contained in Sections 8-006 and 8-303 of the Zoning Ordinance.

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

Mr. Ribble seconded the motion. The motion carried by a vote of 4-1 with Chairman Smith voting nay; Mrs. Thonen and Mr. Kelley absent from the meeting.

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

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page 135, November 28, 1989, (Tape 1), Scheduled case:

10:00 A.M. WILLIAM E. AND FELICITA R. BERNIER, VC 89-A-108, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling and deck 9.3 feet high to 6.6 feet to the side lot line such that side yards total 16.5 feet (8 ft. min., 20 ft. total min. side yard required by Sect. 3-307), on property located at 5553 Queen Victoria Court, on approximately 11,911 square feet of land, zoned R-3 (developed cluster), Annandale District, Tax Map 78-2((19))38.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bernier replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, William E. Bernier, 5553 Queen Victoria Court, Burke, Virginia, explained that he would like to construct an addition in order to provide additional living space. He added that the lot is very narrow and to construct an addition without a variance would not be adequate. Mr. Bernier stated that he has worked with the Architectural Review Board in his neighborhood and they support the request. He submitted a petition in support of the request signed by his neighbors into the record. Mr. Bernier stated that he had hired a real estate agent to obtain input as to whether or not the addition would decrease the property value of his land and it was determined that the addition would increase the value of the house. He added that the materials used in the construction of the addition would match those on the existing house as closely as possible.

There were no speakers to address this application, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Ribble made a motion to deny the request for the reasons reflected in the Resolution.

Following the vote, the applicant requested the Board waive the 12-month waiting period and it was the consensus of the Board not to grant the waiver.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-108 by WILLIAM E. AND FELICITA R. BERNIER, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling and deck 9.3 feet high to 6.6 feet to the side lot line such that side yards total 16.5 feet, on property located at 5553 Queen Victoria Court, Tax Map Reference 78-2((19))38, 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 28, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 11,911 square feet of land.
4. The lot is similar to other lots in the area.
5. There is too much infringement on the side 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.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 6, 1989.

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10:15 A.M. SOUTH CONGREGATION OF JEHOVAH'S WITNESSES, SP 89-M-044, application under Sect. 3-303 of the Zoning Ordinance to allow a church and related facilities, located at 5801 Arnet Street and 3719 Lacy Boulevard, on approximately 1.8622 acres of land, zoned R-3, Mason District, Tax Map 61-4((18))17A.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the applicant is requesting approval in order to construct a single-story church with a seating capacity of 250 and 69 parking spaces. Mr. Riegle noted that staff was suggesting that a hedge be substituted for the board-on-board fence in the screening yards, that the easternmost entrance to the site be closed, and that additional parking lot landscaping be provided. Based on these modifications to the development conditions, staff recommended approval of the request.

In response to questions from the Board, Mr. Riegle replied that the adjacent lots are owned by VEPCO and are used as utility easements with a transfer station on one.

Keith Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, came forward to represent the church. He stated that the property has been undeveloped for 30 years and the church is now requesting approval in order to construct a one story structure with a .05 FAR, 250 seats, and 69 parking spaces to be used only as a church. Mr. Martin added that there has not been a Kingdom Hall built within the beltway in the past 25 years and the people who would attend the proposed church presently attend the Arlington Church. There are 110 citizens in the vicinity of the proposed church with 60 of the people within walking distance making the church a community oriented use. There will be a further expansion of the VEPCO transfer station which will make the proposed site less desirable as a residential use. This vacant lot causes the citizens much concern as it is now functioning as an open air drug market and the citizens welcome the site being developed. With respect to the development conditions, Mr. Martin stated that the applicant agreed with all development conditions including those modifications suggested by staff.

The following citizens came forward to speak in support of the request: Ed Runyon, 3501 Ball Street, Falls Church, Virginia; Larry Whitehead, 2931 Irvington Road, Falls Church, Virginia, Chairman, Church Building Committee; Margann Dodge, 8358 Alvord Street, McLean, Virginia; Orman D. Pratt, 3820 Lakeview Terrace, Lake Barcroft, Falls Church, Virginia; Mryna Guadalupe, 3422 Spring Lane, #39, Falls Church, Virginia; Edward E. Hicks, 3705 S. George Mason Drive, Falls Church, Virginia, elder of the congregation; Mary Arnold, 5820 Sanger Avenue, Alexandria, Virginia; Mildred Hall, 5055 S. Chesterfield Street, Arlington, Virginia; Diana Mantona, 3416 Spring Lane, Apt. 5, Falls Church, Virginia; Larinda R. Somers, 3421 Carlyn Hill Drive, Apt. 1, Falls Church, Virginia.

The citizens agreed with the church's request as they would like to see the parcel of land developed because it now causes great concern to the neighborhood.

Chairman Smith then called for citizens in opposition to the request.

Hazel B. Goodman, 3721 Lacy Boulevard, Falls Church, Virginia, representing the Spring Dale Civic Association, came forward and voiced her concern regarding the traffic generation and the storm water runoff problem. She added that she recognized the need for improvement in the area but stated that she would rather see the proposed low income housing program move forward.

In response to questions from Mrs. Harris, Ms. Goodman used the viewgraph to show the areas were the members of the Association live.

Prior to making his motion, Mr. DiGiulian asked staff for a clarification of development condition number 14 with respect to the pro rata share of road improvements. Mr. Riegle stated staff had recommended this based on the impact that will be generated by the church on the roadways.

Mr. DiGiulian then made a motion to grant the request subject to the revised development conditions contained in the staff report dated November 21, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-M-044 by SOUTH CONGREGATION OF JEHOVAH'S WITNESSES, under Section 3-303 of the Zoning Ordinance to allow a church and related facilities, on

property located at 5801 Arnet Street, Tax Map Reference 61-4((18))17A, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 28, 1989; and

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

1. That the applicant is the contract purchaser of the land.
2. The present zoning is R-3.
3. The area of the lot is 1.8622 acres of 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 Section 8-303 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity in the main area of worship shall be limited to a total of 250 seats with a corresponding minimum of 63 parking spaces. There shall be a maximum of 69 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements.

6. The parking area shall be designed to provide islands every 10 spaces, landscaped in accordance with Sect. 13-106 of the Zoning Ordinance. Shade trees, the type and size to be reviewed and approved by the County Arborist, shall be provided within the islands in the parking lot. The purpose of these plantings shall be to provide visual relief from the parking lot and provide shade.

7. Transitional Screening 1 (25 feet) shall be provided along all lot lines. Barrier C shall be provided within all screening yards. Any existing vegetation in these areas, if deemed worthy by the County Arborist, shall be utilized in the transitional screening yard. The County Arborist shall be review and approve the size, type, location and quantity of all the above plantings.

8. A tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site.

9. Landscaping and building foundation plantings shall be provided along all sides of the proposed building in order to enhance the visual appearance of the building. These foundation planting shall be reviewed by the County Arborist.

10. If required by DEM, a geotechnical engineering study shall be prepared by, or under the direction of, a geotechnical engineer experienced in soil foundation engineering and shall be submitted and approved by DEM prior to the submittal of the construction plan. Approved measures shall be incorporated into the site plan as determined by DEM.

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11. Any proposed lighting of the parking areas shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall focus directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

12. Stormwater management shall be provided in the form of detention pond to be placed west of the proposed parking area, as approved by the Director, DEM.

13. A pro-rata share shall be contributed as determined by DEM for present and future road improvements on Arnet Street and Lacy Boulevard.

14. The height of the proposed structure shall not exceed 18 feet, and its FAR shall not exceed 0.05, as depicted on the special permit plat.

15. Right-of-way to 25 feet from existing centerline of Arnet Street shall be dedicated for public street purposes and shall convey to the Board of supervisors in fee simple on demand or at the time of site plan approval, whichever comes first. Ancillary easements shall be provided to facilitate Arnet Street improvements.

16. Right-of-way to 30 feet from existing centerline of Lacy Boulevard shall be dedicated for public street purposes and shall convey to the Board of supervisors in fee simple on demand or at the time of site plan approval, whichever comes first. Ancillary easements shall be provided to facilitate Lacy Boulevard improvements.

17. The plat shall be redesigned to reflect the completed road improvements made by the Department of Public Works along Lacy Boulevard and Arnet Street prior to the submission of the site plan.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion. The motion carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 6, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 139, November 28, 1989, (Tape 2), Scheduled case:

11:00 A.M. ROBERT BEE APPEAL, A 89-C-014, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's decision that appellant's truck is a dump truck and therefore the keeping of this dump truck on appellant's residentially zoned lot is a violation of Par. 15A, Sect. 10-102 of the Zoning Ordinance, on property located at 2656 Fanieul Hall Court, on approximately 11,386 square feet of land, zoned R-2, Centreville District, Tax Map 25-4((2))768.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that due to time constraints on the Board's having to vacant the Board Room staff suggested that the case be deferred to December 7, 1989 at 11:00 a.m.

The appellant was present and voiced no objection. The Chair so ordered.

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11:30 A.M. DR. THOMAS ROEHR APPEAL, A 89-C-015, application under Sect. 18-301 to appeal the Zoning Administrator's determination that Special Permit SPA 79-C-091-1 and Variance VC 87-C-110 have expired, on property located at 2703 Centreville Road, on approximately 18,149 square feet of land, zoned C-5, Tax Map 25-1((1))23A.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that due to time constraints on the Board's having to vacate the Board Room staff suggested that the case be deferred to December 7, 1989 at 11:30 a.m.

Hearing no objection, the Chair so ordered.

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Page 140, November 28, 1989, (Tape 2), Scheduled case:

12 Noon LARRY D. MOWRY, VC 89-D-088, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a detached garage/workshop to 10.0 feet from side lot line (20 ft. min. side yard required by Sects. 3-107 and 10-104), located at 1307 Altamira Court, on approximately 40,046 sq. ft. of land, zoned R-1, Dranesville District, Tax Map 29-1((7))8. DEFERRED FROM 10/19/89 AT APPLICANT'S REQUEST)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mowry replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Larry Mowry, 1307 Altamira Court, McLean, Virginia, stated that the property is a one acre lot located on a cul-de-sac and that he has lived there for three years. He stated that he would like to construct a two car garage large enough to house four cars as well as provide a workshop. Mr. Mowry added that the materials used to construct the addition would match those on the existing house.

Chairman Smith asked why the addition could not be moved to the rear of the house and Mr. Mowry explained that there is an inground swimming pool in the rear of the property as well as a shed.

Some of the Board members expressed concern over the fact that the plats did not show either the swimming pool or shed in the rear of the applicant's lot.

Mr. Mowry explained that he had asked the surveyor to show only the addition as he had not been aware that it was pertinent to show the structures in the rear of the lot.

There were no speakers in support of the request and Chairman Smith called for speakers in opposition to the request. The following citizens came forward: Keith Borne, 1301 Altamira Court, McLean, Virginia; Tanya Young, 1306 Altamira Court, McLean, Virginia; and Nadar Roknizadeh, 1304 Altamira Court, McLean, Virginia.

The speakers were concerned over the visual impact due to such a large garage being located in the front yard. They stated that they believed that the applicant had alternative locations to construct the addition.

There were no staff closing comments and Chairman Smith closed the public hearing.

Mr. Hammack made a motion to deny the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-088 by LARRY D. MOWRY, under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage/workshop to 10.0 feet from side lot line, on property located at 1307 Altamira Court, Tax Map Reference 29-1((7))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 November 28, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 40,046 square feet of land.
4. There appear to be other locations to place the garage even taking into account the pool.
5. This is a self-inflicted hardship and a convenience sought by the applicant.

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

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

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

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

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

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 6, 1989.

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As there was no other business to come before the Board, the meeting was adjourned at 12:18 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: January 30, 1990 APPROVED: February 6, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Court Room 5D, of the Judicial Center, 4110 Chain Bridge Road, Fairfax, Virginia, on December 5, 1989. The following Board Members were present: Chairman Daniel Smith; Vice Chairman John DiGuilian; Mary Thonen; Martha Harris; and Robert Kelley. John Ribble and Paul Hammack were absent.

Chairman Smith called the meeting to order at 8:10 p.m. and gave the invocation. There were no Board Matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 143, December 5, 1989 (Tape 1), Scheduled case of:

8:00 p.m. WORD OF LIFE ASSEMBLY OF GOD BY REV. WENDEL COVER, PASTOR, SPA 81-A-078-2, application under Sect. 3-303 of the Zoning Ordinance to amend SP 81-A-078 for a church and related facilities to permit revision to size and configuration of the approved sanctuary addition, on property located at 5225 Backlick Road, on approximately 12.42 acres of land, zoned R-3, in the Lee District, Tax Map 71-4((1))40-C. (DEF. FROM 5/9/89 AT APPLICANT'S REQUEST. DEF. FROM 7/6/89 AT APPLICANT'S REQUEST. DEF. FROM 10/3/89 AT APPLICANT'S REQUEST)

Chairman Smith asked Mr. Via to reaffirm that the affidavit before the Board was complete and accurate. Mr. Via replied that it was. Chairman Smith then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Patrick Via, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorne and Haynes, Box 547, Fairfax, Virginia, introduced himself to the Board.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated this case had been deferred from October 3, 1989, essentially to allow the architect to try to move the building back as far as possible, in order to allow room to provide foundation planting because of the large bulk of the building. The thrust of the motion was to allow space for plantings to assist in reducing the visual impact of the building. Ms. Kelsey advised that the revised plat was submitted, moving the building back between five (5) and ten (10) feet and called the Board's attention to the plat which had been placed in front of them.

G. T. Ward of Ward and Hall Associates, the architectural firm representing the applicant, stated that he had, in fact, submitted new plats which showed three tiers of landscaping around the perimeter of the building. He stated that they had moved the building back ten (10) feet from the corner, ten (10) feet from Edsall Road, and ten (10) feet back from Backlick Road. Mr. Ward stated that some of the parking spaces had been relocated for visual effect, but the net number had not been reduced.

Reference was made to the size of the proposed building which was originally approved in 1985, noting that the building is now 10,000 square feet larger. Ms. Kelsey stated that, if the building had been proposed to be this size at the time of the first application in 1985, staff would not have recommended approval.

Mrs. Harris stated that, had she been on the Board in 1985, she would not have voted for this large a structure; she felt the plans should have been more finalized. Mrs. Harris felt that the landscaping would not be sufficient to diffuse the impact of the size of the building.

Chairman Smith called for speakers in support of the application and hearing no reply called for speakers in opposition to the request.

Matt Abrams, 7017 Braddock Mews Place, represented the Braddock Mews Homeowners Association, and spoke in opposition to the application, addressing the change in the plat and the height of the building. Mr. Abrams stated it was his understanding that the square footage was 14,000 in 1985 and is now 25,000. Mr. Abrams expressed concern for such a large structure in this residential area. He thanked the Chairman and the Board for their consideration.

Ms. Kelsey and Mrs. Thonen engaged in a discussion on lighting and the applicant agreed to the terms set forth by Mrs. Thonen.

There were no other speakers and Chairman Smith closed the hearing.

Mrs. Thonen made a motion to approve the application, with changes in the development conditions contained in the Addendum to the staff report and the Revised Proposed Development Conditions dated October 3, 1989. She stated that the face of the building should be moved back a minimum of ten (10) feet from the back of the sidewalk on the side facing Edsall Road and Backlick Road, and that the footprint shall be increased by no more than 5,000 feet from what was approved in 1985. She stated that the applicant shall abide by the revised development conditions set forth in the Resolution, which would not be released until the applicant furnished new plats to the Board in conformance with same.

Mr. DiGuilian seconded the motion.

Mrs. Harris stated that she disagreed with the conceptual idea. She stated she felt that, when an applicant comes before the Board, they should have plans showing what is to be done.

She stated she would like to see the plans reflect what was originally approved in 1985 and voted nay.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-A-078-2 by WORD OF LIFE ASSEMBLY OF GOD, under Section 3-303 of the Zoning Ordinance to amend SP 81-A-078 for a church and related facilities to permit revision to size and configuration of the approved sanctuary addition, on property located at 5335 Backlick Road, Tax Map Reference 71-4((1))40C, Mrs. Thonen made a motion that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 12.42 acres of land.
4. The maker of the motion stated that she felt that the application has come a long way but was not sure that they are there yet. She added that possibly with the recommendations that she would make that the Board might be united.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-303 of the Zoning Ordinance.

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

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

2. This approval is granted for the buildings and uses indicated on the approved plat except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit.*

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 use shall be subject to the provisions set forth in Article 17, Site Plans.*

5. This approval is to allow the church related use of the additional buildings. The school of general education and the child care center shall be operated in accordance with the Board of Supervisors' approval of Special Exception SE 85-L-036.*

6. The maximum seating capacity in the main worship area shall be two thousand three hundred and forty (2,340).

7. The minimum number of parking spaces provided shall be based on the applicable seating capacity in accordance with Article 11 of the Zoning Ordinance. The maximum number of parking spaces shall be five hundred eighty-five (585). All parking shall be on site.

8. Transitional Screening shall be as follows:

- The full screening yard along the Edsall and Backlick Roads shall be maintained between the resultant lot lines after dedication and the parking areas. No structures or fences shall be permitted in this area and no removal of trees except those that are dead or dying as determined by the County Arborist. However, such shall not preclude the curb cut, a permitted freestanding sign, or necessary utility work.* However, if a sign is placed in the transitional screening yard, plantings shall be placed in and around the sign in order to provide plantings equivalent to Transitional Screening 1, but may be planted behind the sign rather than in front of it.

- Additional evergreen trees or shrubs shall be provided and interspersed with the existing evergreen trees on the earth mounds east of the ball field in a manner that would provide an effective continuous visual buffer for the Sequoia subdivision. In addition, plantings shall be provided between the easements and the tot lots in order to screen these tot lots from the adjacent properties. The type, amount, quantity of these plantings shall be as approved by the County Arborist.

- Transitional Screening 1 (25') shall be provided along the northern lot line. The existing vegetation shall be supplemented to be equivalent to Transitional Screening 1 and to the satisfaction of the County Arborist.

- Interior parking lot landscaping shall be provided for the entire parking lot in accordance with the provisions of Sect. 13-106 of the Zoning Ordinance. Any dead or dying vegetation currently used as parking lot landscaping shall be replaced with new vegetation.*

- All trees that are required to be planted subject to this condition shall have a minimum planting height of six (6) feet.*

- The face of the building shall be moved back a minimum of ten (10) feet from the back of the sidewalk around the building on the side facing Edsall and Backlick Roads and the footprint of the building shall be increased by no more than 5,000 square feet over what was approved in 1985. This is to allow room for foundation plantings in front of the building. The type, location, and quantity shall be as approved by the County Arborist. The intent of these plantings is to soften the visual impact of the building. (This will not preclude exit sidewalks across the 10 foot area.)

9. A two-rail/split rail fence shall be retained between the trail and drainage ditch and tree plantings shall be provided between the fence and the trails. The fence will allow safe use of the trail and the plantings will provide a visual buffer for the residents of Sequoia Park. This fence will serve as the barrier requirement for the eastern lot line.*

10. The barrier requirement shall be waived along the western. and southern lot line and the barrier requirement along the eastern lot line shall be modified to permit the existing split rail fence to satisfy this requirement.

11. Right turn deceleration lanes shall be constructed at the entrances on Backlick Road and Edsall Road subject to approval by VDOT, the Office of Road Program Management, and the Office of Transportation. These lanes shall be constructed in their ultimate location in accordance with the design plans for County Road Bond Project #6453. However, if the curb cut on Backlick Road is to be used for exit only, then it shall be reconfigured and channelized in a manner that would prevent vehicles from entering the site, as approved by the Director, DEM and VDOT. If this "exit only" method is implemented, then no right turn deceleration lane shall be required on Backlick Road. If these declaration lanes are to be constructed in conjunction with the Road Bond Project #6453, the applicant shall provide a contribution equivalent to the estimated cost of construction of these deceleration lanes as determined by the Office of Transportation and the Office of Road Program Management. The Non-Residential Use Permit for the sanctuary addition constructed under this approval shall not be issued until this condition has been satisfied.*

13. Additional dedication and conveyance of public right-of-way and a fifteen (15) foot temporary construction easement shall be provided along the road frontage to accommodate the improvements required in Condition Numbers 11 above and County Road Bond Project #6453 as determined by the Director, DEM and the Office of Road Program Management. If the "exit only" method is implemented on Backlick Road, then no additional dedication shall be required on Backlick Road. However, the fifteen (15) foot temporary construction easement shall still be provided for improvements on Backlick Road under County Bond Project #6453. All dedications, conveyances and easements shall be granted prior to final site plan approval.*

14. All parking lot lighting installed after October 3, 1989 shall not exceed a height of twelve (12) feet. All lighting shall be provided in such a manner that would prevent light from projecting onto adjacent property. If necessary, the existing parking lot lights shall be shielded to prevent light and/or glare from projecting off the property.*

    If security lights are installed, they shall be directed onto the site only with no projection of light off the property.

    No concentrated, naked, or unshielded light source (hot spot) lighting of the building or any portion thereof may be allowed.

    Only inside lighting of the cathedral window will be allowed.

15. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.*

16. The existing sanctuary may be utilized as a gymnasium when the new sanctuary is completed.*

17. As necessary, the parking area on the south and west sides of the site shall be reduced in size or redesigned to accommodate the requirements for dedication, temporary construction easement, landscaping and screening as conditioned above. Parking spaces shall be located in accordance with the requirements of Article 11.*

18. A public access easement and a 4 foot wide, TX2 type I asphalt trail shall be provided within a 20 foot wide public access easement from Edsall Road to Deerlick Park by the applicant in accordance with the proffers pursuant to Rezoning Application RZ 78-A-100. The alignment of the trail shall be generally as shown on the Preliminary Site Plan, and construction of the trail shall be coordinated with the Park Authority. A bridge shall be provided over the small creek to allow the trail to connect to Deerlick Park. The bridge design shall be as approved by the FCPA Trails Planner and the Countywide Trails Planner. A standard Fairfax County concrete curb-cut ramp and standard Fairfax County restrictive barricade shall be provided at Edsall Road to restrict unauthorized vehicular traffic and to allow pedestrian bicycle use. Exact clearing limits, trail stabilization methods required and trail alignment and grades shall be determined by the FCPA Trails Planner and Countywide Trails Planner at the time of field review.*

19. The proposed structure shall adhere to noise mitigation guidelines contained in Enclosure 1 of Attachment 1.

20. The applicant shall provide the appropriate stormwater management measures for this site as determined by the Department of Environmental Management (DEM). These measures shall accommodate increased runoff volumes being delivered to the receiving streams. If constructed, these measures shall be located as determined by DEM. However, the proposed stormwater management pond located along the southern lot line adjacent to Edsall Road shall be relocated outside of the required transitional screening yard unless plantings can be installed around the rim of the stormwater detention pond which will have the effectiveness of Transitional Screening 1 to the satisfaction of the County Arborist.

* Indicates development conditions of previously approved special permit use.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit Amendment shall automatically expire, without notice, twenty four (24) months after the approval date* of the Special Permit Amendment unless construction of the first building addition has started and is diligently pursued, unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this special permit Amendment. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 4-1 with Mrs. Harris voting nay; Mr. Hammack and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1989. This date shall be deemed to be the final approval date of this special permit.

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8:15 P.M. TIPCO HOMES, INC., VC 89-C-110, application under Sect. 18-401 of the zoning Ordinance to allow dwelling to remain 17.6 feet from new front lot line (40 ft. min. front yard required by Sect. 3-107) and stoop to remain 13.6 feet from front lot line (35 ft. min. front yard required by Sects. 2-412 and 3-107), on property located at 12105 Bennett Road, on approximately 54,932 square feet of land, zoned R-1, Centreville District, Tax Map 36-3((1))24B.

Chairman Smith called the applicant's representative, Ken Sanders, 3905 Railroad Avenue, Fairfax, Virginia, to the podium and asked if the affidavit before the Board was complete and accurate. He replied that it was. Chairman Smith then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Mr. Sanders presented the statement of justification, stating that the variance was necessitated by the fact that the Virginia Department of Transportation (VDOT) was requesting forty-five (45) feet of dedication from the center line of Bennett Road. An exchange ensued between Mr. Sanders and the Board, in which Mr. Sanders endeavored to clarify the applicant's justification to the Board. One of the issues raised was the wood shed.

Jane Kelsey, Chief, Special Permit and Variance Branch, commented on the accessory structure (wood shed), stating that the requirements would depend on when the structure was constructed.

Mr. DiGuilian asked Mr. Sanders to clarify the fact that the reason for the variance requested was to allow the existing dwelling to remain where it is.

Mrs. Harris asked Mr. Sanders to assure the Board that the plats being presented at the public hearing were actually the plats that would be adhered to if the request was granted. Mr. Sanders questioned whether new plats would be required if, before subdivision approval was obtained, it was necessary to revise a line on the lot, possibly even enlarging the lot. Chairman Smith replied that, if no variance was required, any change in plans would not require the submission of new plats.

Jane Kelsey, Chief, Special Permit and Variance Branch, attempted to clarify the circumstances under which a change in the lot line would not require further approval or review; i.e., if the change did not affect the variance granted.

Speaking in support of the application was Bill Clean, resident of the house under discussion at 12105 Bennett Road, stating he and Mr. Davis had lived in that area for over thirty-five (35) years and are still living there. He stated he believed the dwellings should be allowed to remain to retain some of the area's original character.

Mrs. Harris asked Mr. Clean to clarify the fact that he did not own the property and that the property was owned by Tipco Homes, to whom he had sold the house.

Mr. DiGuilian made a motion to grant VC 89-C-110, for the reasons noted in the Resolution, and subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-110 by TIPCO HOMES, INC., under Section 18-401 of the Zoning Ordinance to allow dwelling to remain 17.6 feet from new front lot line and stoop to remain 13.6 feet from front lot line, on property located at 12105 Bennett Road, Tax Map Reference 36-3((1))24B, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 54,932 square feet of land.
4. The applicant has met the nine required standards for a variance, specifically, 2(f) extraordinary situation or condition of the subject property, and that is the requirement for dedication.
5. The house has been there for a long time and the property line has been moved back closer to the house.

Page 148, December 5, 1989 (Tape 1), (TIPCO HOMES, INC., VC 89-C-110, continued from Page 147)

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

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

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

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

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

1. This variance is approved for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Mr. Hammack and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 148, December 5, 1989 (Tape 1), Scheduled case of:

8:30 P.M. RALPH T. DAVIS AND MILDRED DAVIS, VC 89-C-124, application under Sect. 18-401 of the Zoning Ordinance to allow dwelling to remain 5.7 feet from new front lot line (40 ft. min. front yard required by Sect. 3-107), on property located at 12019 Bennett Road, on approximately 6.55503 acres of land, zoned R-1, Centreville District, Tax Map 36-3((1))27.

Chairman Smith called the applicant's representative, Ken Sanders, 3905 Railroad Avenue, Fairfax, Virginia, to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sanders replied that it was. Chairman Smith then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Mrs. Harris raised the question of whether the Davis family owned the property and Mr. Sanders stated that his research indicated that Tipco had made provisions to subdivide with the stipulation that they would leave the Davis family a lot to live on in their house.

A discussion ensued concerning the pictures of the houses supposedly in question and it was established that the pictures were of the wrong houses.

Chairman Smith asked Mr. Clean to come back to the podium at Mrs. Harris's request. Mrs. Harris asked Mr. Clean if the Davises planned to remain on the property and he said they did. She asked him if the house they were living in was the house they wanted to live in and he said that was his opinion; in fact, they had just remodeled the house.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked that the record indicate that the photographs which were submitted for both the previous application and this case were inaccurate photographs, and it was upon those photographs that staff had based its statements contained in the staff reports; i.e., that the current house is abandoned and in disrepair.

At this point, Ms. Kelsey acknowledged that Lori Greenlief, Staff Coordinator, had just arrived, and had discussed the lot line adjustment at the time of submission with the Zoning Administrator previously on similar applications. On those occasions, it was the Zoning Administrator's position that, as long as the lot line where the variance had been approved would not be affected, there would be no problem. In view of this, with the Board's knowledge that, provided the size of the lot was not reduced to less than (1) acre, on the average for the subdivision. Ms. Kelsey said she believed there would be no problem, and further suggested noting this as a finding of fact in the Resolution. Ms. Kelsey suggested that perhaps Mrs. Harris, in her motion, could indicate that the application met the requirement of the R-1 District.

Since there were no speakers, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to approve VC 89-C-124 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-124 by RALPH T. DAVIS AND MILDRED DAVIS, under Section 18-401 of the Zoning Ordinance to allow dwelling to remain 5.7 feet from new front lot line, on property located at 12019 Bennett Road, Tax Map Reference 36-3((1))27, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 6.55503 acres of land.
4. The applicant has met the nine standards for a Variance.
5. Due to the forty-five foot dedication required by the County to bring Bennett Road up to standard, the house is going to be put closer to the lot line, therefore an extraordinary situation exists on the property.
6. The granting of the request will not change the character of the neighborhood and will in fact save the character of the neighborhood by allowing the house to remain.
7. Everything should be done to retain the rural environment and as many of the older houses as possible.

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

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

F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

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

1. This variance is approved for the location and the specific dwelling shows on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. The Davis' lot, after subdivision, will meet the requirements of the R-1 District.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Mr. Hammack and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 150, December 5, 1989 (Tape 1), Scheduled case of:

8:45 P.M. ROBERT J. AND DONNA L. PADGETT, VC 89-P-111, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling to 17.5 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 8408 Berea Court, on approximately 12,382 square feet of land, zoned R-3, Providence District, Tax Map 49-1((9))(J)20.

Chairman Smith stated that a letter had been received from the applicant, requesting withdrawal of this application, and asked if anyone present had any interest in this application. None was indicated.

Mrs. Harris made a motion to grant the withdrawal of VC 89-P-111. Mr. DiGuilian seconded the motion, which carried by a vote of 4-0. Mr. Kelley was not present for the vote and Mr. Ribble and Mr. Hammack were absent from the meeting.

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9:00 P.M. JOHN W. ESCOLAS, VC 89-S-112, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling 14 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 7903 Orange Plank Road, on approximately 9,328 square feet of land, zoned R-3 (developed cluster), Springfield District, Tax Map 89-4((6))45.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. John Escolas, 7903 Orange Plank Road, Springfield, Virginia, replied that it was. Chairman Smith then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Mr. Escolas presented justification for his request, stating that the proposed location was the only place on the lot the addition could be placed.

Mrs. Harris asked for clarification of whether the proposed addition would be a carport or a garage. Mr. Escolas stated there is an existing carport which would be enclosed to be a garage.

Since there were no speakers, Chairman Smith closed the public hearing.

Mr. Kelley made a motion to grant VC 89-S-112 as per the findings of fact set forth in the Resolution and subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-112 by JOHN W. ESCOLAS, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling 14 feet from rear lot line, on property located at 7903 Orange Plank Road, Tax Map Reference 89-4((6))45, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 9,328 square feet of land.
4. The applicant has met the standards required for a Variance in particular that the lot has exceptional shape and topographic conditions.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shows on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 4-1 with Chairman Smith voted nay; Mr. Hammack and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 152, December 5, 1989 (Tape 1&2), Scheduled case of:

9:15 P.M. BURKE PRESBYTERIAN CHURCH PRESCHOOL, SP 89-S-047, application under Sect. 5-303 of the Zoning Ordinance to allow a nursery school, on property located at 5690 Oak Leather Drive, on approximately 4.700 acres of land, zoned I-3, Springfield District, Tax Map 77-1((3))68.

Chairman Smith called the applicant's representative to the podium and asked if the affidavit before the Board was complete and accurate. Elizabeth Egan, 1147 Meads Drive, Fairfax, Virginia, replied that it was. Chairman Smith then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report which recommended approval subject to the Development Conditions set forth in Appendix 1. She stated that the nursery school would occupy approximately 4,000 square feet of the church. The Health Department has indicated that the facility could accommodate 71 students within the center; although the staff report mentioned that there are sufficient facilities to serve 80 children, as requested. The nursery school has been operating for six years without a Special Permit and has recently increased their enrollment. They want to accommodate 48 children daily.

Ms. Egan, the applicant's agent, stated that they agreed with the conditions staff outlined, except for Conditions 6 and 12. She stated that she had contacted the Department of Environmental Management (DEM) and someone there outlined the information she would need to enter into a parking agreement between Burke Presbyterian Church and Burke Presbyterian Preschool. She stated she submitted the parking agreement to the Clerk of the Board of Zoning Appeals on November 14 and it was her understanding that the requirement of DEM was satisfied.

Mrs. Thonen expressed dissatisfaction with the applicant having been operating for six years without a proper permit.

Reference was made by Ms. Egan regarding a special permit six years ago through Harvey Mitchell, and they have been operating since then. Her information regarding this was vague.

An exchange ensued regarding the parking requirements for two uses and Ms. Bettard advised that a parking agreement is required, even if the operations occur at different times. She referenced Sleepy Hollow as a case in point.

Lori Greenlief, Staff Coordinator, quoted Par. 18, Sect. 11-102: "...where a given use or building contains a combination of uses as set forth in the following sections, parking shall

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be provided on the basis of the sum of the required spaces for each use...." She stated that, in this case, they are thirteen (13) spaces short. She cited another provision for a cooperative parking agreement but stated that the total number of parking spaces cannot be varied or waived. Chairman Smith asked if this section was not used to regulate shopping centers and not churches. Mrs. Harris said she remembered incidents in the past where the staff report has designated a cumulative total and, in most cases, they had a larger parking area. Ms. Greenlief stated that most applications involve churches with excess parking, where there are sufficient spaces to accommodate another use and not exceed the parking. Ms. Greenlief referenced Groveton Church as one case when a shared parking agreement was required.

Mr. Kelley suggested including a development condition stating the Board of Zoning Appeals saw no need for a shared parking agreement, and Chairman Smith suggested substituting this for a parking requirement.

Mrs. Thonen expressed concern about the fee involved and suggested stating that the school should never be in use when the church was in use.

Ms. Egan stated that Pastor Beth Braxton had a signed agreement stating that the hours of operation would not conflict.

Chairman Smith asked if the Board would find that a cooperative parking agreement is not necessary for this use due to the fact that the church use and the school use are not in session at the same time and there is adequate parking for both uses.

Chairman Smith asked if a cooperative parking agreement had ever been required of a church. Ms. Greenlief replied that Mrs. Thonen might remember that Groveton Baptist Church was such a case. Mrs. Thonen mentioned the amount of the fee involved of $9,700 in this instance.

Ms. Bettard cited Sleepy Hollow and the fact that St. Albans Church had decided to reduce their seating and that, by the time the issue came to the Board, they had met the required number of spaces.

Ms. Egan addressed Condition 12 and requested that the Board delete the trail condition because an asphalt trail already exists, approximately 3 feet wide, along Burke Center Parkway, and their students are brought to school by their parents. She said no one walks to school and they do not foresee this changing significantly in the future. The Board discussed this point and Chairman Smith stated that the existing trail appears to be adequate.

Mrs. Harris stated she would like to discuss Condition 6, stating she was sympathetic and agreed with the other Board Members that it did seem, on face value, that there is enough parking. She said she would like to consider two things; one, she felt this was a very subjective issue. Possibly other co-existing day care centers and churches, etc., that have been expected to comply with this in the past, or those which the Board may need to instruct to comply in the future. She stated she realized it involved a lot of money and wondered if there was an appeal process to cover this because the Board is obligated to uphold the Zoning Ordinance.

Mr. Kelley stated that the very nature of the Board was to give exceptions. Mrs. Harris disagreed about the role of the Board in this case. Mrs. Thonen stated she wished that everybody would just stop putting in such strong ideas of what the duties of the Board were. Mrs. Harris asked Ms. Greenlief if the applicant could appeal. Ms. Greenlief stated that she believed the actual fee could be waived by the Board of Supervisors. Mrs. Harris asked if the fee could be waived through DEM.

Chairman Smith asked Ms. Greenlief if the Board of Supervisors had ever required a cooperative parking agreement when the parking is on-site. Ms. Greenlief stated that, the way the condition is worded, she doesn't think there is any appeal. She added that if the Board wished to put wording in to place this under the determination of DEM, that might be a solution.

Since there were no speakers, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant SP 89-S-047, subject to the development conditions contained in the Staff Report with condition no. 5 added.

Mr. Kelley stated he wanted to point out that he believed the conditions presented by staff were rather harsh for a small non-profit day care center.

Chairman Smith stated he agreed with Mr. Kelley but, of course, the staff had a job to do and, in doing it, sometimes gets in conflict with the Board.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-047 by BURKE PRESBYTERIAN CHURCH PRESCHOOL, under Section 5-303 of the Zoning Ordinance to allow a nursery school, on property located at 5690 Oak Leather Drive, Tax Map Reference 77-1((3))68, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 5, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is I-3.
3. The area of the lot is 4.700 acres of 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 Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The hours of operation for this facility shall be limited to 9:00 a.m to 1:00 p.m., Monday through Friday.

5. The Board finds that a cooperative parking agreement is not necessary for this use due to the fact that the nursery school and church are not in session at the same time and there is adequate parking for both uses.

6. The outdoor play area shall be approximately 8,400 square feet in size and shall be enclosed by a fence at least 3 ft. in height. The number of children using the play area at any one time shall be in strict conformance with the provisions of Sect. 8-305 of the Zoning Ordinance and meet requirements as designated by the County Health Department.

7. The maximum number of employees at the child care center at any one time shall not exceed 15 (fifteen).

8. Existing vegetation along all lot lines shall be deemed to satisfy the Transitional Screening 1 requirement and the barrier requirements. The barrier requirement along the eastern, northeastern and southern boundaries of the site shall be waived.

9. The maximum daily enrollment shall not exceed 48 children.

10. Signs shall be provided at the two one-way entrances to indicate the direction of the traffic flow. All signs shall conform with Article 12 of the Zoning Ordinance.

11. The existing three (3) foot sidewalk is deemed to satisfy the requirement for a trail.

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

Page 155, December 5, 1989 (Tape 1&2), (BURKE PRESBYTERIAN CHURCH PRESCHOOL, SP 89-S-047, continued from Page 154)

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 4-1 with Mrs. Harris voting nay; Mr. Hammack and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 13, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 155, December 5, 1989 (Tape 2), After Agenda Item:

Request for Additional Time
Islamic Center of Northern Virginia Trust, SP 85-S-005

Chairman Smith stated that the applicant had requested additional time to commence construction, claiming that certain regulations contained in the Public Facilities Manual have changed and required redesign of the stormwater management facility.

Mr. DiGuilian made a motion to grant six (6) months additional time. Mrs. Thonen seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were absent from the meeting. The new expiration date is May 21, 1990.

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Page 155, December 5, 1989 (Tape 2), After Agenda Item:

Request for Out-of-Turn Hearing
Floria and Robert Kukler, VC 89-P-149

Chairman Smith called the Board's attention to the applicant's request for an out-of-turn hearing due to a problem created by the back yard being in a state of preparation for construction.

Mrs. Thonen made a motion to grant the applicant's request for an out-of-turn hearing. Mr. DiGuilian seconded the motion, which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were absent from the meeting.

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Page 155, December 5, 1989 (Tape 2), After Agenda Item:

Approval of Resolutions from November 28, 1989 Meeting

Mrs. Thonen made a motion to accept the Resolutions as presented. Mr. DiGuilian seconded the motion which carried by a vote of 5-0. Mr. Ribble and Mr. Hammack were absent from the meeting.

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Page 155, December 5, 1989 (Tape 2), Adjournment:

Since there was no other business to come before the Board, the meeting was adjourned.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals, on behalf of
Alicia Caperton, who attended the meeting

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: May 1, 1990 APPROVED: May 8, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, December 7, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

Chairman Smith called the meeting to order at 9:17 a.m. and gave the invocation. Mr. Hammack asked staff to determine whether or not the Board was being represented by the County Attorney with respect to the Michael and Rebecca White case. Chairman Smith assured him that it was being taken care of and called for the first scheduled case.

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Page 157, December 7, 1989, (Tapes 1 and 2), Scheduled Case:

9:00 A.M. BELL ATLANTIC MOBILE SYSTEMS INC. APPEAL, A 89-C-006, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's decision that appellant's proposed telecommunication facility is not permitted in an area designed Convention/Conference Center in the PRC District, on property located at 11800 Sunrise Valley Drive, zoned PRC, Centreville District, Tax Map 17-3((3))1C. (DEFERRED FROM 6/27/89 - NOTICES. DEFERRED FROM 9/21/89 - NOTICES. DEFERRED FROM 9/26 FOR ADDITIONAL INFORMATION. DEF. FROM 11/16/89 FOR RENOTIFICATION, REPOSTING, READVERTISING)

Frank Stearns, 11320 Random Hills Road, Fairfax, Virginia, attorney for the appellant, asked the Board to defer the public hearing until such time as the other Board members could arrive.

It was the consensus of the Board to proceed as scheduled and Chairman Smith asked staff for their opening statement.

William E. Shoup, Deputy Zoning Administrator, stated that this appeal had been initiated in response to a determination of the Zoning Administrator that the appellant's proposed telecommunication facility could not be located at the Reston International Tower without Special Exception approval. In preparing for that appeal, the Zoning Administrator revised her position and determined that the use was not allowed at this location under any circumstances. He summarized the background of the appeal which was contained in the staff report by stating that the subject building is located in the PRC District in Reston in an area which is designated for convention/conference center use. The Zoning Ordinance lists uses which are permitted and provides that such uses may be allowed by right if they are shown on an approved development plan, otherwise those uses listed as a category or group use could be permitted with special exception or special permit approval. Although a telecommunication facility is listed as a permitted use in other areas of the PRC, it is not listed as a permitted use in areas designated for conference/convention centers under Par. E of Sect. 6-302 of the Zoning Ordinance, therefore the proposed telecommunication facility cannot be permitted under any circumstances.

In response to questions from the Board, Mr. Shoup replied that there are whip antennas on top of the building belonging to many users. He added that the antennas are in violation and staff is in the process of trying to identify the owners. He noted that most of the antennas were erected without County approval. While in the process of preparing for this appeal, the Zoning Administrator discovered the problem but could not ascertain how the other antennas had been processed. Mr. Shoup assured the Board that notices of violation would be issued to the owners of the existing antennas.

Following further discussion between the Board and Mr. Shoup, Mr. DiGiulian asked Mr. Shoup what staff intended to do if the Board upheld the appellant. Mr. Shoup replied that staff is prepared to issue and enforce notices of violation to the antenna owners. Mr. Hammack suggested that the Board hear from the appellant rather than speculate.

Mr. Stearns came forward and stated that the appellant planned to erect three or four whip antennas on a building that had been designed to hold whip antennas and that the Board of Supervisors had approved that design through the PRC and through a final Development Plan and the use has been there for seventeen years. (Mr. Stearns used a slide presentation to show the types of antennas which are presently located on the roof of the building.)

Harry Fisher, General Manager, Bell Atlantic Mobile Systems, 180 Mount Erie Road, Baskin Ridge, New Jersey, explained that the receivers/transmitters for most of the antennas on the roof were located on the equipment level floor. Mr. Fisher added that some of the equipment is enclosed in fire proof buildings which require air conditioning and fire alarms because of the heat that is generated and some of the equipment is contained in stand alone buildings with fans.

Mr. Stearns continued by stating that the triangular platforms located on the roof were constructed with the building. He pointed out that the antennas have been there for seventeen years without any complaints and to remove the antennas would impact the public because all the public safety groups use the antennas. Mr. Stearns noted that he

believed that the problem lies in the interpretation wherein the Zoning Administrator believes that the use must be listed under Par. E, must be shown on a General Development Plan, and must have Special Exception or Special Permit approval. He stated that he believed that only one of these requirements had to be applicable.

Mr. Hammack questioned why the Zoning Administrator had noted that this use had never been shown on a General Development Plan. Mr. Stearns stated that when that occurred cellular phones was in its infancy and no one had envisioned the growth potential. Mr. Stearns argued that since the General Development Plan cannot be found the County no one could say that the use is not shown there but it is clearly evident that the building has existed for seventeen years. Mr. Stearns stated that the antennas are an accessory use and therefore are permitted under Sect. 10-101.

Mrs. Harris noted that she believed that the antennas are an essential part of the appellant's business and that the appellant could not operate without an antenna thus it is not an accessory use. Mr. Hammack agreed with Mrs. Harris.

The Board again discussed whether or not the use should be allowed to continue if it is not permitted although antennas have been on top of the building for seventeen years. The Board expressed concern over the fact that the General Development Plan could not be found.

Mr. Shoup stated that he believed that Mr. Stearns had misinterpreted Sect. 6-304 and outlined all the uses which fall under that section. He elaborated on how that section is administered.

Mrs. Thonen again questioned the whereabouts of the Development Plan. Mr. Shoup stated that he believed that issue was moot since the use could not be permitted under any circumstances.

Mrs. Harris stated that she believed that the Zoning Administrator was aware that mistakes had been made but was willing to correct those mistakes. Mr. Shoup agreed.

Chairman Smith called for speakers and hearing no reply closed the public hearing.

Mr. Hammack made a motion to uphold the Zoning Administrator as he did not believe that the appellant had proven that the Zoning Administrator had erred in her decision and he agreed with the Zoning Administrator. The property was developed under PRC which allows specific uses. He stated that there may have been mistakes made in the past seventeen years but that does not justify the BZA compounding that mistake. He added that he believed that the remedy should come through an amendment from the Board of Supervisors. Mr. Hammack stated that he did not find the antennas objectionable, but they are not permitted under the Ordinance.

Mrs. Harris seconded the motion which failed by a vote of 2-4 with Mrs. Harris and Mr. Hammack voting aye; Chairman Smith, Mrs. Thonen, Mr. DiGiulian and Mr. Kelley voting nay; Mr. Ribble not present for the vote.

Mrs. Thonen then made a motion to overrule the Zoning Administrator. She stated that she was never happy to overrule the Zoning Administrator but that she believed this to be a quasi public use, perhaps even a public use. Mrs. Thonen stated that she could not believe that there had been mistakes made for seventeen years and believed that this had been missed in the zoning. Since the Zoning Administrator had assisted the previous Zoning Administrator in writing the Ordinance, she believed that the use had simply been overlooked.

Mr. DiGiulian seconded the motion.

Chairman Smith stated that he would support the motion and that he believed that there were some indecisions involved and that some additional work was needed on the Ordinance in this particular area. He added that he was never happy to overrule the Zoning Administrator.

Mr. Hammack stated that he would still have to agree with the Zoning Administrator and that he believed she was correct in her interpretation and that the appellant had not shown where she had erred. He suggested that perhaps the Zoning Ordinance should be amended to more adequately address this type of use.

Mrs. Harris pointed out that Zoning Enforcement would be issuing notices of violation to the other owners of the antennas on the roof and those owners would then file appeals. By upholding the appellant in this instance, the Board would in effect be changing the Ordinance and that she did not believe that to be appropriate.

Mr. DiGiulian seconded the motion and stated that he would support the motion. He added that he believes that it is up to each individual member of the BZA to interpret the Ordinance and he believes that the use is allowed.

Mr. Kelley echoed Mr. DiGiulian's comments.

Mrs. Thonen stated that she was not changing the Ordinance but merely interpreting the Ordinance to the best of her ability and that she believed that this use was permitted.

Mr. Hammack again stated that he did not believe that the use was permitted.

The motion passed by a vote of 4-2 with Chairman Smith, Mrs. Thonen, Mr. DiGiulian and Mr. Kelley voting aye; Mrs. Harris and Mr. Hammack voting nay; Mr. Ribble not present for the vote. This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1989.

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Page 159, December 7, 1989, (Tape 2), Scheduled Case:

9:30 A.M. JULIE CAMPAGNA APPEAL, A 89-D-010, application under Sect. 18-300 of the Zoning Ordinance to appeal Zoning Administrator's revocation of special permit for private school of general education with summer day camp, on property located at 1616 Hunter Mill Road, on approximately 5 acres of land, zoned R-E, Dranesville District, Tax Map 18-3((3))1. (DEF. FROM 11/16/89 FOR READVERTISING, RENOTIFICATION, AND REPOSTING)

Robert Vaughn, partner with Miller and Bucholtz, 1801 Reston Parkway, Reston, Virginia, stated that Harold Miller, the appellant's attorney, was a witness in a civil proceeding and had been requested by the judge to be present in the court room at 10:30 a.m. and therefore could not be present in the Board Room at this time.

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The Board recessed at 10:45 a.m. and reconvened at 10:55 a.m.

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Chairman Smith asked if the appellant was now ready to be heard. Juliana Campagna, 11428 Purple Beach Drive, Reston, Virginia, came forward. She stated that Mr. Miller was not yet present in the Board room. Chairman Smith then stated that the Board would proceed with the next scheduled case.

Mr. Kelley suggested that the Board return to this case at the end of the next scheduled case. Hearing no objection, the Chair so ordered.

Mr. Miller then appeared in the Board room and apologized to the Board.

The Board then proceeded to hear A 89-D-010.

William E. Shoup, Deputy Zoning Administrator, stated that this was an appeal of the Zoning Administrator's revocation of SP 81-D-030. He noted that the background of the case and the Zoning Administrator's position was set forth in the staff report. Mr. Shoup briefly summarized the staff report by stating that in June 1981 the BZA approved the special permit for a school of general education and summer day camp. In August 1982, the BZA denied the appellant's request to expand the use, change the hours, and make changes to the site. Following that denial, the appellant did make changes to the site and to the operation and the changes were outlined in detail in the staff report. Staff's main concern is that the use changed from a school of general education to a child care operation with a related kindergarten, which was not in accordance with the approved special permit. He stated that given the nature of the violations and the fact that there was such a significant change to the use and the fact that there was no compliance with the notices of violation the Zoning Administrator believed that she had no choice but to revoke the special permit.

Chairman Smith asked if the appellant had been notified prior to the revocation. Mr. Shoup replied that the first notice of violation was issued on April 19, 1989 but because of improper service, a notice of violation was reissued on May 5, 1989 and the appellant was given ten days to correct the violations. Because the appellant did not bring the site into compliance, the Zoning Administrator revoked the special permit on June 1, 1989.

Harold Miller, 1801 Reston Parkway, Reston, Virginia, attorney for the appellant came forward. He agreed with Mr. Shoup that the notice of violation was issued in May with a subsequent ten days extension granted. After the initial inspection, no one returned and he wrote to the Zoning Administrator to inform her that the all the violations that could be corrected within the ten days had been corrected. He stated that the appellant has conducted her business in the County for fifteen years without any problems. In this particular case, the appellant had two schools, one of which she sold and had an agreement with the new owner which allowed her to remain in that location for one year, but because of problems with the new owner she found it impossible to do so. The

appellant then went to Harvey Mitchell, with the Zoning Administration Division, and was told that she should file an amendment to her special permit. Mr. Mitchell told the appellant that she could proceed with the expanded operation as long as she had filed the amendment and there would be no enforcement problems as long as she was proceeding in good faith. He stated that he pointed this out so that the Board did not get the impression that the appellant had consistently violated County laws. Based upon Mr. Mitchell's advice, the appellant took the students in for one semester and stopped the practice at the end of the term and stopped everything as soon as physically possible.

Chairman Smith asked when all the violations had been cleared up and Mr. Miller assured the Board that the appellant had brought the site into compliance during the month of June.

With respect to the outside lighting, the appellant received a permit from the County in order to install the lights and she was not aware that she had to come back to the Board for approval. Upon being told by the Zoning Administrator that the lights were a violation, the appellant stopped using the lights although she did not remove them from the site. The appellant put blue stone down in the area where the trucks are parked when told to do so by the Fire Marshal and after checking with the County she was told that this too was a violation of the special permit.

Mrs. Thonen stated that the Board realized that there were many violations and that the appellant had filed a new special permit and asked Mr. Miller to stay on the issue of the appeal only. Mr. Miller explained that he was dealing with a delicate issue because there were two cases. If the Board denied the appeal, and hopefully granted the special permit, then there was the issue of the site plan process which is rather lengthy. Mrs. Thonen asked Mr. Shoup if this was correct. Mr. Shoup replied that it would be necessary for the appellant to obtain all the necessary permits and comply with the site plan process.

Mrs. Harris asked Mr. Miller if he did not believe that this was a self-imposed hardship as the appellant knew that the school was under special permit, therefore any changes must be approved by the BZA. Mr. Miller replied that he did not believe that to be the case. The appellant had merely complied with requests of other County agencies. Mrs. Harris then asked if Mr. Mitchell had told the appellant that she did not have to come before the BZA in order to change the hours of operation and increase the number of students. Mr. Miller stated that Mr. Mitchell had told the appellant that if she filed a special permit amendment, and proceeded in good faith, then Zoning Enforcement would not proceed until the case had been heard.

Mrs. Thonen pointed out that the Board had discussed this with the appellant a few months ago when the she was before the Board. Mr. Miller acknowledged that discussion and added that the violations have been cleared. Mrs. Thonen asked Mr. Shoup if all violations had been cleared up and Mr. Shoup replied they had not. Mr. Shoup agreed that the appellant may have ceased to use some of the site improvements but these improvements are still on site but the biggest violation is that the appellant is operating a child care center which the Board did not approve. Mrs. Thonen asked Mr. Miller if this was true. Mr. Miller stated that the appellant had leased space at Lake Anne which is approved for that type of use and is operating in that facility.

The appellant, Juliana Campagna, 11428 Purple Beach Drive, Reston, Virginia, explained that one of the major violations was the timing in that the school was supposed to be from 8:00 a.m. to 3:00 p.m., occasionally to 5:00 p.m. Ms. Campagna stated that she obtained another site, which had been a child care center for 19 years, and brought that site up to the 1989 codes and used it for summer day camp and early and late hours.

In response to questions from Mrs. Thonen, Ms. Campagna replied that Country Day School was used for a center for children operating from 8:00 a.m. to 3:00 p.m. She stated that she would like to operate a child care center for school age children and alleviate the private school for general education.

Mr. Miller explained that the appellant had amended her application within the last couple of days to reflect that the school would provide a summer day camp and child care for school age children before and after school. He stated that he believed that the appellant had provided a great service to the community.

Chairman Smith stated that the Board was well aware of the service that the appellant has provided to the community and asked Mr. Miller to respond to the violations.

Mr. Miller stated that he believed that the violations fall into four categories, the first being an inadvertent violation. The Fire Marshall told her to put the blue stone down in order to make more room for the vehicles. Secondly, the Health Department told her to install a dumpster, which she did.

Mrs. Thonen asked Mr. Miller to explained why so much time elapsed before the appellant filed a special permit amendment application.

Mr. Hammack asked Mr. Miller to continue outlining the history of the violations before answering Mrs. Thonen's question. Mr. Miller continued by stating that the first two violations resulted at the request of County agencies. He stated that he did not believe that the trail, the gazebo, nor the foot bridge were a violation as they were on the property when the appellant purchased the property and the only thing that she had done was to install exercise equipment along the trail. She installed picnic tables on the property so that the children could eat lunch outside when the weather permitted.

In response to a question from Mrs. Harris, Mr. Miller replied that the engineer omitting the structures from the approved plat in 1982 had merely been an oversight.

Mr. Hammack asked Mr. Miller to continue addressing the violations as he believed that some were more important than others. Mr. Miller stated that at the time of purchase there was an old barn on the property which the appellant tore down and moved a temporary trailer onto the site which was used only if it started to rain when the children was outside. As soon as the appellant was told that the trailer was a violation, she immediately had it pulled off the site. He stated that there was no question that she did change the hours and the type of use.

Mr. Miller added that the delay in filing the special permit amendment was caused by the engineer not finalizing the plat. He asked that the Board overrule the Zoning Administrator.

Mr. Hammack called Mr. Miller's attention to a letter from the State of Virginia issued in November 1988 and to obtain this the appellant would have had to apply long before November. Mrs. Campagna came back to the podium and explained that any facility used on a regular basis had to obtain a license from the State.

Mrs. Harris noted that the appellant was aware that she was operating two different types of schools on two different sites. Mr. Miller stated that she knew there was a difference and that was the reason for the discussion with Harvey Mitchell.

Chairman Smith called for speakers in support of the appellant and hearing no reply called for speakers in support of the Zoning Administrator. The following came forward: Jeannette Twomey, 1504 Brookmeade Place, Vienna, Virginia, Founder of the Hunter Mill Defense League, an alliance of homeowners associations in the Hunter Mill Corridor; and, Tom Vier, 1831 Post Oak Trail, Reston, Virginia.

The citizens urged the Board to uphold the Zoning Administrator's decision to revoke the special permit as they did not believe that the appellant had acted in good faith but had flagrantly disregarded the County rules and had as many as 177 students on site at a given time.

During rebuttal, Mr. Miller stated that during inspections staff had only found 76 students on site.

Chairman Smith closed the public hearing as there were no more speakers.

Mrs. Thonen stated that she realized that her actions might put a school out of operation but she definitely believed that the Ordinance had been violated. She then made a motion to uphold the Zoning Administrator.

Mrs. Harris seconded the motion.

Chairman Smith stated that he would support the motion because the appellant did not correct the violations in a timely fashion after being informed by staff to do so.

The motion carried by a vote of 6-0 with Mr. Ribble not present for the vote. This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1989.

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Page 161, December 7, 1989, (Tapes 3-4), Scheduled Case:

10:00 a.m. JULIANA CAMPAGNA T/A SUNRISE COUNTRY DAY SCHOOL, SP 89-D-048, application under Sects. 3-E03 and 8-915 of the Zoning Ordinance for private school of general education with summer day camp, nursery school and child care center, increasing maximum daily enrollment to 99, changing operating hours to 6:30 a.m.-6:30 p.m., Monday-Friday, increasing parking spaces to 21, other structural and use additions, and waiver of dustless surface requirement, on property located at 1616 Hunter Mill Road, on approximately 5.00 acres of land, zoned R-E, Dranesville District, Tax Map 18-3((3))1. (DEF. FROM 11/16/89 FOR READVERTISING, RENOTIFICATION, AND REPOSTING)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Miller replied that it was. Chairman Smith then

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asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that following discussions between the applicant and staff the applicant has modified the request with respect to the parking. The applicant chose to eliminate the private school of general education, thus lowering the parking requirement.

Chairman Smith asked staff if they had any problem with the modification and Mr. Riegle replied that staff's analysis would still be the same.

Mr. Riegle continued by stating that the use would be a child care center with children arriving between 6:30 a.m. and 8:50 a.m. in the morning and participating in before and after school child care with the parents picking up the children at approximately 6:30 p.m. He stated that to staff's knowledge buses would still be used to take the children back and forth to off site recreational activities and that had been figured into the trip generation. The applicant is requesting approval to increase the number of students to 99, expand the size of the building, and construct an indoor swimming pool. If this development is approved, it would double the floor area ratio (FAR). This request would also bring some of the existing structures under special permit such as the gazebo and some of the recreational facilities. Mr. Riegle stated that the applicant had been working with staff in order to resolve outstanding issues and progress had been made with regard to screening. Staff was concerned with the intensity of development on the site, in particular, the pool enclosure.

In response to questions from Mrs. Thonen, Mr. Riegle explained that staff is presenting the application and as it was reviewed which was strictly for a child care center for 99 children.

Chairman Smith asked if any Board member objected to the applicant amending the application by deleting the request for the school of general education.

There were no objections but Mr. Hammack asked staff exactly what type of use would be conducted on the site. Mr. Riegle stated that the use would be a child care center only.

In response to further questions from the Board, Mr. Riegle stated that the hours of operation would be from 6:30 a.m. to 6:30 p.m. and that there was no age limit on the children who could attend the summer camp.

Mr. Riegle continued his presentation by stating that the pool enclosure would add 1,800 square feet of development to the site and with the addition of the two wings, the FAR on the site would be doubled. The applicant proposes placing the pool in the basement of one of the proposed wings. Staff was concerned with the proximity of the play area to Hunter Mill Road and requested that noise mitigation measures be taken. With respect to the screening yard, staff requested that the play equipment be shifted away from the screening yard and that the septic field be engineered in a way that removed it from the screening yard. Mr. Riegle stated that the major outstanding concern was the transportation issues and based on those concerns as outlined in the staff report staff continued to recommend denial.

In response to questions from the Board with respect to intensity, Mr. Riegle agreed that the request was within the allowable FAR but noted that with the addition of the proposed structures the FAR would be doubled.

Following a discussion between the Board and staff as to whether or not any of the proposed structures would be precluded if the site was developed with a single family residence, Mr. Riegle noted that they would be allowed with the appropriate permits. He added that staff had reviewed the application as a non-residential use in a district that is planned distinctly for low density residential uses and staff believed that this use would not preserve the residential character of the neighborhood.

With respect to the number of vehicle trips generated by the use per day, Mr. Riegle stated that the Office of Transportation had computed 495 vehicle trips per day. Mr. Hammack asked how many trips would be generated if the site it were developed with single family residences and Mr. Riegle replied 30.

Mrs. Harris expressed concern over the sight distance entering/exiting the site onto Hunter Mill Road. Mr. Riegle explained that these concerns were noted in the transportation analysis contained in the staff report. He added that staff believed that the deceleration lanes were warranted and staff suggested the creation of a one-way entrance toward the northern boundary of the site.

Harold Miller, attorney with the law firm of Miller and Bucholtz, 1801 Reston Parkway, Reston, Virginia, came forward to represent the applicant. He explained that the existing structure is a two story house with a basement and the proposed addition would be located on the other side of a hill which drops away from Hunter Mill Road, thus

would not have a visual impact. He stated that 95 percent of the parents using the school travel the road that time of day to get to their jobs regardless of whether or not their children attend the school. Regarding the number of vehicle trips generated per day, Mr. Miller stated that the applicant had conducted a traffic survey and computed only 244 vehicle trips per day.

Mrs. Harris asked if the students would be participating in extracurricular activities and Mr. Miller stated that those numbers had been incorporated into the appellant's tally.

Mr. Hammack asked if this would be classed as a private school if someone came to the school to teach classes. Mr. Miller assured the Board that the applicant would not be operating a private school and would only operate within the special permit.

Mr. Miller continued his presentation by stating that he believed that the screening was adequate and disagreed that there was a noise problem from Hunter Mill Road. (He submitted photographs of other child care centers in the area closest to the subject site.) Mr. Miller stated that the horse shoe entrance allows parents to exit the site at the high point for visibility and this design is better than that suggested by staff. The applicant has agreed to dedicate land for the widening of Hunter Mill Road but cannot bear the expense of providing deceleration lanes, building a wider road, and left turn lanes. Aside from the transportation issues, he believed that the applicant has satisfied staff's concerns. He disagreed with staff's recommendation for the size of the sport court and noted that it would not even be seen from the road.

In response to a question from Mrs. Thonen regarding the type of use requested, Ms. Campagna came forward and explained that the center would be for school age children. The center would offer special activities for the children but that would not a part of their school day. To alleviate any confusion on the part of the Board members, Ms. Campagna outlined a typical day for the children by stating that the children are dropped off by their parents and would remain at the facility until it is time for them to be taken by bus to the appropriate public school. The children who attend Kindergarten are taken at noon and at the end of the regular school day the center goes back to the public schools to pick up the children to bring them back to the center. Every eight weeks, the parents and children come into the center and sign up for extracurricular activities, some are conducted on site and some are not.

The Board and Ms. Campagna discussed in detail the traffic that would be generated by the use. As a follow-up to this discussion, Mr. Miller agreed that there is a large volume of traffic on Hunter Mill Road but since the last application there have been three stop signs erected which has helped any problem with entering/exiting the site

Chairman Smith called for speakers in support of the request and the following came forward: Robert L. Thoburn, 1636 Crowell Road, Vienna, Virginia; Ellen Scheanfield, 2313 Archdale Road, Reston, Virginia; and, Arlene Rosh, 11632 Quail Ridge Court, Reston, Virginia.

The citizens stated that the school was a fine neighbor, there is no problem with entering/exiting the site, nor is there a need for additional screening.

Chairman Smith then called for speakers in opposition to the request and the following citizens came forward: Ron Stanton, 10309 Browns Mill Road, Vienna, Virginia; Jeannette Twomey, 1504 Brookmeade Place, Vienna, Virginia; and Tom Vier, 1831 Post Oak Trail, Reston, Virginia.

The citizens opposed the application based on the traffic congestion, the applicant's lack of cooperation with the County, and the fact that there are similar facilities in the area which are located in planned commercial centers rather than residential.

Mrs. Thonen asked staff if all the structures existing on site were noted on the plat. Mr. Riegle replied that they were and that it was the applicant's desire to bring all structures under special permit.

In response to a question from Chairman Smith with respect to the pond, Ms. Campagna replied that there is a chain link fence surrounding the pond and the children are not allowed to go to the pond to fish without a counselor.

Mr. Hammack questioned staff about planned road improvements on Hunter Mill Road. Mr. Riegle stated that the transportation analysis had indicated that Hunter Mill Road would be widened and staff was not aware of any additional improvements.

Mr. Miller stated that he had attended a meeting in Supervisor Pennino's office along with Planning Commissioner Thillman and County staff when the Virginia Department of Highways had discussed plans for widening Hunter Mill Road to four lanes and the realignment of Sunset Hills Road.

Mrs. Harris noted that was merely speculation at this point in time and had not been approved. Mr. Miller agreed.

Mrs. Thonen asked if the children could be picked up and brought to the center in vans. Mr. Miller stated that to his knowledge this option had not been addressed. Ms. Campagna noted that this would not be feasible because of the uncertainty of the parents work schedules.

Mrs. Harris asked if all the community activities were still going to be conducted at the center. Mr. Miller stated that the applicant would like to continue those activities only if the Board agreed. Ms. Campagna explained that the CPR and First Aid classes were held only for the center's staff and the fund raisers were not a necessity. She added that she had only included these activities as a part of the application to make the BZA aware of the fact that these activities might be conducted at the center.

With respect to the traffic analysis contained in the staff report, Mr. Miller stated that 95 percent of the people using center were already using Hunter Mill Road. He added that the appellant's tally had also included staff, milk/food deliveries, and trips taking the children back and forth to extracurricular activities.

As there was no further discussion, Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant the use subject to the development conditions contained in the staff report dated November 7, 1988 with the following revisions:

Delete Condition Number 4.

Modify Condition Number 5 to read, "The normal hours of operation shall be limited to 6:30 am to 6:30 pm, Monday through Friday."

Modify Condition Number 10 to read, "Right-of-way to 45 feet from existing centerline of Hunter Mill Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand.

Delete Condition Numbers 11 and 12.

Modify first paragraph of Condition Number 16 to read, "The pool shall be accurately depicted on a revised plat and the following operational procedures shall be implemented:"

Modify Condition Number 24 to read, "The sport court (# 38 on the plat) shall not exceed 17 feet by 28 feet as shown on the plat."

A new Condition to read, "There shall not be more than a total of 300 vehicle trips per day generated with this use."

Renumber Conditions accordingly.

Mr. Hammack stated that he would support the motion but believed that the applicant was getting a substantial increase and that he did have reservations about the traffic generation. He added that he would look at any request for an enlargement very carefully.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-D-048 by JULIANA CAMPAGNA T/A SUNRISE DAY SCHOOL, under Sections 3-E03 and 8-915 of the Zoning Ordinance to allow a child care center with a maximum daily enrollment of 99 (**THE BOARD GRANTED ONLY 80**), operating hours 6:30 a.m.-6:30 p.m., Monday through Friday, maximum number of parking spaces 21, other structural and use additions, and waiver of dustless surface requirement, on property located at 1616 Hunter Mill Road, Tax Map Reference 18-3((3))1, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 5.00 acres of 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 Sections 8-305, 8-307, and 8-915 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The normal hours of operation shall be limited to 6:30 am to 6:30 pm, Monday through Friday.

5. The maximum daily enrollment shall be limited to a total of 80 students and 20 employees.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 as determined by the Director, Department of Environmental Management at the time of site plan review. All parking shall be on site. The maximum number shall be 21 parking spaces, which shall include loading spaces for the buses associated with the proposed use.

7. Transitional Screening 1 (25') shall be provided around all lot lines. The existing vegetation around the northern, western and southern lot lines shall be deemed to satisfy the screening requirement without further planting provided that the existing vegetation is maintained and preserved as determined by the County Arborist. With the exception of the existing miniature golf course and pond, all existing and proposed accessory structures shall be located outside of the screening yard required by this condition. The existing vegetation along the eastern lot line may be used to satisfy the Transitional Screening 1 requirement provided the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist. The full 25 foot depth of planting yard required by Transitional Screening 1 shall be measured from the new lot line formed by any required right-of-way dedication along Hunter Mill Road.

8. The barrier requirement shall be waived with the exception of the existing fencing shown on the special permit plat.

9. Right-of-way to 45 feet from existing centerline of Hunter Mill Road shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand.

10. No accessory structures, including livestock pens or cages shall be located within any minimum required yard or any required screening yard.

11. Any existing or proposed new lighting on the site shall be in accordance with the following:

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

    - The lights shall focus directly onto the subject property.

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

12. If deemed feasible by the Fairfax County Health Department, the proposed septic field shall be shifted out of required transitional screening yard and 10-15 feet eastward in order to preserve to the greatest extent possible existing mature hardwood trees which will otherwise be removed by construction of the septic field.

13. The pool shall be accurately depicted on a revised plat and the following operational procedures shall be implemented:

    - The Consumer Services Division of the Fairfax County Health Department shall be notified before any pool waters are discharged during drainage or cleaning operations. This agency will make a determination as to whether proper neutralization of these pool waters has been completed.

    - Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found Fairfax County range in pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

    - If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it should be allowed to stand so that most of the solids settle out prior to being discharged.

14. The gravel surfaces shall be maintained in accordance with Public Facilities Manual (PFM) standards and the following guidelines. The waiver of the dustless surface shall expire five years from the date of the final approval of this application. The entrance driveway shall be paved a minimum of 25 feet into the site as required by PFM standards.

    - Speed limits shall be kept low, generally 10 mph or less.

    - The areas shall be constructed with clean stone with as little fine material as possible.

    - The stone shall be spread evenly and to a depth adequate enough to prevent wear-through or bare subsoil exposure as may be determined by DEM. Routine maintenance shall prevent this from occurring with use.

    - Resurfacing shall be conducted when stone becomes thin and the underlying soil is exposed. The applicant shall resurface these areas whenever it may be determined that the stone is thin and the underlying soil is exposed or within thirty (30) days of receipt of a directive from the Director, Department of Environmental management stating that resurfacing is required pursuant to this special permit condition.

    - Runoff shall be channeled away from and around driveway and parking areas.

    - The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

15. The keeping of livestock shall be subject to the limitations set forth in Sect. 2-512 of the Zoning Ordinance.

16. The picnic area adjacent to the dwelling shall be graded flat, seeded and mulched and left unused until such time as a stand of grass or other plant material is established in order to resolve the existing erosion problem in these areas and minimize future erosion as determined by the County Arborist. The area for the open air stage shall also be seeded and mulched left unused until such time as a stand of grass or other plant material is established in order to resolve the existing erosion problem in these areas and minimize future erosion as determined by the County Arborist. The Extension office shall be contacted for recommendations on plant materials, including grasses that are optimal for actual site conditions and best suited for heavy use by children and these recommendations shall be implemented as directed by the Extension Office.

17. A maximum exterior noise level of 65 dBA Ldn shall be achieved in the area of the outdoor play and picnic area adjacent to the dwelling by constructing a solid board on board fence between Hunter Mill Road and the play area. The fence shall extend from the existing northernmost entrance shown on the plat to the northernmost boundary line and shall be located and constructed so as to minimize disturbance to existing vegetation.

18. No additional burial of pets shall be permitted on the site.

19. Any structures, except for animal pens which are not depicted on the special permit plat dated May 30, 1989, submitted with this application may not be constructed.

20. No additional flag poles shall be permitted on the site.

21. The sport court (# 38 on the plat) shall not exceed 17 feet by 28 feet as shown on the plat.

22. Stormwater management shall be provided on site to the satisfaction of the Department of Environmental Management.

23. Appropriate Fairfax County Personnel shall be permitted on site during operational hours for the purpose of inspecting for compliance with these Special Permit conditions.

24. There shall not be more than a total of 300 vehicle trips per day generated with this use.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-1 with Mrs. Harris voting nay; Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1989. This date shall be deemed to be the final approval date of this special permit.

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At this time the Board agreed to break for lunch. The applicant's agent in the next scheduled case came forward and asked the Board to hear the case before taking their lunch break. It was the consensus of the Board to proceed.

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Page 167, December 7, 1989, (Tape 1), Scheduled Case:

10:20 a.m. BARBARA GRAYSON, VC 89-P-128, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling to 21 feet from the rear lot line and stoop to 15 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-407; and 5 foot extension for a stoop permitted by Sect. 2-412), on property located at 2810 Liberty Avenue, on approximately 3,375 square feet of land, zoned R-4, Providence District, Tax Map 50-2((9))48, pt. of 49. (OTH GRANTED. DEF. FROM 11/16/89 FOR READVERTISING, RENOTIFICATION, AND REPOSTING)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Ellis replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She noted a clarification to the staff report by stating that the variance would be from the "25 foot required rear yard."

John Ellis, with Fairfax County Housing and Community Development, 1 University Plaza, Fairfax, Virginia, came forward to represent the applicant. He stated that the applicant would like to remove the existing dwelling as the expense involved in

restoring the dwelling was not economically feasible. He added that the new structure will be located further back from the street than the existing dwelling and would enhance the community. (Mr. Ellis submitted letters from the neighbors in support of the request into the record.)

In response to questions from Mrs. Thonen, Mr. Ellis stated that the existing house is 17.5 feet from the front lot line and the proposed structure would be 30.5 feet. The lot is very narrow thus necessitating the need for the variance to the rear yard requirement.

The applicant, Barbara Grayson, 3310 Woodburn Village Drive, Annandale, Virginia, asked the Board to grant the request.

Jeremy Novack, 2005 Halyard Lane, Reston, Virginia, spoke in support of the request. He stated that a variance would be needed if even if the applicant chose to refurbish the existing house. The applicant proposes to construct a two story dwelling with a smaller footprint and one which will set back further from the front lot line.

There were no speakers to address the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant the request subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-128 by BARBARA GRAYSON, under Section 18-401 of the Zoning Ordinance to allow construction of a dwelling to 21 feet from the rear lot line and stoop to 15 feet from rear lot line, on property located at 2810 Liberty Avenue, Tax Map Reference 50-2((9))48, pt. of 49, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 3,375 square feet of land.
4. An extraordinary situation or condition exists on the subject property and the applicant is trying to rectify that by getting this Variance to build a house she can live in.
5. The proposed house will be smaller than the existing one.
6. The granting of the Variance will not be of substantial detriment to the adjacent properties but probably a substantial benefit to the adjacent properties.

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Kelley seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1989. This date shall be deemed to be the final approval date of this variance.

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The Board recessed and took a one hour lunch break.

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Page 169, December 7, 1989, (Tape 4), After Agenda Item:

10:30 A.M. CREATIVE PLAY SCHOOL, INC., VC 89-V-109, application under Sect. 18-401 of the Zoning Ordinance to allow existing building to remain 33 feet from a front lot line of a corner lot and 34.1 feet from the other front lot line of a corner lot and to allow one building addition to be 36 feet from one front lot line and another building addition to be 33 feet from the other front lot line (40 ft. min. required by Sect. 4-807), on property located at 8331 Washington Avenue, on approximately 15,043 square feet of land, zoned C-8 and HC, Mount Vernon, Tax Map 101-4((8))(D)5. (CONCURRENT WITH SP 89-V-046. DEF. FROM 11/16/89 FOR READVERTISING, RENOTIFICATION, AND REPOSTING)

10:30 A.M. CREATIVE PLAY SCHOOL, INC., SP 89-V-046, application under Sect. 4-803 and 7-601 of the Zoning Ordinance to allow existing child care center to increase enrollment, construct a building addition, and to allow a recreation area within the minimum front yard, on property located at 8331 Washington Avenue, on approximately 15,043 square feet of land, zoned C-8 and HC, Mount Vernon District, Tax Map 101-4((8(D)5. (CONCURRENT WITH VC 89-V-109. DEF. 11/16/89 TO BE HEARD CONCURRENT WITH VARIANCE.)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Smalley replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that staff initially had very serious screening concerns specifically along the southern lot line where the site borders an apartment building and a residential community to the south. The original plat showed both building additions, play area, and parking lot approximately a foot from the southern lot line therefore allowing no room for screening. In response to staff's concerns, the applicant revised the plat and shifted both building additions away from the southern lot line and provided a brick wall with cedar plantings in between the brick wall and the southern lot line. Ms. Greenlief noted that it is possible to obtain a waiver to the 25 foot transitional screening yard if a 7 foot high brick wall is provided.

Ms. Greenlief addressed the Variance request and explained that the shifting of the building caused the need for a second variance, thus the application had been deferred from November 16th to allow the second variance to be advertised.

With respect to the development conditions, Ms. Greenlief noted that in the conditions staff had referenced a 7 foot high brick wall although the plat reflected 6 foot. She explained that what would actually be built was a brick wall from the edge of the lot line to the building with the building serving as the screening wall and the brick wall continuing from the building.

Ralph Smalley, 6213 Lakeview Drive, Falls Church, Virginia, came forward to represent the applicant. He stated that there is considerable support for the request and no opposition. Mr. Smalley added that 90 percent of the 34 children who are in the school now are under the County subsidy program. He read into the record comments from a letter received from Carol Keal, Director, Child Care Assistance Program, Office of Children, and noted a letter from Ingeborg Catlett, President, Mount Zephyr Citizens Association, in support of the application.

Chairman Smith noted that all letters received referencing this case had been made a part of the record.

Mr. Smalley asked if staff had received a letter from Keith Nichol, President, Planning and Zoning Committee, and Citizens Improvement Program Committee, also in support of the request dated December 6, 1989. Mrs. Thonen assured Mr. Smalley that the Board had received a copy of the letter.

Mr. Smalley addressed the Variance request by stating that the lot has an irregular shape and is a corner lot with two front yards. The applicant proposes to expand the center as it is no longer economically feasible to maintain the center with only 34 children.

In response to comments from the Board, Mrs. Greenlief explained that the brick wall would be attached to the wall of the existing building.

Mr. Smalley stated that he just wanted to make sure that there was no confusion as to what was proposed.

A discussion took place among the Board, staff, and the applicant with respect to the fence.

Mr. Smalley continued by stating that there is a large maple tree on the site which he would like to preserve if at all possible. He expressed concern that the wording of the condition might prohibit him from cutting down the tree if it becomes necessary when the construction begins. Mr. Smalley suggested some wording with respect to the condition and submitted it to the Board.

Chairman Smith noted that the maple tree should have been shown on the plat.

There were no speakers to address the request and Chairman Smith asked staff for closing comments.

Ms. Greenlief stated that condition number 11 called the fencing around the play area acoustical and noted that the fence should also be called screening. She suggested that the third sentence be revised to read, "The purpose of this fencing shall be to shield the children from adverse noise from Route 1 and to mitigate noise impacts of the use on the adjacent neighborhood to the south and to screen the use from adjacent properties."

Mr. Hammack made a motion grant the VC 89-V-109 and subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-109 by CREATIVE PLAY SCHOOL, INC., under Section 18-401 of the Zoning Ordinance to allow existing building to remain 33 feet from a front lot line of a corner lot and 34.1 feet from the other front lot line of a corner lot and to allow one building addition to be 36 feet from one front lot line and another building addition to be 33 feet from the other front lot line, on property located at 8331 Washington Avenue, Tax Map Reference 101-4((8))(D)5, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is C-8 and HC.
3. The area of the lot is 15,043 square feet of land.
4. The applicant has met the standards for a Variance, in particular that the lot is very irregular in shape and has a double front yard.

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

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

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

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

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

1. This variance is approved for the location and the specific structure shown on the plat included with this application and is not transferable to other land.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. DiGiulian, Mr. Kelley, and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1989. This date shall be deemed to be the final approval date of this variance.

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Mr. Hammack then made a motion to grant SP 89-V-046 subject to the development conditions contained in the staff report dated November 9, 1989 and modified as follows:

Condition Number 9 - "The rear portion of the proposed and existing building shall be used to satisfy the seven (7) foot high brick wall requirement."

Condition Number 10 - "The tree preservation plan shall include preservation of the maple tree in the western portion of the site unless absolutely required to be removed in order to allow construction."

Condition Number 11 - "...and to screen the use from adjacent properties ..."

A discussion took place among the Board and staff as to whether or not revised plats were needed. It was the consensus that revised plats showing the 7 foot high brick wall and the location of the maple tree were needed to alleviate confusion at a later date. Ms. Greenlief called the Board's attention to condition number 9 which referenced the date of the plat. The Board agreed that the date should be amended to reflect the date which would correspond with the submission of the revised plat.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-V-046 by CREATIVE PLAY SCHOOL, INC., under Section 4-803 and 7-601 of the Zoning Ordinance to allow existing child care center to increase enrollment, construct a building addition, and to allow a recreation area within the minimum front yard, on property located at 8331 Washington Avenue, Tax Map Reference 101-4((8))(D)5, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is C-8 and HC.
3. The area of the lot is 15,043 square feet of 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 Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum daily enrollment for the child care center shall be limited to 60 students.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 of the Zoning Ordinance and shall be a maximum of 12 spaces. All parking shall be on site and shall meet the parking geometrics specified in the Public Facilities Manual.

7. The maximum number of employees on site at any one time shall be seven (7).

8. The hours of operation for this facility shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.

9. Transitional Screening 1 (25') shall be modified to allow the 7 foot high brick wall and the cedar trees shown on the plat to satisfy the screening requirement along the southern lot line. The existing building shall be allowed to remain to project into the screening yard as shown on the plat. The barrier requirement shall be modified to allow the fencing shown on the special permit plat dated November 3, 1989 to satisfy the requirement. The rear portion of the proposed and existing building shall be used to satisfy the seven (7) foot high brick wall requirement.

10. A tree preservation plan shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees on the site. The tree preservation plan shall include preservation of the maple tree in the western portion of the site unless absolutely required to be removed in order to allow construction.

11. Noise attenuation measures shall be provided for the new construction and the existing building. In addition, in the area surrounding the play area, acoustical fencing shall be provided which is at least 5 feet in height as determined by DEM. The purpose of this fencing shall be to shield the children from adverse noise from Route 1 and to mitigate noise impacts of the use on the adjacent neighborhood to the south and to screen the use from adjacent properties. Acoustical fencing shall be architecturally solid from the ground up with no gaps or openings. The structure employed shall be of sufficient height to adequately shield the impacted area from the source of the noise. Attenuation measures shall be in accordance with the following standards:

    A. In order to achieve a maximum interior noise level of 45 dBA Ldn, structural components shall have the following acoustical attributes:

    1. Exterior walls, shall have a laboratory sound transmisson class of at least 39, and

    2. Doors and windows shall have a laboratory sound transmission class of at least 28. If windows constitute more than 20% of any facade they shall have the same laboratory sound transmission class rating as walls.

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

    4. In areas of outdoor recreation, a maximum exterior noise level of 65 dBA Ldn shall be attained.

12. Contribution to road improvements as determined necessary at the time of site plan review shall be provided along Mohawk Lane and Washington Street. The contribution shall equal that amount determined by the Mount Zephyr Community Improvement Committee.

13. Any proposed lighting of the parking areas shall be in accordance with the following:

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

    - The lights shall focus directly onto the subject property.

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

14. Stormwater Management shall be provided, if determined necessary by the Department of Environmental Management. If the stormwater detention pond shown on the plat is not large enough, the pond may be expanded to usurp a portion of the play area, but the play area shall not be decreased in size by more than 510 square feet.

15. If required by DEM, a soils study or a geotechnical engineering study shall be prepared by, or under the direction of a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved by DEM prior to submittal of the construction plan and approved measures shall be incorporated into the site plan as determined by DEM.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. DiGiulian, Mr. Kelley, and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 174, December 7, 1989, (Tape 4), Scheduled Case:

11:00 A.M. ROBERT BEE APPEAL, A 89-C-014, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's decision that appellant's truck is a dump truck and therefore the keeping of this dump truck on appellant's residentially zoned lot is a violation of Par. 15A, Sect. 10-102 of the Zoning Ordinance, located at 2656 Fanieul Hall Court, on approximately 11,386 square feet of land, zoned R-2, Centreville District, Tax Map 25-4((2))768. (DEF. FROM 11/28/89)

William Shoup, Deputy Zoning Administrator, stated that it was the zoning Administrator's determination that the appellant's truck is a dump truck therefore the keeping of the dump truck on residential property is in violation of the Zoning Ordinance. Under Par. 15A, Sect. 10-102 of the Zoning Ordinance, one commercial vehicle can be kept on residential property with the exclusion of certain vehicles, one being a dump truck. The appellant's truck is a one ton vehicle fitted with a hydraulic lift which allows the bed to be raised so that materials might be off loaded. While there is no Ordinance definition of dump truck, based on its function the Zoning Administrator has determined that it is dump truck.

At Mrs. Thonen's request, Mr. Shoup submitted photographs to the Board.

Robert Bee, 2656 Fanieul Hall Court, Herndon, Virginia, came forward. Mr. Bee called the Board's attention to eleven letters from surrounding neighbors who did not object to the vehicle. He submitted a graph showing the exact location of those neighbors, copies of the Zoning Administrator's memorandum stating her position, and submitted photographs comparing his truck to dump trucks.

In response to a question from Mrs. Thonen with respect to the weight of the truck, Mr. Bee called the Board's attention to a copy of his vehicle registration which showed an empty weight of 4,422 pounds and a load capacity of 11,000 pounds.

Chairman Smith asked if those weights were before Mr. Bee had added the body. Mr. Bee stated that was the way the truck had come. Mr. Bee stated that if the hoist is removed it would no longer be a dump truck and therefore would be legal. Chairman Smith stated that he believed that it was a dump truck as it had an expanded wheel base. Mr. Bee pointed out that the truck was no larger than a van and would fit into a regular size parking space. He stated that it is his belief that a dump truck is a device that has a high load bearing capability which would destroy the residential roads with multi dual wheels and of high weight and size. Chairman Smith noted that the Zoning Administrator had to make her determination based on the Zoning Ordinance. Mr. Bee stated that he could remove the hoist. Chairman Smith stated that the Board could not tell him what to do and could only consider what had been presented to them by the Zoning Administrator.

Mr. Bee stated that the complaint was not filed by one of his neighbors but by an irate citizen driving through the neighborhood. He stated that he was not a large enterprise that could go out and purchase a warehouse or a barn.

Page 175, December 7, 1989, (Tape 4), (ROBERT BEE APPEAL, A 89-C-014, continued from page 174)

Mrs. Harris asked how the truck was assessed by the County. Mr. Bee replied that the taxes would be higher based on the weight.

There were no speakers in support or on opposition to the appeal, nor any staff closing comments.

The Board again discussed whether or not the County assessed this vehicle as a dump truck. Mr. Shoup clarified that the definition of a commercial vehicle essentially states that if there is lettering on any vehicle it is a commercial vehicle. If the vehicle has the rated carrying capacity of three-quarter ton or more, the vehicle is a commercial vehicle. While the appellant's truck meets the definition of commercial definition, it cannot be the one allowed commercial vehicle because it is excluded by the Zoning Ordinance.

Chairman Smith closed the public hearing.

Mrs. Thonen stated that she believed that the Ordinance was getting a little too picky. After looking at the photographs of the truck, she did not believe that it should be classed as a dump truck. She then made a motion to uphold the appellant. The motion failed for the lack of a second.

Mrs. Harris stated that she agreed that it was a small dump truck but by any definition it is a truck and it can dump things, therefore is specifically precluded in the Ordinance from being parked in a residential district. She then made a motion to uphold the Zoning Administrator in her decision that the appellant's truck is a dump truck and therefore the keeping of this dump truck on appellant's residentially zoned lot is a violation of Par. 15A, Sect. 10-102 of the Zoning Ordinance.

Mr. Hammack seconded the motion. The motion carried by a vote of 4-1 with Mrs. Thonen voting nay; Mr. DiGiulian and Mr. Kelley absent from the meeting. This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1989.

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Page 175, December 7, 1989, (Tape 5), Scheduled Case:

11:30 A.M. DR. THOMAS ROEHR APPEAL, A 89-C-015, application under Sect. 18-301 to appeal the Zoning Administrator's determination that Special Permit SPA 79-C-091-1 and Variance VC 87-C-110 have expired, on property located at 2703 Centreville Road, on approximately 18,149 square feet of land, zoned C-5, Tax Map 25-1((1))23A. (DEF. FROM 11/28/89)

William Shoup, Deputy Zoning Administrator, presented the background by stating that in June 1979 the Board of Zoning Appeals (BZA) granted a Special Permit to allow a veterinary clinic to operate on the subject property. On December 8, 1987, the BZA approved an amendment to expand the veterinary clinic and to permit a real estate office on the site and in conjunction with that, there was an approval of a Variance to allow the existing building to remain closer to the front lot line. Both approvals provided that they would automatically expire eighteen months from the approval date, unless construction commenced or additional time was approved by the BZA. The final approval date on both applications was December 16, 1987 making the expiration date June 16, 1989. He stated that construction did not commence by that date and the appellant submitted a request for additional time for the special permit only and that request had been received on June 16, 1989. The applicable Zoning Ordinance provisions require that a request for additional time must be filed prior to the expiration date. He stated that staff is sympathetic but it is the Zoning Administrator's position that there is no authority to make an exception to the requirement that the request be filed prior to the expiration date.

In response to questions from the Board, Mr. Shoup replied that staff had not received an additional time request for the Variance. He stated that he had no information as to when the request was mailed. Mr. Shoup added that Sect. 8-015 talks about expiration of a special permit and the applicable wording is eighteen months from the approval of such permit.

Dr. Thomas Roehr, Box 103, Route 1, Chantilly, Virginia, came forward. He stated that he is the veterinarian and sole proprietor of Chantilly Animal Hospital. On December 16, 1987, the BZA granted an special permit amendment to construct a 300 square foot addition to the animal hospital. During the research on this application, the agent, Bill Naylor, was told that there were discrepancies in the original special permit granted in 1979, such as the real estate office on the second floor of the building, and the location of the building being too close to the front lot line, following dedication to the County for future road improvements. To address these discrepancies, a Variance was applied for concurrent with the special permit amendment and all this process was handled by Mr. Naylor and a lawyer associate, Lance Gardner. Both applications had the stipulation to commence construction within eighteen months and various circumstances had prevented him from starting construction within the alloted time. Dr. Roehr stated

that due to the decrease in clientele because of the ongoing road improvements the addition is not really needed at this time. In January 1989, he contacted Mr. Naylor to file the request for additional time and was assured that it would be taken care of in a timely manner. As he had not heard from Mr. Naylor on May 12th, he contacted him and was assured that the request would be submitted the following Monday and that it would take approximately 60-90 days for the Board to take action. In June or early July, he called Mr. Naylor's home and was told that Mr. Naylor had passed away. Upon learning of Mr. Naylor's death, he contacted the County and was told that a request for additional time for the Special Permit Amendment had been received. He asked the Board to grant the additional times for both requests, hopefully until such time as Centreville Road is widened or until such time as he can work with the adjacent property owners on the entrance changes. He stated that he did not plan to construct the addition in the near future and asked the Board to allow the Special Permit and the Variance for the building location to stand as is and the real estate office to remain without any time limitation.

In response to questions from Chairman Smith regarding the real estate office, Dr. Roehr stated that at the time he applied for the Special Permit the upstairs was shown on the plat but the real estate office was not there. He assumed that the person operating the real estate office had obtained the proper permits.

Chairman Smith questioned why the Variance application would not still be active. Dr. Roehr stated that he had to obtain a building permit within the eighteen months and if not the Variance expired.

Mr. Shoup stated that the original approval is still a valid approval but when the applicant came back in for an amendment he was required to meet the bulk regulations. Due to the applicant dedicating land for road improvements since the filing of the original special permit, the building was no longer in compliance with the bulk regulations. So in order to process the special permit amendment he needed to file a Variance to meet the bulk regulations. The Variance was hand in hand with the special permit amendment.

The Board questioned why then was the Variance also not a part of the request for additional time if it went hand in hand with the Special Permit Amendment.

Chairman Smith questioned Dr. Roehr as to why he did not file new applications rather than file an appeal. Dr. Roehr stated that he believed that it was such a close call as to when the letter was submitted and added that he hoped the Board would have mercy on him rather than have him go through the entire process again. Chairman Smith noted that it did not take the Board 60-90 days to act on a request for additional time. Dr. Roehr asked the Board to remove the time limitation from the Variance if it was within their power at this time. Chairman Smith stated to his knowledge the Board had never granted a Variance without a time limitation.

There were no speakers to address this request and Chairman Smith called for staff closing comments.

Mr. Shoup reiterated that a permit expires eighteen months after the approval date and that constitutes the expiration date and Ordinance provisions stipulate that an applicant must file a request for additional time prior to that expiration date.

A discussion took place among the Board members as to whether the request for additional time had been submitted in a timely manner and as to what date was the proper expiration date.

Following this discussion, Chairman Smith closed the public hearing.

Mr. Hammack made to uphold the appellant and overrule the Zoning Administrator. Mrs. Thonen seconded the motion.

Chairman Smith stated that he could not support the motion as he believed that the Zoning Ordinance was very specific that the request had to be received prior to the expiration date.

Mr. Ribble stated that he believed that there is some doubt at least that this letter may have gotten there on time.

Mrs. Thonen called for the question. Chairman Smith called for the vote. The motion carried by a vote of 4-1 with Chairman Smith voting nay; Mr. DiGiulian and Mr. Kelley absent from the meeting. This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1989.

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As there was no other business to come before the Board, the meeting was adjourned at 3:50 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. McGlothlin V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: February 22, 1990

APPROVED: March 6, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, December 12, 1989. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Paul Hammack; Robert Kelley; and John Ribble. John DiGiulian, Vice Chairman, and Mary Thonen were absent from the meeting.

Chairman Smith called the meeting to order at 10:15 a.m. and gave the invocation. There were no matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 179, December 12, 1989, (Tape 1), Scheduled Case:

9:00 A.M. R. JERRY GROSSMAN AND JACQUELYN A. GROSSMAN, VC 89-D-123, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 13.8 feet from a side lot line such that side yards total 34.3 feet (40 ft. min. total side yard required by Sect. 3-107), on property located at 12175 Holly Knoll Circle, on approximately 22,279 square feet of land, zoned R-1 (developed cluster), Dranesville District, Tax Map 6-1((7))48.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Grossman confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

In response to Mrs. Harris, Ms. Greenlief confirmed that the addition would meet the minimum 12 foot requirement.

The applicant, R. Jerry Grossman, 12175 Holly Knoll Court, Great Falls, Virginia, stated that he was requesting the variance in order to add to his family's living space. Mr. Grossman said that he planned to use materials similar to the existing structure so that the exterior would enhance the neighborhood. He explained that the existing landscaping and trees would be retained, and expressed his belief that the proposed location of the addition would be the best site. He noted that the neighbors and the homeowners association had been consulted and all approved of the addition.

Chairman Smith called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mrs. Harris made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated December 5, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-123 by R. JERRY GROSSMAN AND JACQUELYN A. GROSSMAN, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 13.8 feet from a side lot line such that side yards total 34.3 feet, on property located at 12175 Holly Knoll Circle, Tax Map Reference 6-1((7))48, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1 developed cluster.
3. The area of the lot is 22,279 square feet of land.
4. To deny the variance request would prohibit the applicant the reasonable use of the land.
5. The Variance will not change the character of the zoning District.
6. There is no other area on the lot for the addition that would not 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;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 180, December 12, 1989, (Tape 1), Scheduled Case:

9:15 A.M. PHYLLIS M. AND DAVID C. BENNER, VC 89-L-126, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with one lot having a lot width of 95 feet and the other lot having a lot width of 85 feet (100 ft. min. lot width required by Sect. 3-206) and to allow the existing dwelling on proposed Lot B-2 to be 13.7 feet from the new side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 5219 Monroe Drive, on approximately 45,900 square feet of land, zoned R-2, Lee District, Tax Map 71-4((6))B.

Chairman Smith called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Pleasants confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and expressed concern that the resulting lots would be smaller than the other lots in the subdivision with the exception of Lot 30 on Clifton Street.

Richard Pleasants, 3129 Valley Lane, Falls Church, Virginia, represented the applicant and explained to the Board that he had moved the location of his office and because of this had not received a staff report. He then asked the Board to defer the public hearing so that he could research lot sizes in the subdivision in order to support his case.

Mr. Kelley agreed with Mr. Pleasants and asked the Board to consider his request.

Chairman Smith polled the audience to determine if there was anyone present who was interested in the request. Hearing no reply, he asked staff for a deferral date.

Ms. Greenlief suggest January 23, 1990 at 9:15.

Mr. Kelley made a motion to defer the VC-89-L-126 to January 23, 1990 at 9:15. Mr. Ribble seconded the motion which carried by a vote of 4 - 0. Mr. Hammack was not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 181, December 12, 1989, (Tape 1), Scheduled Case:

9:30 A.M. DONALD AND SHEILA GOLDSTEIN, VC 89-A-127, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to 17.4 feet from the rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 8726 Shadow Lawn Court, on approximately 10,050 square feet of land, zoned PDH-3, Annandale District, Tax Map 59-3((22))9.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Goldstein confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Sheila Goldstein, 8726 Shadow Lawn Court, Annandale, Virginia, said that an addition is needed to utilize the backyard because the lot is narrow and borders on a church parking lot.

In response to questions from the Board, Ms. Goldstein said that she had not received the letter of opposition from her neighbors, Mr. and Mrs. Dancer. She went on to say that the Dancer's had expressed no opposition to the addition but did have reservations about the deck. She told the Board that she was the first occupant of the house which was purchased in 1986 and was aware of the Zoning restrictions. Although she did not have a copy of the original survey, she explained that the lot was two and one-half feet smaller than the plat the builder had shown her when she contracted for the property. Ms. Goldstein used the viewgraph to indicate the location of the Dancer's front door in relation to the addition.

Chairman Smith called for speakers in support of the request.

The representation of Saint Matthew's Church, Dr. Bernard Burnette, 3423 Pellinore Place, Annandale, Virginia, attested that the church owns the adjoining property on the east side. He expressed his support of the addition and requested the Board grant the Variance.

In response to a question from Mr. Ribble he said he did not believe the addition would adversely affect the neighbors.

Chairman Smith stated that the Board must make a decision based on justification of the hardship section of the Ordinance.

Dr. Burnette again expressed his support of the addition.

Chairman Smith called for any further speakers in support or any speakers in opposition to the request. Hearing no reply, and staff having no comments, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to deny VC 89-A-127 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-127 by DONALD AND SHEILA GOLDSTEIN, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to 17.4 feet from the rear lot line and a deck to 11.4 feet from the rear lot line, on property located at 8726 Shadow Lawn Court, Tax Map Reference 59-3((22))9, 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 12, 1989; and

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

1. T/at the applicant is the owner of the land.
2. The present zoning is PDH-3.
3. The area of the lot is 10,040 square feet of land.
4. The applicant has not satisfied the nine standards for a Variance.

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

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

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

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

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

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1989.

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9:45 A.M. JOHN R. AND JACQUELIN L. AGNEW, VC 89-A-133, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to the existing structure to 16.2 feet from a front lot line and 20.3 feet from another front lot line (35 ft. min. front yard required by Sect. 3-207), on property located at 5723 High Lane, on approximately 20,315 square feet of land, zoned R-2, Annandale District, Tax Map 78-1((1))11.

Chairman Smith called the representative of the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Via confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. Ms. Greenlief told the Board that the applicant had submitted a revised plat showing the septic field as staff had requested.

Patrick Via, an attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, P.O. Box 547, Fairfax, Virginia, represented the applicant and submitted letters of support from the neighbors. He addressed the Board and stated that the existing structure is within the front yard requirement on High Lane. Mr. Via explained that the house was purchased in 1985 and constructed in 1923 and an addition was subsequently built at a unknown date. He said that the small structure is 2,214 square feet on a long, narrow, corner lot, which restricts the building of an addition within code. He noted that the sloping yard, and the position of the house on the lot, require the addition to be on the proposed site. Mr. Via explained that the property is located on the corner of High Lane and Lee Street. He said that High Lane is a 30 foot right of way, and immediately past High Lane is a small strip of land, and then the Burke Lake Overpass. He further explained that on the Lee Street side is a gully, the railroad tracks, and then the back of a shopping center. Mr. Via went on to explain that on the two other sides of the property are single family dwellings and expressed his belief that the proposed location would minimize any adverse impact to the neighbors. He pointed out that the two large walnut trees in the backyard would screen the addition. Mr. Via reiterated the justifications for placing the addition in the proposed location. He noted that in order to build an addition to the rear of the existing structure, the patio and the deck would have to be removed. He emphasized the problem with the sloping yard, the basement door which is situated under the deck, and his belief that the proposed site would have little impact on the neighbors. He went on to say with the addition, the house will conform better with those in the neighborhood.

In response to Mrs. Harris' questions, Mr. Via said the proposed addition would contain bedrooms and a bathroom and would be placed on the Lee Street side of the property because there are no homes on that side. He said that if the addition was placed further into the backyard at least one walnut tree would have to be removed.

Mrs. Harris pointed out that if the addition was moved towards the deck and patio area, the front yard Variance on Lee Street would be minimized.

Again Mr. Via stated that the proposed site was chosen in order to minimize the impact on the neighbors, and because the applicant believes that with a gully, railroad tracks, and shopping center on this side, no diverse effect from the addition would take place.

Chairman Smith expressed his agreement with Mrs. Harris and stated that he believed that the addition could be moved over to meet the deck, therefore minimizing the front yard Variance.

Mr. Kelley stated that he could see no harm in having the addition on the Lee Street side and said if the addition were moved it would have more impact on the neighbors.

Chairman Smith called for speakers in support of the request.

Oscar Barr, 5721 High Lane, Burke, Virginia, the neighbor on Lot 12 said that he had reviewed the plans for the addition and expressed his support for the applicant. Mr. Barr noted that the neighborhood is comprised of quaint homes dating from the early 1900's. He explained that most of the houses in the area have been renovated and told the Board that the proposed improvements to the applicants property would further improve the neighborhood which fully supported the Variance.

Chairman Smith called for speakers in opposition to the request. Hearing no reply, and staff having no comments, Chairman Smith closed the public hearing.

Mr. Kelley made a motion to grant VC 89-A-133. He noted the exceptional topographical conditions and expressed his belief that even though the applicant might be able to build an addition with a lesser Variance on Lee Street, the proposed site is the best one.

Mr. Ribble seconded the motion.

Mrs. Harris supported the motion in-part but suggested a Variance of a lesser degree on Lee Street.

Chairman Smith called for a vote which failed by a vote of 2 - 2 with Mr. Kelley and Mr. Ribble voting aye and Chairman Smith and Mrs. Harris voting nay; Mr. Hammack not present for the vote; Mr. DiGiulian and Mrs. Thonen absent from the meeting.

In response to Mr. Kelley's suggestion, Mr. Via agreed to move the addition over 8 feet so that it would be in line with the back of the existing structure.

Chairman Smith agreed with the amendment and said he would support a Variance with a setback of 24.2 feet.

Mr. Kelley offered a substitute motion to grant-in-part VC 89-A-133 with the condition that the setback on Lee Street be 24.2 feet, the setback on High Lane to be 20.3 feet, and with the development conditions contained in the staff report dated December 5, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-133 by JOHN R. AND JACQUELYN L. AGNEW, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to the existing structure to 16.2 feet from a front lot line and 20.3 feet from another front lot line **(THE BOARD APPROVED 24.2 FEET FROM LEE STREET AND 20.3 FEET FROM HIGH LANE)**, on property located at 5723 High Lane, Tax Map Reference 78-1((1))11, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 20,315 square feet of land.
4. The applicant has satisfied the nine standards.
5. Exceptional topographic conditions exist on the property.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 185, December 12, 1989, (Tape 1), Scheduled Case:

10:00 A.M. DEBRA L. ESHELMAN, VC 89-P-130, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling and enclosure of deck 18 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 9120 Maywood Lane, on approximately 10,648 square feet of land, zoned R-3, Providence District, Tax Map 58-2((10))77.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Eshelman confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Staff Coordinator, Bernadette Bettard. Ms. Kelsey stated that the research had determined that the dwellings on Lots 192 and 195 to the rear are 140 feet and 160 feet, respectively, from the shared lot line. She note that a Variance application is pending to construct a garage addition to 10.4 ft to the side lot line and a room addition to 18.9 from rear lot line on Lot 76.

The applicant, Daniel Kent Eshelman, 9120 Maywood Lane, Fairfax, Virginia, addressed the Board and explained the he had consulted with his neighbors and had their approval as well as the approval of the Mantua Citizens Association. He said that the existing structure has a deck with an aluminum awning and that he would like to expand his kitchen and enclose the deck. Mr. Eshelman stated that he believed the addition would enhance the neighborhood and improve the aesthetic value of his home. He pointed out the addition would not extend any further into the backyard than the existing deck and the large trees in his yard would screen the addition from the neighbors to the rear. Mr. Eshelman explained that the shape of the lot prohibited any other site for this addition.

In response to questions from the Board, Mr. Eshelman said that he would remove the existing deck and construct the addition in the exact spot. He said that the deck would be extended to the center of the house and would need a 2.5 foot Variance. He pointed out that the deck and the kitchen already extended into the yard and that by adding to the center of the house he could have one roof which would be more symmetrical.

Ms. Kelsey stated that no record of a Building Permit for the deck was contained in the street file. She presented the Board with a list of previous Variances granted in the subdivision.

Chairman Smith called the applicant back to the podium and asked when he had purchased the property. Mr. Eshelman replied that he had bought the property, which had two (2)

previous owners, in 1963 and that the deck was in existence at that time. He submitted another plat, previously drawn by his engineer, showing the existing canopy and deck.

Chairman Smith called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mrs. Harris made a motion to grant VC 89-P-130 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated December 5, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-130 by DEBRA L. ESHELMAN AND D. KENT ESHELMAN, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling and enclosure of deck 18 feet from rear lot line, on property located at 9120 Maywood Lane, Tax Map Reference 58-2((10)77, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,648 square feet of land.
4 The applicant has satisfied the nine standards.
5. The screening is more than adequate.

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

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

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

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

Page 187, December 12, 1989, (Tape 1), (DEBRA L. ESHELMAN, VC 89-P-130, Continued from Page 186)

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Hammack not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 187, December 12, 1989, (Tapes 1 and 2), Scheduled Case:

10:15 A.M. ALBERTA L. BOOTHE, VC 89-D-129, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into three (3) lots, proposed Lots 1A and 2A having a lot width of 15.05 feet (200 ft. min. width required by Sect. 3-E06), on property located at 858 Seneca Road, on approximately 6.4184 acres of land, zoned R-E, Dranesville District, Tax Map 6-4((1))9.

Chairman Smith called the representative of the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sanders confirmed that it was and requested the Board defer the public hearing.

In response to Chairman Smith's query, H. Kendrick Sanders, 3905 Railroad Avenue, Fairfax, Virginia, attorney for the applicant, explained that the applicant had discovered a potential way to develop the property which would minimize the Variance needed to the lot width for one lot. He said that the applicant would like to prepare an alternative plat to present to the Board.

Chairman Smith polled the audience to determine if there was anyone present interested in the application.

Anthony Ramuglia, 850 Senica Road, Great Falls, objected to the deferral and stated that he had not been notified of the request for deferral. He noted that this was the third time he had come to a public hearing on this application only to have the case deferred.

Chairman Smith asked Mr. Sanders to take the names of the interested parties and to inform them in advance of any changes. Mr. Sanders stated that, on December 11, 1990, he had informed the Clerk to the Board, and the Great Falls Civic Association, in the hope of informing as many people as possible.

In response to Mrs. Harris' question, Mr. Sanders said that the revised Variance request would be for a 50 foot Variance on the front lot only. He explained that the request would be for a lesser Variance, therefore he would not have to submit a new application.

Chairman Smith asked if staff had any problem with a deferral to allow the applicant to reduce the number of Variances requested. Ms. Kelsey stated that if the Board approved the application as presented today, the applicant would be allowed to reduce the Variance to one lot as long as the lot configuration remained the same. She explained that a revised application would have to be evaluated again because of staff's position that the applicant can make reasonable use of the land without the Variance.

Mr. Sanders explained that the applicant plans to modify the plans so that no Variance would be required for Lot 1A and Lot 2A. Lot 3A would require a Variance.

In response to Mrs. Harris' inquiry as to the need to submit a new application, Mr. Sanders explained that although additional information would be submitted to staff, the application would basically be the same.

Co-Chairman of the Planning and Zoning Committee of the Great Falls Citizens Association, Richard B. Peters, 9209 Weant Drive, P.O. Box 443, Great Falls, Virginia, expressed his belief that the proposal should be withdrawn and a new application filed.

Chairman Smith explained that Mr. Sanders was acting within the limits of the Ordinance when amending the application to a lesser number of Variances. He noted that if the request was deferred, the revised plat would be available to the interested parties before the new public hearing. He added that staff would determine if a new application should be filed when the revised plat is reviewed.

In response to Mr. Peters' questions, Chairman Smith said that the usually procedure was to add an addendum to the original staff report. He told Mr. Peters that Mr. Sanders would be required to submit new plats to the Great Falls Citizen Association or to Mr. Peters at least ten days before the new public hearing date.

Mrs. Harris asked if readvertising would be necessary. Ms. Kelsey explained that until the new proposal was submitted, staff would be unable to make that determination.

Mr. Sanders stated that the applicant would bear the cost of readvertising if legally required.

Edith McKenna, 864 Seneca Road, Great Falls Virginia; Janos Nyitrai, 854 Seneca Road, Great Falls, Virginia; Marge Toni Gersec, 11120 Carabon Lane, Great Falls, Virginia; and Sarah Ramuglia, 850 Seneca Road, Great Falls, Virginia; expressed their displeasure at having to attend four public hearings without the application being heard and asked the Board not to defer the application.

Mr. Sanders apologized for the inconvenience the request for deferral may have caused the neighbors and explained that one of the reasons for the request was to modify the application so that it will be acceptable to them.

A discussion took place between the Board and staff as to a deferral date and it was the Board's decision to defer the case to January 23, 1990, at 10:45 A.M.

Mr. Kelley made a motion to defer the case to January 23, 1990 at 10:45 a.m. Mr. Ribble seconded the motion which carried by a vote of 3 - 0 with Mrs. Harris voting nay. Mr. Hammack was not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

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The Board recessed at 12:00 noon and reconvened at 12:15 p.m.

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Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Randy Baxter, Rezoning and Special Exception Branch to the Board.

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Page 188, December 12, 1989, (Tape 2), Scheduled Case:

10:30 A.M. FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, VC 89-L-132, application under Sect. 18-401 of the Zoning Ordinance to allow existing structure to remain 9.33 feet from front lot line (20 ft. min. front yard required by Sect. 3-807), on property located at 3514 Lockheed Boulevard, on approximately .864 acres of land, zoned R-8, Lee District, Tax Map 92-4((1))11.

Chairman Smith called the representative of the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Kidwell confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Randy Baxter, Staff Coordinator, presented the staff report to the Board.

Jeffrey Kidwell, Development Officer with the Fairfax County Redevelopment and Housing Authority, One University Plaza, Fairfax Virginia addressed the Board and explained that the structure has been in existence for 40 years. He said that as a result of the right-of-way dedication for Lockheed Boulevard, the front yard setback was reduced to approximately 9.3 feet. Mr. Kidwell noted the an addition to the rear building is proposed but would not effect the existing front yard setback.

Chairman Smith called for speakers in support of in opposition and hearing no reply asked staff for closing comments. Staff having no further comment, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant the VC 89-L-132 with conditions contained in the staff report dated November 29, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-132 by FAIRFAX COUNTY REDEVELOPMENT AND HOUSING AUTHORITY, under Section 18-401 of the Zoning Ordinance to allow existing structure to remain 9.33 feet from front lot line, on property located at 3514 Lockheed Boulevard, Tax Map Reference 92-4((1))11, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-8.
3. The area of the lot is .864 acres of land.
4. The applicant has satisfied the nine standards.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Kelley not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 190, December 12, 1989, (Tape 2), Scheduled Case:

10:45 A.M. PAUL AND GHISLAINE GOFFIN, VC 89-D-131, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an attached garage and addition to dwelling to 5.38 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 1400 Colleen Lane, on approximately 17,546 square feet of land, zoned R-3, Dranesville District, Tax Map 31-1((11))28.

Chairman Smith called the representative of the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bier confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report

Greg Riegle, Staff Coordinator, presented the staff report to the Board.

Richard Bier, 1951 Horseshoe Drive, Vienna, Virginia, architect for the applicant, addressed the Board stating that the Goffin's were the first owners of the house which they purchased in 1965. He explained that upon retiring, Mr. Goffin had become a consultant and needed the addition in order to accommodate the necessary office equipment and files. He added that the applicants would like to add a master bedroom, enlarge the existing bathroom and have a two car garage. Mr. Bier noted that there is a 44.4 foot arch on the cul-de-sac to the front of the property and a 20 to 25 foot slope to the rear of the property. He explained that with the configuration of the lot the proposed site is the only place an addition could be added.

In response to Mrs. Harris' question, Mr. Bier said that the existing garage is approximately 12 feet wide

Chairman Smith called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mr. Hammack made a motion to grant VC 89-D-131 with the conditions contained in the staff report dated December 5, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-131 by PAUL AND GHISLAINE GOFFIN, under Section 18-401 of the Zoning Ordinance to allow construction of an attached garage and addition to dwelling to 5.38 feet from side lot line, on property located at 1400 Colleen Lane, Tax Map Reference 31-1((11))28, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 17,546 square feet of land.
4. The applicant has satisfied the nine standards.
5. Exceptional topographic conditions exist on the property.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Kelley not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 191, December 12, 1989, (Tapes 1 and 2), Scheduled Case:

11:00 A.M. GEORGE GRAINE, VC 89-P-125, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing screened porch to 10.6 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 7604 Westminister Court, on approximately 12,783 square feet of land, zoned R-3, Providence District, Tax Map 59-2((13))9.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Graine confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Reigle presented the staff report to the Board.

Mr. George Graine, 7604 Westminister Court, Falls Church, Virginia addressed the Board and explained that he wishes to enclose an existing screened porch. He explained that this would enable him to use the porch throughout the year and that no further encroachment to the side lot line would be need. He emphasized that there would be no changes to the roof line or the entrances.

Chairman Smith called for speakers in support or in opposition to the request and for staff closing comments. Hearing no reply, he closed the public hearing.

Mrs. Harris made a motion to grant VC 89-P-125 with the conditions contained in the staff report dated December 5, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-125 by GEORGE GRAINE, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing screened porch to 10.6 feet from side lot line, on property located at 7604 Westminister Court, Tax Map Reference 59-2((13))19, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 12, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 12,783 square feet of land.
4. The location of the structure on the lot has created an extraordinary condition.
5. The zoning character 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 **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Kelley not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 20, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 193, December 12, 1989, (Tape 2), Scheduled Case:

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-113, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104) and to allow a 4.3 foot high fence on a corner lot (3.5 ft. max. hgt. for a fence allowed by Sect. 2-505), on property located at 2647 Paddock Gate Court, on approximately 11,723 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))1.

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-114, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104) and to allow a 4.3 foot high fence on a corner lot (3.5 ft. max. hgt. for a fence allowed by Sect. 2-505), on property located at 2650 Paddock Gate Court, on approximately 11,804 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))41.

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-115, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2645 Paddock Gate Court, on approximately 10,200 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))2.

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-116, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2643 Paddock Gate Court, on approximately 10,328 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))3.

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-117, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2641 Paddock Gate Court, on approximately 15,208 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))4.

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-118, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2640 Paddock Gate Court, on approximately 14,186 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))36.

Page 194, December 12, 1989, (Tape 2), (STANLEY MARTIN COMMUNITIES, INC., VC 89-C-113 thru VC 89-C-122, continued from Page 193)

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-119, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2642 Paddock Gate Court, on approximately 12,031 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))37A.

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-120, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2644 Paddock Gate Court, on approximately 11,416 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))38A.

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-121, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2646 Paddock Gate Court, on approximately 10,564 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))39.

11:15 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-122, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2648 Paddock Gate Court, on approximately 10,432 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))40.

Chairman Smith called the agent for the applicant to the podium and asked if the affidavits before the Board was complete and accurate. Mr. O'Brien confirmed that they were. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, addressed the Board and said that staff and the applicant were requesting a deferral so that the Zoning Administrator could give an interpretation on this request. He explained that the applicant was proposing construction of a fence along Monroe Street which would require Monroe Street to be designated as a major throughfare in the Zoning Ordinance. Mr. Reigle said that the Zoning Administration was analyzing the application with regard to how the Ordinance should be applied.

David O'Brien, with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, 3110 Fairview Drive, Falls Church, Virginia, represented the applicant and advised the Board that a deferral would be in his clients best interest.

Chairman Smith expressed his believe that an interpretation from the Zoning Administrator was needed.

Mr. Reigle suggested to the Board a deferral date of January 23, 1990 at 11:00 a.m.

Mrs. Harris made a motion to defer VC 89-C-120 to January 23, 1990 at 11:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 4 - 0. Mr. Kelley was not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 194, December 12, 1989, (Tape 2), After Agenda Item:

Bahram Khozai and David Anderson, VC 88-M-084, Additional Time
5502 Seminary Road
62-3((1))7

Mrs. Harris made a motion to grant the applicant an additional six (6) months in order to commence construction. Mr. Hammack seconded the motion which carried by a vote of 4 - 0. Mr. Kelley was not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting. The new expiration date is August 2, 1990.

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Page 195, December 12, 1989, (Tape 2), After Agenda Item:

Raymond and Carol Schupp, VC 87-D-014, Additional Time
7406 Old Dominion Drive
21-3((1))40A

Mrs. Harris made a motion to grant the applicant an additional six (6) months in order to commence construction. Mr. Hammack seconded the motion which carried by a vote of 4 - 0. Mr. Kelley was not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting. The new expiration date is April 27, 1990.

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Page 195, December 12, 1989, (Tape 2), After Agenda Item:

Approval of December 5, 1989 and December 7, 1989 Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted by staff. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote; Mr. DiGiulian and Mrs. Thonen absent from the meeting.

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Page 195, December 12, 1989, (Tape 2), After Agenda Item:

Approval of September 12, 1989 Minutes

Mr. Harris moved to accept the Minutes as submitted by staff. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. Kelley not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 195, December 12, 1989, (Tape 2), After Agenda Item:

Jane Kelsey, Chief, Special Permits and Variance Branch, pointed out to the Board that the 9:15 application of Phyllis M. and David C. Benner, VC 89-L-126 had been deferred to January 23, 1990 at 9:15. Due to a scheduling conflict she asked the Board to reschedule the case to January 23, 1990 at 10:00 a.m.

Mr. Hammack moved to reopen VC 89-L-126, Mrs. Harris seconded the motion which carried by a vote of 4 - 0. Mr. Kelley was not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

The Chair entertained a motion to amend VC 89-L-126.

Mr. Hammack moved to reschedule VC 89-L-126 to January 23, 1990 at 10:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 4 - 0 with Mr. Kelley not present for the vote; Mr. DiGiulian and Mrs. Thonen were absent from the meeting.

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Page 195, December 12, 1989, (Tape 2), After Agenda Item:

As there was no other business to come before the Board, The meeting was adjourned at 12:55 p.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED February 22, 1990 APPROVED March 6, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, December 21, 1989. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble.

Chairman Smith opened the meeting at 9:15 a.m. with the invocation. There were no Board matters.

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Page 197, December 21, 1989, (Tape 1), Scheduled case of:

9:00 A.M. CARMEN J. MANDICH, VC 89-P-055, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage and room additions to dwelling to 10.4 feet from side lot line and 18.9 feet from rear lot line (12 ft. min. side yard; 25 ft. min. rear yard required by Sect. 3-307), on property located at 9122 Maywood Lane, on approximately 11,455 square feet of land, zoned R-3, Providence District, Tax Map 58-2((10))76. (DEF. FROM 7/27/89 AT THE APPLICANT'S REQUEST. DEF. FROM 10/10/89 AT APPLICANT'S REQUEST LAST DEFERRAL)

Lori Greenlief, Staff Coordinator, informed the Board that the notices for this application were not in order.

The applicant, Carmen J. Mandich, 9122 Maywood Lane, Fairfax, Virginia, appeared before the Board and requested another deferral.

Mrs. Thonen made a motion to defer VC 89-P-055 to January 23, 1990 at 11:00 a.m.

Mrs. Harris seconded the motion which passed by a vote of 5-0 with Mr. Hammack and Mr. Ribble not present for the vote.

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Page 197, December 21, 1989, (Tape 1), Scheduled case of:

9:15 A.M. SHARON J. STULL, VC 89-M-094, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling 6 feet from side lot line (10 ft. min. side yard required by Sect. 3-407), on property located at 3120 Wayne Road, on approximately 7,200 square feet, zoned R-4, Mason District, Tax Map 50-4((17))283. (DEF. 10/24/89 AT APPLICANT'S REQUEST)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Stull replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant's husband, Robert Stull, 3120 Wayne Road, Falls Church, Virginia, presented the request as outlined in the statement of justification submitted with the application and further stated that the porch and addition to the house would remain a porch, although enclosed by windows.

Ed Campbell, 7465 Clifton Road, Clifton, Virginia, appeared before the Board in support of the application. Mr. Campbell represented Patio Enclosures, the contracting company that is going to enclose the porch.

There being no speakers in opposition to the request, nor any staff closing comments, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant VC 89-M-094 subject to the development conditions contained in the staff report dated October 19, 1989.

Chairman Smith noted for the record that the Board had received two letters in opposition to the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-094 by SHARON J. STULL, under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling 6 feet from side lot line, on property located at 3120 Wayne Road, Tax Map Reference 50-4((17))283, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 7,200 square feet of land.
4. The lot is exceptionally long and narrow.
5. The existing structure was built in 1953 prior to the present Zoning Ordinance.
6. The request will not bring any construction closer to the lot then currently exists.
7. This is an upgrade of the previous structure.
8. This 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 **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A building permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 29, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 199, December 21, 1989, (Tape 1), Scheduled case of:

9:30 A.M. WAYNE N. SCOTT AND CAROL A. SCOTT, SP 89-V-049, application under Sect. 3-803 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow garage 11.92 feet in height to remain 1.5 feet from side lot line and 1.17 feet from rear lot line (10 ft. min. side yard required, 11.92 ft. min. rear yard required by Sects. 3-807 and 10-104), on property located at 2517 Oberline Drive, on approximately 3,602 square feet of land, zoned R-8, Mount Vernon, Tax Map 93-1((20))(3)5A.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Scott replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that staff recommended denial of the request for the reasons outlined in the staff report.

Wayne Scott, 2517 Oberline Drive, Alexandria, Virginia, the applicant, addressed the Board and stated that he did not know that he needed a building permit for the subject structure; that he was advised by an unnamed County agency that because it would be difficult to get a building permit he should place an already built structure on the property; that he was using the structure for storage and also for storage of an antique automobile; and that the structure is not on a permanent foundation but rather on cinder blocks. Mr. Scott submitted letters from his neighbors in support of the request into the record.

There were no speakers in support and Chairman Smith called for speakers in opposition to the request.

Rose Stautzenburger, 7005 Stanford Drive, Alexandria, Virginia, President of the Bucknell Heights Citizens Association, appeared before the Board and stated that the Association had received oral complaints about the shed; that on at least three occasions Mr. Scott's shed had come up for discussion at Association meetings; that it was the consensus of the Association that all sheds and improvements to be the properties be in conformance with the zoning rules and regulations; and that, accordingly, the Association did not wish to see an exception in Mr. Scott's case which would create a precedent for evading the Fairfax County Zoning Ordinance and regulations governing such structures.

There being no further speakers to address this application, Chairman Smith closed the public hearing.

Ms. Greenlief informed the Board that the reason the structure was called a garage was because the use of the structure is to store a vehicle and there is a restriction in the Ordinance that a storage shed cannot be over 200 square feet in size, so if the structure were to be called a shed it would still need a variance allowing the structure to be over 200 square feet.

Mr. DiGiulian made a motion to deny SP 89-V-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

In Special Permit Application SP 89-V-049 by WAYNE N. SCOTT AND CAROL A. SCOTT, under Sect. 3-803 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow garage 11.92 feet in height to remain 1.5 feet from side lot line and 1.17 feet from rear lot line, on property located at 2517 Oberline Drive, Tax Map Reference 93-1((20))(3)5A, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-8.
3. The area of the lot is 3,602 square feet of land.
4. The structure can be moved and it is a large violation of the setback requirements.

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 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mr. Hammack not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 29, 1989.

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Page 200, December 21, 1989, (Tape 1), Scheduled case of:

9:45 A.M. JOSEPH MINICOZZI AND MARIA MINICOZZI, VC 89-P-139, application under Sect. 18-401 of the Zoning Ordinance to allow a subdivision of one lot into two (2) lots, proposed Lot 3B having a lot width of 20 feet (150 ft. min. width required by Sect. 3-106), on property located at 10500 Miller Road, on approximately 2.4063 acres of land, zoned R-1, Providence District, Tax Map 47-2((9))3.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Petrelli replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

John F. Petrelli, Esquire, Suite 200, 7010 Little River Turnpike, Annandale, Virginia, appeared on the applicants' behalf and presented the request as outlined in the statement of justification submitted with the application, and furnished each Board member with material concerning the gift lot statute, 15.1-466(K), and the five tests required to qualify under the statute.

As there were no speakers in support of the request, Chairman Smith called for speakers in opposition.

John Holland, 10526 Miller Road, Oakton, Virginia, appeared before the Board in opposition to the application, stating that he believed the proposed subdivision would mean the tearing down of the woods which would change the nature of the neighborhood.

Robert Sherba, 10514 Miller Road, Oakton, Virginia, owner of Lot C, appeared before the Board in opposition to the application and referred the Board members to his earlier submitted letter, especially the last paragraph where he stated his fears that the subdivided lot would not be retained by the present owner but would be sold for a profit.

Both speakers submitted letters into the record.

Mr. Petrelli, in rebuttal, spoke to the Board concerning the points raised by the opposition speakers, stating that he would be happy to consult with the County Arborist regarding the trees and that the owner intended to retain the property and live on it.

There being no further speakers to address this application, Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant VC 89-P-139 subject to the development conditions contained in the staff report dated December 12, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-139 by JOSEPH MINICOZZI AND MARIA MINICOZZI, under Sect. 18-401 of the Zoning Ordinance to allow a subdivision of one lot into two (2) lots, proposed Lot 3B having a lot width of 20 feet, on property located at 10500 Miller Road, Tax Map Reference 47-2((9))3, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 2.4063 acres of land.
4. The lot has an exceptional shape and narrowness.

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

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

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

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

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

1. This variance is approved for the subdivision of one lot into two (2) lots as shown on the plat submitted with this application.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless this subdivision has been recorded among the land records of Fairfax County, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval of this variance. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. Only one (1) entrance to both lots shall be allowed from Miller Road and the driveway shall intersect with Miller Road at a right angle. The driveway easements shall be recorded with deeds to the property to ensure future access to these lots via a common driveway.

4. The driveway to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

5. If requested by the Director, Department of Environmental Management, (DEM), a geotechnical study shall be provided at the time of subdivision plat review for approval by DEM and all findings of the study shall be implemented as requested by DEM.

6. Prior to subdivision plat approval, a plan showing the limits and clearing and grading shall be submitted for review and approval by the County Arborist for the purpose of identifying, locating and preserving individual mature, large and/or specimen trees and tree save areas on the site. Preliminary rough grading shall not be permitted on site prior to County Arborist approval for a tree preservation plan.

7. Right-of-way to 45 feet from the centerline of Miller Road shall be dedicated to the Board of Supervisors in fee simple on demand or at the time of subdivision approval, whichever comes first. Ancillary easements to 15 feet from the new right-of-way line shall be provided to facilitate construction of the road improvements.

8. The proposed dwelling on Lot 3A shall meet the minimum yard requirements specified in Sect. 2-416 of the Zoning Ordinance.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-2 with Chairman Smith and Mrs. Harris voting nay; Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 29, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 202, December 21, 1989, (Tape 1), Scheduled case of:

10:00 A.M. GENUARIO CONSTRUCTION CO., INC./HERBERT AND ASSOCIATES, INC. GP, VC 89-V-138, application under Sect. 18-401 of the Zoning Ordinance to allow a subdivision of one lot into three (3) lots, proposed Lots 2 and 3 having a lot width of 9.84 feet (80 ft. min. required by Sect. 3-306), on property located at 8316 Ft. Hunt. Road, on approximately 1.0013 acres of land, zoned R-3, Mt. Vernon District, Tax Map 102-4((1))22.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Genuario replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Louis V. Genuario, Sr., 2300 Candlewood Drive, Alexandria, Virginia, the owner of Genuario Construction Co., Inc., appeared before the Board and requested a thirty day deferral so that he could work out some details with the three neighbors across the street who were concerned about the application.

Chairman Smith asked if there was anyone present who wished to address the applicant's request for a deferral.

Thomas E. Thompson, 1406 Cool Spring Drive, Alexandria, Virginia, owner of the property adjacent to the subject property on the south, appeared before the Board in opposition to the deferral. He cited difficulties in his taking leave from work to attend a future hearing and said he was not one of the parties that the applicant wished to confer with during the thirty day deferral.

Robert Anderson, 1404 Cool Spring Drive, Alexandria, Virginia, property owner of the lot adjacent to the subject property, stated that he had no problem with a deferral at this time.

Mr. Thompson, the earlier speaker, advised the Board that in light of the difficulties in his schedule, he would be happy to submit a letter outlining his position which could be read into the record at the time of the hearing.

Mrs. Thonen noted that she had suggested to the applicant that a deferral might be in order so that he could work out some of the problems she had with the application.

There being no further speakers to address the question of deferral, Chairman Smith closed the discussion on the deferral.

Mrs. Thonen made a motion to grant the applicant's request for a deferral of VC 89-V-138 to January 30, 1990 at 11:30 a.m.

Mr. DiGiulian seconded the motion which passed by a vote of 7-0.

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Page 203, December 21, 1989, (Tapes 1 and 2), Scheduled case of:

10:15 A.M. CHARLES AND GAIL F. DAVENPORT, VC 89-D-135, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling to 15 feet from front lot line (30 ft. min. front yard required by Sect. 3-307 and 4-407), on property located at 6522 Old Chesterbrook Road, on approximately 15,703 square feet of land, zoned R-3 and R-4, Dranesville District, Tax Map 30-4((1))63B.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Davenport replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Randy Baxter, Staff Coordinator, presented the staff report.

Charles Davenport, 1501 Twisting Tree Lane, McLean, Virginia, the applicant, presented his request as outlined in the statement of justification submitted with the application.

Travis Price, 7050 Carroll Avenue, Tacoma Park, Maryland, the architect, appeared before the Board and stated that the plan submitted was the best way the building could be situated on the lot in his opinion.

Joe Childers, 1614 Seventh Place, McLean, Virginia, owner of Lot 1, which faces Seventh Place, on the left side of the subject property, appeared before the Board and stated that his concern was the drainage of the water after the house and driveway were built.

Jim Marshall, 6520 Old Chesterbrook Road, McLean, Virginia, appeared before the Board in support of the application.

Mr. Davenport addressed the water drainage concern by stating that most of the drainage, the way the construction is planned, would be toward Old Chesterbrook Road and away from Mr. Childers' property.

There being no further speakers to address this application, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant VC 89-D-135 subject to the development conditions contained in the staff report dated December 12, 1989 for the reasons noted in the Resolution.

Mr. Ribble seconded the motion. Mrs. Thonen requested that the motion be amended to include language requiring that a stormwater plan be worked out with the Department of Environmental Management to insure that stormwater runoff shall not affect adjacent property owners.

Mrs. Harris adopted the amendment to her motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-135 by CHARLES AND GAIL F. DAVENPORT, under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling to 15 feet from front lot line, on property located at 6522 Old Chesterbrook Road, Tax Map Reference 30-4((1))63B, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 21, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 15,703 square feet of land.
4. The lot has an unusual shape as the back of the lot is angular shaped.
5. The lot has two front yards because of the 20 foot road easement in the back of the lot.
6. The applicant has tried to situate the house on the property to reduce the Variance and make it as small as possible.
7. The strict application of the Zoning Ordinance would effectively prohibit the use of the property.
8. The granting of the request will not change the zoning character of the area.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. Stormwater runoff will not adversely affect adjacent properties.

Mr. Ribble seconded the motion. The motion carried by a vote of 6-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 29, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 205, December 21, 1989, (Tape 1), Scheduled case of:

10:45 A.M. SAINT MATTHEW'S UNITED METHODIST CHURCH, SPA 80-A-087-3, application under Sect. 3-103 of the Zoning Ordinance to amend SP 80-A-087 for a church and related facilities to allow a change in location of the approved entrance and parking lot, on property located at 8617 Little River Turnpike, on approximately 5.32 acres of land, zoned R-1, Annandale District, Tax Map 59-3((10))13-19,22-28.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Burnette replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the only conditions which staff believed should be altered were those pertaining to transitional screening along the southern lot line in the vicinity of the proposed parking areas and explained what the staff recommended in this regard.

Bernard B. Burnette, 3423 Pellinore Place, Annandale, Virginia, Chairman of the Building Committee of the church, presented the applicant's request as outlined in the statement of justification submitted with the application and further suggested and discussed a modification to condition number 6, bullet 2, of the development conditions.

There being no speakers to address this application, Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant SPA 80-A-087-3 subject to the development conditions in the staff report dated December 12, 1989 with the following modification to condition number 6, bullet 2: "The Transitional Screening yard shall be modified to be planted between the existing asphalt parking area and the lot line, the nearest point being approximately 9 feet at the south end of the property on the west side; to be tapered out to 25 feet on the north end of the property. The tapered area shall be supplemented with additional plantings as required by the County Arborist to reduce any impact on the adjacent properties because of the reduction in the transitional screening. To be included in this area shall be an evergreen hedge the length of the parking lot, the intent to be to screen the parking lot from the adjacent residences." ...

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-A-087-3 by SAINT MATTHEW'S UNITED METHODIST CHURCH, under Sect. 3-103 of the Zoning Ordinance to amend SP 80-A-087 for a church and related facilities to allow a change in location of the approved entrance and parking lot, on property located at 8617 Little River Turnpike, Tax Map Reference 59-3((10))13-19, 22-28, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 1989; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 15,703 square feet of 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 Section 8-303 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity in the main area of worship shall be limited to a total of 470 seats with a corresponding minimum number of parking spaces as set forth in Article 11 and a maximum of 172 spaces. The minimum number of spaces as set forth in Article 11 shall conform to current Public Facilities Manual (PFM) standards. All parking shall be on site.

6. Transitional Screening shall be provided as follows:

   - Transitional Screening 1 shall be provided along the southern lot line with a modification to 17 feet in width in the area of the existing parking lot and the proposed parking lot addition. An appropriate reduction in the number of plantings shall be made in this 17 foot wide area as determined by the County Arborist

   - The Transitional Screening yard shall be modified to be planted between the existing asphalt parking area and the lot line, the nearest point being approximately 9 feet at the south end of the property on the west side; to be tapered out to 25 feet on the north end of the property. The tapered area shall be supplemented with additional plantings as required by the County Arborist to reduce any impact on the adjacent properties because of the reduction in the transitional screening. To be included in this area shall be an evergreen hedge the length of the parking lot, the intent to be to screen the parking lot from the adjacent residences. In other words, the required and supplemental screening shall be in that strip between the existing edge of pavement of the parking lot and the property line.

   - The existing vegetation along the eastern and northern lot lines shall be deemed to satisfy the transitional screening requirements.

8. At the time of site plan review, a tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site. The tree preservation plan shall be reviewed and approved by the County Arborist. Mature trees deemed worthy by the County Arborist shall be preserved.

9. A tree replacement program shall be established in coordination with and subject to approval by the County Arborist on east side of the previously approved addition in the area between the building and the proposed stormwater detention pond. Mature trees removed in the grading of this area of the site shall be replaced with trees of similar species with an ultimate height of 30 feet or greater as determined by the County Arborist.

10. Subject to the approval of the County Arborist, landscaping and building foundation plantings shall be provided along the southern side of the previously approved addition in order to provide screening and enhance the visual appearance of the building.

11. Dedication, as required at the time of site plan review shall be provided for a right-turn lane along Little River Turnpike and dedicated in fee simple to the Board of Supervisors.

12. Stormwater Best Management Practices (BMPs) shall be provided in the form of detention pond to be placed east of the previously approved addition, as may be acceptable to the Director, DEM.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 6-0 with Mrs. Thonen not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 29, 1989. This date shall be deemed to be the final approval date of this special permit.

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Page 207, December 21, 1989, (Tape 2), Scheduled case of:

11:00 A.M. TODD-WATSON APPEAL, A 89-S-016, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the appellant's proposed automotive detailing business involving the polishing, waxing, interior cleaning and conditioning of vehicles is a car wash, on property located at 14230-B Sullyfield Circle, on approximately 1,500 sq. ft., zoned I-5, Springfield District, Tax Map 34-3((11))B7 and 34-4((16))B6.

William E. Shoup, Deputy Zoning Administrator, appeared before the Board and presented the Zoning Administrator's position on the appeal.

Frank H. Grace, Esquire, 4160 Chain Bridge Road, Fairfax, Virginia, appeared before the Board on behalf of the applicant and presented a brief statement on the background of the appellant and their position that since all vehicles involved would be washed off site before being brought to their establishment, they should not be considered a car wash business.

Victor Todd, 10874 Hampton Road, Fairfax Station, Virginia, co-owner of Todd-Watson Corporation, appeared before the Board to answer questions the Board had about the specific nature of the work performed at his establishment.

Clodie Roy, with Commercial Condo Management Company, 8496-B Tyco Road, Vienna, Virginia, appeared before the Board on behalf of the Board of Directors of the Unit Owners Association of Mariah Business Center and objected to permitting any parking intensive user to occupy a space at the Mariah Business Center and to request that a parking tabulation study be performed to show whether or not there was sufficient parking on site for the proposed use.

There being no further speakers to address appeal, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion with respect to A 89-S-016 to uphold the determination of the Zoning Administrator that the Todd-Watson Corporation is a car wash establishment.

Mr. DiGiulian seconded the motion which carried by a vote of 7-0. This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 29, 1989. This date shall be deemed to be the final approval date of this appeal.

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Page 208, December 21, 1989, (Tape 2), Scheduled case of:

11:30 A.M. CAROLE N. AND CHARLES F. HOLDEN III, VC 89-V-134, application under Sect. 18-401 of the Zoning Ordinance to allow construction of swimming pool and a 4 foot by 8 foot pool equipment area in front yards, 26.6 feet from one street line, 25.3 feet from other street line of a corner lot and to allow shed to remain in a front yard (accessory structure or use not permitted in front yard by Par. 11C and storage shed not permitted in front yard by Par. 10B of Sect. 10-104), on property located at 2101 Waltonway Road, on approximately 16,405 square feet of land, zoned R-4, Mount Vernon District, Tax Map 83-3((14))(15)1 and 3.

Mr. DiGiulian made a motion that the Board, having received a letter from the applicant requesting withdrawal, allow the application to be withdrawn.

Mrs. Thonen seconded the motion which passed by a vote of 6-0 with Mr. Kelley not present for the vote.

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Page 207, December 21, 1989, (Tape 2), Scheduled case of:

11:45 A.M MICHAEL D. PAYNE AND CYNTHIA T. PAYNE, VC 89-S-136, application under Sect. 18-401 of the Zoning Ordinance to allow construction of enclosure of portion of existing deck on rear of dwelling to 10.7 feet from side lot line (20 ft. min. side yard required by Sect. 3-C07), on property located at 15607 Meherrin Drive, on approximately 25,466 square feet of land, zoned R-C and WSPOD, Springfield District, Tax Map 53-3((4))(4)22.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Payne replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Michael D. Payne, 15607 Meherrin Drive, Centreville, Virginia, presented his request as outlined in the statement of justification with the application.

There being no speakers to address this application, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant VC 89-S-136 subject to the development conditions contained in the staff report dated December 12, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-136 by MICHAEL D. PAYNE AND CYNTHIA T. PAYNE, under Section 18-401 of the Zoning Ordinance to allow construction of enclosure of portion of existing deck on rear of dwelling to 10.7 feet from side lot line, on property located at 15607 Meherrin Drive, Tax Map Reference 53-3((4))(4)22, 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 21, 1989; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 25,466 square feet of land.
4. The lot has exceptional narrowness towards the rear of the lot and converging lot lines.
5. The deck is already there, it is a simple enclosure.
6. It will be built in accordance with the plans submitted and the design is attractive.
7. The house on the adjacent property is approximately 75 feet from the shared lot line.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 29, 1989. This date shall be deemed to be the final approval date of this variance.

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Page 209, December 21, 1989, (Tape 2), Scheduled case of:

12:15 P.M. DR. MARK A. LAWRENCE, SP 89-D-051, application under Sect. 3-E03 of the Zoning Ordinance to allow a home professional office, on property located at 8612 Tebbs Lane, on approximately 6.2757 acres of land, zoned R-E, Dranesville District, Tax Map 20-1((1))48,52.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

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Bernadette Bettard, Staff Coordinator, presented the staff report. In response to a question from the Board, Ms. Bettard advised that there was no more than a letter of authorization from the owner of the adjacent property permitting Dr. Lawrence to use that property for parking; that was all that was required under the Zoning Ordinance; and that both lots would be under special permit if it was approved. The Board expressed concern that the owner of the property where the proposed parking spaces was not a co-applicant on the application.

Ms. Bettard further informed the Board that in response to a citation of violation, the applicant stopped practicing at the subject location and had taken offices in the Tysons Corner area.

Keith Martin, Esquire, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, then requested a deferral, stating that the applicant needed time to work out problems with an adjoining property owner and also to address the question of the appropriate applicants involved.

John J. Adams, 819 Towston Road, McLean, Virginia, an abutting property owner, appeared before the Board in support both of the applicant and of the deferral request.

Mary Ellen West, 8601 Tebbs Lane, McLean, Virginia, appeared before the Board and objected to the deferral.

Nancy Greenwald, 801 Towston Road, McLean, Virginia, an adjacent property owner, appeared before the Board and stated that she opposed the application but supported the deferral which would allow them to work out their differences.

Jeff Edwards, 829 Towston Road, McLean, Virginia, an adjacent property owner appeared before the Board and stated that he supported the deferral because he would like to get the problems worked out with the neighborhood.

Virginia Child, 22 Langley Road, Baltimore, Maryland, appeared before the Board in support of the deferral.

Mark West, (no address given), a former resident of the neighborhood in question, appeared before the Board in support of the deferral.

Lydia Bono, 6168 Castletown Way, Alexandria, Virginia, appeared before the Board in support both of the application and the deferral.

Mr. Hammack made a motion to defer SP 89-D-051 to February 13, 1990 at 9:00 a.m. in order to give the applicant and citizens an opportunity to work out any problems that they may have.

Mrs. Harris seconded the motion which passed by a vote of 6-0 with Mr. Kelley not present for the vote.

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Page 210, December 21, 1989, (Tape 2), After Agenda Item:

Wolftrap Meadows Homeowners Association Appeal

Mrs. Thonen stated that the appeal of Wolftrap Meadows Homeowners Association had been timely filed and made a motion to schedule the hearing for March 13, 1990 at 11:00 a.m. Mrs. Harris seconded the motion which passed by a vote of 6-0 with Mr. Kelley not present for the vote.

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Page 210, December 21, 1989, (Tape 2), After Agenda Item:

Pulte Home Corporation Appeal

Mrs. Thonen stated that the appeal of Pulte Home Corporation had been timely filed and made a motion to schedule the hearing for February 22, 1990 at 11:00 a.m. Mr. Hammack seconded the motion which passed by a vote of 6-0 with Mr. Kelley not present for the vote.

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Page 211, December 21, 1989, (Tape 2), After Agenda Item:

B and E, Inc., VC 89-P-152
Out of Turn Hearing

Mrs. Thonen made a motion to deny the request for an out-of-turn hearing.

Keith C. Martin, Esquire, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, appeared before the Board on behalf of the applicant and presented a letter from Supervisor Kathryn Hanley in support of the request. A discussion ensued about the various issues in the case.

Mrs. Thonen withdrew her motion to deny and Mr. Hammack made a motion to grant the out-of-turn hearing and schedule the hearing for February 13, 1990 at 9:15 a.m.

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Page 211, December 21, 1989, (Tape 2), After Agenda Item:

December 12, 1989 Resolutions

Mrs. Thonen made a motion to approve the Resolutions from the December 12, 1989 hearing as submitted by staff. Mr. Hammack seconded the motion which passed by a vote of 6-0 with Mr. Kelley not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:45 p.m.

Judy Finney (Clerk)
Judy Finney, Substituting for the Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED February 27, 1990

APPROVED March 6, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, January 9, 1990. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble.

Chairman Smith called the meeting to order at 8:15 p.m. and gave the invocation. Mr. Hammack made a motion to go into Executive Session to discuss personnel matters. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Harris not present for the vote.

Upon returning to the Board Room, Mrs. Thonen 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.

Mrs. Harris seconded the motion which carried by a vote of 7-0. The regular meeting of the Board of Zoning Appeals was reconvened at 8:25 p.m.

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Chairman Smith stated the first order of business would be the election of officers for the coming year. He called for nominations for Chairman.

Mr. Ribble made a motion to nominate Daniel Smith to again Chair the Board of Zoning Appeals for 1990. Mr. Hammack seconded the motion. There were no other nominations and the motion carried by a vote of 7-0.

Mr. Hammack made a motion to nominate John DiGiulian to again serve as Vice-Chairman. Mrs. Harris seconded the motion. There were no other nominations and the motion carried by a vote of 7-0.

Mr. Ribble made a motion to nominate Betsy Hurtt as Clerk. Mr. Hammack seconded the motion. There were no other nominations and the motion carried by a vote of 7-0.

Chairman Smith thanked the Board and called for the first scheduled case.

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Page 213, January 9, 1990, (Tape 1), Scheduled case of:

8:00 P.M. MILTON E. AND LILLIAN S. MITLER, VC 89-M-106, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to an existing garage to 11.4 feet of the side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 3420 Mansfield Road, on approximately 17,800 square feet of land, zoned R-2, Mason District, Tax Map 61-1((11))992. (DEF. FROM 10/31/89 FOR NOTICES.)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Pleasants replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. In August 1989, the applicants were granted a building permit for construction of a carport addition to 11.4 feet from the side lot line as well as other improvements on the property. When staff went to post the property, staff noted that the requested garage addition was already under construction. The applicant's agent has informed staff that the portion of the garage addition which is in the minimum rear yard is now constructed of plywood which can be taken down, if necessary. Since the publication of the staff report, Ms. Greenlief stated that a request for a Variance on the adjacent property has been received.

In response to questions from Mrs. Harris, Ms. Greenlief explained that the pending Variance request was from the neighbor on Lot 993 and that request was for construction of a garage/porch addition 8.9 feet from the lot line.

The applicant's agent, Richard Pleasants, 3129 Valley Lane, Falls Church, Virginia, came forward. He stated that the lot is triangular shaped which makes it awkward to construct without a variance. Mr. Pleasants noted that the neighbor's house, which would be the most impacted, sets back approximately 10 feet from the shared lot line and they have no objections to the request. The lot has a severe drop from Mansfield Road to the edge of the Lake Barcroft which prohibits construction elsewhere on the lot.

There were no speakers to address the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Kelley asked staff if there had been many variances granted in the vicinity of the applicant's property. Jane Kelsey, Chief, Special Permit and Variance Branch, stated

that the staff report had been prepared by Denise James, who was on maternity leave, and her research notes were not in the file. Ms. Kelsey apologized to the Board. She stated that not every lot had been granted a variance but that there had been several variances granted in the vicinity of Lake Barcroft.

Mr. Hammack made a motion to grant the request for reasons stated in the Resolution and subject to the development conditions contained in the staff report dated October 24, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-106 by MILTON E. AND LILLIAN S. MITLER, under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to an existing garage to 11.4 feet of the side lot line, on property located at 3420 Mansfield Road, Tax Map Reference 61-1((11))992, 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 9, 1990; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 17,800 square feet of land.
4. The applicant has satisfied the nine required standards for a variance; in particular, the lots in Lake Barcroft are relatively narrow but are very deep and this lot has converging lot lines. The front of the proposed garage being 18.5 feet off the side lot line and rear of the garage being 11.4 feet demonstrates that in fact only a small corner of the rear of the garage requires a variance.
5. The variance is a minimal request.
6. There are no other appropriate locations where this addition could be placed in view 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 GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A building permit shall be obtained prior to any construction.

Mrs. Thonen and Mr. Ribble seconded the motion. The motion 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 17, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 215, January 9, 1990, (Tape 1), Scheduled case of:

8:15 P.M. JAMES H. WARRICK, SPA 88-M-087-1, application under Sect. 8-901 of the Zoning Ordinance to amend SP 88-M-087 for error in building to allow 12 foot peak roof on garage addition to remain, on property located 3154 Holloway Road, on approximately 10,010 square feet of land, zoned R-3, Mason District, Tax Map 50-4((20))122.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that this request was for approval to allow a peaked roof to remain on a garage which was originally built with a flat roof. On November 29, 1988, the Board of Zoning Appeals (BZA) granted a special permit to allow the attached garage to remain 1.6 feet from the side lot line with a development condition which required the applicant to obtain a building permit. After that approval, the applicant obtained a building permit in December and four months later he amended that permit to allow the addition of a pitched roof. Subsequent to a complaint being filed about the addition of the pitched roof, Zoning Enforcement issued a Notice of Violation which stated that the roof was not in conformance with the approved special permit. The Zoning Administrator determined that since it had been represented to the BZA through the pictures that the garage was constructed with a flat roof the authority lay only with the BZA to allow a pitched roof on the structure. Ms. Greenlief stated that in staff's opinion the second error was made in good faith as the applicant had obtained an amended building permit which allowed the pitched roof 12 feet in height. She added that staff did believe that the change in the design of the roof from flat to pitched would increase the velocity of the runoff. She added that the applicant had installed a gutter and drain spout which should alleviate any drainage problem and the drain spout should be directed toward the applicant's property and staff had included a development condition to that effect.

In closing, Ms. Greenlief stated that staff recommended approval subject to the development conditions contained in the staff report being implemented. She noted that the plat used during the presentation was different than that contained in the staff report as there is also a two foot overhang.

Keith Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, came forward to represent the applicant. Mr. Martin stated that this was an unfortunate situation that occurred as a result of a human error on the part of County staff and has caused the applicant, who is elderly, much mental anguish. He added that the applicant has lived on the subject property for thirty years and is on a fixed income as he is now retired. The BZA granted a special permit to the applicant on November 29, 1988 which

allowed an existing garage to remain with a condition that the applicant obtain a building permit. The applicant obtained a building permit on December 16, 1988 and the permit was amended to allow the pitched roof to rectify a leaky roof. Mr. Martin referenced the BZA Minutes of November 29, 1988 wherein the next door neighbor herself, who opposed the request, testified that the garage was in need of repair. The architectural plans shown to the Zoning Administration Division staff showed a peaked roof with a 13 foot building height. The original approval was for a flat roof 12 feet in height but what actually was built was a peaked roof. When Betty Tiches, Zoning Inspector inspected the property, she discovered the error and noted that was not in conformance with the BZA approval. Following discussions with the Zoning Administrator, it was determined that the applicant must file a special permit amendment application.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition.

Douglas Cleveland, 3152 Holloway Road, Falls Church, Virginia, expressed concern over the drainage problem and stated that he did not believe that the pitched roof helps the problem.

Mr. DiGiulian stated that he believed that the pitched roof would help the drainage problem as it would allow only half of the water to drain onto the neighbor's property.

Richard Cleveland, 3152 Holloway Road, Falls Church, Virginia, came forward and agreed with the first speaker's remarks regarding the drainage.

During rebuttal, Mr. Martin stated that there are two down spouts, one on each side of the roof, and that there is a underground pipe on the applicant's property which channels the water away from the neighbor's yard.

Ms. Greenlief pointed out that staff was not aware of the underground pipe and suggested that perhaps the Board would like to modify condition number 3.

Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant SPA 88-M-087-1 subject to the development conditions contained in the staff report dated January 2, 1990 with the following modification to Condition Number 3: "The down spout shall be directed so that water released from the roof will flow into the applicant's backyard and not impact on the neighboring property. The underground pipe shall be connected to the down spout."

Mr. Kelley stated that he would reluctantly support the motion but would prefer to have the applicant first take the corrective measures recommended by the Board and then determine if they were appropriate. The other Board members did not agree with a deferral.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 88-M-087-1 by JAMES H. WARRICK, under Sect. 8-901 of the Zoning Ordinance to amend SP 88-M-087 for error in building to allow 12 foot peak roof on garage addition to remain, on property located at 3154 Holloway Road, Tax Map Reference 50-4((20))122, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1990; and

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

The Board has determined that:

A. The error exceeds ten (10) percent of the measurement involved, and

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, and

C. Such reduction will not impair the purpose and intent of this Ordinance, and

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

E. It will not create an unsafe condition with respect to both other property and public streets, and

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

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 approval is granted for the location and the specific garage with pitched roof shown on the plat included with this application and is not transferable to other land.

2. The area between the garage and the side lot line shall be maintained with grass.

3. The down spout shall be directed so that water released from the roof will flow into the applicant's backyard and not impact on the neighboring property. The underground pipe shall be connected to the down spout.

Mr. DiGiulian 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 17, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 217, January 9, 1990, (Tape 1), Scheduled case of:

8:30 P.M. MCLEAN PRESBYTERIAN CHURCH, SPA 85-D-034-2, application under Sect. 3-103 and Sect. 3-203 of the Zoning Ordinance to amend SP 85-D-034 for a church and related facilities to allow decrease in land area and increase in seating capacity, on property located at 1020 Balls Hill Road, on approximately 7.1191 acres of land, zoned R-1 and R-2, Dranesville District, Tax Map 21-3((1))50A, 50, 51, part of Parcel 18 (outlot A).

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Leonard replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant is requesting a special permit amendment in order to increase the number of seats from 580 to 736 and to decrease the land area. The request to decrease land area will not actually reduce the area devoted to the church but will correct an error in the original calculations. In 1985, the Board of Zoning Appeals (BZA) granted a special permit which allowed the construction of a church and in 1987 the special permit was amended to allow additional land area and to increase parking. During previous reviews, staff was concerned about landscaping along Balls Hill Road and a landscape plan was submitted to the BZA at the time of the last hearing and was approved. At that hearing, the BZA stipulated a condition that the landscaping be implemented per that plan but that was not the plan approved by the County Arborist. Ms. Greenlief stated that she has visited the site with the Arborist to determine what is needed to bring the planting up to the level that the BZA originally approved. She noted that revised development

condition number 5 reflected those recommendations. In conclusion, Ms. Greenlief stated that staff recommended approval subject to the revised development conditions being implemented.

In response to questions from Mrs. Thonen with respect to the landscape plan, Ms. Greenlief explained that staff is requesting a new landscape plan because the church has been constructed and the plantings are in place. The submission of a new landscape plan will alleviate the applicant having to remove what presently exists to make room for additional plantings. Staff believed this to be the best way to bring the plan up to what the BZA had approved.

William Leonard, 7144 Old Dominion Drive, McLean, Virginia, came forward to represent the church. He explained that the church had always intended to have a balcony but during the initial plan it seemed that the Sunday school rooms were needed more than the balcony. The contractor approached the church early in the construction phase and told them that it would be more economical to do the balcony at the start rather than convert the area to a balcony at a later date and the church decided to go ahead with the plan for the balcony. At the time the church filed for the building permit they also filed a special permit amendment so that the seating capacity would correspond with the permit. The church held its first service in the new building on December 24, 1989 and is currently conducting two services on Sunday in hopes of alleviating overflow parking. Mr. Leonard added that the parishioners have been encouraged not to park outside the church facilities but visitors are not aware of this request. He stated that the only way to accommodate the church's growth without the additional seats would be to hold more than two services on Sunday morning, something the church does not want to do.

With respect to parking, Mr. Leonard stated that the church presently has 289 parking spaces and exceeds the parking requirement by 100 spaces. He added that he believed that the church has met all the requirements and complied with all conditions. The church has spent $70,000 already on landscaping but agreed to supplement the landscaping on the front of the site. Mr. Leonard stated that the church had discussed the landscape plan with the architect and the church was told that the plan was approved in concept subject to the approval of the County Arborist.

There were no speakers to speak in support of the request and Chairman Smith called for speakers in opposition to the request. The following citizens came forward: Judith Salerno, 7207 Heather Hill Lane, McLean, Virginia, represented the Heather Hill Civic Association; and, Rebecca Gemunder 1004 Heather Hill Court, McLean, Virginia.

The citizens stated that they were not opposed to the interior changes to the church but were concerned with the expansion making an overflow parking problem worse. The speakers also objected to the illuminated sign in front of the church.

In response to the Board's questions regarding the sign, Ms. Greenlief stated that she had not checked to see if the church had obtained a sign permit. She did note that the previous approval stipulated that the sign must comply with Article 12.

Mr. Leonard came forward and explained that the sign is 4 1/2 feet by 7 feet and is illuminated and stated that the church had obtained all the proper permits for the sign. He added that the neighbor who would be the most affected has not complained about the sign. Mr. Leonard stated that at least ten parking spaces are presently occupied by construction vehicles and piles of snow. During a community meeting attended by Supervisor Richards, County and State police, the citizens requested that "no parking" signs be erected and were told by the police that the street is for public parking. The church has pledged to the neighborhood to assist in the parking situation and the church plans to have parking lot attendants. Mr. Leonard added that the church has also contacted Cooper School about using the school parking lot with a shuttle that would take people back and forth to the church. He stated that he believed that the confusion is because the church is new and people have not yet decided what service they will be attending.

Mrs. Harris asked where the Sunday school classes would be held and Mr. Leonard replied that they would be held in the fellowship hall.

Ms. Greenlief read from Article 12 with respect to signs at a church. She stated that staff could request that a Zoning Inspector inspect the sign.

Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant SPA 85-D-034-2 subject to the revised development conditions dated January 9, 1990 with one modification to condition number 6 by adding the wording: "All parking shall be confined to the site. The church is to institute a program to educate their parishioners that all parking must be confined to the site and this program is to include parking lot attendants, if required."

The Board discussed whether or not a condition should be added regarding the parking agreement. It was the consensus of the Board not to include such a condition.

Ms. Greenlief stated that the Zoning Ordinance stipulates that someone has to make a determination that if the church uses the school parking lot that use cannot conflict with the school programs.

Mrs. Thonen called for the question. Mr. Hammack seconded the motion which passed by a vote of 7-0.

Mr. DiGiulian then made a motion that the Board direct staff to request that a Zoning Inspector go the site to ensure that the sign meets all the requirements of the Zoning Ordinance.

Mrs. Harris seconded the motion which passed by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 85-D-034-2 by MCLEAN PRESBYTERIAN CHURCH, under Sects. 3-103 and 3-203 of the Zoning Ordinance to amend SP 85-D-034 for a church and related facilities to allow decrease in land area and increase in seating capacity, on property located at 1020 Balls Hill Road, Tax Map Reference 21-3((1))50A, 50, 51, part of Parcel 18 (Outlot A), Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 9, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1 and R-2.
3. The area of the lot is 7.1191 acres of 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 Section 8-303 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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. An amendment in the form of a revised site plan shall be submitted to the Department of Environmental Management. Specifically, a revised landscape plan shall be submitted for review and approval which conforms to Condition 5 of this approval. As determined by DEM, a revision may also be necessary to the approved site plan so that the plan accurately reflects the increase number of seats.

5. A revised landscape plan shall be submitted to the County Arborist which shows the existing vegetation along the eastern lot line supplemented by:

- one additional Leyland Cypress tree, 7 to 8 feet in height, just south of the southern-most flowering dogwood tree (It is noted that this tree should be kept out of the sanitary sewer easement);

- two Leyland Cypress trees, 7 to 8 feet in height, just north of the southern-most flowering dogwood tree;

- three Leyland Cypress trees, 7 to 8 feet in height, north of the church sign and south of the northern-most dogwood tree (it is noted that these three trees should be kept out of water main easement);

- 20 additional shrubs extending from the southern-most Leyland Cypress tree required in this condition to the southern-most flowering dogwood in the grouping of three centrally located along the front lot line (These shrubs may be a combination of English Laurel, 24 to 30 inches in planted height, Dense Japanese Yew, 18 to 24 inches in planted height and Japanese Barberry, 18 to 24 inches in planted height. They may follow the line of the existing beds but should when possible be located along the crown of the hill. It is noted that these shrubs should be kept out of the sanitary sewer easement in the southern portion of the frontage.);

- 20 additional shrubs extending from the northern-most flowering dogwood tree in the grouping of three centrally located along the front lot line to the flowering dogwood on the southern side of the northern-most entrance. (These shrubs may be a combination of English Laurel, 24 to 30 inches in planted height, Dense Japanese Yew, 18 to 24 inches in planted height and Japanese Barberry, 18 to 24 inches in planted height. It is noted that these plantings must be kept out of the water main easement.)

6. The maximum seating capacity in the main area of worship shall be limited to a total of 736 seats with a corresponding minimum of 184 parking spaces. There shall be a maximum of 289 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements. All parking shall be confined to the site. The church is to institute a program to educate their parishioners that all parking must be confined to the site and this program is to include parking lot attendants, if required.

7. The limits of clearing and grading shall be maintained as shown on the plat submitted with the application dated 5-12-88 last revision.

8. Transitional Screening 1 shall be maintained along all lot lines except:

   - Along all lots lines associated with Lot A1, provided Lot A1 remains in its undisturbed naturally vegetated state.

   - Along the common lot line with Lot 18A, provided the limits of clearing and grading remain as shown on the plat submitted with this application and dated 5-12-88 last revision.

   - Along the lot line common to the rear of Lot 50B.

   - Modification the front lot line provided landscaping is provided as specified in Condition 5 of this approval.

9. Barrier F shall be maintained along Lots 4, 5, 6, and 50B where the property is adjacent to the church's southern property line, except along Lot A1. The barrier requirement shall be waived along all other lot lines except as stated above.

10. Interior parking lot landscaping shall be maintained as shown on the approve landscape plan dated 4-5-88 last revision. The ground shall be maintained in grass.

11. A right turn deceleration lane shall be provided at the southern entrance from Balls Hill Road. If it is determined by the Office of Transportation at any time that the signs indicating exit only provided to prevent ingress movements into the northern exit are not effective, the applicant shall commit to construct a standard right-turn deceleration lane.

12. The structure shall maintain acoustical treatment as follows:

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

- o Doors and windows shall have a laboratory STC rating of at least 28. If "windows" function as the walls, then they shall have the same laboratory STC rating specified for exterior walls.

- o Adequate measures to seal and caulk between surfaces shall be provided.

- o If the building is not constructed to residential noise standards then a school or child care center shall not be allowed in the building, unless it can be acoustically retrofitted or modified to meet these standards.

13. The floor area ratio (FAR) for this entire parcel shall be limited to 0.15; that which governs the most restrictive district (R-1) this property is within.

14. Parking lot lighting shall be on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent residential properties as determined by the Department of Environmental Management.

15. Signs shall be permitted provided they are erected in accordance with the provisions of Article 12. Signs shall be located so as to be integrated into the landscape and shall conform in size to Article 12 of the Zoning Ordinance.

These development conditions incorporate those applicable conditions from previous approvals and some of the former conditions have been reworded to conform with current wording policies. Those conditions of previous approvals which had been satisfied at the time of site plan review have not been included.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion. The motion 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 17, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 221, January 9, 1990, (Tape 2), After Agenda Item:

Calvary Memorial Park, SPA 81-A-022-4, Additional Time
4401 Burke Station Road
69-1((1))1, 12

Mrs. Thonen made a motion to grant the applicant's request making the new expiration date December 14, 1990. Mr. DiGiulian seconded the motion.

Mr. Hammack questioned why it had taken staff so long to bring the request to the Board. Mr. Kelley stated that he had asked that question many times. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the requests are logged in when received and assigned to a staff coordinator with a due date. Prior to when that due date arrives, the request is routed to other departments for their input. She added that she would be glad to research why this one had taken so long and bring an answer back to the Board the following week. Mr. Hammack stated that he would be glad to wait.

The motion passed by a vote of 7-0.

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Page 222, January 9, 1990, (Tape 2), After Agenda Item:

Waiver of the 12-month Time Limitation for Dennis L. Dress, VC 89-A-099

Dennis L. Dress, 10914 Rippon Lodge Drive, Fairfax, Virginia, came forward and explained that he had requested a 11 foot variance to construct a deck and the Board had denied the request.

Mrs. Thonen made a motion to grant the applicant a waiver of the 12-month time limitation for the refiling of a new application.

Mr. Hammack noted that it appeared that there were only four members present and an unanimous vote was needed to grant the variance.

Jane Kelsey, Chief, Special Permit and Variance Branch, apologized to the Board because the Clerk had inadvertently overlooked bringing the file to the hearing. She asked if the Board would like to defer action for one week.

Mr. Kelley asked the speaker to address any new information that he might have and pointed out that he would not support a motion to grant a waiver just because there had only been four Board members present.

Ms. Kelsey noted that the motion had not been seconded, therefore the Board should not be holding any discussion.

Mr. Kelley stated that he would second the motion for purposes of discussion.

Mr. DiGiulian agreed that he would also like to hear the new information.

Mr. Dress stated that his next door neighbor had applied for and had been granted an identical variance in 1983. He added that for his statement of justification he had used the exact wording used by his neighbor and pointed out that his neighbor's variance was not brought out at the hearing.

Mr. Hammack called for the question. The motion passed by a vote of 7-0.

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Page 222, January 9, 1990, (Tape 2), After Agenda Item:

Terrell Appeal

Mr. DiGiulian stated that the appeal was complete and timely filed and made a motion to schedule the hearing for February 6, 1990 at 8:30 p.m. Mr. Hammack seconded the motion which passed by a vote of 7-0.

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Page 222, January 9, 1990, (Tape 2), Information Item:

BZA Certified Meeting

Jane Kelsey, Chief, Special Permit and Variance Branch, asked Mrs. Harris and Mr. Kelley if they would please let her know if they would be interested in attending the Conference.

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As there was no other business to come before the Board, the meeting was adjourned at 10:03 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: February 22, 1990

APPROVED: March 6, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, January 18, 1990. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Paul Hammack; and John Ribble. John DiGiulian, Vice Chairman; and Robert Kelley were absent from the meeting.

Chairman Smith called the meeting to order at 9:25 a.m. and gave the invocation. There were no Board matters and Chairman Smith called for the first scheduled case.

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Page 223, January 18, 1990, (Tape 1), Scheduled Case:

9:00 A.M. ROBERT K. HEDRICK AND LORRAINE K. HEDRICK, VC 89-V-141, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to 7.6 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 8543 Mt. Vernon Highway, on approximately 18,000 square feet of land, zoned R-3, Mt. Vernon District, Tax Map 101-4((17))42.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hedrick confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

The applicant, Robert K. Hedrick, 8543 Mount Vernon Highway, Alexandria, Virginia, stated that he had submitted to the Board a letter of approval from the Riverside Estates Homeowners Associations for the proposed garage.

Mr. Ribble noted that the Board had also received written justifications in the staff report for the Variance from Mr. Hedrick.

Chairman Smith expressed his belief that a 22.0 foot garage would be sufficient.

In response to a question from Mrs. Harris, Mr. Hedrick said that it would be cost effective to build the garage with a storage/work area. He explained that the addition would be built with materials similar to the existing structure.

Mrs. Thonen noted that a 22.0 foot garage would probably be the maximum that the Board would grant. Mr. Hedrick agreed to reduce the width of the garage to 22.0 feet. He added that the addition would not have a detrimental effect on the neighborhood, that he had written approval from his neighbors, that the position of the house on the lot caused the need for a Variance, that any other site on the lot would be too costly, and that he would like to protect his cars from the elements and from vandalism.

In response to questions from the Board, Mr. Riegle stated that there have been no other variances granted in this neighborhood and that the applicant's home was built about 1961. He explained that there were homes with two car garages in the area that had been built under different Ordinance requirements.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant-in-part VC 89-V-141 for a 22.0 foot wide garage 8.6 feet from the side lot line for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated January 11, 1990.

The Board discussed the fact that there have been no other variances granted in this neighborhood and noted their reluctance to start a precedent. They also questioned the hardship.

Mrs. Thonen explained that if the house had been centered on the lot then a variance would not be necessary.

Chairman Smith said that when the houses with two car garages were originally built, they were better situated on the lots.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-141 by ROBERT K. HEDRICK AND LORRAINE K. HEDRICK, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to 7.6 feet from the side lot line **(THE BOARD APPROVED A 22 FOOT WIDE GARAGE TO BE 8.6 FEET FROM SIDE LOT LINE)**, on property located at 8543 Mount Vernon Highway, Tax Map Reference 101-4((17))42, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 18,000 square feet of land.
4. There is no other site on lot to build a garage.
5. There will be no negative impact on neighborhood.
6. The applicant has satisfied the nine standards.
7. The position of the house on the lot creates a hardship.
8. The applicant has the support of the Riverside Estates Civic Association.
9. The Board must consider what would be a minimum Variance which would give the applicant some relief.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Hammack not being present for the vote; Mr. DiGiulian and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 26, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 225, January 18, 1990, (Tape 1), Scheduled Case:

9:15 A.M. GERALD AND RANDA MENDENHALL, VC 89-M-140, application under Sect 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling 8.8 feet from side lot line and 26.0 feet from front lot line and to allow construction of a covered porch addition to 17.9 feet from front lot line (15 ft. min. side yard and 35 ft. min. front yard required by Sect. 3-207), on property located at 3418 Mansfield Road, on approximately 19,117 square feet of land, zoned R-2, Mason District, Tax Map 61-1((11))993.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mendenhall confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. He noted that research indicated there had been no other variance to the minimum front yard requirement granted in the neighborhood. Mr. Riegle said that there is a consistent 35.0 front yard in the area.

The applicant, Gerald Mendenhall, 3418 Mansfield Road, Falls Church, Virginia, addressed the Board and said that he would like the addition in order to access the house from the garage. He explained that the lot is very narrow with the backyard sloping down to the lake, that he had renovated the house and believed that the addition would enhance the neighborhood, and that the Lake Barcroft Architectural Committee and the neighbors supported the request.

In response to Mrs. Harris' question, Mr. Mendenhall said that he wanted a 32.2 foot wide garage with a covered porch to provide aesthetic and practical value to the house.

The Board expressed concerns about the need for a 32 foot garage. The consensus of the Board was that this variance would be for convenience and not for hardship.

In response to Mr. Mendenhall's remark that the Board had granted a variance for a three car garage in the area, Chairman Smith explained that the variance was not to the front yard requirement.

Mr. Mendenhall noted that the narrow lot and the backyard slope prohibits construction anywhere else on the site. He said that he had consulted two architects and both had recommended the proposed location for the addition.

In response to a question from Mr. Ribble, Mr. Riegle said that the variance referred to earlier by Mr. Mendenhall had been for a side yard requirement.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mrs. Harris made a motion to deny VC 89-M-140 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-140 by GERALD AND RANDA MENDENHALL, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling 8.8 feet from side lot line and 26.0 feet from front lot line, on property located at 3418 Mansfield Road, Tax Map Reference 61-1((11))993, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 19,117 square feet of land.
4. The applicant has not satisfied the nine standards necessary for a variance.
5. The applicant gave aesthetic reasons which did not qualify as a hardship under the ordinance.
6. The request is for convenience or special privilege, not for hardship.

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

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

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

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

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

Mrs. Thonen seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Hammack not being present for the vote; Mr. DiGiulian and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 26, 1990.

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Page 226, January 18, 1990, (Tape 1), Scheduled Case:

9:30 A.M. MICHAEL C. AND MARY ELLEN M. CORRIDORE, VC 89-V-145, application under Sect. 18-401 of the Zoning Ordinance to allow addition of one car garage with second story to be constructed 2.9 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 1114 Alden Road, on approximately 11,992 sq. ft. of land, zoned R-3, Mount Vernon District, Tax Map 111-2((6))(25)8.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Corridore confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

Michael Corridore, 1114 Alden Road, Alexandria, Virginia, addressed the Board and explained that there was no other site on the lot in which to build an addition. He further stated that most of the neighboring houses have garages and said that he desired a garage in order to protect his car from the elements and to store the children's bicycles. He noted that the addition on the second floor would serve as a sewing room for his wife and also provide storage space. Mr. Corridore stated that materials similar to the existing structure would be used to construct the addition and that he believed the addition would be aesthetically pleasing. He added that he had the approval of his neighbors.

Chairman Smith asked Mr. Corridore if he had read the hardship section of the Ordinance and commented that there was no mention of this in his justification.

Mr. Corridore stated that the way the house is situated on the lot makes it impossible to build an addition without a variance.

Chairman Smith noted that a great many large houses are being built on small lots and this situation does not justify the granting of a variance.

In response to Chairman Smith's question, Mr. Corridore said that he had built the carport but the porch had been screened by the previous owner.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mr. Ribble made a motion to deny VC 89-V-145 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-145 by MICHAEL C. AND MARY ELLEN M. CORRIDORE, under Section 18-401 of the Zoning Ordinance to allow addition of one car garage with second story to be constructed 2.9 feet from side lot line, on property located at 1114 Alden Road, Tax Map Reference 111-2((6))(25)8, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 18, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,992 square feet of land.
4. The application does not satisfy the nine required standards for a variance.
5. The addition would be entirely too close to the property line
6. The applicant talked about the financial situation and the inconvenience in having to store bicycles downstairs which is for convenience, not a hardship.

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

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

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

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

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

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

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Hammack not being present for the vote; Mr. DiGiulian and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 26, 1990.

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Page 228, January 18, 1990, (Tape 1), Scheduled Case:

9:45 A.M. MR. AND MRS. JOSEPH AND ANNE LEONARD, VC 89-M-142, application under Sect. 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 5.0 ft. from side lot line (10 ft. min. side yard required by Sects. 3-207 and 2-412), on property located at 5206 Redwing Drive, on approximately 20,026 square feet of land, zoned R-2, Mason District, Tax Map 72-3((21))14.

Chairman Smith called the representative for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hedzic confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She submitted a revised plat that indicated a change of the dimensions to 17.1 on the north side of the addition and a letter of justification to be added to Appendix Number 2. Ms. Bettard noted that on September 26, 1989, the BZA had denied a variance application to allow an addition 2.6 feet from side lot line on this property.

Arif Hodzic, 4300 Evergreen Lane, Annandale, represented the applicant and explained that the topographical condition of the lot is exceptional as the land slopes steeply down to a low point where the house is located. He pointed out that this was a serious consideration in planning the addition and because of this problem there is no other site on the property to put the addition. He went on to say that the applicants are elderly and need a garage because of the inclement weather.

In response to Chairman Smith's question, Mr. Hodzic said that the rear of the house has a steep upward slope and is heavily wooded and to use this site would not be practical.

Chairman Smith expressed his belief that there are alternate sites for an addition and explained that the Board does not have the authority to grant a Variance in this situation. He noted that a one car carport could be added without the need for a variance.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to deny VC 89-M-142 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-142 by MR. AND MRS. JOSEPH AND ANNE LEONARD, under Section 18-401 of the Zoning Ordinance to allow construction of carport addition to dwelling to 5.0

feet from side lot line, on property located at 5206 Redwing Drive, Tax Map Reference 72-3((21))14, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 18, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 20,026 square feet of land.
4. The applicant has not satisfied the nine standards required for a variance.
5. There is an alternate location for the applicant to construct the garage.
6. The Board finds that there is no physical hardship of the land which prevent the applicant all reasonable use.

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**.

Mrs. Harris seconded the motion. The motion carried by a vote of 3 - 1 with Mr. Ribble voting nay. Mr. Hammack was not present for the vote; Mr. DiGiulian and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 26, 1990.
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10:00 A.M. VIRGILIO M. MARQUINA M. AND EVELIN M. MARQUINA, SPA 80-A-017-1, application under Sect. 3-103 of the Zoning Ordinance to amend S-80-A-017 for a child care center to permit change of applicant and to increase parking, hours of operation, and number of employees, on property located at 5102 Thackery Court, on approximately 1.40863 acres of land, zoned R-1, Annandale District, Tax Map 69-3((1))6A.

Chairman Smith called the representative for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Eickhoff confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report and submitted to the Board a new plat showing revised parking and the one way internal circular system, which had been requested by the Office of Transportation (OT). She noted that OT had not approved the plat because of the inadequate width of two parking spaces. She further asked the Board to disregard the last sentence in the second paragraph on page 8 of the staff report dated January 11, 1990, and submitted a Health Department Permit for fifty children. Ms. Bettard stated that staff recommended approval subject to the recommended development conditions in the staff report.

In response to questions from the Board, Ms. Bettard said that there did not have to be a waiver of the 25 foot screening area for the playground. She noted that there is a 3 foot high fence, numerous mature trees around the play area, and that a 6 foot fence surrounds the property. She said that the applicants are proposing to use the first floor as a residence.

The applicants' attorney, Ralph V. Eickhoff Jr., 10625 Jones Street, Suite 101A, Fairfax, Virginia, addressed the Board and explained that the new owners would reside at the site and there would be no changes except for some improvements they intended to make. He went on to say that although the number of children would remain the same, the applicant wishes to extend the hours to 6:30 a.m to 6:30 p.m. The hours are currently from 7:00 a.m. to 6:00 p.m. Mr. Eickhoff stated that the applicants would like to include infant care which necessitates additional employees. He further explained that although there would be fourteen employees, only seven would be on the site at any given time. In response to the Board's earlier question, Mr. Eickhoff noted that OT had not approved the plat presented to the Board.

Mrs. Harris expressed her concern about hearing the Special Permit Amendment request without a plat on which OT staff could recommend approval, to indicate it meets the technical requirements of the Codes.

Mr. Eickhoff said that the applicant would cooperate with OT and adopt any recommendation. He went on to explain that the present owner of the facility is in the process of leaving the area and would like to conclude the exchange of ownership as soon as possible.

In response to Mrs. Thonen's question, Mrs. Bettard stated that the parking requirement could not be met without the two spaces. She said that the plat submitted to the Board had the revised parking layout, but that OT would not approve it because parking spaces 8 and 9 were not the required size.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and said that if the existing garage was used, the parking requirement could be met and added that staff could not support any additional paving on the site. Ms. Kelsey said if adequate parking was provided, as required by the Zoning Ordinance, staff could support the use.

Fred Blum, 5102 Thackery Court, Fairfax, Virginia, husband of the owner of the day care center, addressed the Board and explained that the garage is currently being used for recreation and as a storage room. He stated that the garage is not considered a part of the school and could be used for parking.

Mr. Eickhoff explained that there would be no changes to the day care center except for expansion of hours and the implementation of infant care. He presented photographs of the existing vegetation to the Board and asked for a waiver of the transitional screening and barrier as indicated on the plat.

In response to Mrs. Harris' question, Ms. Bettard explained that the parking requirement is based on the number of children attending the day care center.

Chairman Smith called for any speakers in support of the application.

Mr. Blum presented a petition signed by the parents of children who attend the day care center. He explained that the site is well screened on approximately 1.4 acres of land and has been in existence for ten years without any difficulties.

Chairman Smith called for speakers in support of the request and the following came forward: Bob Sweet Jr., 5101 Thackery Court, Fairfax, Virginia; Ron Qualley, the pastor of Lord of Life Lutheran Church, 5114 Twinbrook Road, Fairfax; Karen Rechaitzer, 9822 Rand Drive, Burke, Virginia; and Mary Byers, 5101 Thackery Court, Fairfax, Virginia.

The citizens voiced their approval of the application and noted that quality child day care centers are vital to the community.

Rochelle Blum, 5102 Thackery Court, Fairfax, Virginia, the present owner of the day care center, explained to the Board that she is selling the day care center in order to take care of her dying mother and would like to settle the matter as soon as possible.

Chairman Smith call for any additional speakers in support of the applicant and hearing no reply called for speakers in opposition.

John Roberts, 11403 Octogan Court, Fairfax, Virginia, owner of the property at 5104 Thackery Court, stated that he was representing a group of the neighbors who objected to the child care center because of the noise, the traffic, and the parking problems. He said that Thackery Court is used for parking by the parents of children attending the day care center and also expressed his belief the parents use excessive speed when traveling on Thackery Court. Mr. Roberts stated that he had not complained to the Police Department or to Zoning Enforcement about the problems the day care center had caused but had voiced objections at previous BZA hearings.

Robert J. Meadows, 5105 Thackery Court, Fairfax, Virginia, read a letter from the Kings Park Civic Association asking the Board not to increase the hours of operation and to buffer the area from the noise generated by the use. In particular, he mentioned the outside ringing of the telepone which is magnified by the way the property is located, therefore creating a bowl effect. The letter also suggested the clients of the day care center be made aware of the speed limit and to refrain from using Thackery Court as a parking area. He also noted that Mr. Sweet, who testified in support, had an easement through Mr. Blum's property to get to his property.

In response to Mr. Ribble's question, Mr. Sweet told the Board that when he bought the property in 1984 he was given a 25 foot right-of-way through the Blum and County property. He used the viewgraph to show the location of his easement to the Board.

After further discussion, it was the Board's consensus that they could not hear the case without a new plat, noting that Mr. Sweet's easement was not shown on the plat submitted with the application.

In response to a question from Chairman Smith, Mr. Eickhoff and Mr. Blum confirmed that Mr. Sweet did have a right-of-way through the property.

Mrs. Harris made a motion to defer SPA 80-A-017 until a new plat could be submitted. Mr. Ribble seconded the motion.

It was the consensus of the Board that the staff and the applicant work closely with OT to resolve outstanding problems.

The motion carried by a vote of 5 - 0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

Ms. Kelsey suggested a deferral date of January 30, 1990 at 11:45.

Hearing no objection, the Chair so ordered.

Chairman Smith asked the applicant to submit a revised plat to Mr. Roberts and Mr. Meadows at least two days in advance of the public hearing.

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The Board recessed at 10:05 a.m. and reconvened at 10:15 a.m.

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Page 231, January 18, 1990, (Tape 2), Scheduled Case:

10:15 A.M. RICHARD M. DOYLE, SP 89-A-052, application under Sect. 8-901 of the Zoning Ordinance to allow detached shed, 10.5 ft. in height, to remain 0.6 ft. from rear lot line (10.5 ft. min. rear yard required by Sect. 10-104), on property located at 4226 San Juan Drive, on approximately 10,505 square feet of land, zoned R-3 and WS, Annandale District, Tax Map 57-3((7))14.

Chairman Smith stated that the notices for SP 89-A-052 were not in order and asked if the applicant was present.

The applicant, Richard M. Doyle, 4226 San Juan Drive, Fairfax, Virginia, addressed the Board and said that he was aware that his notices were not in order.

Chairman Smith called for anyone interested in this application.

John E. Berry, 10920 Decatur Drive, Fairfax, Virginia, told the Board that he had sent a memorandum in opposition to the Board.

Chairman Smith explained to Mr. Berry that because the notices had not been done correctly, the case could not be heard at this time. Mr. Berry said that he was undergoing chemotherapy but would be able to attend the public hearing at a deferred date.

Chairman Smith asked staff for a deferral date. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a date of March 13, 1990 at 9:00 a.m. Ms. Kelsey told the Board that she had discussed the notice procedure with Mr. Doyle and believed that he now understood the requirement. Ms. Kelsey pointed out to the Board that the shed is in violation and explained that if the notices were not done for the new public hearing, staff would ask the Board to dismiss the case and notify Zoning Enforcement.

Chairman Smith informed Mr. Doyle that if the notices were not done and the case not heard on the deferred date, the zoning violation would be enforced.

Mr. Doyle agreed to the deferral date and assured the Board the notices would be correctly done.

Hearing no objection, the Chair so ordered.

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Page 232, January 18, 1990, (Tape 2), Scheduled Case:

10:30 A.M. HOWARD F. DAWSON, JR. VC 89-A-144, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 8.5 feet from side lot line such that side yards total 16.5 feet (20 ft. total side yards required by Sect. 3-307), on property located at 10723 Rippon Lodge Drive, on approximately 9,577 square feet of land, zoned R-3 (developed cluster), Annandale District, Tax Map 68-3((11))5.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Dawson confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Randy Baxter, Staff Coordinator, presented the staff report and noted that in October 1989 the Board had granted a variance for an enclosed deck and porch in the neighborhood.

Howard F. Dawson, 10723 Rippon Lodge Drive, Fairfax, Virginia, explained that he would like to enclose the existing carport in order to protect his vehicles from the elements and vandalism. He stated that he believed that he could gain fuller use of his property with a garage, noting that most of the homes in the area have garages.

In response to Mr. Ribble's question, Mr. Dawson stated that he was enclosing the existing carport and would not intrude further into the side yard. He explained that the minimum side lot requirement was met but the required total for both side yards was not.

Mr. Hammack asked if the other garages in the neighborhood required variances and Mr. Dawson said that the majority of the garages were part of the original structure. He added that one of his neighbors had been granted a variance to enclose a carport.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant VC 89-A-144 subject to the development conditions contained in the staff report dated January 11, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-A-144 by HOWARD F. DAWSON, JR., under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 8.5 feet from side lot line such that side yards total 16.5 feet, on property located at 10723 Rippon Lodge Drive, Tax Map Reference 68-3((11))5, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 18, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 9,577 square feet of land.
4. The applicant has satisfied the nine required standards for a variance.
5. The lot is exceptionally narrow.
6. There will be no extension into the side yard.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5 - 0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 26, 1990. This date shall be deemed to be the final approval date of this variance.

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10:45 A.M. JAMES TSAKANIKAS, SP 89-S-053, application under Sect. 3-C04 of the Zoning Ordinance to allow a home professional office, on property located at 12389 Henderson Road, on approximately 5.0983 acres of land, zoned R-C and WS, Springfield District, Tax Map 85-4((5))28.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Tsakanikas confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Randy Baxter, Staff Coordinator, presented the staff report and explained that the applicant has been operating a home real estate office for three years without a permit, that a written notice of violation had been issued on September 28, 1989, and that staff recommended denial of the application for the reasons set forth in the staff report.

James Tsakanikas, 12389 Henderson Road, Clifton, Virginia, addressed the Board and explained that he did not realize that he was in violation of the Ordinance and that although he does not conduct business with clients in his home, he must display the sign because the State of Virginia requires his wife, a real estate broker, to do so.

In response to Mr. Hammack's questions as to how and where he meets clients, Mr. Tsakanikas said when he is contacted by a builder he goes to the building site to conduct the business.

Mrs. Thonen questioned Mr. Tsakanikas on the need for a professional home office when he has no clients coming to the home. He explained that his wife is a broker and therefore must display a sign.

In answer to Mrs. Harris' question, Mr. Tsakanikas explained that he has eleven parking spaces on the property because he is a sports car fan and has many vehicles. He said that the parking spaces are used by his immediate family and are not for used for his business. Mr. Tsakanikas added that he has the support of the neighbors and the homeowners association.

Mrs. Harris stated that when she drove past the site the lighted sign was very visible.

Chairman Smith explained to Mr. Tsakanikas that the Board must decide if the request is in harmony and compatible to the Comprehensive Plan.

In response to a question from Mrs. Thonen, Jane Kelsey, Chief, Special Permit and Variance Branch, said that the Board has not granted a new home professional office special permit in the Watershed Protection Overlay District (WSPOD) since the time of the adoption of the WSPOD. She added that the Board had approved a special permit extension for an existing home professional office with very stringent conditions and a maximum term.

Chairman Smith stated that the Board had received a letter from a neighbor on Clifton Hunt Drive in objection to the request.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mr. Hammack made a motion to deny SP 89-S-053 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-053 by JAMES TSAKANIKAS, under Section 3-C03 of the Zoning Ordinance to allow a home professional office, on property located at 12389 Henderson Road, Tax Map Reference 85-4((5))28, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 18, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 5.0983 acres of land.
4. The applicant has not satisfied the eight standards required for a special permit.
5. The Board is in agreement with the analysis as stated in the Staff Report dated January 11, 1990 which notes that the use is not in harmony with the Comprehensive Plan for the area.

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 and the additional standards for this use as contained in Sections 8-903 and 8-907 of the Zoning Ordinance.

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

Mrs. Thonen seconded the motion adding that the preservation of the rural character of the Occoquan is a reason to deny this use, and further that the request for a sign in such low density residential is not appropriate. The motion carried by a vote of 5 - 0 with Mr. DiGiulian and Mr. Kelley not present at the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 26, 1990.

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Page 235, January 18, 1990, (Tape 2), After Agenda Item:

Woodlawn Country Club, SPA 74-V-107-1, Additional Time
5111 Old Mill Road
110-1(1))3,4,13,13A

Mrs. Thonen expressed her concern about the reference to revisions mentioned in the letter from the applicant.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and noted that in December 1988 the Board had granted additional time to the applicants and that no plans have been submitted to the County up to the present time. She stated that the applicants had met with staff and the applicants indicated that they desired modifications to the original request and were advised that they must seek an amendment if they wished a major change to the original approved special permit. Ms. Kelsey stated staff recommended denial because of the time that has expired without the applicant exercising due diligence.

In answer to the Board's inquiry, Ms. Kelsey explained that when an additional time request is accepted, staff reviews the expiration date and discusses any problems the applicant may have. Staff then must check with the various departments to see if any changes to the Comprehensive Plan or the transportation network have taken place.

Mr. Hammack asked if there had been any changes, and if so why were they not included in the staff report. He expressed his belief that sixty days is sufficient time in which to investigate an additional time request and to inform the Board of any changes that may have taken place.

After a discussion, it was the Board's consensus that the applicant should be granted a six months extension.

Mr. Hammack made a motion to grant the applicant an additional six (6) months in order to commence construction. Mrs. Harris seconded the motion which carried by a vote of 5 - 0 with Mr. DiGiulian and Mr. Kelley absent from the meeting. The new expiration date is May 27, 1990.

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Page 235, January 18, 1990, (Tape 2), After Agenda Items:

Approval of September 14, 1989 and October 24, 1989 Minutes

Mr. Hammack moved to accept the Minutes as submitted by the clerk. Mrs. Harris seconded the motion which carried by a vote of 5 - 0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

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Page 235, January 18, 1990, (Tape 2), Information Item:

Mr. Hammack expressed concern about the Board receiving additional time requests after the expiration date as it puts the Board in an awkward position.

The Board discussed the difficulties involved with additional time requests and Mrs. Thonen suggested receiving the written request as soon as staff receives them. She explained that this would be for information, not staff response.

Page 236, January 18, 1990, (Tape 2), Information Item, continued from Page 235)

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that if it was the consensus of the Board, a motion to that effect would be in order.

Mrs. Thonen made a motion to have staff give the written request for additional time to the Board, as an information item, as soon as it is received. The motion carried by a vote of 5 - 0 with Mr. DiGiulian and Mr. Kelley absent from the meeting.

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Page 236, January 18, 1990, (Tape 2), After Agenda Items:

As there was no other business before the Board, the meeting was adjourned at 12:40 p.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED March 13, 1990

APPROVED March 22, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, January 23, 1990. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble.

Chairman Smith called the meeting to order at 9:18 a.m. and gave the invocation. There were no Board matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 237, January 23, 1990 (Tape 1), Scheduled case of:

9:00 A.M. JAMES C. AND DEIRDRE DOLAN DOUGLAS, VC 89-C-093, application under Sect. 18-401 of the Zoning Ordinance to allow addition to dwelling to 14.4 feet from rear lot line (25 ft. rear yard required by Sect. 3-507), on property located at 13601 Angelica Court, on approximately 7,644 square feet of land, zoned R-5, Centreville District, Tax Map 34-2((5))9A. (DEF. FROM 10/24/89 SO ARB CAN REVIEW REQUEST)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Douglas replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that this case had been deferred from October 24, 1989 so that the applicants could present their request to their neighborhood Architectural Review Board (ARB).

Deirdre Dolan Douglas, 13601 Angelica Court, Chantilly, Virginia, co-applicant, came forward. She stated that the design of the proposed addition is similar to others in the neighborhood and that the request would increase privacy for them as well as the neighbors. She explained that the ARB had first denied the request and she had then submitted two separate applications, one for the deck and one for the porch. The ARB again denied the porch but approved the deck with a 10 foot setback and screening all the way down.

Chairman Smith stated that the applicant had not yet shown a hardship.

Mr. Hammack questioned Mrs. Douglas as to why the height of the addition was shown as 19 feet. Mrs. Douglas explained that the back of the existing dwelling is three stories high and the proposed addition would be located in the middle.

She added that her adjacent neighbor has a screened porch. Chairman Smith asked if the neighbor's addition had required a variance and Mrs. Douglas replied that it had not.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mr. Hammack made a motion deny VC 89-C-093 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-093 by JAMES C. AND DEIRDRE DOLAN DOUGLAS, under Section 18-401 of the Zoning Ordinance to allow addition to dwelling to 14.4 feet from rear lot line, on property located at 13601 Angelica Court, Tax Map Reference 34-2((5))9A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1990; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-5.
3. The area of the lot is 7,644 square feet of land.
4. The applicant has not satisfied the nine standards for the construction of this addition.
5. The applicant could construct a smaller screened porch without a variance.
6. This is a brand new structure.
7. The deck that has been constructed complies 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;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0-1 with Mr. Ribble abstaining.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1990.

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Page 238, January 23, 1990 (Tape 1), Scheduled case of:

9:15 A.M. MATTHEW A. MATHES, VC 89-V-146, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling to 9 feet from both side lot lines (15 ft. min. side yard required by Sect. 3-207), on property located at 8514 Engleside Street, on approximately 5,600 square feet of land, zoned R-2, Mt. Vernon District, Tax Map 101-3((7))11.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mathes replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report which stated that the application, in staff's opinion, met the nine standards for a variance, particularly number 6(a).

Matthew A. Mathes, 8514 Engleside Street, Alexandria, Virginia, the applicant, came forward and stated that he would like to construct a single family dwelling on the site similar to others in the neighborhood. He added that in 1978 the area was rezoned to R-2; and, without a variance the lot is unusable.

There were no speakers in support of the request and Chairman Smith called for speakers in opposition to the request.

Donna Ridgely, 8518 Engleside Street, Alexandria, Virginia, came forward and questioned who would live in the house as the applicant already owned property on the same street. Chairman Smith pointed out that who would live in the house was not a relative issue noting the other houses in the area which are similarly constructed.

Ms. Ridgely then expressed concern over the drainage problem. Chairman Smith explained that was an issue that would come under the jurisdiction of another County agency.

Mr. Hammack questioned the speaker as to severity of the drainage problem. Ms. Ridgely replied that it was bad.

Mr. Mathes waived rebuttal.

Staff had no closing comments and Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant VC 89-L-146 subject to the development conditions contained in the staff report dated January 16, 1990 with the following addition: "The applicant must solve the drainage problem, if one exists."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-146 by MATTHEW A. MATHES, under Section 18-401 of the Zoning Ordinance to allow construction of dwelling to 9 feet from both side lot lines, on property located at 8514 Engleside Street, Tax Map Reference 101-3((7))11, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 5,600 square feet of land.
4. This is one of the classic variance cases where there would be absolutely no use of the land if the applicant is not allowed to develop.
5. The lot is very long and narrow.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. The applicant must solve the drainage problem, if one exists.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 240, January 23, 1990 (Tape 1), Scheduled case of:

9:30 A.M. JOHN M. OHRNBERGER, SP 89-S-054, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 11.6 ft. from side lot line (20 ft. min. side yard required by Section 3-C07) on property located at 4363 Cub Run Road, on approximately 11,506 square feet of land, zoned RC and WS, Springfield District, Tax Map 33-4((2))311.

Chairman Smith informed the Board that staff had indicated the notices in this case were not in order.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested March 22, 1990 at 9:00 a.m. as a deferral date.

Hearing no objection, the Chair so ordered.

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Page 240, January 23, 1990 (Tape 1), Scheduled case of:

9:45 A.M. FLORIA AND ROBERT KUKLER, VC 89-P-149, application under Sect. 18-401 of the Zoning Ordinance to allow construction of swimming pool to 4 feet from the lot line formed by the pipestem driveway and to allow an accessory structure to occupy more than 30 percent of the minimum rear yard (25 ft. min. front yard required by Sect. 2-416 and limitation of 30 percent coverage of the min. rear yard by accessory structures per Sect. 10-103), on property located at 13303 Melville Lane, on approximately 9,477 square feet of land, zoned R-3, Providence District, Tax Map 45-3((2))(52)21. (OTH GRANTED)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Gwizdz replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Joseph Gwizdz, 14100 Willard Road, Chantilly, Virginia, came forward to represent the applicants.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that Mr. Gwizdz was not on the affidavit and therefore could not speak on behalf of the applicants.

Mr. Gwizdz stated that Mr. Kukler was present and could make the presentation.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that the applicant had obtained a building permit for the proposed swimming pool based on a plat that did not show the pipestem driveway. She added that research indicated that the house on the adjacent lot sets back approximately 30 feet from the shared lot line.

Mr. Ribble asked how many lots were served by the pipestem and Ms. Greenlief replied two.

Robert Kukler, 13303 Melville Lane, Fairfax, Virginia, the applicant, came forward. He stated that he had contracted Lewis Pools to construct the pool and had left it to them to obtain the proper permits and had not even cut down one tree until the permit was issued. The sewer line was hit during the construction and the contractor contacted the County to see if the pool could be relocated and was first told that the pool could be moved within 6 feet of the lot line and then was told that the setback was 25 feet. Mr. Kukler stated that it was at this point he discovered that what he thought was a rear yard was actually a front yard. He noted that two adjoining neighbors have pools and do not object to the request. Regarding the justification, Mr. Kukler stated that the back yard has been dug up for the pool and trees have been removed.

In response to questions from the Board, Mr. Kukler replied that the pool will be located 10 feet from the pipestem.

Mr. DiGiulian stated that it appeared to him that the lot is very shallow with a sanitary sewer easement running through the lot.

Mr. Hammack asked if the pool could be moved to the east and Mr. Kukler replied that it could not because the pool would then be located over top of the County sewer easement. He explained that when the houses on the pipestem were constructed a new sewer line was added and his lot had been connected to that line.

The Board questioned staff as to whether or not the total land area including the sewer easement met the minimum yard requirements. Ms. Greenlief replied that the applicant's land exceeded the requirement by approximately 3 percent.

With respect to the other pools in the neighborhood, Mr. Gwizdz stated that his company had only installed one of the pools, thus could only address that one. He added that a sewer easement had not been located on the neighbor's property therefore the same problems had not been encountered.

Jerry Clapp, 14100 Willard Road, Chantilly, Virginia, designer of the pool, explained that the pool could not be moved further to the left.

Mr. DiGiulian asked if permits had been obtained prior to the start of construction and Mr. Clapp replied that they had.

There were no speakers to address this request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant VC 89-P-149 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-149 by FLORIA AND ROBERT KUKLER, under Section 18-401 of the Zoning Ordinance to allow construction of swimming pool to 4 feet from the lot line formed by the pipestem driveway and to allow an accessory structure to occupy more than 30 percent of the minimum rear yard, on property located at 13303 Melville Lane, Tax Map Reference 45-3((2))(52)21, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1990; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 9,477 square feet of land.
4. The applicant has satisfied the nine standards, specifically that the lot has an exceptional shape and is exceptionally shallow.
5. The existence of the sanitary sewer easement across the rear of the lot does impact the lot.
6. There is no other location to construct the pool.
7. The pool construction may not have been started if a building permit had not been issued.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 243, January 23, 1990 (Tape 1), Scheduled case of:

10:00 A.M. PHYLLIS M. AND DAVID C. BENNER, VC 89-L-126, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with one lot having a lot width of 95 feet and the other lot having a lot width of 85 feet (100 ft. min. lot width required by Sect. 3-206) and to allow the existing dwelling on proposed Lot B-2 to be 13.7 feet from the new side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 5219 Monroe Drive, on approximately 45,900 square feet of land, zoned R-2, Lee District, Tax Map 71-4((6))B. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that it is staff's opinion that the application does not meet all the standards for approval, specifically standards 6 and 9.

Keith C. Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, represented the applicants. He stated that this request will allow the applicants to subdivide one lot approximately 45,900 square feet in size into two lots as the large lot has now become too much for them to maintain due to their age. Mr. Martin added that there is an existing house where the applicants now reside and will continue to reside, the request will not be precedent setting as most of the original lots have already been subdivided, the request will not be detrimental to the neighborhood, and there is no citizen opposition.

Mr. Hammack asked the size of Lots 18 and 19. Mr. Martin replied that both lots were smaller than the subject property and both had houses constructed in the middle.

In response to a question from Chairman Smith as to why the applicants were requesting two variances, Mr. Martin explained that this would allow the lots to be more in line in size with the surrounding lots.

There were no speakers to address the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mrs. Harris made a motion to deny VC 89-L-126 for the reasons noted in the Resolution.

The Board also granted the applicant a waiver of the 12-month time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-126 by PHYLLIS M. AND DAVID C. BENNER, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with one lot having a lot width of 95 feet and the other lot having a lot width of 85 feet and to allow the existing dwelling on proposed Lot B-2 to be 13.7 feet from the new side lot line, on property located at 5219 Monroe Street, Tax Map Reference 71-4((6))B, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1990; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 45,900 square feet of land.

4. The property does not have an exceptional size, shape, or topography considering the other lots in the area that are of equal or greater size. This is the third largest in the subdivision and is not unique in that way.
5. There is no hardship that has been demonstrated by the applicant. The applicant has lived on this property for some years and there is no demonstrable hardship that the non-granting of this variance will approach confiscation of 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. Hammack seconded the motion. The motion carried by a vote of 4-3 with Chairman Smith, Mrs. Harris, Mr. Hammack and Mr. Ribble voting aye; Mrs. Thonen, Mr. DiGiulian and Mr. Kelley voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1990.

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The Board recessed at 10:35 and reconvened at 10:55 a.m.

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Page 244, January 23, 1990 (Tapes 1-2), Scheduled case of:

10:45 A.M. ALBERTA L. BOOTHE, VC 89-D-129, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into three (3) lots, proposed Lots 1A and 2A having a lot width of 15.05 feet (200 ft. min. width required by Sect. 3-E06), on property located at 858 Seneca Road, on approximately 6.4184 acres of land, zoned R-E, Dranesville District, Tax Map 6-4((1))9. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sanders replied that it was. Chairman Smith then

asked for disclosures from the Board members. Mrs. Harris stated that she would abstain from the case.

Randy Baxter, Staff Coordinator, presented the staff report. He stated that it is staff's opinion that the applicant does not meet all the required standards for a variance, that the request could set a destabilizing precedent, and that the request would be disruptive to the neighborhood.

H. Kendrick Sanders, 3905 Railroad Avenue, #200N, Fairfax, Virginia, attorney for the applicants, came forward and stated that this application had been deferred to allow the applicant time to revise the plat. He added that another engineer had been consulted and had concluded that a public street could not be developed for several reasons one being sight distance, therefore the only option is the pipestem driveway. Mr. Sanders adopted the testimony from the previous public hearing with the exception of staff's negative comments. In closing, he stated that if it was not the BZA's intent to grant three lots the applicant would be willing to accept two lots.

There were no speakers in support of the request and Chairman Smith called for speakers in opposition to the request. The following came forward: Vivian Lyons, 10808 Nichols Ridge Road, Co-Chair and President, Great Falls Planning and Zoning Association; Marge Gersic, 11120 Corobon Lane, Great Falls, Virginia; Janos Nyitrei, 854 Seneca Road, Great Falls, Virginia; and, Edith McKinnon, 864 Seneca Road, Great Falls, Virginia.

Ms. Lyons stated that the Great Falls Citizens Association had met and unanimously voted to support the staff report. The speakers did not believe that the standards had been met, the sight distance is inadequate, and the request would negatively impact the neighborhood.

During rebuttal, Mr. Sanders disagreed with the speakers comments and stated that the hardship is real estate taxes and added that the lots would be larger than most in the area.

The Board and Mr. Sanders discussed why he had not submitted an amended plat showing a two lot subdivision.

Mr. Hammack stated that he would like to see a revised plat before commenting.

Chairman Smith stated that he would prefer to see the applicant reapply.

Mr. Kelley made a motion to deny VC 89-D-129 for the reasons noted in the Resolution. Mr. Hammack seconded the motion. The motion carried by a vote of 4-1-0 with Chairman Smith, Mrs. Thonen, Mr. Hammack, and Mr. Kelley voting aye; Mr. DiGiulian voting nay; Mrs. Harris abstaining; and Mr. Ribble not present for the vote.

Mr. Kelley then made a motion to grant the applicant a waiver of the 12-month time limitation. Mr. Hammack seconded the motion. The motion carried by a vote of 4-1-0 with Mrs. Thonen, Mr. DiGiulian, Mr. Hammack, and Mr. Kelley voting aye; Chairman Smith voting nay; Mrs. Harris abstaining; and Mr. Ribble not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-129 by ALBERTA L. BOOTHE, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into three (3) lots, proposed Lots 1A and 2A having a lot width of 15.05 feet, on property located at 858 Seneca Road, Tax Map Reference 6-4((1))9, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 6.4184 acres of land.
4. The applicant has not met the standards for the many of the reasons listed in the staff report.

5. The granting of this variance would lead to further development in the area and the zoning district would be ipso facto changed.
6. The Board might be more sympathetic to three acre lots although that is not what is before the Board.

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. The motion carried by a vote of 4-1-0 with Chairman Smith, Mrs. Thonen, Mr. Hammack, and Mr. Kelley voting aye; Mr. DiGiulian voting nay; Mrs. Harris abstaining; and Mr. Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1990.

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Page 246, January 23, 1990 (Tape 2), Scheduled case of:

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-113, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104) and to allow a 4.3 foot high fence on a corner lot (3.5 ft. max. height. for a fence allowed by Sect. 2-505), on property located at 2647 Paddock Gate Court, on approximately 11,723 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))1. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-114, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104) and to allow a 4.3 foot high fence on a corner lot (3.5 ft. max. height. for a fence allowed by Sect. 2-505), on property located at 2650 Paddock Gate Court, on approximately 11,804 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))41. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-115, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104), on property located at 2645 Paddock Gate Court, on approximately 10,200 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))2. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-116, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104), on property located at 2643 Paddock Gate Court, on approximately 10,328 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))3. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-117, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104), on property located at 2641 Paddock Gate Court, on approximately 15,208 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))4. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-118, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104), on property located at 2640 Paddock Gate Court, on approximately 14,186 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))36. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-119, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104), on property located at 2642 Paddock Gate Court, on approximately 12,031 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))37A. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-120, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104), on property located at 2644 Paddock Gate Court, on approximately 11,416 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))38A. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-121, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104), on property located at 2646 Paddock Gate Court, on approximately 10,564 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))39. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

11:00 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-122, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. height. for a fence in a front yard allowed by Sect. 10-104), on property located at 2648 Paddock Gate Court, on approximately 10,432 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))40. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST)

Greg Riegle, Staff Coordinator, stated that at the request of staff, the Zoning Administrator had reviewed the information and materials associated with these cases and reached a determination just prior to the public hearing that the 10 lots were most

similar to reverse frontage lots which results in the fences not requiring a variance. As both the applicant and staff would like this determination in writing before withdrawing the applications, Mr. Riegle asked the Board to defer the applications until February 22, 1990 at 11:30 a.m. to allow the Zoning Administrator to document the information used to make this determination.

David P. O'Brien, Esq., attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn & Hanes, P.C., P.O. Box 547, Fairfax, Virginia, came forward and agreed with the deferral.

Mr. DiGiulian made a motion to defer to the date and time suggested by staff. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 248, January 23, 1990 (Tape 2), Scheduled case of:

11:10 A.M. CARMEN J. MANDICH, VC 89-P-055, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage and room additions to dwelling to 10.4 feet from side lot line and 18.9 feet from rear lot line (12 ft. min. side yard; 25 ft. min. rear yard required by Sect. 3-307), on property located at 9122 Maywood Lane, on approximately 11,455 square feet of land, zoned R-3, Providence District, Tax Map 58-2((10))76. (DEF. FROM 7/27/89 AT THE APPLICANT'S REQUEST. DEF. FROM 10/10/89 AT APPLICANT'S REQUEST LAST DEFERRAL. DEF. FROM 12/21/89 FOR NOTICES.)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Mandich replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

In response to questions from the Board, Ms. Greenlief explained that the carport is underneath a bedroom.

The applicant, Carmen J. Mandich, 9122 Maywood Lane, Fairfax, Virginia, came forward and stated that she would like to enclose the existing carport in order to have a two garage. She added that she would withdraw the request for the addition if the Board would allow the carport to be enclosed as she believed that it would improve the looks of the property.

Mrs. Harris asked what type of material would be used to enclose the carport and Ms. Mandich assured the Board that the materials would match those on the existing dwelling.

Mrs. Thonen stated that it appeared that the lot had an unusual shape. Ms. Mandich stated that the addition could not be located elsewhere on the lot.

There were no speakers to address the request, nor any staff closing comments, and Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant-in-part VC 89-P-055 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-055 by CARMEN J. MANDICH, under Section 18-401 of the Zoning Ordinance to allow construction of garage and room additions to dwelling to 10.4 feet from side lot line and 18.9 feet from rear lot line (**THE BOARD GRANTED ONLY THE GARAGE ADDITION**), on property located at 9122 Maywood Lane, Tax Map Reference 58-2((10))76, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 23, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,455 square feet of land.
4. The applicant has indicated that if the Board granted the garage addition she would withdraw the request for the room addition.
5. The applicant has satisfied the nine standards, in particular that the lot is irregular in shape and has sharply converging lot lines towards the front of the property.
6. There is an unusual, if not an extraordinary situation, that this Board about 11 years ago granted a variance for the construction of a bedroom above the area that the applicant now proposes to enclose to be used for a garage.
7. The property would look better and would be a lot better for the house and the community if the area were enclosed.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. The garage enclosure shall be constructed with white siding materials compatible with the siding on the existing bedroom directly overhead.

Page 250, January 23, 1990 (Tape 2), (CARMEN J. MANDICH, VC 89-P-055, continued from Page 249)

5. Evergreen trees or shrubs shall be added to the side and rear of the new garage addition as may be determined by the County Arborist, if it is necessary to provide additional screening for the neighbors.

6. The applicant must submit a revised plat showing only the garage addition and deleting the Variance request to the rear.

Mrs. Thonen seconded the motion. The motion carried by a vote of 6-0 with Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 31, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 250, January 23, 1990 (Tape 2), After Agenda Item:

Cottontail Swim Club, SPA 81-S-060-1, Out of Turn Hearing

Mrs. Harris made a motion to deny the request. Mr. DiGiulian seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 250, January 23, 1990 (Tape 1), Information Items:

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the Board about their meeting with James P. Zook, Director, Office of Comprehensive, and Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning, scheduled for next week.

Mrs. Thonen asked that the Board forego discussing the policies/procedures until after the meeting with Mr. Zook and Ms. Byron.

Mr. Hammack brought the other Board members up to date on the requested pay increases and stated that it was his understanding that the County Executive had made a recommendation that the pay per meeting be increased to $125.

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Page 250, January 23, 1990 (Tape 1), After Agenda Item:

Richard M. Doyle, SP 89-A-052

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had received a request from the applicant in SP 89-A-052 that his public hearing be rescheduled until after March 23, 1990. Ms. Kelsey noted that the applicant was now under notice of violation.

It was the consensus of the Board to deny the applicant's request and leave the case scheduled for March 13, 1990. They indicated that the applicant could have a representative present the case, but that person's name will need to be added to the affidavit.

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As there was no other business to come before the Board, the meeting was adjourned at 12:02 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: February 22, 1990

APPROVED: March 6, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, January 30, 1990. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble.

Chairman Smith called the meeting to order at 9:15 a.m. and gave the invocation. There were no matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 251, January 30, 1990, (Tape 1), Scheduled Case:

9:00 A.M. TERRY MILLER, SP 89-M-043, application under Sect. 3-403 of the Zoning Ordinance to allow a child care center, on property located at 4401 Carrico Drive, on approximately 35,230 square feet of land, zoned R-4, HC, and SC, Mason District, Tax Map 71-1((5))3A, pt. 4. (DEF. FROM 10/31/89 TO ALLOW APPLICANT TO PURSUE RESUBDIVISION)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Miller confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. He explained that a continuance had been granted in order to allow the applicant to pursue resubdivision. Mr. Riegle stated that the Department of Environmental Management (DEM) has not approved the application to resubdivide, and that staff has strong concerns about the level of use and development on a site of this size as well as the insufficient screening, and therefore recommended denial.

In response to questions from the Board, Mr. Riegle said that staff cannot direct an applicant to redesign a proposed site. He also explained that the child care center could not be permitted as an accessory use to the residential dwelling unless the two were physically connected. He stated that staff does recommend general changes to the screening, parking, and building size, but staff refrained from actually telling an applicant how and where to build. In this instance, staff did recommend that this applicant try to consolidate the use on both lots.

Terry Miller, 4407 Carrico Drive, Annandale, Virginia, addressed the Board and explained that in the two years that he has been pursuing this matter, he has spent between fifteen and twenty thousand dollars. He said that at first they had considered using the existing house as part of the day care center, but that the County inspection of the house turned up concerns about the wood framing and recommended the installation of a sprinkler system. With the County recommendations in mind, he decided to construct a new building. Mr. Miller questioned the estimated traffic the day care center would generate according to staff, stating that some of the students would be pedestrians and that car pools would be used. Mr. Miller said that he had the Carrico and Hillbrook Civic Group's approval.

Mr. Miller explained that he had been advised by the Site Review Branch, DEM, that it would be preferable to subdivide after permission is granted for the child care center. He said that the issues of concern were the screening, the lot line, and the provision of a service road. He stated that since he would reside in the house, the screening should be exempted, and asked the Board not to address the service road requirement. He said that the proposed center would be sound proof, aesthetically pleasing, and built with concern for the health and welfare of the children.

In reply to Mrs. Thonen's question, Mr. Riegle said that the amount of employees required by the County for a day care center would depend on the hours of the employees and the ages of the children.

Replying to questions from Mrs. Harris, Mr. Miller said that there is a sidewalk along Route 236 but none on Carrico Drive. He explained that there would be walls built to alleviate the noise and to screen the property from Route 236. Mr. Miller stated that he would be open to any suggestion from the Board on reducing the noise and air pollution in the outside play area.

Chairman Smith called for speakers in support of the request.

The President of the Carrico Association, Louis Roland, 4411 Carrico Drive, Annandale, Virginia, expressed his and the neighboring communities' support for the day care center, stating Mr. Miller has always lived up to his promises. He said he was opposed to a service road because he believed it would cause accidents. Mr. Roland said that the day care center was needed in the community and asked the Board to approve the request.

Dorothy Miller, 4407 Carrico Drive, Annandale, Virginia, explained that the day care center would be required to have fifteen employees on the site at any given time with the ratio of employee per child depending on the age group.

Chairman Smith call for any additional speakers in support of the applicant, and hearing no reply called for speakers in opposition.

In replying to questions from the Board, Mr. Riegle said that the George Mason Library had provided a service drive but that the office building to the west had not. He could offer no

background as to why the office building had not. He explained that the Office of Transportation was seeking to separate through traffic from local traffic, and had advised staff to pursue a service drive with any development in this area. He explained that development conditions 16 and 17 need two different right-of-way dedications because they are for dedication only and allow for future road improvements.

There being no further speakers, Chairman Smith asked for staff's comments.

Mr. Riegle said that staff had concerns relating to noise, air pollution, and the proposed screening of the play area.

In reply to Mr. Hammack's question, Mr. Riegle explained that staff had requested 35 feet of screening on the northern portion, 25 feet of screening on the southern portion, landscaping, and two rows of white pines trees along Carrico Drive.

In reply to Mr. DiGiulian's question, Mr. Riegle said that staff had requested 35 feet screening directly north of the play area because of noise and air pollution concerns.

Mr. Riegle pointed out that staff had requested a service drive and was also concerned about storm drainage.

Chairman Smith called Mr. Miller back to the podium.

In reply to a question from Mr. Hammack, Mr. Miller asked that the screening between his house and the day care center be waived as well as the service road.

In reply to Mrs. Harris' concern about the screening, Mr. Miller said that there is not enough land to meet all the screening requirements.

There being no further comments, Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant SP 89-M-043 for the reasons noted in the Resolution and subject to the development conditions dated October 24, 1989, with the changes as reflected in the Resolution.

Mr. Hammack expressed his belief that this was a great location for a child care center, that it would not adversely impact the community, and it is surrounded by commercial uses. He added that he believed staff had imposed too many requirements.

Mrs. Thonen asked for a condition that the applicant encourage car pooling, buses and vans because of the volume of traffic in the area.

Mrs. Harris stated that it is a wonderful site for a child care center but believed that the two lots should be consolidated so that the play area could be better screened.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-M-043 by TERRY MILLER, under Section 3-401 of the Zoning Ordinance to allow a child care center, on property located at 4401 Carrico Drive, Tax Map Reference 71-1((5))3A, pt.4, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the proposed building lot is 35,230 square feet of land.
4. The location is excellent for a child care center.
5. There is no impact on the community.
6. The child care center is surrounded by public and commercial uses.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum daily enrollment for the child care center shall be limited to 94 students.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 of the Zoning Ordinance and shall be a maximum of 18 spaces. All parking shall be on site.

7. The maximum number of employees on site at any one time shall be fifteen (15).

8. The hours of operation for this facility shall be limited to 6:30 a.m. to 7:00 p.m.

9. Transitional Screening 1 (25') shall be provided between proposed Lots 3B and 4A except where it cannot be provided in the area of the parking lot, and behind the building, and play area. A 35 foot screening yard shall be provided along the portion of the north property line extending from the east property line to the east corner of the building for the purpose of shielding the play area which fronts Little River Turnpike. The existing vegetation may be used to satisfy these requirements if the vegetation is supplemented to the satisfaction of the County Arborist.

10. The street tree planting program shown on the plat shall be relocated so that it is within the limits of clearing and grading shown on the plat. This program shall be implemented along Carrico Drive, and the portion of Little River Turnpike not covered by the 35 foot screening requirement outlined in the previous condition. The existing vegetation may be used to satisfy this requirement if to the satisfaction of the County Arborist.

11. Landscaping and foundation plantings shall be provided in the front of the proposed building. The amount, type, and location shall be approved by the County Arborist. The purpose of these planting shall be to enhance the visual appearance of the building.

12. A tree preservation plan and/or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees which may be impacted by construction on the site.

13. The outdoor play area shall contain 5,000 square feet and shall be located in the area generally shown on the plat provided that the play area does not encroach into the required front yard of the site.

14. Noise attenuation measures shall be provided in accordance with the following standards:
A. In order to achieve a maximum interior noise level of 45 dBA Ldn, structural components shall have the following acoustical attributes:

    1. Exterior walls, shall have a laboratory sound transmission class of at least 45, and

    2. Doors and windows shall have a laboratory sound transmission class of at least 37. If windows constitute more than 20% of any facade they shall have the same laboratory sound transmission class rating as walls.

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

4. In areas of outdoor recreation, in order to achieve a maximum exterior noise level of 65 dBA Ldn, acoustical fencing shall enclose the play area. The fencing shall be at least 6 feet in height as determined by DEM. If acoustical fencing is used, it should be architecturally solid from the ground up with no gaps or openings. The structure employed must be of sufficient height to adequately shield the impacted area from the source of the noise.

15. The proposed lighting of the parking areas shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet.
    - The lights shall focus directly onto the subject property.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

16. Stormwater Best Management Practices (BMPs) shall be provided in the form of an infiltration trench and to be placed along the proposed parking area, as may be acceptable to the Director, DEM.

17. If required by DEM, a geotechnical engineering study shall be prepared by, or under the direction of a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved by DEM prior to submittal of the construction plan and approved measures shall be incorporated into the site plan as determined by DEM.

18. Appropriate erosion and sediment control measures shall be implemented during construction if determined necessary by DEM.

19. This approval is subject to DEM review and approval of the proposed resubdivision to 3B and 4A.

20. New plats shall be submitted reflecting the changes.

21. A van or car pool program shall be implemented after the center is in operation in order to mitigate any traffic impact to the area.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 5 - 2 with Chairman Smith and Mrs. Harris voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 254, January 30, 1990, (Tape 1), Scheduled Case:

Jane Kelsey, Chief, Special Permit and Variance Branch addressed the Board and said that Barbara Byron, Director, Zoning Evaluation Division, OCP, was present for the scheduled 10:00 a.m. meeting with the Board but that James Zook, Director, Office of Comprehensive Planning was not.

Mrs. Thonen expressed her desire to discuss legal matters and Ms. Byron informed her that she believed the County Attorney should be present.

The Board discussed the merits of having the County Attorney present. Ms. Byron agreed to consult the County Attorney as to the need for his presence at the meeting. The Board agreed to this and Chairman Smith called for the next scheduled case.

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9:15 A.M. PAUL WAYNE ALEXANDER, SP 89-P-050, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow an enclosed porch to remain 20.8 feet from rear lot line (25 ft. min. required by Sect. 3-307), on property located at 8157 Woodland Court, on approximately 13,623 square feet of land, zoned R-3, Providence District, Tax Map 39-4((18))24.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Alexander confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report and stated that the addition actually built was four feet wider than the plans shown on the building permit.

In response to Mrs. Harris' question, Mr. Riegle said that the reviewer who had accepted the building permit had written "25 feet plus" between the porch and the back lot line on the building permit and that no record of a final inspection could be found.

Chairman Smith noted that it is the applicant's responsibility to arrange for a final inspection.

Paul Wayne Alexander, 8157 Woodland Court, Dunn Loring, Virginia, addressed the Board and said that when the porch was constructed the owner of Lot 16 did not know where his property line laid and the original plat does not show the dimensions from the rear of the house to the property line, so all he could do was assume that he had built within the requirements.

There being no speakers in support of the application, Chairman Smith called for speakers in opposition.

Marsha Sloop, 8159 Woodland Court, Dunn Loring, Virginia, addressed the Board and explained that her property is adjacent to the applicant and asked that the Board require that the porch be inspected for safety reasons. Ms. Sloop said that in 1976 the property had been surveyed and staked, and she presented a picture of Mr. Alexander's deck to the Board.

In response to a question from Mr. Hammack, Ms. Sloop said that she had not reported the violation because she had assumed that the deck was built within the Zoning Ordinance. She stated that she was in opposition to the type and location of the porch.

Ronald E. Sawyer, 8114 Bright Meadows Lane, Dunn Loring, Virginia, addressed the Board and said that his property abuts the applicant's lot. He explained that the noise level generated from the porch, although within the legal limits, has been a problem. He stated that he did not seek denial to the application but he would like the addition's appearance and quality to be upgraded.

In response to Mrs. Harris' question, Mr. Sawyer said that he had planted a line of hemlocks and Mr. Alexander had planted oak trees in order to shield the porch.

Mr. Alexander returned to the podium and told the Board that he thought that the porch had had a final inspection.

Mrs. Harris asked who had made the change between the initial width and the final width, Mr. Alexander explained that the plans had not been drawn to scale.

Mrs. Thonen made a motion to grant SP-89-P-050 for the reason reflected in the Resolution and subject to the development conditions contained in the staff report dated January 23, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-P-050 by PAUL WAYNE ALEXANDER, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow an enclosed porch to remain 20.8 feet from rear lot line, on property located at 8157 Woodland Court, Tax Map Reference 39-4((18))24, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,623 square feet of land.

4. The area exceeds ten (10) percent but the noncompliance was done in good faith.
5. The structure will not impair the purpose and intent of the Ordinance.
6. It will not be detrimental to others.
7. Compliance to the Ordinance would create an undue hardship.
8. The minimum reduction is being allowed in order to give relief to the applicant.
9. The request will not create unsafe conditions with respect to other property and public streets.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

2. The screened porch shall be inspected by appropriate Fairfax County Personnel to ensure that its construction is sound and in conformance with all applicable Building Code requirements and a new Building Permit which reflects the as built dimensions and accurate yards shall be obtained within 90 days.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 4 - 2 with Chairman Smith and Mrs. Harris voting nay. Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 256, January 30, 1990, (Tape 2), Scheduled Case:

Ms. Byron came back to the podium and said that the Board could meet without the presence of the County Attorney but the Board did need to specify the nature of the potential lawsuit to be discussed. She suggested that the Board hear the variance request from Mr. Alexander before the executive meeting.

Chairman Smith called for the next scheduled application.

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Page 256, January 30, 1990, (Tape 2), Scheduled Case:

9:15 A.M. PAUL WAYNE ALEXANDER, VC 89-P-137, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 7 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 8157 Woodland Court, on approximately 13,623 square feet of land, zoned R-3, Providence District, Tax Map 39-4((18))24.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Alexander confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

Paul Wayne Alexander, 8157 Woodland Court, Dunn Loring, Virginia, addressed the Board and said trees screen his property from the neighbors and that he is requesting the garage to protect his cars. He stated that materials similar to the existing structure would be used and that the addition would add aesthetic value to the neighborhood.

In response to Chairman Smith's question, Mr. Alexander expressed his belief that a one car garage addition on a two story colonial would not be aesthetically pleasing.

There being no speakers in support to the application, Chairman Smith called for speakers in opposition.

Marsha Sloop, 8159 Woodland Court, Dunn Loring, Virginia, addressed the Board and explained that her property is adjacent to the applicant and stated that she is in opposition to the request. Ms. Sloop expressed her belief that the Zoning Ordinance should be enforced and asked the Board to deny the variance.

Ronald E. Sawyer, 8114 Bright Meadows Lane, Dunn Loring Virginia, addressed the Board and said that his property abuts the applicant's lot. He explained that the garage addition

would block his view, lower his property value, and expressed his belief that Mr. Alexander had other options such as building a one car garage or using an alternative site. Mr. Sawyer asked the Board to deny the variance.

Brenda Turner, 8155 Woodland Court, Dunn Loring, Virginia, addressed the Board and expressed her opposition to the garage because of its proximity to her property line.

There being no further speakers to address this application, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to deny VC 89-P-137 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-137 by PAUL WAYNE ALEXANDER, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to dwelling to 7 feet from side lot line, on property located at 8157 Woodland Court, Tax Map Reference 39-4((18))24, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,623 square feet of land.
4. The applicant has not satisfied the nine standards.
5. There is another area in which the garage could be build without a Variance.
6. The request would not relieve a hardship but would be a convenience.
7. A long one car garage could be used to house two cars, one behind the other.

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. DiGiulian seconded the motion. The motion carried by a vote of 7 - 0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1990.

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At 11:00 a.m. Mrs. Thonen made a motion to go into Executive Session to discuss legal matters with regard to the pending fence application, the application for the dentist, and how the Board of Supervisors' action regarding proffers would affect the Board of Zoning Appeals.

Upon returning to the Board Room, Mrs. Thonen 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.

Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. DiGiulian, Mr. Kelley and Mr. Ribble not present for the vote.

At 11:15 a.m. Mrs. Thonen announced that the Board of Zoning Appeals would conduct a meeting with staff in the Board of Supervisors' conference room and invited the public to the meeting.

The Board discussed the financial requirement imposed by the County on the applicants for shared parking agreements. Staff informed the Board that the $9,700 required by DEM is used to cover the cost of personnel reviewing the application and any money not used is refunded to the applicant. Staff informed the Board that the County is researching ways in which to streamline the system and to reduce the applicant's cost. Staff noted that the Board of Supervisors has the authority to waive the fees.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Mort Roth, Chief, Land Use Section, DEM, to the Board.

The Board and staff discussed the need to have a working meeting in order to change the by-laws. The need for changes in the swimming pool facilities, and other recreational facility regulations in order to accommodate parties for teenagers was discussed. The Board expressed their interest for a meeting and their intent that a full Board be present for readoption but no date was set.

The regular meeting of the Board of Zoning Appeals was reconvened at 11:40 a.m.

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Page 258, January 30, 1990, (Tape 1), Scheduled Case:

9:30 A.M. COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-1, application under Section 3-103 of the Zoning Ordinance to amend SP 82-S-102 for country club to permit expansion of clubhouse, increase in membership, increase in number of parking spaces, and extension of operating hours, on property located at 5110 Ox Road, on approximately 151.9 acres of land, zoned R-C and WS, Springfield District, Tax Map Reference 68-1((1))17,18,20,

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Best confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the property is located in the Water Supply Protection Overlay District (WSPOD), and said this was the first significant review of the site since the establishment of WSPOD. Mr. Riegle stated that staff recommended approval subject to the development conditions contained in the staff report dated January 23, 1990. He noted that the revised plats presented to the Board accurately depict the additional parking area consisting of 333 spaces.

Stephen L. Best, 4151 Chain Bridge Road, Fairfax, Virginia, addressed the Board and explained that he would like to bring the clubhouse up to the current code requirements, to modify the facilities to accommodate the handicapped, and to increase the number of parking spaces in order to handle special events. He stated that he would be willing to cooperate with staff on the requirement of a deceleration lane on Route 123, and the dedication of land for future expansion on Braddock Road.

Mr. Best asked the Board to consider waiving some of the development conditions that he believed were unnecessary. He specified the following conditions: number 4, requiring a site plan, and said that they were adding on to the existing building and not changing the use, the increase in membership reflects the inactive members, not the active membership which would remain the same; number 9 asking that the concrete abutments and potted trees satisfy the requirement so that he does not have to tear up the parking lot; and number 16 which refers to the protection of a large oak tree, explaining that he has an active tree planting program and the removal of one tree will have no detrimental effect on the area.

In response to questions from Mr. DiGiulian, Mr. Best said that 60 parking spaces would be added bringing the total number of parking spaces to 298.

Mr. Riegle said that with a total membership of 900, the minimum number of parking spaces required is 225.

In response to questions from the Board, Mr. Best said that he would like to expand the hours of the club to Sunday through Thursday 8:00 to 10:30 p.m., Friday 8:00 a.m. to Saturday at 1:00 a.m., and Saturday at 8:00 a.m. to Sunday at 1:00 a.m. He explained that the club was adding a large patio area, expanding the foyer, the kitchen, the dining room, the pro shop, and the locker rooms.

There being no other speakers, Chairman Smith called for staff comments.

Mr. Riegle stated that in accordance with Article 17, any addition to a building that exceeds 2,000 square feet or one-third of the existing gross floor area is subject to the requirement of a site plan. He said that while staff could support additional parking spaces, landscaping was recommended.

In response to Mr. Kelley's question, Jane Kelsey, Chief, Special Permit and Variance Branch, said that staff did not recommend the use of potted trees in the parking lot to satisfy landscaping requirements.

Mr. Kelley noted that at Belle Haven County Club the parking lot has had to be replaced because of the moisture that seeps under it from the trees.

Chairman Smith called Mr. Best to the podium to reply to a question from Mr. Hammack about parking lot drainage. Mr. Best explained that he does not plan to redo the existing parking lot, just to expand it.

Chairman Smith noted that it would be impractical to tear up the existing parking lot in order to plant trees.

Mr. Best noted that he had mistakenly told the Board the number of parking spaces would be 298 when the correct figure is 333.

Staff having no further comments, Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant SPA 82-S-102-1 subject to the development conditions dated January 23, 1990, with the changes as reflected in the Resolution.

In response to a question from Mr. Hammack, Mr. DiGiulian said he had not intended to exempt landscaping for the existing parking lot.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-S-102-1 by COUNTRY CLUB OF FAIRFAX, INC., under Section 3-103 of the Zoning Ordinance to amend SP 82-S-102 for country club to permit expansion of clubhouse, on property located at 5110 Ox Road, Tax Map Reference 68-1((1))17,18,20, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 151.9 acres of 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 Sections 8-403 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.*

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.*

4. The addition to the existing clubhouse shall have the appearance of a one story structure, and FAR on site shall not exceed 0.00873 as depicted on the special permit plat.

5. The hours of operation shall be as follows:

   Use of the clubhouse shall be limited to 7:00 A.M. to 10:30 P.M., Sunday through Thursday, and 7:00 A.M. to 1:00 A.M. Friday and Saturday; occasional exceptions to these hours of operation shall be allowed to accommodate special functions, these functions shall not include the use of the lighted tennis courts and they shall conclude by 1:30 A.M.

   Use of the seasonally enclosed tennis courts shall be limited to 7 a.m. to 12 midnight, seven days a week.*

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

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

6. All lighting and noise shall be confined to the site.

7. There shall be a minimum of 225 parking spaces. There shall be a maximum of 333 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements as determined by DEM. All parking shall be on site.

8. Parking lot landscaping shall be provided in the new parking lot in accordance with Sect. 13-106 of the Zoning Ordinance this requirement can be satisfied with the installation of concrete abutments and potted trees.

9. The total membership shall not exceed 900 members unless an amendment to the special permit allowing an increase in membership has been approved by the BZA.

10. Right of way dedication shall be provided in an amount to be determined by The Department of Environmental Management (DEM) at the time of site plan review to facilitate VDOT road improvements on Braddock Road. Ancillary easements to 15 feet behind the new right-of-way shall be provided to facilitate these improvements.

11. A right turn deceleration lane shall be constructed from Route 123 to the site's entrance to the satisfaction of VDOT and DEM.

12. A fertilizer, herbicide, and pesticide management program shall be developed in conjunction with the Department of Extension and Continuing Education. This program shall be designed to prevent excessive application of fertilizer, herbicide and other chemicals to protect water quality in the Popes Head Creek watershed.

13. Best Management Practices (BMP's) shall be provided on site to the satisfaction of DEM in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.

14. All erosion and sedimentation controls required by the county code as determined by DEM shall be stringently adhered to in the course of construction to prevent soil erosion from impacting the Popes Head Creek watershed.

15. Transitional Screening requirements shall be modified along all lot lines to allow existing vegetation and landscaping materials to satisfy the requirements of Article 13 of the Zoning Ordinance to the satisfaction of the County Arborist.

16. Any proposed new lighting of the parking areas shall be in accordance with the following:

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

    o The lights shall focus directly on the subject property.

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

* A condition of previous approval.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Kelley seconded the motion. The motion carried by a vote of 7 - 0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 261, January 30, 1990, (Tape 2), Scheduled Case:

11:00 A.M. ROBERT ARLEDGE APPEAL, A 89-D-012, to appeal the Zoning Administrator's decision that appellant is in violation of Par. 1 of Sect. 8-004 by not complying with Condition #3 of Special Permit SP 85-D-062 for a structure located at 6022 Orris Street, zoned R-1, Dranesville District, Tax Map 31-2((22)) 2-A.

Chairman Smith noted that a request for deferral had been received from the appellant's attorney.

Patrick Via, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, Box 547, Fairfax, Virginia, came forward and said he would represent the appellant.

Chairman Smith noted that the appellant was in violation and asked for staff comments.

William Shoup, Deputy Zoning Administrator, addressed the Board and stated that staff had no objection to a deferral. He explained that the appellant had submitted an application for an amendment to the Special Permit.

In response to Chairman Smith's question, Jane Kelsey, Chief, Special Permit and Variance Branch, said that staff would like to hear the Special Permit Amendment first and suggested that the appeal be deferred for ninety days.

Chairman Smith asked if anyone was present to speak to the request.

Sarah Reifsnyder, Blankingship and Keith, 4020 University Drive, Fairfax, Virginia, addressed the Board and explained that she was representing Mrs. Means Johnston. Ms. Reifsnyder said that she had no objection to the deferral but requested that the Special Permit Amendment application be heard as soon as possible so that this matter could be resolved.

In response to Chairman Smith's question concerning the Special Permit Amendment, Mr. Shoup informed the Board that the case is scheduled for March 27, 1990.

Mr. DiGiulian made a motion to defer A 89-D-012 to April 24, 1990 at 9:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 6 - 0 with Mr. Kelley not present for the vote.

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11:30 A.M. GENUARIO CONSTRUCTION CO., INC./HERBERT AND ASSOCIATES, INC. GP, VC 89-V-138, application under Sect. 18-401 of the Zoning Ordinance to allow a subdivision of one lot into three (3) lots, proposed Lots 2 and 3 having a lot width of 9.84 feet (80 ft. min. required by Sect. 3-306), on property located at 8316 Ft. Hunt. Road, on approximately 1.0013 acres of land, zoned R-3, Mt. Vernon District, Tax Map 102-4((1))-22.

Chairman Smith noted that the Board had received a letter dated January 25, 1990, from the applicant requesting withdrawal.

Mr. Hammack made a motion to withdraw VC 89-V-138. Mrs. Thonen seconded the motion which carried by a vote of 6 - 0 with Mr. Kelley not present for the vote.

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11:45 A.M. VIRGILIO M. MARQUINA M. AND EVELIN M. MARQUINA, SPA 80-A-017-1, application under Sect. 3-103 of the Zoning Ordinance to amend S-80-A-017 for a child care center to permit change of applicant and to increase parking, hours of operation, and number of employees, on property located at 5102 Thackery Court, on approximately 1.40863 acres of land, zoned R-1, Annandale District, Tax Map 69-3((1))6A.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Eickhoff confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report and noted that the application had been deferred in order to allow the applicant to submit a revised plan which the Office of Transportation had approved. She used the viewgraph to explain how and where the applicant would change the parking area and noted that the revised plat shows an easement to the neighboring property. She pointed out the areas where planting would be added to better buffer the neighboring properties. Ms. Bettard said that staff recommended approval subject to the proposed development conditions with the following revisions: the last sentence in condition number 5 be deleted; and add, "and lot 12 on the north" to the end of the second sentence in condition number 10.

In response to a question from Mrs. Harris, Ms. Bettard said that the development conditions were from the January 11, 1990 staff report and explained that in development condition number 5 staff was not recommending additional pavement be allowed but would approve deleting the pavement in one area and adding the pavement to another area as long as the square footage remained the same. She said that parking space number eight was in front of the garage door explaining that the garage is now used as a storage area.

The applicants' attorney, Ralph V. Eickhoff Jr., 10625 Jones Street, Suite 101A, Fairfax, Virginia, addressed the Board and said the concerns of the Office of Transportation had been satisfied with the revised plan. He explained that one tree would have to be removed and this has been approved by the Environmental and Heritage Resources Branch. Mr. Eickhoff stated that the applicant is planting eighteen Hemlocks and twelve Foster Hollies along Lots 9, 13, and 14 on the recommendation of the County Arborist.

Chairman Smith called for speakers in support of the application and the following came forward: Deborah D. Woodson 10156 Wavell Road, Fairfax, Virginia; Sharell Houston, 3516 Queen Anne Drive, Fairfax, Virginia; Fred Blum, 5102 Thackery Court, Fairfax, Virginia; and Billie Ross, 10001 E. Constable Court, Fairfax, Virginia.

The citizens voiced their support of the application noting the high quality of child care, the homey atmosphere, the convenience of having child care in the neighborhood, and the large play area. They asked the Board to approve the application.

Chairman Smith called for speakers in opposition and the following came forward: D. J. Krafsig, 5103 Thackery Court, Fairfax, Virginia; E. M. O'Donnell, 9620 Commonwealth Boulevard, Fairfax, Virginia, John Roberts, 11402 Octagon Court, Fairfax, Virginia, R. F. Meadows, 5105 Thackery Road, Fairfax, Virginia; Patricia L. Meadows, 5105 Thackery Court, Fairfax, Virginia; and Frances L. Bouley, 5106 Thackery Court, Fairfax, Virginia.

The citizens voiced their opposition noting that the situation of the property has a bowl effect which caused the noise factor to be accentuated, the traffic problems, the outdoor phone bell, the residential character of the neighborhood, the inadequate screening, and the fact that there are many other day care centers in the area and this one is not needed. They asked the Board to deny the application.

Mr. Eickhoff asked that Mrs. Blum be allowed to speak in rebuttal.

The present owner of the day care center, Rachel Blum, 5102 Thackery Court, Fairfax, Virginia, addressed the Board and explained that the day care center is licensed for fifty children but because of health and personal reasons she only has an enrollment of thirty-five children.

Mr. Eickhoff noted that the enrollment is at this level because of Mrs. Blum's personal problems, but until the present time it had been substantially higher. He explained that the applicant was not seeking an increase in the number of children allowed to attend the child care center. He said that a great deal of the parking problem on Thackery Court is not due to the day care center but to the neighbor, Mr. Krafsig of 5103 Thackery Court. He explained that a 25 foot barrier around the play ground would impact on the attractiveness and usefulness of the area.

There being no further speakers and staff having no comments, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant SPA 80-A-017-1 subject to the development conditions as stated in the staff report dated January 11, 1990 with the changes as reflected in the Resolutions.

Mr. Ribble seconded the motion.

Chairman Smith called for discussion.

Mr. Hammack supported the motion and said that there has been a use on this site since 1967. He expressed his concern about the neighbor's opposition and said that he believed that the use at the present level had impacted the neighbor in a detrimental way, and therefore the use at the level requested did not satisfy Standards 3, 4, and 5.

In response to Mrs. Harris' question as to the reduction in the number of parking spaces, Ms. Bettard said that the number of parking spaces required would be reduced to nine spaces.

Mrs. Harris amended the motion to change development condition number 5 to read, "There will be a maximum of ten parking spaces on site. The additional parking spaces, nine (9) and ten (10), on the plat shall be removed, and all parking shall be on site."

Ms. Kelsey asked if the Board intended that the applicant remove the interior driveway to provide the transitional screening in the area.

Mrs. Harris said she would waive the transitional screening along the northeastern property line so as to not interrupt the circular motion of the cars.

Mr. Ribble accepted the amendments as stated by Mrs. Harris.

The motion carried by a vote of 5 - 0 with Mrs. Thonen and Mr. Kelley not present for the vote.

Ms. Kelsey explained to Mr. Eickhoff that a new plat must be submitted to staff and that staff will bring it back to the Board for Chairman Smith's signature.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-A-017 by VIRGILIO M. MARQUINA AND EVELIN M. MARQUINA, under Section 3-103 of the Zoning Ordinance to amend SPA 80-A-017 for a child care center to permit change of applicant and to increase parking, hours of operation, and number of employees, on property located at 5102 Thackery Court, Tax Map Reference 69-3((1))6A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 30, 1990; and

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

1. That the applicant is the contract purchaser of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.40863 acres of 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 Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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. To assure compliance with (PFM) Public Facilities Manual requirements for improvements shown to this Special Permit plat, a site plan or waiver condition plan shall be submitted in accordance with Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with a revised Special Permit plat, which shows that the parking and travel aisles meet the standards of the PFM (Public Facilities Manual) and these development conditions.

5. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 10 spaces. The additional parking spaces, nine (9) and ten (10), on the plat shall be removed. All parking shall be on site. The parking shall be designed so as to conform with the requirements of the PFM (Public Facilities Manual) as determined by DEM (Department of Environmental Management) The parking lot shall be striped and signed to meet these requirements. The travel aisle shall be one-way. If necessary, the garage may be used for two of the required parking spaces. There shall be no additional paving except that which is added will be made up with that which is subtracted.

6. The maximum daily enrollment of students in the child care center shall not exceed 35 students.

7. Hours of operation for the nursery school shall be limited to 7:00 a.m. to 6:00 p.m., Monday thru Friday.

8. The maximum number of employees shall be limited to fourteen (14).

9. There shall be no waiver of transitional screening on the site at all except along the northeastern property line where the circular driveway exists and where the driveway accesses the easement.

10. There shall be no outside ringing of telephones or any mechanical devices which generate noise.

11. There shall be a two (2) year time limit on the Special Permit Amendment so that the Board can review the application to see whether the screening has been implemented and has mitigated some of the noise that is generated by the usage.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twelve (12) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

It is noted that the applicant cannot take over the operation until all of the above conditions have been met and a new Non-Residential Use Permit has been issued.

Mr. Ribble seconded the motion. The motion carried by a vote of 5 - 0 with Mrs. Thonen and Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 13, 1990. This date shall be deemed to be the final approval date of this special permit.

Page 265, January 30, 1990, (Tapes 2 and 3), (VIRGILIO M. MARQUINA M. AND EVELIN M. MARQUINA, SPA 80-A-017-1, continued from Page 264)

(A letter was received from Mr. and Mrs. Marquina dated February 28, 1990, stating that they wished to withdraw the Special Permit application and that they would not be implementing it. Thus, this Special Permit is null and void.)

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Page 265, January 30, 1990, (Tape 3), After Agenda Item:

Colvin Run Pet-Otel, Inc., SP 87-D-060, Additional Time
10127 Colvin Run Road
12-4((1))30

In response to Mrs. Harris' question about this request, Ms. Kelsey said that the applicant intends to amend the application but that staff had not received the amended application.

Mrs. Harris made a motion to grant the applicant an additional twelve (12) months in order to commence construction. The new expiration date is December 16, 1990. Mr. Ribble seconded the motion.

Mr. Hammack expressed his belief that if the applicant submits substantial amendments he should submit a new application.

Chairman Smith explained that the applicant is operating under a Special Permit and desires to continue while he complies with the requirements.

The motion carried by a vote of 5 - 0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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Page 265, January 30, 1990, (Tape 3), After Agenda Item:

Five Fold Fellowship Church, SP 87-S-012, Additional Time
4525 Pleasant Valley Road
33-3((1))5

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and explained that staff suggested an eighteen month (18) extension be granted.

Mrs. Harris made a motion to grant the applicant an additional eighteen (18) months in order to commence construction. The new expiration date is May 27, 1991. Mr. Ribble seconded the motion which carried by a vote of 5 - 0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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Page 265, January 30, 1990, (Tape 3), After Agenda Item:

Approval of Resolutions

Mr. Hammack made a motion to approve the Resolutions from January 23, 1990 as submitted by staff. Mr. DiGiulian seconded the motion which carried by a vote of 5 - 0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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Page 265, January 30, 1990, (Tape 3), After Agenda Item:

Georgelas and Sons, Inc. Appeal

Mr. DiGiulian stated that the appeal was complete and timely filed and made a motion to schedule the hearing for April 10, 1990 at 11:00 a.m. Mr. Hammack seconded the motion which passed by a vote of 5 - 0.

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Page 265, January 30, 1990, (Tape 3), After Agenda Item:

Jane Kelsey, Chief, Special Permit and Variance Branch, congratulated Chairman Smith on his reappointment as Chairman of the Board of Zoning Appeals.

Chairman Smith expressed his gratitude for the appointment.

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Page 266, January 30, 1990, (Tape 2), Adjournment:

As there was no other business before the Board, the meeting was adjourned at 1:20 p.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. Digiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED April 3, 1990

APPROVED April 10, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 6, 1990. The following Board members were present: Chairman Daniel Smith; John DiGiulian, Vice-Chairman; Martha Harris; Paul Hammack; and, Robert Kelley. John Ribble and Mary Thonen were absent.

Chairman Smith called the meeting to order at 8:10 p.m. and led the invocation.

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Page 267, February 6, 1990, (Tape 1), Scheduled case of:

8:00 P.M. TURNER AND ELAINE ROSE, VC 89-D-147, application under Sect. 18-401 of the Zoning Ordinance to allow resubdivision of lots with proposed Lot 36A having a lot width of 10.47 feet (100 ft. min. lot width required by Sect. 3-207), on property located at 1869 Rhode Island Avenue, on approximately 99,999 square feet of land, zoned R-2, Dranesville District, Tax Map 41-1((13))(2)29, 30, 31, 32, 33, 34, 35, 36.

Rory Clark, with the firm of Mackall, Mackall, Walker & Gibb, representative of the applicant, requested a deferral of the application.

Mr. DiGiulian made a motion that variance application VC 89-D-147 be deferred until April 3, 1990 at 8:20 p.m. Ms. Harris seconded the motion which passed by a unanimous vote of 4-0. Mr. Hammack not yet having arrived. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Page 267, February 6, 1990, (Tape 1), Information Item:

Following a discussion about the procedures used for notifying neighbors when an application is deferred, Mr. DiGiulian moved that the Clerk contact attorney's and other offices that frequently do business with the BZA and indicate that a request for an intent to defer should be submitted one week prior to the scheduled public hearing. This would allow the applicant an opportunity to notify adjacent neighbors prior to the meeting of the scheduled public hearing. Mr. Kelley seconded the motion which passed by a unanimous vote of 4-0. Mr. Hammack not yet having arrived. Mrs. Thonen and Mr. Ribble were absent from the meeting.

Ms. Harris clarified that this would not exclude any last minute emergency requests. The other Board members agreed.

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At 8:20 p.m., Mr. DiGiulian made a motion that the Board of Zoning Appeals go into Executive Session to discuss potential litigation in the Marquini case, SPA 80-A-017-1. Mr. Kelley seconded the motion which passed by a unanimous vote of 4-0. Mr. Hammack not yet having arrived. Mrs. Thonen and Mr. Ribble were absent from the meeting.

At 9:05 p.m. the Board reconvened the meeting.

Ms. Harris 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.

There was an affirmative roll of the members present.

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Page 267, February 6, 1990, (Tape 1), Scheduled case of:

8:15 P.M. GREGORY P. AND DONNA M. PAYNTER, VC 89-S-148, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 12 ft. by 20.2 ft. building addition and a 12 ft. by 22.6 ft. building addition to 14.3 feet from rear lot line and 10.7 feet from side lot line (25 ft. min. rear yard required and 20 ft. min. side yard required by Sect. 3-C07), on property located at 4304 Silas Hutchinson Drive, on approximately 11,424 square feet of land, zoned R-C and WS, Springfield District, Tax Map 33-2((3))25.

Greg Riegle, Staff Coordinator, presented the staff report. He explained that the house was built prior to the rezoning of the property to the R-C District which was why it was located closer to the side lot line than what is currently allowed.

Greg Paynter, 4304 Silas Hutchinson Drive, Chantilly, the applicant, appeared before the Board to explain the request as outlined in the statement of justification contained in the staff report. He stated that the way the house was situated on the lot, prevented

the construction of any additions without requesting a variance. Also, there was no other location to place the addition. He indicated that the file contained letters of support from the owners of Lot 24 and Lot 26. In addition, the owners of Lot 26 and Lot 27 were present in the Board room and were in support of the application.

There being no speakers, Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant VC 89-S-148 for the reasons noted in the Resolution.

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

In Variance Application VC 89-S-148 by GREGORY P. AND DONNA M. PAYNTER, under Section 18-401 of the Zoning Ordinance to allow construction of a 12 ft. by 20.2 ft. building addition and a 12 ft. by 22.6 ft. building addition to 14.3 feet from rear lot line and 10.7 feet from side lot line, on property located at 4304 Silas Hutchinson Drive, Tax Map Reference 33-2((3))25, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 6, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 11,424 square feet of land.
4. A variance would not be needed if it weren't for the downzoning which created an increase in the side yard setback requirements. The position of the house is set so far back that there is no other place to put an addition. The rear yard abuts parkland or open space.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-1 (Mr. Smith) (Mr. Ribble and Mrs. Thonen absent).

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 13, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 269 February 6, 1990, (Tape 1), Scheduled case of:

8:30 P.M. TERRELL APPEAL, A 89-S-019, appeal of the Zoning Administrator's determination that stockade fence erected in the front yard exceeds the 7 ft. height limit as set forth in Par. 3A of Sect. 10-104, on property located at 12465 Henderson Road, on approximately 5.0484 acres of land, zoned R-C, Springfield District, Tax Map 85-2((1))60.

William E. Shoup, Deputy Zoning Administrator, stated that it was the determination of the Zoning Administrator that the stockade fence erected in the front yard of the property located at 12465 Henderson Road exceeds the 7 foot height limit as set forth in Par. 3A of Sect. 10-104. He stated that some portions of the fence stood as high as eight feet. Mr. Shoup stated that the appellant was issued a notice of violation on October 10, 1989, and subsequently filed the appeal. He indicated that Donald Beaver, the Supervising Field Inspector for the Zoning Enforcement Branch, and David Sines, the Zoning Inspector involved in the case, were present to answer any questions the Board members might have.

Glenna Terrell, the appellant, appeared before the Board to present her position. She stated that the fence had been constructed for purposes of noise abatement and safety. The fence itself was as low as 6.8 feet and as high as 7.6 feet due to the terrain. Mrs. Terrell indicated that the decorative finial balls on the fence posts were partially the cause of the fence being too high. She referenced other fences she had seen in Fairfax County that were as high or higher than the one she had built.

Ms. Terrell stated that when she had called the zoning office to inquire about constructing the fence, she had been told that since she boarded horses she could consider herself an industrial use and, therefore, could build an eight foot fence.

In response to questions, Ms. Terrell stated that the house had been purchased two years ago.

In closing, Mr. Shoup stated the zoning office had always administered the Ordinance to interpret that the supporting posts of the fence would be subject to the same height limit as the fence. He stated that the fence at Braddock Oaks mentioned by the appellant had probably been built under a site plan which resulted from a planned development or a rezoning.

There being no speakers, Chairman Smith closed the public hearing.

Mr. Hammack moved to uphold the decision of the Zoning Administrator in appeal application, A 89-S-019. Ms. Harris seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting. This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 14, 1990.

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Page 270, February 6, 1990, (Tape 1), After Agenda Item #1:

Approval of Minutes
October 19, 1989 and November 28, 1989

Ms. Harris made a motion to approve the BZA Minutes of October 19 and November 28, 1989. Mr. Hammack seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Page 270, February 6, 1990, (Tape 1), Information Item:

Jane Kelsey, Chief, Special Permit and Variance Evaluation Branch, introduced Phil Hartman, a new Planning Technician in the Zoning Evaluation Division, Office of Comprehensive Planning, who would be assisting staff at this meeting.

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Page 270, February 6, 1990, (Tape 1), After Agenda Item #2:

Iranian Community School, VC 90-P-009
Out-of-Turn Hearing Request

Mr. DiGiulian made a motion to approve the out-of-turn hearing request for VC 90-P-009 and scheduled the application for March 6, 1990. Ms. Harris seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Page 270, February 6, 1990, (Tape 1), After Agenda Item #3:

Request to Change Hearing Time
Georgelas Appeal

Mr. DiGiulian made a motion that the Board schedule the public hearing for the Georgelas Appeal for April 10, 1990 at 9:00 a.m. instead of the previously scheduled time of 11:00 a.m. Mr. Hammack seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Page 270, February 6, 1990, (Tape 1), After Agenda Item #4:

Green Trails, SP 90-S-004
Out-of-Turn Hearing Request

Mr. DiGiulian made a motion to approve the out-of-turn hearing request for SP 90-S-004 and schedule the application for March 27, 1990. Ms. Harris seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Page 270, February 6, 1990, (Tape 1), After Agenda Item #5:

Dr. Mark Lawrence, SP 89-D-051
Request for Intent to Defer

Mr. Hammack made a motion that the Board issue an intent to defer SP 89-D-051 and scheduled the application for April 3, 1990, at 8:40 p.m. Mr. DiGiulian seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Page 270, February 6, 1990, (Tape 1), After Agenda Item #6:

Jane Gwinn v. Board of Zoning Appeals
Chancery No. 114699

Mr. Hammack moved that the Board seek authorization to be represented by outside counsel on the above-referenced case, specifically Brian McCormack, at an amount not to exceed $2,500. Mr. DiGiulian seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Page 271, February 6, 1990, (Tape 1), Executive Session.

At 10:00 p.m., Ms. Harris made a motion that the Board of Zoning Appeals go into Executive Session to discuss legal matters regarding SPA 80-A-017-1. Mr. Hammack seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

At 10:35 p.m. the Board reconvened the meeting.

Ms. Harris 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.

There was an affirmative roll call of the members present.

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Page 271, February 6, 1990, (Tape 1), After Agenda Item #7:

Approval of Resolutions
January 30, 1990

Mr. Hammack made a motion to approve the Resolutions of January 30, 1990, with the exception of SPA 80-A-017, Evelin M. Marquina, which would be deferred for eight days. Mr. Kelley seconded the motion which passed by a unanimous vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:40 p.m.

Judy L. Moss / Clerk
Judy L. Moss, Substituting for the
Clerk to the Board of Zoning Appeals

John P. DiGiuliano V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED March 22, 1990

APPROVED March 27, 1990

Blank

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, February 13, 1990. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble.

Chairman Smith called the meeting to order at 9:18 a.m. and gave the invocation. There were no Board matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 273, February 13, 1990 (Tape 1), Scheduled case of:

9:00 A.M. DR. MARK A. LAWRENCE AND SELDEN RING, SP 89-D-051, application under Sect. 3-E03 of the Zoning Ordinance to allow a home professional office, on property located at 8612 Tebbs Lane, on approximately 6.2757 acres of land, zoned R-E, Dranesville District, Tax Map 20-1((1))48, 52. (DEF. FROM 12/21/89 AT APPLICANT'S REQUEST AND FOR ADDITIONAL INFORMATION)

Chairman Smith stated that a deferral request had been received from the applicant.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that the Board, at its February 6, 1990 meeting, had issued an intent to defer SP 89-D-051 to April 3, 1990. She added that since then, the applicant's attorney had requested that the public hearing be rescheduled for May 1 due to a conflict in his schedule. Ms. Kelsey stated that a representative for the applicant was present.

Mr. Hammack made a motion to defer SP 89-D-051 to May 1. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Page 273, February 13, 1990 (Tape 1), Scheduled case of:

9:15 A.M. B AND E, INC., VC 89-P-152, application under Sect. 18-401 of the Zoning Ordinance to allow four (4) residential buildings to be located 156 feet, 165 feet, 167 feet, and 193 feet from Route 66 (200 ft. min. distance required by Sect. 2-414), on property located on proposed Colonel Lindsay Court, on approximately 2.64 acres of land, zoned R-3, Providence District, Tax Map 40-3((1))pt. 58. (OUT OF TURN HEARING GRANTED)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Keith C. Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, represented the applicant. Mr. Martin stated that the applicant purchased the property two years ago and planned to develop the site into a R-3 cluster subdivision which could be developed by right. The applicants filed subdivision plans with the Department of Environmental Management (DEM) approximately three days after the effective date of an Ordinance change which required a special exception to develop the proposed site as the applicant had planned. He added that if the subdivision plan had been filed three days earlier the houses would probably already be built. The applicant then filed a special exception and during that process the applicant was contacted by the Fairfax County Heritage Resources and Supervisor Hanley's office regarding the historical structure on the property, which is one of the oldest, if not the oldest, house in the county. He added that both the Planning Commission and Board of Supervisors have approved the special exception and he stated that the waiver was merely an oversight during the special exception process. Mr. Martin stated that he believed that if this problem had been discovered a proffer would have been added which would have alleviated the need for the variance, but the applicant is ready, willing, and able to comply with the development conditions contained in the staff report for this variance.

In addressing the standards, Mr. Martin stated that the property was acquired in good faith and has an extraordinary situation, the property is currently the site of a historical structure, the applicant has obtained special exception approval of the Planning Commission and Board of Supervisors for R-3 cluster development, the request will not change the character of the neighborhood, and if the variance request is denied the site will have to be reconfigured and the historical structure will be removed.

Mr. Hammack asked if the applicant agreed with the development conditions and Mr. Martin replied that they did.

In response to questions from Mrs. Harris with respect to the acoustical treatment of the proposed houses, Mr. Martin replied that it would be a combination of landscaping and a solid wooden barrier.

Chairman Smith asked if the applicant would be renovating the historical structure. Mr. Martin explained that the structure would not be subject to the current standards but the applicant plans to preserve its historical appearance.

There were no speakers in support of the request and Chairman Smith called for speakers in opposition to the request.

Ben Mason, 7610 Rudyard Street, Falls Church, Virginia, stated that he has lived in the adjacent neighborhood for thirteen years and noted that the historical structure on the subject property was built in 1745. He added that his house is a solidly built house and was constructed in 1935 but he can still hear the noise generated from I-66. Mr. Mason stated that he did not believe that the noise problem can be addressed and not impact the historical structure.

Chairman Smith pointed out that the historical structure would be left as it is at present. Mrs. Thonen stated that someone had to take responsibility for maintaining the structure.

Mr. Mason stated that he would like to see the applicant go back to the original plan. Mr. Hammack explained that the Board of Zoning Appeals (BZA) could only take action on the plan that had been approved by the Planning Commission and Board of Supervisors.

The next speaker was Dr. Lily Ruckstuhl, 7545 Idlywood Road, Falls Church, Virginia. She spoke on behalf of herself and another adjacent neighbor and expressed concern that the large trees surrounding an old cemetery would be disturbed. Dr. Ruckstuhl asked that the BZA require the applicant to construct a fence around the cemetery.

Chairman Smith told the applicant that the cemetery was not on the subject parcel, therefore the BZA could not require the applicant to do as she requested.

During rebuttal, Mr. Martin stated that unlike the houses across I-66 the proposed houses will have better noise measures and the applicant will not be required to construct a 16 foot high fence. He asked the BZA to approve the request.

For the BZA's information, Ms. Bettard used the viewgraph to show the location of the cemetery.

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

Mr. Hammack made a motion to grant VC 89-P-152 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated February 6, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-152 by B AND E, INC., under Section 18-401 of the Zoning Ordinance to allow four (4) residential buildings to be located 156 feet, 165 feet, 167 feet, and 193 feet from Route 66, on property located at proposed Colonel Lindsay Court, Tax Map Reference 40-3((1))pt. 58, 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 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 2.64 acres of land.
4. The applicant has satisfied the nine required standards for a variance, in particular that there is an extraordinary situation and condition in the development of the subject property.

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

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

E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific dwellings shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. In order to achieve a maximum interior noise level of 45 dBA Ldn, all units located between 70-75 dBA Ldn highway noise impact contours shall have the following acoustical attributes:

   1. Exterior walls shall have a laboratory sound transmission class (STC) rating of at least 45.

   2. Doors and windows shall have a laboratory STC rating of at least 37. If windows constitute more than 20% of any facade, they shall have the same laboratory STC rating as walls.

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

   In order to achieve a maximum exterior noise level of 65 dBA Ldn, noise attenuation structures such as acoustical fencing, walls, earthern berms or combinations thereof shall be provided for those outdoor recreation areas including rear yards that are unshielded by topography or built structures. If acoustical fencing or walls are used, they shall be architecturally solid from ground up with no gaps or openings. The structure employed must be of sufficient height to adequately shield the impacted area from the source of the noise.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 276, February 13, 1990 (Tape 1), Scheduled case of:

9:30 A.M. ALIDA WINTER, SP 89-D-058, application under Sect. 3-303 of the Zoning Ordinance to allow child care center, on property located at 1335 Butter Churn Drive, on approximately 12,279 square feet of land, zoned R-3, Dranesville District, Tax Map 6-3((6))21.

Mrs. Thonen made a motion to grant the applicant's request to withdraw SP 89-S-058. Mr. DiGiulian seconded the motion which carried by a vote 6-0 with Mr. Ribble not present for the vote.

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Page 276, February 13, 1990 (Tape 1), Scheduled case of:

9:45 A.M. BIRGIT HAMAN-BAWELL, VC 89-L-150, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling to 8 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 8522 Highland Lane, on approximately 5,600 square feet of land, zoned R-2 and HC, Lee District, Tax Map 101-3((7))42.

Mrs. Thonen made a motion to grant the applicant's request for a deferral and scheduled the case for May 15, 1990 at 9:00 a.m. as suggested by staff. Mr. DiGiulian seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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Page 276, February 13, 1990 (Tape 1), After Agenda Item:

McLean Bible Church, SPA 73-D-151-2 and Variance VC 88-D-095
Additional Time

Mrs. Harris made a motion to grant the applicant in SPA 73-D-151-2 and VC 88-D-095 an additional twelve (12) months in order to commence construction. The additional time will begin at the end of the existing permit in April 1990 making the new expiration date April 26, 1991. Mr. DiGiulian seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

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Page 276, February 13, 1990 (Tape 1), After Agenda Item:

Christian Fellowship Church Appeal

Mrs. Thonen made a motion to accept the appeal as being complete and timely filed and scheduled the public hearing for May 1, 1990 at 8:00 p.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the BZA to schedule the appeal for 8:20 p.m. as they had scheduled another case for that time earlier in the public hearing.

Following a discussion between the Board and staff, Mrs. Harris made a motion to change the time to 8:15 p.m. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

(The Board reconsidered this case later in the public hearing and deferred action on scheduling until February 22, 1990.)

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Page 276, February 13, 1990 (Tape 1), After Agenda Item:

J. Alfred Baird Appeal

The Board questioned why the appellant had filed an appeal with the BZA and also with the Planning Commission.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the appellant was simply covering all the bases. She stated that if the Planning Commission acted favorably it was her understanding that the appellant would withdraw the appeal before the BZA.

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Page 276, February 13, 1990 (Tape 1), After Agenda Item:

Christian Fellowship Appeal

Mr. Hammack questioned why Christian Fellowship had filed an appeal now when the special permit had been granted in 1988.

Chairman Smith explained that this appeal had to do with a time factor that had just recently come up.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that this appeal involved the BZA approval to allow trailers on the site for two years. She added that as she recalled shortly after that approval, the applicant came back to the BZA and asked for a clarification as to exactly when the approval became effective, whether it was from the date of the BZA approval or from the date the Non-Rup was issued. The BZA had decided that the time began with the date the BZA made the final decision, not when the Non-Rup was issued. The issuance of the Non-Rup included a condition limiting the trailers to two years from the date the BZA's decision became final. The applicant is now appealing the Zoning Administrator's, or her agent's, decision to so limit the Non-Rup.

Mr. Hammack noted that there was nothing in the memorandum from the Zoning Administrator's office that indicated that she had made a decision. Ms. Kelsey stated that she was not that familiar with the appeal, therefore could not answer specific questions. She added that the issue before the BZA was whether or not the appeal had been properly and timely filed.

Mrs. Thonen stated that the Board was trying to determine whether or not it was timely filed since the Board's decision had been made in 1988.

Ms. Kelsey asked if the Board would like to forego action on the appeal until she could contact the Zoning Administrator's office.

Mrs. Harris noted that action had been taken and Ms. Kelsey stated that the Board would need to make a motion to reconsider its action before proceeding.

Mr. Hammack made a motion that the Board reconsider its action on the Christian Fellowship Appeal and forgo action on scheduling the appeal until February 22, 1990. Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Mr. DiGiulian and Mr. Kelley not present for the vote.

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Page 277, February 13, 1990 (Tape 1), After Agenda Item:

J. Alfred Baird Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out that the Board had not taken action on the Baird appeal.

Mrs. Harris stated that after reading the background on the appeal that she did not believe that the appeal had been timely filed.

Ms. Kelsey explained that the appellant was appealing the Department of Environmental Management's (DEM) decision with respect to the site plan.

Mrs. Harris asked if the appellant had filed within thirty days and Ms. Kelsey stated that he had.

In response to a comment from Mrs. Harris regarding deferring the appeal until after the Planning Commission takes action, Ms. Kelsey replied that the Board could defer action or could go ahead and schedule the public hearing and allow the withdrawal of the appeal if the appellant so chose.

Mr. Hammack stated that he would like to have all documents relating to the appeal prior to making a decision.

Chairman Smith explained that if the appeal has been properly and timely filed then the Board had to schedule a public hearing.

Mrs. Harris made a motion to schedule the appeal for April 24, 1990 at 11:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. DiGiulian, and Mr. Kelley not present for the vote.

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Page 277, February 13, 1990 (Tape 1), Scheduled case of:

10:00 A.M. MEHDI MIRSHAHI AND AKHTAR MIRSHAHI, VC 89-M-151, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling to 2 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 6407 Columbia Pike, on approximately 0.2121 acres of land, zoned R-2 and HC, Mason District, Tax Map 61-3((3))3.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hassan replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Zia Hassan, 13827 Springstone Drive, Clifton, Virginia, represented the applicants. He stated that the applicant is requesting a 13 foot variance because the lot is extremely narrow and without the variance the applicant could build only a 20 foot wide house compared to the other houses in the neighborhood which are approximately 34 feet wide. Mr. Hassan added that the applicant had not been aware of the zoning regulations at the time of purchase. He noted that there is a 15 foot egress/ingress easement that runs along one side of the property which is for the use of Lot 3, the subject property, and cannot be built upon. Mr. Hassan stated that on Lot 4 there is currently a garage that is 18 feet from the shared property line which makes the distance between the proposed house and the garage approximately 20 feet.

Mr. DiGiulian asked if the easement had been recorded and Mr. Hassan stated that it had been and was strictly for the use of Lot 3.

In response to questions from the Board with respect to the size of the house, Mr. Hassan replied that the new houses being built in the area are approximately 34 feet wide but agreed that the lots are larger.

Chairman Smith asked when the applicant had purchased the property and Mr. Hassan replied in 1988.

Mr. Hammack questioned staff as to how far back the house on Lot 4 had to set back from the easement. Ms. Bettard replied 15 feet.

Chairman Smith asked when the house and garage on Lot 4 was constructed. Mr. Hassan stated that he was not sure about the house but the garage was constructed within the past year. Mr. Hammack noted that in the letter received from Mr. and Mrs. Mills, owners of Lot 4, indicated that they had purchased their property in December 1988 and recently added a two car garage.

Chairman Smith called for speakers in support of the application and hearing no reply called for speakers in opposition to the request.

Sharon Mills, 6413 Columbia Pike, Annandale, Virginia, adjacent property owner, came forward and objected to the applicant's request as she believed that the house being constructed so closely to the shared lot line it would invade her privacy. Mrs. Mills stated that the granting of the applicant's request will create a lot with a wholly different character and will result in an apartment living type atmosphere. She added that when she and her husband constructed their garage five months ago they had complied with all setbacks stipulated in the Zoning Ordinance.

With respect to questions from Mr. DiGiulian about the easement, Mrs. Mills explained that she and her husband own the property, that it is a recorded easement strictly for the use of Lot 3 egress/ingress, and that it has nothing to do with the sanitary easement.

In response to a question from Mr. Hammack, Mrs. Mills used the viewgraph to show the location of her house and garage.

Mr. Hammack asked staff if the lot is a buildable lot. Jane Kelsey, Chief, Special Permit and Variance Branch, responded by stating that if the lot is a recorded lot prior to the adoption of the current Zoning Ordinance it is a buildable lot as long as it can meet the yard requirements.

Mrs. Mills stated that she and her husband had been told by the builder that there had originally been three lots.

Ms. Kelsey stated that she could not answer specific questions about the history of Lot 3 but if the Board would like to defer the case she would discuss it with Mapping.

Chairman Smith asked staff why they had not advised the applicant to move the house over and ask for a minimum variance to both sides of the lot. Ms. Kelsey stated that staff does not take the position of trying to redesign an applicant's house.

Mr. Ribble asked Mrs. Mills who had granted the easement. She stated that the documents she had been given at the time she and her husband had purchased their home had made reference to the fact that a 15 foot egress/ingress easement for the use of Lot 3 did exist.

During rebuttal, Mr. Hassan stated that the applicant had considered asking for a variance to the other side lot line but decided not to because of the noise from the service station. The applicant also believed that it would be better to construct closer to the side with the easement as the easement cannot be built upon. Mr. Hassan added that the applicant would be willing to move closer to the other lot line if the Board would consider the request more favorably.

The Board and Mr. Hassan discussed in length the possibility of redesigning the house to move it closer to the lot line abutting the service station as the Board did not believe that the

neighbor on the other side of the subject property should be expected to bear the brunt of the variance.

Chairman Smith asked staff if the request would have to be readvertised if the variance were moved closer to the other lot line. Ms. Bettard replied that a modified request would have to be readvertised.

In staff's closing comments, Ms. Kelsey read Sect. 2-405 of the Zoning Ordinance in response to an earlier question from Mr. Hammack regarding the lot size.

Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant-in-part VC 89-M-151 as noted in the Resolution and subject to the development conditions contained in the staff report dated February 6, 1990.

Prior to the vote, Mr. Kelley asked Mrs. Mills if this was agreeable to her and she stated this was agreeable.

Mr. Hammack stated that he would abstain from voting as he would like to know if it is a buildable lot before taking action.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-M-151 by MEDHI MIRSHAHI AND AKHTAR MIRSHAHI, under Section 18-401 of the Zoning Ordinance to allow construction of dwelling to 2 (**THE BOARD GRANTED** 11) feet from side lot line, on property located at 6407 Columbia Pike, Tax Map Reference 61-3((3))3, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 13, 1990; and

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

1. That the applicants are the owners of the land.
2. The present zoning is R-2 and HC.
3. The area of the lot is 0.2121 acres of land.
4. The applicant can construct a dwelling within 11 feet of the right side property line, looking at the property from Columbia Pike, which will allow the applicant to build a house 24 feet wide, which is standard.
5. The lot is the most narrow lot on the street and does need some relief, but a house can be constructed with a minimum variance.

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

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

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

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

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

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

1. This variance is approved for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0-1 with Mr. Hammack abstaining.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 21, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 280, February 13, 1990 (Tape 1), After Agenda Item:

McLean Bible Church, SPA 73-D-151-2 and Variance VC 88-D-095
Additional Time

Jane Kelsey, Chief, Special Permit and Variance, informed the Board that the applicant's attorney, William Hansbarger, was present and would be happy to answer any questions that the Board might have regarding the request.

Chairman Smith thanked Mr. Hansbarger and stated that the request had been approved earlier in the public hearing.

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Page 280, February 13, 1990 (Tape 1), After Agenda Item:

Christian Fellowship Appeal

The Board had passed over this item earlier in the public hearing. Following further discussion, Mr. Hammack made a motion to defer action until February 22, 1990 for additional information. Mrs. Thonen seconded the motion. Hearing no objection, the Chair so ordered.

Chairman Smith asked what it was specifically that the Board would like to know. Mr. Hammack stated that he would like to see something from the Zoning Administrator that would explain why the applicant is appealing as he did not believe that it was a timely filed appeal and requested that Jane Gwinn or her representative be present to respond to questions if possible.

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Page 280, February 13, 1990 (Tape 1), After Agenda Item:

Marquini Resolution

Mr. DiGiulian asked staff the status of the Marquini Resolution from an earlier public hearing. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that she had discussed this with the Pat Taves, County Attorney's office, and had asked Mr. Taves to come

down to discuss this with the Board. He is presently on his way to the Board Room from an earlier meeting in another County agency.

The Board discussed whether or not it was proper to defer action for another week. Mr. DiGiulian stated that he did not see a problem with deferring action until February 22, 1990. Mr. Hammack made a formal motion and Mr. DiGiulian seconded the motion.

Mrs. Harris asked how long it would be before Mr. Taves arrived. Ms. Kelsey assured the Board that it would not be too long. Mrs. Thonen asked the Board to give Mr. Taves until 11:10 a.m. to get to the Board Room. Mrs. Harris seconded the motion. The motion carried by a vote of 4-3 with Chairman Smith, Mrs. Harris, Mrs. Thonen and Mr. Kelley voting aye; Mr. DiGiulian, Mr. Hammack, and Mr. Ribble voting nay.

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Page 281, February 13, 1990 (Tape 1), After Agenda Item:

Board's Meeting Schedule

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if it were agreeable with the Board to schedule a work session for April 10, 1990 to allow the Board and staff to discuss the By-Laws and policies. She stated that since the adoption of the By-Laws the 90 day deadline had been instituted which makes it difficult for staff to schedule only controversial cases for the Board's night meeting as stipulated in the By-Laws.

Chairman Smith stated that the Board had to consider the time factor on the night meetings and scheduling had to comply with the State Code.

Following further discussion, Mrs. Harris made a motion to schedule a work session on April 10, 1990. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. DiGiulian, Mr. Hammack, and Mr. Kelley not present for the vote.

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Page 281, February 13, 1990 (Tape 1), After Agenda Item:

Approval of Resolutions

Mrs. Harris made a motion to approve the Resolutions from February 6, 1990 as submitted by staff. Mrs. Thonen seconded the motion which carried by a vote of 3-0-1 with Mr. Ribble abstaining; Mr. DiGiulian, Mr. Hammack, and Mr. Kelley not present for the vote.

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Page 281, February 13, 1990 (Tape 1), After Agenda Item:

Marquini Resolution

Chairman Smith outlined the history of the problem with the Marquini Resolution for Mrs. Thonen to bring her up to date prior to going into Executive Session.

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Page 281, February 13, 1990 (Tape 1), Scheduled case of:

BZA Certified Program

Jane Kelsey, Chief, Special Permit and Variance Branch, asked Mrs. Harris and Mr. Kelley if they were still interested in attending the Conference. Mr. Kelley stated that he would be unable to attend. Mrs. Harris stated that she would be attending. Ms. Kelsey stated that Lori Greenlief, Staff Coordinator, would be attending.

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Ms. Kelsey informed the Board that Mr. Taves was on his way down. Mrs. Thonen made a motion to go into Executive Session to discuss the legal issues regarding the Marquini case, SP 89-S-017.

Mr. Hammack seconded the motion and the motion carried by a vote of 5-1 with Mr. Ribble voting nay; Mr. DiGiulian not present for the vote.

Following the executive session, Mrs. Thonen 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.

Mrs. Harris seconded the motion which carried by a vote of 7-0. The regular meeting of the Board of Zoning Appeals was reconvened at 11:50 a.m.

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Marquini Resolution

Mr. Hammack made a motion to approve the Resolution and deny the applicant's request for reconsideration.

Mr. Kelley stated that he believed that there should be two separate motions. Chairman Smith agreed.

Mr. Hammack then made a motion to deny the applicant's request for reconsideration of SP 89-S-017 with respect to development condition number 4. Mrs. Harris seconded the motion. The motion carried by a vote of 4-3 with Chairman Smith, Mr. DiGiulian, and Mr. Kelley voting nay.

Mr. Hammack then made a motion to approve the Resolution dated February 13, 1990. Mrs. Harris seconded the motion.

Mr. Hammack stated that he believed that the Board had acted within their powers.

Mr. Kelley stated that he would support the motion but that he believed that this is subject to legal challenge. He stated that the Board is prohibiting the sale of any business that is operating under a special permit and that it will have far reaching consequences that the Board will regret.

Mr. DiGiulian stated that he would support the motion only because the motion for reconsideration had failed. He stated that he did not believe that what the Board had done was equitable.

Chairman Smith stated that he would not support the motion because he did not agree with development condition number 11.

Mr. Hammack stated that he did not believe that the Board had denied anyone the right to sell their business because the Board had granted the request with the implementation of development conditions.

Mr. Kelley noted that it was not the same business that is being sold as there is a smaller number of children and a time limitation.

Mrs. Thonen called for the question.

The motion carried by a vote of 6-1 with Chairman Smith voting nay.

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Page 282, February 13, 1990 (Tape 1), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 12:55 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: March 22, 1990

APPROVED: March 27, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, February 22, 1990. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; and Robert Kelley. John Ribble was absent from the meeting.

Chairman Smith called the meeting to order at 9:25 a.m. and gave the invocation. There were no Board matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 283, February 22, 1990 (Tape 1), Scheduled case of:

9:00 A.M. PHILIP K. BARBALACE AND KAREN L. BARBALACE, VC 89-P-153, application under Sect. 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 4.7 feet from one side lot line and construction of addition to dwelling to 9.2 feet from other side lot line (8 ft. min. side yard required, and a combined total side yard of 20 feet required by Sect. 3-307), on property located at 2150 Westglen Court, zoned R-3 (developed cluster), Providence District, Tax Map 39-1((30))1.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Barbalace confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

The applicant, Karen L. Barbalace, 2150 Westglen Court, Vienna, Virginia, addressed the Board and explained that the steps were part of the original structure and they would like to extend the deck so that it ties into the steps. Ms. Barbalace said that in order to make full use of the narrow, pie shaped lot, the proposed deck had to be placed at an angle.

In response to a question from Chairman Smith, Ms. Barbalace said that she believed the proposed site was the best location for the addition.

In response to Mrs. Harris' question, Ms. Barbalace used the viewgraph to show the Board where the existing step and the proposed deck would meet.

There being no speakers in support or in opposition, Chairman Smith called for staff's closing comments.

Ms. Greenlief noted that a letter of support had been received from the homeowners association.

Mr. Hammack made a motion to grant VC 89-P-153 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated February 13, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-153 by PHILIP K. AND KAREN L. BARBALACE, under Section 18-401 of the Zoning Ordinance to allow construction of deck addition to dwelling to 4.7 feet from one side lot line and construction of addition to dwelling to 9.2 feet from other side lot line, on property located at 2150 Westglen Court, Tax Map Reference 39-1((30))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 9,469 square feet of land.
4. The lot is pie-shaped and converges sharply in the rear.
5. The applicant only wants to extend the deck to tie into the existing steps.
6. There will be minimum intrusion into the side yard.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition and deck shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5 - 1 with Chairman Smith voting nay; Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 284, February 22, 1990 (Tape 1), Scheduled case of:

9:15 A.M. WILLIAM ROY CLAY, VC 89-C-158, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 16.8 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 12527 Lt. Nichols Road, on approximately 9,144 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 45-2((6))55.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Clay confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

William R. Clay, 12527 Lt. Nichols Road, Fairfax, Virginia, addressed the Board and explained that because of the position of the house on the lot, a Variance was necessary. He said that there is 25 feet of common property behind his backyard, therefore there would be 41 feet between the addition and the neighbor's yard.

In response to a question from Mrs. Harris, Mr. Clay stated that addition would be a one level sunroom consisting mainly of windows and would be constructed with materials similar to the existing house, with a pitched roof. He explained that the foundation is in place because the builder had started construction of the addition but stopped when he realized a Variance was needed.

There being no speakers in support or in opposition, Chairman Smith called for staff's closing comments.

Ms. Greenlief informed the Board that a building permit had been issued for a deck slab with footers, and the permit stated that it did not meet the setbacks for further addition.

Mrs. Thonen made a motion to grant VC 89-C-158 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated February 13, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-158 by WILLIAM ROY CLAY, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 16.8 feet from rear lot line, on property located at 12527 Lt. Nichols Road, Tax Map Reference 45-2((6))55, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 9,144 square feet of land.
4. The lot is small and narrow.
5. The house is situated 10.5 feet further back than the required front yard setback, thereby causing the need for the variance.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. DiGiulian seconded the motion. The motion carried by a vote of 4 - 1 with Chairman Smith voting nay; Mr. Kelley not present for the vote; and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 286, February 22, 1990 (Tape 1), Scheduled case of:

9:30 A.M. SAMUEL J. GARRETT, VC 89-L-155, application under Sect. 18-401 of the Zoning Ordinance to allow a carport extension in order to construct a two car garage and a second story addition 3.8 feet from side lot line with a total minimum side yards of 25.9 feet (8 ft. min. side yard with total min. side yards of 20 ft. permitted by Sect. 3-307), on property located at 5444 Broadmoor Street, on approximately 8,598 square feet of land, zoned R-3 (developed cluster), Lee District, Tax Map 100-2((2))520A.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Garrett confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report and submitted to the Board letters of support signed by the neighbors.

In response to Mrs. Harris' question, Ms. Bettard said the house on Lot 519A is 15.6 feet off the side lot line.

Samuel J. Garrett, 5444 Broadmoor Street, Alexandria, Virginia, addressed the Board and explained that because of the narrowness of the lot a variance was necessary. He said that the addition would be comprised of a two car garage with a second story master bedroom. Mr. Garrett said that the existing carport would have to be extended an additional 8 feet into the side yard for the addition.

In response to questions from Mr. DiGiulian, Mr. Garrett stated that materials similar to those on the existing structure would be used and a new roof would be put on the entire structure so that the addition would enhance the neighborhood.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mr. DiGiulian made a motion to grant VC 89-L-155 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated February 15, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-155 by SAMUEL J. GARRETT, under Section 18-401 of the Zoning Ordinance to allow a carport extension in order to construct a two car garage and a second story addition 3.8 feet from side lot line with a total minimum side yards of 25.9 feet, on property located at 5444 Broadmoor Street, Tax Map Reference 100-2((2))520A, Mr. DiGiulian moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 8,598 square feet of land.
4. The applicant has satisfied the nine standards for a Variance.
5. The location of the house on the narrow lot has caused the need for the Variance.
6. The request is for a minimum Variance.
7. There is no Variance necessary to the total side yard.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 6 - 0 with Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 288, February 22, 1990 (Tape 1), Scheduled case of:

9:45 A.M. HAMPTON B. AND MARINDA BARNES, VC 89-P-157, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling 12 feet from one side lot line and 8 feet from the other side lot line (20 ft. min. side yard required by Sect. 3-107), on property located at 1773 Chain Bridge Road, on approximately 7,000 square feet of land, zoned R-1 and HC, Providence District, Tax Map 30-3((2))233.

Chairman Smith noted that VC 89-P-157 could not be heard because the notices were not in order.

Bernadette Bettard, Staff Coordinator, informed the Board that the applicant had not submitted the required certified mail receipt to the Clerk although they were called and reminded to do so.

In response to Chairman Smith's question, Ms. Bettard said that the applicant was not in violation of the Zoning Ordinance.

In reply to Chairman Smith's question, Lori Greenlief, Staff Coordinator, said that it was the agent for the applicant who did not do the notices.

Chairman Smith asked if the applicant was present, hearing no reply he called for anyone interested in the application.

Mary Holbeck, 1608 Colonel Lane, McLean, Virginia, addressed the Board and said that she was in opposition to the request.

Chairman Smith explained to Ms. Holbeck that because the notices had not been done, the case could not be heard at this time. Ms. Holbeck said she would attend the next scheduled public hearing.

Mr. DiGiulian suggested that the case be deferred and that the applicant be informed that if the notices are not mailed within the allotted timeframe for the next hearing, the case would be denied for lack of interest.

Ms. Greenlief suggested April 19, 1990 at 9:00 a.m. as a deferral date.

Hearing no objection, the Chair so ordered.

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Page 288, February 22, 1990 (Tape 1), After Agenda Item:

Wolftrap Meadows Homeowners Association, A 89-D-018, Intent to Defer

Mr. DiGiulian made a motion to issue an intent to defer A 89-D-018 scheduled for March 13, 1990. Mrs. Harris seconded the motion which carried by a vote of 6 - 0 with Mr. Ribble absent from the meeting.

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Page 288, February 22, 1990 (Tape 1), After Agenda Item:

Young Ho Kim, SPR 83-D-040-2, Intent to Defer

In response to a question from Mr. DiGiulian, Lori Greenlief, Staff Coordinator, said that although the permit had expired, the applicant had applied for renewal prior to the expiration date.

Mr. DiGiulian made a motion to issue an intent to defer SPR 83-D-040-2 scheduled for March 6, 1990. Mrs. Thonen seconded the motion which carried by a vote of 6 - 0 with Mr. Ribble absent from the meeting.

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Page 289, February 22, 1990 (Tape 1), After Agenda Item:

Approval of November 16, 1989 Minutes

Mr. Kelley made a motion to approve the Minutes as submitted. Mr. Hammack seconded the motion which carried by a vote of 6 - 0 with Mr. Ribble absent from the meeting.

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Page 289, February 22, 1990 (Tape 1), After Agenda Item:

Christian Fellowship Church Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board about the decision to ask the Zoning Administrator to be present or to inform the Board whether she had advised the appellant that the trailers were approved from the date of the Board of Zoning Appeal's decision, rather than the date of the Non-Residential Use Permit. Ms. Kelsey said that the Zoning Administrator would be available if the Board could not resolve the issue.

In response to a question from Mr. Hammack, Ms. Kelsey replied that the appeal is to dispute the issuance of the Non-Residential Use Permit with the condition that states it is approved for two years from the date of the BZA's approval. Ms. Kelsey told the Board that the Non-Residential Use Permit was issued on January 24, 1990, but she did not know the reason why the Non Residential Use permit had not been issued sooner. She told Chairman Smith that she had no knowledge of the trailers being used prior to the issuance of the Non-Residential Use Permit and that no violation notice had been issued.

It was the consensus of the Board that the appellant should ask for an extension of time and not appeal the Board's right to limit the amount of time a special permit may be valid.

In response to Mrs. Thonen's question, Ms. Kelsey said that the appeal is to address the limitations and conditions of the Non-Residential Use Permit, and to amend the expiration date be amended to read January 24, 1992.

Mr. Hammack stated that as he recalled the trailers were in place when the BZA granted the permit and expressed concern as to why the appellant took so long to get a Non-Residential Use Permit. He stated that the application was granted for immediate use until the applicant could build a permanent structure and wondered if the trailers had been used all this time.

After a lengthy discussion, the Board agreed to set a time for the appeal.

Mr. DiGiulian made a motion to hear Christian Fellowship Church Appeal on May 1, 1990 at 8:00 p.m. Mrs. Thonen seconded the motion which carried by a vote of 6 - 0 with Mr. Ribble absent from the meeting.

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Page 289, February 22, 1990 (Tape 1), Scheduled case of:

10:00 A.M. DAVID L. COOPER, SP 89-C-059, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum side yard requirement based on error in building location to allow addition to remain 4.8 feet from side lot line (20 ft. min. side yard required by Sect. 3-107), on property located at 3634 West Ox Road, on approximately 1.0 acres of land, zoned R-1 and WS, Centreville District, Tax Map 46-1((1))78.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Cooper confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report and said that staff was unable to conclude that the application meets all the required standards, specifically number 3, nor could staff conclude that the applicant had acted in good faith, therefore staff could not take a position.

David Cooper, 3634 West Ox Road, Fairfax, Virginia, addressed the Board and explained that he had bought the property in good faith and was not aware that the former owner had not obtained a building permit for the addition. He noted that the property went through settlement, was refinanced, and it was not until he had applied for a building permit that he was informed of the violation. Mr. Cooper told the Board that he would have to remove part of a bedroom, pantry, and kitchen, in order to comply with the Ordinance.

In response to Mrs. Harris' questions, Mr. Cooper said that the septic field is partly on the neighboring property, although the County records shows that it is on his property. He explained that the original owners of the properties involved were sisters.

Mr. Cooper replied to Chairman Smith's question by saying that the original structure was built in 1949 and he had purchased it in 1981. He explained that he would like to install central heat and air conditioning to the existing addition.

In response to Mr. Hammack's question, Ms. Bettard said in that in researching the property she found no records showing when the addition was added. She noted that the addition was recorded in the Real Estate Assessment Office prior to 1981.

There were no speakers to address this request and no staff closing comments. Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant SP 89-V-059 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated February 15, 1990.

Mr. Kelley asked why the staff could not conclude that the applicant had acted in good faith and wondered why the staff report was so negative.

Jane Kelsey, Chief, Special Permit and Variance Branch addressed the Board and said that the policy issue should be discussed at a meeting between Mr. Zook, Ms. Byron, Staff, and the Board. She explained that unless an applicant submitted proof that he had acted in good faith, or staff could make that determination from researching the case, staff had no basis on which to make a decision.

Mr. Hammack stated that he agreed with Mr. Kelley's assessment that the statement in the staff report had a very negative connotation and was unfair to the applicant.

Ms. Kelsey said she would prefer to discuss the policy involving writing staff reports for error applications at a meeting with the Board.

Chairman Smith stated that at a public hearing the Board should go into the details in order to get to the truth.

Mr. Hammack said that the applicant had submitted a written statement saying that he was not aware that the property was in violation and that staff ignored his representation. He expressed his belief that staff indicated that they could not accept the applicants statement as true. He asked if staff were incapable of making a conclusion.

Ms. Kelsey explained that when the staff report was routed through the County Attorney's office, staff was advised that unless there is clear evidence that can assure staff that the applicant has acted in good faith, then staff cannot make a positive conclusion.

Mrs. Harris expressed her belief that various people had made mistakes that were unbeknownst to Mr. Cooper, that he had tried to follow the proper procedures, and is now rectifying the situation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-C-059 by DAVID L. COOPER, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum side yard requirement based on error in building location to allow addition to remain 4.8 feet from side lot line, on property located at 3634 West Ox Road, Tax Map Reference 46-1((1))78, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1 and WSPOD.
3. The area of the lot is 1.0 acres of land.
4. The error exceeds 10 percent of the measurement involved.
5. The request will not create unsafe conditions with respect to other property and public streets.
6. To enforce compliance with the Ordinance would create an undue hardship on the applicant.
7. There have been various people who have made mistakes in the surveying of the property, and the applicant is trying to rectify the situation with this application.
8. The applicant bought the property in good faith.

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

Chairman Smith expressed his desire to have staff advise the applicant to reaffirm the affidavit when they are called to the podium to testify.

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Page 292, February 22, 1990 (Tape 2), Scheduled case of:

11:00 A.M. PULTE HOME CORPORATION APPEAL, A 89-D-017, appeal of the Director of Environmental Management determination's disapproving a preliminary plat with the notation that a special exception is required pursuant to Part 9 of Article 2, Floodplain Regulations, on property located at 1116 Drainsville Road, on approximately 362,472 square feet of land, zoned R-1, Dranesville District, Tax Map 6-3((1))22A.

Jane Kelsey, Chief, Special Permits and Variance Branch addressed the Board and introduced Dennis King, Chief, Site Review, DEM, representing the Director of the Department of Environmental Management's position on this appeal.

Chairman Smith called the representative for the appellant to the podium.

Keith Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, 2200 Clarendon Boulevard, Arlington, Virginia, represented the appellant and asked the Board for a deferral. He explained that the reason for the appeal was based on a November 15, 1989 decision by the Director, Department of Environmental Management. He said that the appellant was lead to believe that the denial was based on one provision of the Zoning Ordinance but when the appellant received the staff report numerous other provisions were cited. He then asked for a short deferral in order to address these items and specified the appellant would like to verify the amount of fill and the surface area figures that are stated in the staff report. He noted that with millions of dollars at stake it is critical for the appellant to have accurate information to present to the Board.

In response to a question from Chairman Smith, Mr. Martin informed the Board that the applicant requested a two week deferral.

In response to a questions from Mrs. Harris, Mr. Martin explained that the applicant would like to corroborate the figures stated in the staff report and adequately address all of the provisions cited.

In response to a question from Mr. Hammack, Mr. Martin said that he would submit a position paper to staff and to the Board before the next public hearing.

Mr. King stated that he saw no reason to defer the case.

Chairman Smith stated that in order to be fair to the appellant a deferral request should be entertained.

In response to a question from Mrs. Harris, Mr. Martin said that his client had not appealed to the Board of Supervisors and that the appeal to the Board of Zoning Appeals was the only one filed by his client at this time.

Chairman Smith called for a deferral date and time and Ms. Kelsey suggested March 13, 1990 at 11:45 a.m.

Mrs. Thonen made a motion to defer A 89-D-017 to March 13, 1990 at 11:45 a.m. Mr.Hammack seconded the motion which carried by a vote of 4 - 0 with Mr. DiGiulian and Mr. Kelley not present for the vote and Mr. Ribble absent from the meeting.

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The Board recessed at 11:10 a.m. and reconvened at 11:45 a.m.

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Page 292, February 22, 1990 (Tape 2), Scheduled case of:

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-113, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104) and to allow a 4.3 foot high fence on a corner lot (3.5 ft. max. hgt. for a fence allowed by Sect. 2-505), on property located at 2647 Paddock Gate Court, on approximately 11,723 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))1. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specific additions shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. The trash cans along the side of the subject dwelling that faces the abutting Lot 77 shall be removed within twenty-four (24) hours of this approval and the area between the building and the lot line shall be kept free of any type debris. There shall be no storage in this area. Should plantings be installed, they should be conifer-type evergreen trees, six feet in height and planted five feet on center.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack again expressed his concern with the type of proof staff requires to conclude that an applicant has acted in good faith. He stated that if the County Attorney believes that the statements made by the applicants cannot be trusted, then the Board should consider putting the applicants under oath.

Mrs. Thonen stated that if the applicants were put under oath, then staff should be put under oath, too.

Chairman Smith stated that the Chair would resist this procedure.

Ms. Kelsey again stated that the County Attorney has advised staff, that if the applicant's statements cannot be verified, then staff cannot make a judgment on the reliability of the statements.

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Page 291, February 22, 1990 (Tape 2), After Agenda Item:

Approval of February 13, 1990 Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted. Mr. DiGiulian seconded the motion which carried by a vote of 6 - 0 with Mr. Ribble absent from the meeting.

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Page 291, February 22, 1990 (Tape 2), Information Item:

In response to a question from Mr. Hammack, Jane Kelsey, Chief, Special Permit and Variance Branch, told the Board that the gap in the scheduled case was caused by the appeal being scheduled before the agenda was complete. Ms. Kelsey reflected that it was at the Board's suggestion that the Clerk schedule all appeals for 11:00 a.m. Staff would be glad to change the suggested time for appeals if the Board so desires. Originally, staff had suggested scheduling hearings on appeal applications for 9:00 a.m. However, the Board felt that because appeal hearings were sometimes lengthy, the appeals should be later in the day. The Board decided on 11:00 a.m. which is fine when the hearing date has a full case load, but if it is one that has only a few applications which are not scheduled up to 11:00 a.m., there is a time gap, since the Board has already scheduled the appeal.

After a discussion the Board decided that the appeals should be scheduled at 11:00 a.m. or at the end of the agenda.

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11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-114, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104) and to allow a 4.3 foot high fence on a corner lot (3.5 ft. max. hgt. for a fence allowed by Sect. 2-505), on property located at 2650 Paddock Gate Court, on approximately 11,804 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))41. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-115, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2645 Paddock Gate Court, on approximately 10,200 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))2. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-116, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2643 Paddock Gate Court, on approximately 10,328 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))3. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-117, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2641 Paddock Gate Court, on approximately 15,208 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))4. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-118, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2640 Paddock Gate Court, on approximately 14,186 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))36. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-119, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2642 Paddock Gate Court, on approximately 12,031 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))37A. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-120, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2644 Paddock Gate Court, on approximately 11,416 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))38A. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-121, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2646 Paddock Gate Court, on approximately 10,564 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))39. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:30 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-122, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2648 Paddock Gate Court, on approximately 10,432 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))40. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

Greg Riegle, Staff Coordinator, said that a letter had been received from William Shoup, Deputy Zoning Administrator, stating that his office had not yet completed the review or made

a determination and therefore was requesting a deferral. Mr. Riegle said that Mr. Shoup had assured him that a determination would be reached by March 9, 1990, and requested that the public hearing to be scheduled on March 13, 1990.

Chairman Smith called the representative for the applicant to the podium. David O'Brien, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn, and Hanes, 3110 Fairview Park Drive, Falls Church, Virginia represented the applicant and agreed to the suggested deferral.

Mr. Hammack made a motion to defer VC 89-C-113 through VC 89-C-122 to March 13, 1990 at 11:45 a.m. Mr. DiGiulian seconded the motion which carried by a vote of 6 - 0 with Mr. Ribble absent from the meeting.

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Page 294, February 22, 1990 (Tape 1), Adjournment:

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

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED March 22, 1990

APPROVED March 27, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 6, 1990. The following Board Members were present: Chairman Daniel Smith; John DiGiulian, Vice Chairman; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble.

Chairman Smith called the meeting to order at 8:05 p.m. and gave the invocation. There were no Board matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 295, March 6, 1990 (Tape 1), Scheduled case of:

8:00 P.M. IRANIAN COMMUNITY SCHOOL, INC., SP 89-P-056, application under Sects. 3-103 and 8-901 of the Zoning Ordinance to allow a private school of special education and waiver of the dustless surface requirement, on property located at 2221 Chain Bridge Road, on approximately 20,807 square feet of land, zoned R-1, Providence District, Tax Map 39-1((4))5. (CONCURRENT WITH VC 90-P-009)

8:00 P.M. MOHAMMED REZZ GHAFOURI AND SHAHENTAJD DEYHIMI GHAFOURI, VC 90-P-009, application under Sect. 18-401 of the Zoning Ordinance to allow an existing building to remain 7.1 feet from the side lot line (20 ft. min. side yard required by Sect. 3-107), on property located at 2221 Chain Bridge Road, on approximately 20,807 square feet of land, zoned R-1, Providence District, Tax Map 39-1((4))5. (CONCURRENT WITH SP 89-P-056)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Cate replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant is requesting approval to operate a private school of special education with three employees which will hold classes consisting of five students on Monday through Friday, 6:30 p.m. to 8:30 p.m., four classes on Saturday, and two classes on Sunday. She added that the applicant is also requesting a waiver of the dustless surface as well as a variance to allow the existing dwelling, which was constructed prior to the current Zoning Ordinance, to remain in its present location. Ms. Greenlief outlined the background of the case and staff's analysis as set forth in the staff report. In closing, Ms. Greenlief stated that staff recommended approval of the application subject to the implementation of the development conditions contained in the staff report.

Dennis Cate, attorney with the law firm of Haight, Tramonte & Siciliano, 8221 Old Courthouse Road, Suite 300, Vienna, Virginia, represented the applicant. He stated that there will be no more than five students on the property at any one time, that the classes on Saturday and Sunday have been staggered at half hour intervals to alleviate any problems entering/exiting the site, and the week day classes have been scheduled to avoid peak rush hours. He stated that the applicant proposes to construct a better entrance than is currently on the site, the proposed screening will mitigate visual and noise impact on the neighboring properties, and the building will not be expanded or moved. He noted that the building predates the current Zoning Ordinance and noted that the variance is needed only because the applicant is requesting to operate a private school.

Mr. Cate stated that the applicant agreed with all development conditions relating to the variance. With respect to the special permit development conditions, Mr. Cate stated that the applicant agreed with all the development conditions but asked that condition 10 be amended to allow outdoor activities to occur in the southern rear yard area, south and east of the proposed shed location, as well as the western rear and side yard locations. He also asked that condition 11 be modified to reflect a four foot high fence in the front yard; and, condition 12 be modified to note that the dedication be subject to the provisions that the special permit still be valid at that time, that the direct access to the property not be precluded, and that VDOT/BOS agree to provide a replacement entrance, including the apron and curb cut, and to replace the landscaping and trees that may be disturbed by the dedication. In closing, he stated that he did not believe that the school would adversely affect the neighboring properties, the access to the site is from Chain Bridge Road rather than through a subdivision, the property will be adequately screened, and there will be no more than five students on site at any one time. Mr. Cate asked the Board to grant both the special permit and variance and to waive the dustless surface requirement.

In response to questions from Mrs. Harris, Mr. Cate replied that the applicant had no problem with paving the driveway 25 feet into the site. He stated that the applicant was requesting approval to hold outdoor classes during the spring and summer months.

Chairman Smith called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Lt. Gen. Harold A. Hatch, USMC (Retired), 8655 White Beach Way, Vienna, Virginia, President of Westwood Forest II Homeowners Association, stated that the association would like the property to stay residential. He then read a prepared statement into the record which contained a petition signed by 22 of the surrounding neighbors and submitted it to the Board. (A copy is contained in the file.) Mr. Hatch continued by stating that there is a traffic problem in the area of the subject property, there is no direct access onto the property, and the granting of the proposed use will set a bad precedent.

One speaker came forward to speak in support of the request and Chairman Smith informed her that she should have come forward at the time he called for speakers in support. Following a discussion among the Board members, it was the consensus of the Board to hear the speaker's testimony.

Cathy Furlong, 7982 Silverado Place, Alexandria, Virginia, stated that she was a teacher and had been teaching for 12 years in Fairfax County and had become interested in the Persian culture when she began dating someone from Iran. She began taking classes at the Smithsonian and was introduced to Mrs. Ghafouri who at that time was teaching at St. John's Catholic Church in McLean. Ms. Furlong noted that she had not experienced any problem either entering or exiting the subject property and she highly recommended that the Board approved the request.

The Board questioned why the ages in the staff report indicated that the students would be between the ages of 5 and 12. Mr. Cate explained that the applicant's original intent had been to have students in the age group noted in the staff report but had discussed with staff the possibility of having an occasional adult student. The major concern had been whether or not there would be sufficient parking and staff believed there was adequate parking.

Mr. Hammack stated that the Board had received a letter from Alan S. Toppelberg & Associates representing a neighbor which stated at times there have been as many as 50 to 60 students enrolled in the program. Mr. Cate stated that the applicant ceased holding classes at the site when they were issued a notice of violation. He assured the Board that the applicant would abide by the development conditions placed on the use.

Chairman Smith questioned if the maximum enrollment would be 20. Mr. Cate replied that there would be 5 students per class but he was not certain if each student would attend only one class per week or attend a number of classes.

In response to a question from Chairman Smith, Ms. Greenlief replied that at the time the staff report was written staff had not been aware that adults may attend classes. She added that she did not believe that this presented a problem as the parking was adequate and that this would resolve any of staff's concerns with respect to outdoor play. Ms. Greenlief noted that this application had been advertised as a private school of special education and the Zoning Ordinance does not restrict ages for this type of school.

With respect to questions from Mrs. Harris about the existing house, Ms. Greenlief stated that she believed that the house had been built in the 40's or 50's and the fence would not be constructed in such a way as not to restrict sight distance.

Mrs. Thonen asked if the Zoning Ordinance amendment had been passed allowing play areas in a front yard. Ms. Greenlief explained that there is not a required play area for a private school of special education. In order to clarify for the Board the difference between a school of special and general education, Ms. Greenlief read the definitions contained in the Zoning Ordinance.

In response to a question from Mrs. Harris about the number of students on site, Mr. Cate stated that a large group of the applicant's friends had been on the site to help relocate the shed but classes were not conducted. He added that the dwelling will be used strictly as a school.

Mr. Kelly called Ms. Furlong back to the podium and questioned her as to the type of instruction she had been receiving. Ms. Furlong explained that she had been receiving instruction with respect to the way the Persian culture interrelates. She stated that the number of students in the classes have never exceeded 5.

During staff's closing comments, Ms. Greenlief stated that staff would agree to the applicant's request for a clarification to development condition 11.

With respect to questions from Mrs. Harris regarding Lot 50, Ms. Greenlief stated that the property was zoned R-1 and she was not sure how far back the dwelling set as she had not been able to find a subdivision plat showing the new lots. Following a discussion with Mr. Cate, Ms. Greenlief stated that the applicant had indicated that the dwelling on Lot 50 sets further back from the subject property then the dwelling on Lot 18.

Chairman Smith closed the public hearing.

Lt. Gen. Hatch stood up and informed the Board that there was another citizen present who wished to oppose the application. Chairman Smith asked the Board for guidance.

Mrs. Thonen stated that she would like to hear from the speaker and asked the Chair to give the speaker three minutes. It was the consensus to reopen the public hearing and allow the citizen to speak.

Mrs. John Van Wert, 8705 Westwood Forest Lane, Vienna, Virginia, owner of Lot 20, stated that she was uncomfortable appearing in opposition but stated that she was concerned with the request. She added that she had discussed the request with her next door neighbor, an instructor at the school, and in those discussions her neighbor had indicated that there

would be both adult and school age students and that the school was growing. She stated that she would hate to see a "snow ball" effect in the neighborhood generated by this request and that there is already a traffic problem on the pipestem where her property is located.

During rebuttal, Mr. Cate stated that there is a median break directly in front of the property, that there will be no alterations to the appearance of the existing dwelling, that the classes have been scheduled around peak rush hours, and that there is adequate parking on site.

Chairman Smith closed the public hearing.

Mr. Hammack made a motion to deny SP 89-P-056 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-P-056 by IRANIAN COMMUNITY SCHOOL, INC., under Sections 3-103 and 8-901 of the Zoning Ordinance to allow a private school of special education and waiver of the dustless surface requirement, on property located at 2221 Chain Bridge Road, Tax Map Reference 39-1((4))5, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 6, 1990; and

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

1. That the applicant is the lessee of the land.
2. The present zoning is R-1.
3. The area of the lot is 20,807 square feet of land.
4. The application, although it is only for five students at a time and for a small total student population, is contrary to the adopted Comprehensive Plan. The granting of the application would simply start a school institution in the middle of a very sensitive area just north of the Town of Vienna. The BZA has denied similar applications in the past. For many years we have been attempting to protect this area from commercial uses and the granting of this application would be an extremely bad precedent, therefore General Standard 1 is not met.
5. The proposed hours of operation are in the evening, Monday through Friday, all day on Saturday, and the better part of Sunday, which is not a typical school that operates during the day when citizens are at work and it would indeed have an impact on the residential area. The proposed hours of operation of the school are not compatible nor harmonious with residential use, therefore General Standard 3 is not met.
6. There are a lot of traffic problems in the area and there is no adequate drop off or pick up area for the students who would be attending the school, therefore General standard 4 is not met.

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 and the additional standards for this use as contained in Sections 8-303, 8-307 and 8-903 of the Zoning Ordinance.

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

Mrs. Thonen seconded the motion. The motion carried by a vote of 6-1 with Chairman Smith voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 1990.

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Mr. Hammack noted for the record that the denial of the special permit made the variance request moot.

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8:15 P.M. YOUNG HO KIM, SPR 83-D-040-2, application under Sect. 3-403 of the Zoning Ordinance to renew SP 83-D-040 for an antique retail shop, on property located at 6919 Old Dominion Drive, on approximately 11,250 square feet of land, zoned R-3, Dranesville District, Tax Map 30-2((7))(11)9,10,11.

Chairman Smith stated that the Board had issued an intent to defer this application at its February 22, 1990 public hearing.

Bernadette Bettard, Staff Coordinator, suggested a hearing date of May 1, 1990 at 8:30 p.m. and added that the notices would also need to be done for that public hearing.

Mrs. Thonen made a motion to defer SPR 83-D-040-2 to the date and time suggested by staff. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. DiGiulian, Mr. Kelley, and Mr. Ribble not present for the vote.

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8:30 P.M. NORTHERN VIRGINIA MENNONITE CHURCH, SP 89-S-057, application under Sects. 3-C03 and 8-901 of the Zoning Ordinance to allow a church and related facilities and a waiver of the dustless surface requirement, on property located at 11800 Washington Street, on approximately 2.8217 acres of land, zoned R-C and WS, Springfield District, Tax Map 67-1((04))22.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Gross replied that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report and called the Board's attention to a letter just received from Supervisor Elaine McConnell in support of the request. Ms. Bettard stated that it is staff's conclusion that the use is not in harmony with the Comprehensive Plan and did not meet standards 1, 2, 3, 4, 5, and 7, which are more fully addressed in the staff report, and recommended denial of the request.

Ms. Bettard introduced Randy Stouder, Environmental Branch, Office of Comprehensive Planning, and James Jenkins, Department of Public Works, who were present to answer any questions that the Board might have with respect to the Environmental Quality Corridor (EQC) and the sanitary sewer capacity.

Mrs. Harris asked where the house on Lot 23 was situated and Ms. Bettard used the viewgraph to point out the location. She stated that the house on Lot 23 sets back approximately 25 to 30 feet.

Mr. Hammack stated page 3 of the staff report referenced a sanitary sewer system in the Lincoln-Lewis-Vannoy Conservation Area which is under construction and would be completed in August 1984. Mr. Jones explained that there is an existing system in the Lincoln-Lewis-Vannoy area. Mr. Stouder stated that Mr. Hammack was looking at old Plan language.

Bruce A. Gross, 9431 Main Street, Manassas, Virginia, attorney for the church came forward. He stated that the applicant has worked with staff extensively regarding the EQC that runs through the property. Mr. Gross stated that he believed that there was sufficient open space in the area just north of the church building that could be used to address staff's concerns with respect to the parking lot and the screening. Regarding the screening, the applicant believed that the 25 feet provided along the west side of the church building and running the entire length of the property line was adequate although the adjacent property has been cleared up to the church's property line. He added that the applicant was willing to provide Transitional Screening 1 along all property lines and to remove the stormwater detention center in order to keep the EQC intact. Following discussions with staff, the applicant proposes to construct an on site holding tank system that would be designed to pump into the public system during the off peak hours so there would not be a possibility that all three churches would be using the system at the same time. He stated that First Street is scheduled to be upgraded in the near future and that he believed that the applicant had addressed the traffic uses raised by staff. The church has been designed to be harmonious with the residential character of the neighborhood and is similar to a single-family dwelling.

With respect to the development conditions, Mr. Gross addressed condition number 8 and asked that it be revised to reflect "Transitional Screening 1" rather than 2 and asked the board to waive the requirement of the 6 foot chain link fence along the western boundary; revise condition number 11 to allow light standards at least 12 feet in height with shields to direct the lighting on site; and, revise condition number 16 to allow the applicant more flexibility.

The pastor of the church, Randy Heacock, 14735 Southwarke Place, Centreville, Virginia, came forward. He stated that he has been pastor of the church since March 1988 and outlined the history of the church. He stated that during the 13 years the church has been in existence, the charter membership has grown from 16 to 53 with the members having a variety of occupations ranging from employees of the Federal Government to housewives.

Robert Throne, 11019 Ring Road, Reston, Virginia, a long time member of the church, stated that the church began in 1976 and in the first budget money was set aside for future expansion and in 1986 the church began searching for land. The church will be a good neighbor and will not adversely impact the area. He asked the Board to grant the request.

Chairman Smith called for speakers in opposition to the request.

Richard Harris, 11809 Washington Street, Fairfax, Virginia, opposed the request based on the traffic that would be generated by the use because the roads in the area are so narrow. He stated that the only access to Lincoln park is from Braddock Road and a four year study by the Office of Transportation lists 128 accidents with 219 vehicles involved and 72 injuries.

In response to a question from Mrs. Harris, Mr. Harris used the viewgraph to show the location of his property.

Allen S. Barbour, 11808 Washington Street, Fairfax, Virginia, came forward to answer an earlier question from Mrs. Harris with respect to the location of his house on Lot 23 and explained that his house would run parallel to the proposed church building.

During rebuttal, Mr. Gross submitted photographs to the Board showing the neighbor's house and the subject property. He stated that the neighbor's house sets back approximately 70 feet from the corner of the proposed building.

He continued by stating that the applicant had initially planned a second stage but following discussions with staff regarding the EQC the applicant now believes that the request before the Board is the maximum utilization of the site. The applicant understands the speaker's concerns with the traffic but that he did not believe that the church would adversely impact the traffic.

In response to Mrs. Harris' concerns with the traffic, Mr. Gross explained that by the time the church reaches the maximum of 150 members both Braddock Road and First Street will have been upgraded and the roads will not be an issue.

Mrs. Harris stated that she understood what Mr. Gross was saying but that she was still concerned with the immediate problem.

There were no staff closing comments and Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to deny SP 89-S-057 for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-S-057 by NORTHERN VIRGINIA MENNONITE CHURCH, under Section 3-C03 of the Zoning Ordinance to allow a church and related facilities and a waiver of the dustless surface requirement, on property located at 11800 Washington Street, Tax Map Reference 67-1((4))22, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 6, 1990; and

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

1. That the applicant is the contract purchaser of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 2.8217 acres of land.
4. The motion is based strictly on land use issues.
5. The applicant has not met the standards with respect to the building and the lot would be smaller than the R-C lots, therefore it is not compatible.
6. The church would be located too close to the surrounding houses.
7. There are problem soils on the site, the site is located within the Occoquan Water Shed, and the proposed building would be constructed very close to the EQC that runs through the property.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses and the additional standards for this use as contained in Sections 8-303, 8-903 and 8-915 of the Zoning Ordinance.

Page 300, March 6, 1990 (Tapes 1-2), (NORTHERN VIRGINIA MENNONITE CHURCH, SP 89-S-057, continued from Page 299)

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

Mrs. Harris seconded the motion. The motion carried by a vote of 6-1 with Chairman Smith voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 14, 1990.

NOTE: At its March 13, 1990 meeting, the Board of Zoning Appeals amended finding of fact number 5 to reflect the R-C District. This correction was made prior to the time the Resolution became final.

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Page 300, March 6, 1990 (Tape 2), After Agenda Item:

Austin Zappala, t/a Bug & Honda Shop, Inc., VC 87-M-165
Additional Time

Chairman Smith asked staff if the Board of Supervisors (BOS) had taken action on the pending Special Exception and Jane Kelsey, Chief, Special Permit and Variance, replied not to her knowledge. Mrs. Thonen stated that it was her understanding that the BOS had taken action on the application on March 5th. Ms. Kelsey stated that staff had not been informed of any action. Mrs. Harris suggested deferring action until the next BZA meeting.

Mrs. Thonen made a motion to defer action on the additional time request for VC 87-M-165 until March 13, 1990. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 300, March 6, 1990 (Tape 2), After Agenda Item:

Approval of Minutes from December 7, 1989, December 12, 1989,
December 21, 1989, January 9, 1990, and January 23, 1990

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 300, March 6, 1990 (Tape 2), After Agenda Item:

Christian Fellowship Church Appeal

Mrs. Thonen made a motion to allow the appellant to withdraw the appeal. Mr. DiGiulian seconded the motion which carried by a vote of 7-0.

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Page 300, March 6, 1990 (Tape 2), After Agenda Item:

Alfred J. Baird Appeal

Mrs. Harris made a motion to allow the appellant to withdraw the appeal. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 300, March 6, 1990 (Tape 2), After Agenda Item:

David Iosco, SP 90-S-015, Out-of-Turn Hearing

Mrs. Harris asked staff for a clarification as to where the applicant proposed to construct the accessory dwelling. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that it was her understanding that the applicant is now renting while his new house is being built and the accessory dwelling will be added to the house under construction.

Mr. Hammack stated that if the application is held up any more the dwelling will be constructed before the public hearing which will make adding the accessory dwelling very difficult. He then made a motion to grant the out-of-turn hearing request. Mrs. Thonen seconded the motion.

Following a discussion between the Board and Ms. Kelsey regarding an appropriate hearing date, Mrs. Thonen made a motion to schedule the out-of-turn hearing for April 24, 1990. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 301, March 6, 1990 (Tape 2), After Agenda Item:

Hampton Forest Community Swimming Pool
Out-of-Turn Hearing

Following a discussion between the Board and staff, it was the consensus of the Board to defer action until March 13, 1990. Mrs. Harris made a formal motion. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 301, March 6, 1990 (Tape 2), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 9:40 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian V.C.
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: March 27, 1990

APPROVED: April 3, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 13, 1990. The following Board Members were present: Chairman Daniel Smith; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. John DiGiulian, Vice Chairman, was absent from the meeting.

Chairman Smith called the meeting to order at 9:15 a.m. and gave the invocation. There were no Board matters to bring before the Board and Chairman Smith called for the first scheduled case.

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Page 303, March 13, 1990 (Tape 1), Scheduled case of:

9:00 A.M. RICHARD M. DOYLE, SP 89-A-052, application under Sect. 8-901 of the Zoning Ordinance to allow detached shed, 10.5 ft. in height, to remain 0.6 ft. from rear lot line (10.5 ft. min. rear yard required by Sect. 10-104), on property located at 4226 San Juan Drive, on approximately 10,505 square feet of land, zoned R-3 and WS, Annandale District, Tax Map 57-3((7))14. (DEF. FROM 1/18/90 FOR NOTICES)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Doyle confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report as prepared by Randy Baxter, Staff Coordinator. Ms. Kelsey said that the applicant had postponed the painting, shuttering, and landscaping pending the outcome of the public hearing. She explained that the storm water drainage problem is of concern to staff and had been recommended as a condition of the special permit, if approved.

Richard M. Doyle, 4226 San Juan Drive, Fairfax, Virginia, addressed the Board and explained that he had applied for a building permit and was told by Audrey Clark, Permit Section of Fairfax County, that a permit would not be required. He said that most of his neighbors had sheds of equal size and stated that his yard is on a eight percent slope and that this is the reason he chose this particular site for the shed. Mr. Doyle told the Board that he had graded his yard in order to alleviate some of the water problems and expressed his belief that the grading had actually reduced his neighbor's water flow problem. He used the viewgraph to show the swale that allows water to flows from his rear lot line and explained that he planned to install gutters which will allow the water to flow into this swale.

Ms. Kelsey explained that Ms. Clark works for the Department of Environmental Management and that while a building permit is not required the shed must meet the location regulations of the Zoning Ordinance.

In reply to a question from Mrs. Thonen, Ms. Kelsey explained that a shed of less that 150 square feet does not need a building permit but does have to meet the location requirements of the Zoning Ordinance.

In response to Mrs. Harris' questions, Mr. Doyle explained that his neighbor, Mr. Berry, has shrubbery along the rear lot line that screens the shed from his view. He stated that Mr. Berry also has a shed which is situated 12 feet from the rear lot line. Mr. Doyle said that the trees on the southeast corner of the lot prohibits placing the shed there.

There being no speakers in support of the application, Chairman Smith called for speakers in opposition.

John E. Berry, 10920 Decatur Drive, Fairfax, Virginia, stated that he objected to the roof of the shed overhanging his property. He explained that he does not believe that the applicant's yard is adequately screened and stated that further screening would have to be done on his property at his own expense. He expressed concern about the proposed gutter overhanging onto his property.

There being no further speakers in opposition, Chairman Smith called Mr. Doyle back to the podium for rebuttal.

In response to a question from Chairman Smith on why he could not move the shed so that it is in compliance with the Zoning Ordinance, Mr. Doyle explained that because of his lot's eight percent slope, any other location would require that the yard be regraded and a foundation cut into the ground.

Mr. Doyle addressed his neighbor's concerns and explained that his structure is not complete and stated that the 12 inch roof overhang onto Mr. Berry's property would be cut off and a recessed gutter installed to carry the rain water into the swale on his own property.

Mr. Barry returned to the podium to answer Mr. Kelley's question on the recessed gutter, Mr. Barry said he would have no objection to the shed if the recessed gutter was installed to alleviate the water problem and if the roof and the gutter did not overhang onto his property.

Mr. Doyle explained to the Board that there would be no overhang and that the gutter would be 5 inches wide, 6 inches deep, and be constructed of galvanized metal. He stated that he would be glad to provide Mr. Berry with shrubbery for screening purposes.

Staff having no comments, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant SP 89-A-052 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated January 9, 1990 with the changes as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-A-052 by RICHARD M. DOYLE, under Section 8-901 of the Zoning Ordinance to allow detached shed, 10.5 feet in height to remain 0.6 feet from rear lot line, on property located at 4226 San Juan Drive, Tax Map Reference 57-3((7))14, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3 and WS.
3. The area of the lot is 10,505 square feet of land.
4. The irregular shape, the drainage problem, and steep slope of the lot justified the application.
7. A building permit was not necessary for construction of the shed.
8. If the shed was 8 1/2 feet in height it could remain but because it 10 1/2 feet in height it is too close to the lot line.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific shed shown on the plat included with this application and is not transferable to other land.

2. The shuttering, painting and landscaping of the shed shall be completed so as to enhance its appearance.

3. Due to its height and the proximity of the storage shed to neighboring properties, adequate stormwater drainage measures shall be provided to ensure that no stormwater from the storage shed drains on neighboring properties.

4. The overhang and the downspout on the back of the shed must be flush to the shed and it must drain onto the applicant's property.

Mr. Kelley seconded the motion. The motion carried by a vote of 4 - 1 with Chairman Smith voting nay and Mr. Hammack not present for the vote. Mr. 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 21, 1990. This date shall be deemed to be the final approval date of this special permit.

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9:15 A.M. RYAN E. MAYER, VC 89-S-160, application under Section 18-401 of the Zoning Ordinance to allow deck to 5 feet from side lot line (10 ft. min. side yard required by Sects 3-807 and 2-412), on property located at 13939 Middle Creek Place, on approximately 3,000 square feet of land, zoned R-8 and WS, Springfield District, Tax Map 65-2((9))366.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mayer confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, Ryan Mayer, 13939 Middle Creek Place, Centreville, Virginia addressed the Board and explained that he would like to build a deck of similar size to other decks in the neighborhood.

In response to questions from Chairman Smith, Mr. Mayer said that he could build a 15 foot deck within the setback but he would like to construct a 20 foot deck. He stated that he had the approval of the homeowners association and of his neighbors for the deck.

There being no speakers to address this request and no staff closing comments, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to deny VC 89-S-160 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-S-160 by RYAN E. MAYER, under Section 18-401 of the Zoning Ordinance to allow deck to 5 feet from side lot line, on property located at 13939 Middle Creek Place, Tax Map Reference 65-2((9))366, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-8 and WS.
3. The area of the lot is 3,000 square feet of land.
4. The applicant has not demonstrated a hardship approaching confiscation as distinguished from a special privilege or convenience.
5. The applicant can cut off one corner or reduce the width by 5 feet so that it falls within the boundaries of the side lot line requirements.

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.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4 - 1 with Mr. Kelley voting nay and Mr. Hammack not present for the vote. Mr. 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 21, 1990.

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Page 306, March 13, 1990 (Tape 1), Scheduled case of:

9:30 A.M. GARY R. REDMAN, VC 89-V-159, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of an existing carport to 10.2 feet from the side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 2201 Sherwood Hall Lane, on approximately 10,541 square feet of land, zoned R-3, Mount Vernon District, Tax Map 102-1((13))48.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Redman confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

The applicant, Gary R. Redman, 2201 Sherwood Hall Lane, Alexandria, Virginia addressed the Board and stated that he would like to enclose the carport to add aesthetic value to his property and because his is the only house on the street without a garage.

In response to Mr. Ribble's question, Mr. Redman explained that the garage would be flush with the house and not extend any further into the side yard than the existing carport.

Mrs. Harris asked what materials would be used to enclose the carport and Mr. Redman replied that materials similar to the existing structure would be used.

There being no speakers to address this request and no staff closing comments, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant VC 89-V-159 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated March 6, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-V-159 by GARY R. REDMAN, under Section 18-401 of the Zoning Ordinance to allow enclosure of an existing carport to 10.2 feet from the side lot line, on property located at 2201 Sherwood Hall Lane, Tax Map Reference 102-1((13))48, 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 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,541 square feet of land.

4. The applicant meets the nine standards required for a variance.
5. The exceptional narrowness of the lot makes a variance necessary.
6. The enclosure will be no closer to the side lot line than the existing carport or the house.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5 - 0 with Mr. Hammack not present for the vote and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 21, 1990. This date shall be deemed to be the final approval date of this variance.

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9:45 A.M. ARTHUR J. O'BRIEN AND JAMALLE A. O'BRIEN, VC 89-C-156, application under Sect. 18-401 of the Zoning Ordinance to allow construction of building addition to dwelling to 20 feet from rear lot line (25 ft. min. rear yard required by Sects. 3-207 and 6-106), on property located at 12770 Turberville Lane, on approximately 11,062 square feet of land, zoned PDH-2, Centreville District, Tax Map 35-2((8))105.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. O'Brien confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

In response to Mrs. Thonen's questions, Mr. Riegle stated that there is an existing deck which did not require a variance.

The applicant, Arthur O'Brien, 12770 Turberville Lane, Herndon, Virginia, addressed the Board and said that he would like to construct a 16 by 14 foot screen porch addition with an 11 1/2 by 14 foot deck. He stated that his lot was exceptionally narrow and he submitted photographs of his neighbors' screen porches. Mr. O'Brien said he believe that his addition would enhance the neighborhood, in no way be detrimental to his neighbors, and that the Franklin Farms Foundation had given its approval for the porch.

Mrs. Harris asked what would preclude using a different section of the porch to conform with the Zoning Ordinance. Mr. O'Brien explained the family room door would exit onto the screen porch addition and that the air conditioning unit prohibited constructing the addition in any other location. Mr. O'Brien told the Board that his handicapped son walks with crutches and that the screen porch addition off the family room would serve as a play area for him.

There being no speakers to address this request and no staff closing comments, Chairman Smith closed the public hearing.

Mr. Kelley made a motion to grant VC 89-C-156 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated March 6, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-C-156 by ARTHUR J. O'BRIEN AND JAMALLE A. O'BRIEN, under Section 18-401 of the Zoning Ordinance to allow construction of building addition to dwelling to 20 feet from rear lot line, on property located at 12770 Turberville Lane, Tax Map Reference 35-2((8))105, 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 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is PDH-2.
3. The area of the lot is 11,062 square feet of land.
4. The shape and shallowness of the lot justifies the application.
5. The applicant has meet the nine standard required for approval of a variance.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5 - 0 with Mr. Hammack not present for the vote. Mr. 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 21, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 309, March 13, 1990 (Tape 1), Scheduled case of:

10:00 A.M. SANFORD C. AND ILENE R. ROBECK, SP 89-D-060, application under Sect. 8-901 of the Zoning Ordinance to allow roofed deck to remain 4.6 feet from the side yard line and to allow a total side yard of 19.6 feet (8 ft. side yard and 24 ft. min. total side yards required by Sect. 3-207), on property located at 1718 Chesterbrook Vale Court, on approximately 13,812 square feet of land, zoned R-2 (developed cluster), Dranesville District, Tax Map 31-3((42))14.

Chairman Smith called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sanders confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report and stated that research indicated that the error in building location was made by the builder and prior to the applicants acquisition of the property. Mr. Riegle stated that the porch is in conformance with the residential character of the neighborhood but that if the Board decides to grant the application staff recommends additional shrubbery be provided on both sides of the porch.

Mrs. Harris asked Mr. Riegle to clarify the request for additional screening and expressed her belief that the existing shrubbery was sufficient. Mr. Riegle stated that staff would prefer more substantial planting to buffer the porch.

The attorney for the applicant, H. Kendrick Sanders, 3905 Railroad Avenue, Suite 200N, Fairfax, Virginia, addressed the Board and explained that the odd shape of the lot was the cause of the error in building. He explained that the roof was added after the original plans for the house were prepared and that this resulted in the 8 foot encroachment into the

side yard lot line. He expressed his belief that the deck had no adverse impact on the neighbors.

Mrs. Thonen questioned Mr. Sanders on staff's concerns about additional screening and Mr. Sanders stated that the developer had cooperated with the applicant and would provide any shrubbery stipulated by the Board.

The Board discussed the merits of additional screening with staff and Mr. Sanders. It was agreed upon that the applicant and the County Arborist would work together to enhance the existing landscaping.

There being no speakers to address this request and no staff closing comments, Chairman Smith closed the public hearing.

Mrs. Thonen made a motion to grant SP 89-D-060 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated March 6, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-D-060 by SANFORD C. AND ILENE R. ROBECK, under Section 8-901 of the Zoning Ordinance to allow roofed deck to remain 4.6 feet from the side lot line and to allow a total side yard of 19.6 feet, on property located at 1718 Chesterbrook Vale Court, Tax Map Reference 31-3((42))14, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 13,812 square feet of land.
4. The applicant bought the house in good faith.
5. The applicant is not responsible for the mistake in the positioning of the house on the lot.
5. The odd shape of the lot justifies the application.
6. The denial of the special permit would not benefit 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 Sections 8-914 and 8-903 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

2. Supplemental plantings shall be added to enhance the present landscaping subject to the approval of the County Arborist.

Mr. Kelley seconded the motion. The motion carried by a vote of 5 - 0 with Mr. Hammack not present for the vote. Mr. 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 21, 1990. This date shall be deemed to be the final approval date of this special permit.

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10:15 A.M. PHRA VIMOLSRILAJARN, SP 89-V-061, application under Sects. 3-203 and 8-901 of the Zoning Ordinance to allow place of meditation/worship and waiver of dustless surface requirement, on property located at 8526 Old Mount Vernon Avenue, on approximately 1.9653 acres of land, zoned R-2, Mount Vernon District, Tax Map 101-4((1))63.

Chairman Smith called the representative for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Thomas confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

William C. (Tom) Thomas, Jr., with the law firm of Fagelson, Schonberger, Payne and Deichmeister, 401 Wythe Street, Alexander, Virginia, represented the applicant and requested that the Board defer the public hearing. He explained that when the strong citizen objections were brought to his attention, he had worked diligently to solve some of the issues but believed that certain issues needed to be addressed with the community before the public hearing. He further stated that he had contacted as many of the people involved with this matter as he could in order to inform them of his decision to request a deferral.

Mrs. Thonen stated that she had received calls from concerned residents on this issue and expressed her belief that the busy April and May schedule would preclude deferral and suggested that the case be heard as scheduled.

The Board discussed the merits of a deferral and expressed reluctance to grant a deferral if the activities would continue despite the strong community opposition.

Mr. Thomas explained that the activities are very informal and that the monk does receive many visitors to whom he provides spiritual guidance.

The Board again expressed their reluctance to postpone the public hearing when the applicant is using the property as a place of worship which is a violation of the Zoning Ordinance.

Chairman Smith advised Mr. Thomas that all activities of this nature should be suspended until after the public hearing and stated that a deferral would not be granted unless the applicant agreed to this condition.

Chairman Smith called for any speaker who wished to address the request for a deferral.

Rose Lambert, President of the Mount Vernon Farm Civic Association, addressed the Board and stated that she was against a deferral. She explained that the Civic Association and the residents in the area believed that the proposed use was inappropriate for a residential neighborhood.

Chairman Smith explained that the Board would like to give the applicant the opportunity to meet with members of the community to resolve the issues of concern or to withdraw the application if the issues were not reconciled.

The Board again discussed the problem of the use being in existence and the difficulties involved with monitoring the activities if the case is deferred.

Chairman Smith called Mr. Thomas back to the podium an if he would agree to discontinue any religious use on the site if the Board granted his request for a deferral. Mr. Thomas stated he could agree to no religious services but he could not obligate his client to completely cease having friends visit his home.

Michael Reiley, 3713 Riverwood Road, Alexandria, Virginia, owner of the property directly across the street from the applicant, addressed the Board and expressed his concern with the traffic generated by the religious activities on the property and stated his belief that the character of the neighborhood was being adversely affected by this situation. Mr. Reiley said that he was in opposition to a deferral.

Daniel Bauer, 3801 Maryland Street, Alexandria, Virginia, addressed the Board and stated that the applicant had held outdoor religious activities that had been disruptive to the neighborhood. He said that he had taken the time off from work to attend the public hearing and voiced his objection to a deferral.

The Board again queried Mr. Thomas on the applicants willingness to suspend all religious activities if a deferral was granted. Mr. Thomas again pointed out the differences in the Buddhist religious activities in comparison with conventional religious activities.

George W. Callaghan, Jr., 2306 Creek Drive, Alexandria, Virginia, spoke in opposition to a deferral and told the Board that the religious activities at the property were detrimental to the neighborhood.

In response to Chairman Smith's question, Mr. Callaghan stated that he had not complained to the Zoning Enforcement about the religious activities on the property.

Mr. Riegle replied to Chairman Smith's query and stated that one complaint had beem filed approximately three months ago with Zoning Enforcement and that no violation was found.

Jane Bower, 3801 Maryland Street, Alexandria, Virginia, asked the Board why the applicant does not withdraw the applicant, meet with the citizens, and submit a more viable application.

Chairman Smith explained that the applicant would have to address that issue.

Arthur Doyle, 3704 Nalls Road, Alexandria, Virginia, said he too opposed a deferral and asked the Board to hear the case as scheduled.

Mr. Thomas reiterated his request that the Board defer the public hearing so that he could meet with the citizen associations to discuss the concerns of the community.

The Board again discussed the deferral and expressed their concerns with the situation.

Mr. Kelley made a motion to defer the decision until after the next case was heard so that the representatives of the citizens associations and Mr. Thomas could meet to discuss the request for a deferral. Mrs. Harris seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack not present for the vote. Mr. DiGiulian was absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that the interested parties use the conference room in back of the Board room for their meeting.

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Page 312, March 13, 1990 (Tape 2), Scheduled case of:

10:30 A.M. COTTONTAIL SWIM & RACQUET CLUB, INC., SPA 81-S-060-1, application under Sect. 3-203 of the Zoning Ordinance to amend SP 81-S-060 for a community swim and racquet club to permit the addition of a covered deck and change in hours, on property located at 7700 Cottontail Court, on approximately 2.7133 acres of land, zoned R-2, Springfield District, Tax Map 88-2((12))H

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McHugh confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that staff recommended approval subject to the development conditions.

Michael J. McHugh, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, with the law firm of Hazel, Thomas, Fiske, Weiner, Beckhorn, and Hanes, represented the applicant and said that he believed the conditions recommended by staff were reasonable. He stated that the request was for a physical modification to add a small 340 foot covered deck and an increase in the hours of operation but that there would be no increase in the membership and asked the Board for their favorable consideration.

Mrs. Thonen expressed her belief that the 40 foot trees on the property provided exceptional screening.

In response to Mrs. Harris' question about the contiguous lot owners, Mr. McHugh said that there had been no community objection to the amendment.

There being no speakers to address this request and no staff closing comments, Chairman Smith closed the public hearing.

Mr. Ribble made a motion to grant SPA 81-S-060-1 subject to the development conditions contained in the staff report dated March 6, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-S-060-1 by COTTONTAIL SWIM AND RACQUET CLUB, INC., under Section 3-203 of the Zoning Ordinance to allow the addition of a covered deck and change in hours, on property located at 7700 Cottontail Court, Tax Map Reference 88-2((12))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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 2.7133 acres of 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 Sections 8-403 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum number of employees on the premises at any one time shall be seven (7).

6. The hours of operation shall be limited to the following:

   - Tennis Courts - 8:00 a.m. to 10:00 p.m.
   - Swimming Pool - 8:00 a.m. to 9:00 p.m. for general pool hours with permission for after-hours parties as follows:

     a. Parties shall be limited to six (6) per season.
     b. Parties shall be limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur.
     c. parties shall not exceed beyond 12:00 midnight.
     d. The applicant shall request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.
     e. Requests shall be approved for only (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after hour party.

   The use of bullhorns, whistles, loudspeakers and the like shall be limited to after 9:00 a.m.

7. The maximum number of family memberships shall be limited to three hundred and twenty-five (325).

8. A minimum of 53 and a maximum of 65 parking spaces shall be provided. All parking for this use shall be on-site.

9. The existing vegetation and barriers on site as shown on the submitted special permit plat shall satisfy the transitional screening and barrier requirements.

10. The tennis courts may be lighted, provided: the height of the light standards do not exceed twenty-four (24) feet; the lights are the design which directs the light directly onto the courts; and shields are installed, if necessary, to prevent the light from projecting beyond the courts.

11. Prior to discharge during cleaning or draining operations, sufficient amounts of lime or soda ash shall be added to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream or between a pH of 6.0 and 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters. This requires a minimum concentration of 4.0 milligrams per liter. If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

The above conditions incorporate all applicable conditions of the previous approvals.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 5 - 0 with Mr. Hammack not present for the vote. Mr. 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 13, 1990. This date shall be deemed to be the final approval date of this special permit.

Mr. Kelley made a motion to grant a waiver of the eight day time limitation. Mrs. Harris seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack not present for the vote. Mr. DiGiulian was absent from the meeting.

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The Board recessed at 11:20 a.m. and reconvened at 11:30 a.m.

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Mr. Hammack arrived at the public hearing.

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Mr. Kelley made a motion to defer SP 89-V-061, Phar Vimolsrilajarn, to April 3, 1990 at 8:00 p.m. Mr. Kelley seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack abstaining from the vote. Mr. DiGiulian was absent from the meeting.

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Page 314, March 13, 1990 (Tape 2), Scheduled case of:

10:45 A.M. BETHANY LUTHERAN CHURCH, SP 89-V-062, application under Section 3-303 of the Zoning Ordinance for a church and related facilities and nursery school/child care center to allow building addition and increase in number of students, on property located at 2501 Beacon Hill Road, on approximately 3.8876 acres of land, zoned R-3, Mount Vernon District, Tax Map 93-1((1))61,62.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Shapiro confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and stated the initial concerns of staff had been discussed and the applicant had cooperated and made the following modification: additional plantings along the front, the building would be one story in height, the walkway would be glass enclosed to reduce the mass of the building, the play area would be screened with a solid wood fence, and the wood fence along the side has been increased from 4 feet to 6feet, therefore staff recommended approval. Ms. Greenlief said that on page 2 of appendix 1, condition number 13 should read "Virginia Code Section 10.1-1701."

George Shapiro, 207 South Alfred Street, Alexandria, Virginia, with the law firm of Shapiro and Zimmerman, represented the applicant and stated that Bethany Lutheran Church was established in the mid 1950's and the day care center has been operating since 1964. He told

the Board that the applicant has consulted with the neighbors and have their approval for the request. Mr. Shapiro said that the applicant had worked closely with staff to resolve any concerns and believed that the day care center would add a positive contribution to the community.

In response to Mr. Hammack's question, Mr. Shapiro said that he was in complete agreement with the development conditions proposed by staff.

There being no speakers to address this request and no staff closing comments, Chairman Smith closed the public hearing.

Mr. Hammack made a motion to grant SP 89-V-062 subject to the development conditions contained in the staff report dated March 6, 1990 with the modification to condition 13 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-V-062 by BETHANY LUTHERAN CHURCH, under Section 3-303 of the Zoning Ordinance for a church and related facilities and nursery school/child care center to allow building addition, increase in parking, and increase in number of students, on property located at 2501 Beacon Hill Road, Tax Map Reference 93-1((1))61,62, 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 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 3.8876 acres of 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 Sections 8-303 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat 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 shall be subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum seating capacity in the main area of worship shall be limited to a total of 304 seats with a corresponding minimum of 76 parking spaces. There shall be a minimum of 16 parking spaces provided for the nursery school/child care center. Therefore, 92 parking spaces shall be provided on site which represents the total required for the church and nursery school/child care center use. Handicapped parking shall be provided in accordance with Code requirements. All parking for the uses shall be on site.

6. The maximum daily enrollment for the nursery school/child care center shall be 80.

7. The hours of operation for the nursery school/child care center shall be from 9:00 a.m. to 12:30 p.m., Monday through Friday.

8. The existing vegetation and the proposed plantings shown on the plat shall be deemed to satisfy the transitional screening requirements. It is noted that the special permit plat shows two entries in the Plant Schedule entitled CA. The first CA entry shall refer to the plants along the lot lines. The second CA entry shall refer to the plants along the foundation of the building.

9. Foundation plantings shall be provided as shown on the special permit plat and shall be reviewed and approved by the County Arborist.

10. A vegetative filter strip shall be provided along the southern edge of the parking lot as shown on the special permit plat. This strip shall be planted with woody plants like small ornamental trees and shrubs, the type, size, quantity and location of which shall be reviewed and approved by the County Arborist. The purpose of these plantings shall be to provide vegetation to hinder the flow of water and absorb pollutants from the runoff. The stormwater management pond shown on the plat shall be provided if determined necessary by the Department of Environmental Management. It's presence on the plat does not dictate that it must be required.

11. Parking lot lights shall be on light standards that do not exceed twelve (12) feet in height. The lights shall be designed to direct light directly onto the parking lot and shields shall be installed, if necessary, to prevent the light from projecting beyond the subject property.

12. The play area shall be a minimum of 4,010 square feet in size and shall be fenced as shown on the special permit plat, a six (6) foot high solid wood fence along the eastern side and a three (3) foot high chain link fence around the remainder.

13. Pursuant to the Virginia Code Section 10.1-1701, the applicant shall at the time of site plan approval, record among the land records of Fairfax County, an Open Space Easement to the benefit of the Board of Supervisors. The easement shall include that land south of the line shown on the special permit plat, dated February 12, 1990 last revision, as the EQC line. There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs, no grading and no structures located in the EQC area.

14. The entrance to the site shall meet the Virginia Department of Transportation requirements.

15. All proposed signs shall meet the regulations contained in Article 12 of the Zoning Ordinance, Signs.

16. The rectangular area of proposed building between the existing sanctuary and the remainder of the proposed building shall be constructed primarily of glass. The front elevation shall be constructed in conformance with the elevation submitted with the special permit request and included in the special permit staff report dated March 6, 1990.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 5 - 0 with Mr. Kelley not present for the vote. Mr. 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 21, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 317, March 13, 1990 (Tape 2), Scheduled case of:

11:00 A.M. WOLFTRAP MEADOWS APPEAL, A 89-D-018, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Evaluation Director's decision that Tax Map 19-3((13))K satisfies the Zoning Ordinance definition of usable open space and therefore meets the provisions of Condition Number 22 of Special Exception SE 83-D-106, on property located on Days Farm Drive, on approximately 4 acres of land, zoned R-1, Dranesville District, Tax Map 19-3((13))K.

Chairman Smith noted that the Board had issued an intent to defer on February 22, 1990 and asked if anyone present was interested in the application. Hearing no reply, Chairman Smith request a deferral date for A 89-D-018.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested May 22, 1990 at 9:00 A.M.

Mrs. Thonen made a motion to defer A 89-D-018 to May 22, 1990, at 9:00 A.M. Mrs. Harris seconded the motion which carried by a vote of 5 - 0 with Mr. Kelley not present for the vote and Mr. DiGiulian absent from the meeting.

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Page 317, March 13, 1990 (Tape 2), Scheduled case of:

11:30 A.M. JOHN L. HUNTT, SR. AND MARY LOIS HUNTT, VC 89-L-154, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a two car detached garage 30 feet from one front lot line, 36.8 feet from another front lot line, and 3 feet from side lot line (40 ft. min. front yard and 20 ft. min. side yard required by Sect. 3-107; no accessory storage structure permitted in required front yard per Sect. 10-104), on property located at 7017 Ben Franklin Road, on approximately 22,502 square feet of land, zoned R-1, Lee District, Tax Map 90-1((5))22.

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Huntt confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and explained that the applicant had a garage on land that was condemned for the connection between Villa Del Ray Lane and Ben Franklin Road. This acquisition was the result of the construction of the Fairfax County Parkway to the south.

The applicant, John L. Huntt, Sr., 7017 Ben Franklin Road, Springfield, Virginia addressed the Board and explained that there had been a two car garage and a tool shed on the section of his property that was condemned.

In response to question from the Board, Mr. Huntt stated that he originally had a one-half acre lot and when a portion was condemned it resulted in the lot having an irregular shape. He explained that he would like to build a 30 by 30 foot garage to replace the original garage and tool shed. Mr. Huntt said that when his property was condemned, he was told that he could build a garage on a certain section of his property that would have been in compliance with the Zoning Ordinance, but unfortunately water pipes and cables were buried on that location.. He further stated with this, and the drainage field for his septic tank being taken into consideration, the only place he could build the garage was on the proposed location.

In response to Mr. Hammack's question, Mr. Huntt said that his neighbor's shed would be opposite the garage and added that he had submitted written approval from this neighbor for the request.

He further explained that the garage would be well built and compliment the house. Mr. Huntt told the Board because he has numerous tools, an air compressor, welding equipment, as well as a pick-up truck, he needed a large garage.

The Board questioned the applicant on his willingness to move the garage closer to the house. Mr. Huntt agreed to the proposal.

The Board discussed the proposed site and the size of the garage. It was the Board's consensus that the size of the garage was justified because the condemnation of Mr. Huntt's land caused him to lose his original garage and tool shed.

There being no speakers to address this request and no staff closing comments, Chairman Smith closed the public hearing.

Mrs. Harris made a motion to grant-in-part SP 89-A-052 for the reasons noted in the resolution and subject to the development conditions contained in the staff report dated March 6, 1990 with the changes as reflected in the Resolution.

Chairman Smith advised Mr. Huntt that new plats would be required before the Resolution could be released.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-154 by JOHN L. HUNTT, SR. AND MARY LOIS HUNTT, under Section 18-401 of the Zoning Ordinance to allow construction of a two car detached garage 30 feet from one front lot line, 36.8 feet from another front lot line, and 3 feet from side lot line, **(THE BOARD RESOLUTION REQUIRED THAT THE BUILDING BE MOVED 3.2 FEET TO THE WEST AND BE SET BACK AT LEAST 4.0 FEET FROM THE SIDE LOT LINE AND AT NO POINT SHALL THE STRUCTURE BE CLOSER THAN 30.0 FEET TO ANY FRONT LOT LINE)**, on property located at 7017 Ben Franklin Road, Tax Map Reference 90-1((5))22, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 13, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 22,502 square feet of land
4. An extraordinary condition exists because some of the property on both the rear and side of the lot was condemned for new road frontage.
5. The variance will alleviate a clearly demonstrated hardship to the applicant.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 6 - 0 with Mr. Digiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 21, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 319, March 13, 1990 (Tape 2 and 3), Scheduled case of:

11:45 A.M. PULTE HOME CORPORATION APPEAL, A 89-D-017, appeal of the Director of Environmental Management's determination disapproving a preliminary plat with the notation that a special exception is required pursuant to Part 9 of Article 2, Floodplain Regulations, on property located at 1116 Dranesville Road, on approximately 362,472 square feet of land, zoned R-1, Dranesville District, Tax Map 5-4((1))1 and 6-3((1))pt. 22A. (DEF. FROM 2/22/90 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced the Department of Environmental Management's (DEM) representatives, Dennis King, Chief, Site Review Branch for the Dranesville/Springfield Districts, DEM, and John (Jack) White, Engineer II, Special Project Branch, DEM, to the Board and explained that Irving Birmingham, Director, Department of Environmental Management, could not be present because of ill health.

Mr. King addressed the Board and stated that the Director, based on staff's review of the appellant's proposed roadway within the major floodplain at Sugarland Run, had made an administrative decision based on the guidelines set forth in the floodplain regulations contained in the Zoning Ordinance, that the special exception process would be the more appropriate route for adequately addressing conflicting public benefit issues such as a new road for public use on undisturbed environmentally sensitive floodplain prior to the further processing of plans for the project. The Director's decision was based on the process of elimination of permitted uses as formally described under paragraphs 1 through 9, Section 2-903 of Article 2 of the Zoning Ordinance which is qualified under Paragraph 1 through 10 of Article 2, Section 2-905. In consideration of the appellant contention that the Director incorrectly disapproved preliminary plat number 7749-P-01-1 based on Paragraph 7A of Section 2-905 of Article 2 of the Zoning Ordinance, the Director responded by noting that the Ordinance states that the applicant shall demonstrate to the satisfaction of the approving authority, the Director, the extent to which there are no other feasible options available to achieve the proposed use. The Director noted that while early representation to staff indicated no other reasonable access to this development, the developer was able to find a secondary access in Loudoun County outside of the floodplain area when others, including Loudoun County staff, were dissatisfied with the proposed access to the project. The Director is currently not satisfied that there are no other points of access possible or that this floodplain access route remains an absolute necessity. In addition to the concern about alternate points of access to the proposed project, the Director has an equally great concern with the effect of approving this roadway by placing over 500 cubic yards of fill within an identified environmental sensitive major floodplain. The Director believes that the public benefit trade off issues involved concerning placing a public roadway within a major environmentally sensitive floodplain is of a sufficiently doubtful and complex nature to deserve a greater indepth review of the specifics by County Staff with final review and approving authority resting with the Board of Supervisors (BOS), through the special exception process. Finally the Director believes that the Ordinance allows him the discretion of making the determination to require a special exception where such doubtful and complex public benefit trade off issues are involved and that the final determination of this proposal should be made by the BOS.

Mr. Hammack stated that he had two questions about the lead paragraph in Article 2 which states that "the following uses as qualified may be permitted in a floodplain upon a determination by the Director that such use is permitted" and "that the use is in accordance with the provisions of this part and criteria set forth in the Public Facilities Manual". The first question was "what criteria set forth in the Public Facilities Manual does this meet and what criteria does it not meet." The second question referred to the next paragraph "any use, permitted in the Zoning District in which located, which does not meet the qualifications set forth below as determined by the Director, may be permitted upon the approval of a special exception by the Board". Mr. Hammack asked what qualification, specifically in sub-paragraph 6, this application does not meet, and where the Director has set forth that it does not meet these qualifications.

Mr. Jack White, the hydraulic and floodplain expert for DEM, responded to Mr. Hammack's questions by stating that the first question regarding where the Ordinance refers to the Public Facilities Manual, which addresses the engineering standards in detail, the details of which are not normally spelled out in the County Code or the Zoning Ordinance. He specified Paragraph 1 of Section 2-905, "All permitted uses and all special exception uses in a floodplain shall be subject to the following provisions", and explained that this refers back to the engineering standards which are in the Public Facilities Manual.

Mr. White stated it was two years ago this project was first presented to his department in concept stage only. He explained that in order to meet this provision either a determination is made that from an engineering standpoint an impact study is not needed, or a determination is made that a floodplain impact study would be required in order to meet the provisions of Paragraph 1.

He continued by stating that the denial was not made principally on this matter and it is not addressed in the Public Facilities Manual as it was a technical aspect of the project which would not have yet been fully investigated at this preliminary stage. This matter was not the reason for the Director's decision not to process this as a permitted usage but to determine that it needs a special exception.

Mr. Hammack asked where does it not meet the qualifications under the Ordinance, and Mr. King said that DEM had zeroed in on Article 2, Section 2-905, Paragraph's 7a, 7b, and 7c, wherein the applicant had not demonstrated to the satisfaction of the Director that the requirements under the aforementioned paragraphs had been met. The Comprehensive Plan states that this area was an environmentally sensitive floodplain that should be protected. The issues, public need for a roadway, and the public need to protect an identified major sensitive floodplain, were addressed and a decision was made that the determination should be made at the BOS level.

In response to Mr. Hammack's question if there should only be one means of ingress and ingress to the proposed development, Mr. King said that this should be more fully evaluated by all appropriate County agencies and a decision made on their recommendations. He stated that DEM does not consider that this particular point of access is the best access.

Mr. Hammack asked Mr. White if he was the same Mr. White that had signed the speed letter and he said that he was.

In response to Mr. Hammack's questions, Mr. White explained that he has been with DEM for 19 years, principally involved with floodplain and drainage issues, and had also been a member of the sub-committee which drafted the floodplain regulations. He said that as a result of this, many engineers and developers ask his opinion regarding the interpretation of the floodplain ordinance and the hydraulic impact under Use Limitations. Mr. White said that he makes it very clear that he is a staff person with DEM and cannot speak for the Director. He stated that he does look in detail at several aspect of the Ordinance and makes recommendations to the Director who in most instances follows the recommendations. Mr. White stressed that he only addresses a narrow aspect of the Ordinance.

In response to Mr. Hammack's request, Mr. White read the memorandum dated January 1988 he had sent to Tim Culleiton of Dewberry and Davis which stated, "Recognizing that you haven't made formal submission as yet to Fairfax County of subject work, which involves accessing from Dranesville Road to the site from a point within the 100 year floodplain for Sugarland Run and to confirm our conversation this date, I would recommend that we interpret your proposed use and construction under Section 2-903 Paragraph 6 permitted usages for roadway crossings, "although this crossing" does not bridge or span the main creek it does run essentially perpendicular to the main stream as it connects to its only reasonable access point on Dranesville Road. I note that the connection appears to be above the 25 year flood level and always less than one foot below the 100 year flood level. Site Review should ask OCP for an environmental review but in my opinion can interrupt this as a permitted use as set out above".

Mr. Hammack asked if Mr. White had looked at the County Hydraulic Records and proffer maps before he wrote the speed memorandum in evaluating the height of the floodplain and the roadway. Mr. White said that information was provided by the engineer and is part of the U. S. Geological Survey Report.

In response to Mr. Hammack's questions, Mr. White said that in most instances proposed uses cross the floodplain, which would be a crossing of the stream. He said that he could not think of any example where the crossing of the floodplain would not involve the crossing of the stream.

Mr. Hammack asked if this were not such a case, where builders may pressure to build in floodplains to preserve more valuable or buildable property for the development, it might run parallel to a stream and not cross a stream. Mr. White explained that this would be interpreted as being an intrusion into the floodplain.

In response to Mr. Hammack's questions, Mr. White explained the engineering specifications he needed in order to do an interpretation.

Mr. Hammack said the reason he was questioning this was staff is dealing with a statute that states "floodplain crossings", which is a very clear interpretation, but he was hearing staff say that the word "floodplain crossing" is subject to interpretation.

Mr. White again explained to the Board that he had submitted his opinion as a staff engineer and in no way gave the impression that he had the authority to grant the final determination for the plans. Mr. Hammack stated that he understood that this was not the final statement and asked when Site Review and OCP would be consulted. Mr. White said that when a formal plan had been submitted the appropriate departments were consulted.

In response to Mrs. Harris' questions, Mr. White explained that the Director looks into all the standards for permitted usage and then makes a determination as to whether or not the proposal meets those limitation.

Mrs. Harris questioned the applicants requirement of 14,000 cubic feet of fill, and Mr. White confirmed that it did exceed the limits of Article 2, Section 2-903, Paragraph 9, of the Zoning Ordinance. She also expressed concern about the fact that it would be a major fill and may have a large environmental impact and asked for a copy of the Loudoun County site plan, which the applicant supplied.

There being no further questions of staff, Chairman Smith called for the appellant.

The attorney for the appellant, Keith Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, 2200 Clarendon Boulevard, Arlington, Virginia, addressed the Board and presented a paper in which he outlined the appellant's position. He explained that the appeal represented a case of reliance by an applicant on the Fairfax County and Loudoun County process and statements made by Fairfax County experts during that process. In reliance upon coordination with and correspondence from Fairfax County, the appellant invested over 5 million dollars in a project that requires access to Dranesville Road as good transportation and land use planning. Furthermore, in reliance upon the zoning process and Fairfax County coordination and correspondence, the applicant has already provided substantial funds in compliance with proffers requested by Loudoun County as a first attempt to address affordable housing. Due to the proximity to Fairfax County, it is highly likely that Fairfax County workers will benefit from this affordable housing commitment. It can also be noted that Loudoun County relied on Fairfax County correspondence in rezoning the property subject to Dranesville Road access. As pointed out in Exhibit 3, Loudoun County views the primary access to the site as always proposed from Dranesville Road and the secondary access to Rabbit Run Terrace was never viewed as a feasible alternative. The Special Exception process is not an appropriate remedy to this situation as the proposed access is a permitted use. Furthermore, the Special Exception process imposes uncertainty and damaging delays to the proposed development.

(A memorandum stating the appellant's position in detail is contained in the file.)

Mrs. Thonen asked how much clearing would have to be done in the floodplain. Mr. Martin said almost none because the area had been cleared for a sanitary sewer. He used a plat and photographs to show the Board exactly where the sewer line runs through the site.

Edward Addicott of Paciulli, Simmons, and Associates, Ltd., 1130 Main Street, Suite 100, Fairfax, Virginia addressed the Board and stated that the outlet road referred to is an easement from Dranesville Road across the property line to a spit of parcel and not a fee simple strip, it is approximately 28 feet wide on which you could not construct a VDOT maintained road. He said that they had looked at this as an alternative, but they had no rights on the property and if they did it would still not be wide enough to create a roadway that would be acceptable to VDOT.

Mrs. Harris asked if they had purchased the strip of land from Dranesville Road back to the property for access or if it was part of the original parcel, and Mr. Addicott said that it had been purchased for access.

Mrs. Thonen asked about the conditions the County had recommended if the request was granted, and Mr. Martin said that they would all be complied with. He added that during the rezoning process in Loudoun County, proffer commitments were also approved resulting in contributions to a transportation fund that has in the past and just recently made transportation improvements within Fairfax County at an intersection in this vicinity.

Mrs. Harris expressed her belief that Mr. White had no authority to approve the plan and stated that there are various people who approve different segments of a plan but that all the appropriate departments must be consulted and the final approval must rest with the Director.

Mr. Addicott explained that the original meeting between the Dewberry and Davis engineer and Mr. White was to present Mr. White with a preliminary layout and to get his opinion, as the

County's floodplain expert, whether or not this would be an permitted use, whether it would meet the engineering aspect, etc. He stated that as far as the Public Facilities Manual was concerned he did not believe the engineering aspects had ever been in question or that the roadway would raise the floodplain over a measurable amount. He said the amount of fill that would be placed in the floodplain, if the roadway is construed to be an allowable use, would not be a problem because only if the roadway is not an allowable use does the fill become a matter of objection.

In response to questions from the Board, Mr. Addicott explained that if you do not increase the level of flooding by a tenth of a foot, which is considered to be the margin of accuracy in the computations, then the Public Facilities Manual would not preclude it.

Mrs. Thonen's asked Mr. Addicott if they would increase it more than one tenth of a foot. Mr. Addicott explained that he had asked Mr. White if a floodplain study would be required and was told that it was a backwater of the floodplain and not the main drainage way. Mr. White had stated in his opinion the roadway would not raise it significantly and, therefore, a formal submission to the County would not be required.

In response to Mr. Hammack's question, he said that they were told that the interpretation of Design Review was that since they were creating a new parcel, the outlot between the appellant's dedication and the adjacent property required a preliminary plan be submitted. The plan was held until April 10th and returned to the appellant with comments.

Mr. Hammack expressed his belief that the appellant was addressing one issue while the County was addressing a different issue.

In response to Mr. Kelley's question, Mr. Addicott said that he could not think of an instance when DEM had overridden Mr. White's professional opinion regarding floodplains, hydraulics, and hydrology.

Mr. White confirmed this statement but reminded the Board that hydraulics and hydrology would not be the only issue the Director of DEM would consider when approving a project.

Mr. Kelley expressed his belief that when a staff person has an excellent reputation the engineers in the private section have every reason to trust his opinion.

Mr. Addicott told the Board that when he had asked Mr. White, the County's expert on floodplains his opinion, he had expected that the County would follow through on the same basis. He added that he had not seen anything in the past to indicate that Mr. White would be incorrect.

Mr. Kelley asked Mr. Addicott if the County had given an indication that there were problems with the plan. He said that between the time of the memorandum and the time the preliminary plan was returned there were no indications anything was wrong. Mr. Addicott added that if Mr. White had indicated that the use could not be done under the Ordinance in the Public Facilities Manual, then he would have thought long and hard about submitting the request. He explained that Mr. White had years of experience and is a recognized authority on floodplains, hydraulics and hydrology and in order refute his opinion you would have to have a very substantial argument.

Mrs. Harris expressed her belief that other alternatives should be explored that would be less intrusive to the floodplain.

Mr. Hammack asked if the County had ever said that the proposed development of this road would have an adverse effect on the floodplain by causing a rise in the water surface or that the development did not satisfy Paragraph 6. Mr. Addicott again stated that on November 27, 1989, when Mr. White was asked whether a formal floodplain study should be submitted he stated, that in his opinion and based on his experience, this roadway development would not cause a rise in the floodplain and that a formal floodplain study was not necessary.

Mr. Martin told the Board that if in March, 1988, Fairfax County had indicated that an access to Dranesville Road would not be approved, Pulte would have probably dropped the rezoning effort in Loudoun County as this access was a condition made by Loudoun County. He explained that at this stage, Pulte was contract/purchaser of the property and based on Mr. White's opinion, and having had no negative indication from Fairfax County, they progressed with their plans and invested a great deal of money.

In response to a question from Chairman Smith, Mr. Martin said that Pulte now owns the property and had also paid funds to Loudoun County for affordable housing pursuant to the approved proffers.

Mr. King explained to the Board that the Director of DEM had no input into the proceedings in Loudoun County. He said that there were some comments made by the Office of Transportation (OT) which primarily addressed transportation issues. Mr. King stated that the Director of DEM had to make a decision on all the pertinent information available and noted that the roadway was shown to be intruding on an environmental sensitive floodplain that should be

preserved. The Director believed a decision should be made at the BOS level because of the conflicting nature of the issues. He expressed his belief that decisions concerning the protection of the floodplain and the Comprehensive Plan are the responsibility of the BOS and stated that the Director of DEM has the discretion to make a determination to require a special exception for disturbance to an environmentally sensitive floodplain.

Mr. White again stressed the fact that he advised Mr. Culleiton on the hydraulic impact only. He further explained that he only made recommendations and expressed an opinion on the project and that it was fully understood by all parties that he was not in a position to make a final decision. He stated that it was his understanding that the plans for this project were not submitted until September of 1989 and it was at this time that a formal review by the appropriate County departments took place. Mr. White noted that the significant environmental issues were assessed and Mr. Birmingham had taken the position that there are trade offs involved and those issues should be addressed by the BOS through a special exception. He stated that although the sanitary sewer was already in place, the proposed roadway would cause additional environmental disturbances.

In response to Mr. Hammack's question, Mr. White said that he did not know when the sewer line was installed but that he had visited the site and noticed that the area had been cleared. He stated that the area would return to a natural state but that if a road was built, the environment would be changed. Mr. White said that he was not qualified to comment on the environmental issues.

Mrs. Thonen expressed her belief that Mr. Birmingham must have had strong concerns to deny approval of this project. She also stated that there is a terrible burden put on a developer when the process for approval takes years. Mrs. Thonen said that Fairfax County must find a way to facilitate the process.

In response to Mrs. Harris' question, Mr. King sated that it was in September or October of 1989 that Mr. Birmingham was apprised of the plan and of the roadway access to Loudoun County.

Mr. Hammack asked if Mr. Birmingham did not know what went on in his office and Mr. King stated that issues are brought to him as the need arose. He explained that in a case such as this, the County Code requires a preliminary plat be submitted and it was at that time that it was identified that approximately 70% of the roadway was located within a floodplain. Mr. King explained that when it was determined that from the Comprehensive Plan that 70% of the proposed road was located in an environmentally sensitive floodplain, the plans were returned unapproved and the applicant was told that a special exception would be required.

Mr. Hammack asked if DEM had taken the position that there are other feasible options, apparently the main one being Rabbit Run Terrace ingress and egress. He asked if the appellant had been notified in writing that it is the only other feasible alternative or if there are feasible alternatives within the floodplain itself. He asked that disregarding the cost or knowing whether they could buy the land, has anything been done to inform Pulte what other alternatives are feasible.

Mr. King said that DEM did not study the viability of other access points in Loudoun County because Pulte had not submitted plans involving Loudoun County to DEM. He said that the issues were ones to determine, if the access across the floodplain to Dranesville Road was worth the intrusion into an environmentally sensitive floodplain, or if one access through Rabbit Run Terrace to serve the project would be sufficient.

The Board stated it was their understanding that Fairfax County requires two points of ingress and egress for any development of this size for safety reasons. Mr. King said that he knew of no section in the Code that states that two points of access are required. He noted that some very large developments are built on cul-de-sac streets with only one access point but there may be a regulation under the Fire Marshal's jurisdiction, but he did not know of one.

Mr. Hammack asked if the Fire Marshal said that if the development did have to have two points of access would the Director drop the "no other feasible points of entry argument?" Mr. King again stated that DEM had not been given any of the Loudoun County plans relating to this development.

Mr. Hammack then asked if Fairfax County and Loudoun County had coordinated on this proposal. Mr. King said it was his understanding that OT had been consulted on transportation issues but that Fairfax and Loudoun County had not discussed environmental issues.

Chairman Smith expressed his belief that neither County concerns themselves with environmental issues that do not pertain to their own region.

Mr. Hammack expressed his opinion that Fairfax County would like to second guess Loudoun County.

In response to Mr. Kelley's question, Mr. King said that Mr. Birmingham first became aware of the controversy in September or October of 1989 after the meeting with Mr. Addicott and other Pulte representatives.

Mr. White stated, in response to Mr. Hammack's question, that he had given his professional opinion on this project and although he could not recall Mr. Birmingham previously overturning any hydraulic or hydrological decisions, that there had been numerous cases where floodplain encroachment had been denied for environmental reasons. He emphasized that his expertise is in hydraulic matters and that he does not address environmental issues and that he informs applicants that OCP should be consulted before major commitments are made.

Chairman Smith asked Mr. Martin if he had any comments in regard to the additional conversation.

Mr. Martin said that he would like to point out that the County had a long period of time to raise issues and when it did reject the plan on November 15, 1989 and then followed it up with a clarification on November 27, 1989. The plan was rejected based solely on Paragraph 7a. He said that it had addressed the feasible option issue and that he in turn had presented the facts and that Loudoun County had backed those facts. He stated that the Department of Public Works required that the sanitary sewer easement be kept cleared at all times so that it would not be allowed to return to its natural state.

In response to Chairman Smith, Mr. Martin said that he wanted to point out that there would be no environmental impact and he believed that this was an issue of reliance.

Chairman Smith closed the public hearing.

The Board discussed a deferral on the decision.

Mr. Hammack made a motion to defer A 89-D-017 for one week for decision only. Mr. Ribble seconded the motion.

Mrs. Harris asked if that meant that they could not talk about the case or ask for additional information and Chairman Smith advised her that Board members could ask for additional information if it would be helpful to them in making a decision on the case.

Mr. Kelley told the Board that he thought it would be critical that the six (6) members who have heard the case be present on the deferral date to make a decision on the appeal.

Chairman Smith called for a vote on the motion which failed by a vote of 3 - 3 with Chairman Smith, Mr. Ribble and Mr. Hammack voting aye; Mrs. Harris, Mrs. Thonen and Mr. Kelley voting nay. Mr. DiGiulian was absent from the meeting.

Mrs. Thonen made a motion to uphold the appellant because the case had been on the docket for two years and it had not been proven to her that the appellant did not meet the floodplain qualification.

Mrs. Harris seconded the motion.

Chairman Smith called for discussion.

Mrs. Harris said that she had originally intended to vote totally differently. She explained that she did not normally change her mind so radically but that the Loudoun County Staff Report had made numerous statements concerning their contacts with the Fairfax County planning department relating to the proposed rezoning. Mrs. Harris noted that while several issues were raised, there was no statement saying that this was not in harmony with the Comprehensive Plan. She expressed her believe that Pulte and Loudoun County relied on information provided by members of the Fairfax County staff.

Chairman Smith called for a vote to overturn the decision of the Zoning Administrator in appeal A-89-D-017.

The vote carried by a vote of 5 - 1 with Chairman Smith voting nay. Mr. DiGiulian was absent from the meeting.

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Page 324, March 13, 1990 (Tape 4), Scheduled case of:

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-113, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104) and to allow a 4.3 foot high fence on a corner lot (3.5 ft. max. hgt. for a fence allowed by Sect. 2-505), on property located at 2647 Paddock Gate Court, on approximately 11,723 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))1. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-114, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104) and to allow a 4.3 foot high fence on a corner lot (3.5 ft. max. hgt. for a fence allowed by Sect. 2-505), on property located at 2650 Paddock Gate Court, on approximately 11,804 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))41. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-115, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2645 Paddock Gate Court, on approximately 10,200 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))2. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-116, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2643 Paddock Gate Court, on approximately 10,328 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))3. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-117, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2641 Paddock Gate Court, on approximately 15,208 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))4. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-118, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2640 Paddock Gate Court, on approximately 14,186 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))36. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-119, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2642 Paddock Gate Court, on approximately 12,031 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))37A. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-120, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2644 Paddock Gate Court, on approximately 11,416 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))38A. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-121, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2646 Paddock Gate Court, on approximately 10,564 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))39. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

11:45 A.M. STANLEY MARTIN COMMUNITIES, INC., VC 89-C-122, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a 7 foot high fence in a front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 2648 Paddock Gate Court, on approximately 10,432 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))40. (DEF. FROM 12/12/89 AT APPLICANT'S REQUEST. DEF. FROM 1/23/90 AND 2/22/90 FOR WRITTEN RESPONSE FROM ZONING ADMINISTRATOR)

Chairman Smith asked if there was a representative for Stanley Martin present and hearing no reply asked for staff comments.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented a letter of from the applicant requesting withdrawal to the Board. Ms. Kelsey explained that the letter was based upon an interpretation made by the Zoning Administrator indicating that a variance was not need for the subject lots. They are reverse frontage lots making the lot line in question a rear lot line. A fence may be constructed up to 7 feet in height along the rear lot line.

Mrs. Thonen made a motion to withdraw VC 89-C-113 through VC 89-C-122. Mr. Ribble seconded the motion which carried by a vote of 6 - 0 with Mr. DiGiulian absent from the meeting.

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Page 326, March 13, 1990 (Tape 4), After Agenda Item:

Approval of Resolutions

Mrs. Thonen made a motion to approve the Resolutions from March 6, 1990 as submitted by the clerk. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mrs. Harris and Mr. Hammack not present for the vote. Mr. DiGiulian was absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested to the Board that in the findings of fact on the Northern Virginia Mennonite Church, SP 89-S-057 that the Board had intended it to read "R-C lots".

Mrs. Thonen made a motion to approve the Resolution with the change suggested by Ms. Kelsey. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mrs. Harris and Mr. Hammack not present for the vote. Mr. DiGiulian absent was from the meeting.

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Page 326, March 13, 1990 (Tape 4), After Agenda Item:

Centennial Van Dorn Appeal

The Board discussed their belief that the Board should not be involved with interpretations regarding proffers.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that the Zoning Administrator, Jane Gwinn, had suggested that the Appeal should be heard by the Board of Supervisors.

Mrs. Thonen moved to defer the decision for one week. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mrs. Harris and Mr. Hammack not present for the vote. Mr. DiGiulian absent was from the meeting.

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Page 326, March 13, 1990 (Tape 4), After Agenda Item:

Mary Rose Greene Appeal

Mrs. Thonen stated that the appeal was complete and timely filed and made a motion to schedule the public hearing for May 17, 1990 at 11:00 a.m. Mr. Ribble seconded the motion which passed by a vote of 4 - 0 with Mrs. Harris and Mr. Hammack not present for the vote. Mr. DiGiulian was absent from the meeting.

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Page 326, March 13, 1990 (Tape 4), After Agenda Item:

David C. Buckis, D.D.S., P.C. Appeal

Mrs. Thonen noted that Dr. Buckis had appeared before the Board numerous times and questioned the reason for the appeal.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board that Dr. Buckis is appealing the decision that he does not have a valid special permit because he has not legally established the use. Ms. Kelsey said that he has not received a Non-Residential Use Permit for the dental office and has not implemented all the conditions the Board placed on the application. For these reasons, the Zoning Administrator has determined that he does not have a valid special permit.

Mr. Hammack stated that the appeal was complete and timely filed and made a motion to schedule the hearing for May 22, 1990 at 11:00 a.m. Mrs. Thonen seconded the motion which passed by a vote of 5 - 0 with Mrs. Harris was not present for the vote. Mr. DiGiulian was absent from the meeting.

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Page 327, March 13, 1990 (Tape 4), After Agenda Item:

W. L. and Gerald E. Plaugher Appeal

Mr. Hammack stated that the appeal was complete and timely filed and made a motion to schedule the public hearing for May 29, 1990 at 11:00 a.m. Mr. Ribble seconded the motion which passed by a vote of 5 - 0 with Mrs. Harris not present for the vote. Mr. DiGiulian was absent from the meeting.

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Page 327, March 13, 1990 (Tape 4), After Agenda Item:

Request for Additional Time
Austin Zappala, t/a Bug and Honda Shop, VC 87-M-165
6116 Columbia Pike
Tax Map Reference 61-4((1))160A

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and explained that staff recommended that the additional time for the variance be deferred until after the Board of Supervisors (BOS) had considered the additional time for the special exception. She explained that the request had been scheduled for March 12, 1990 but that the BOS had deferred the request until March 26, 1990. Ms. Kelsey recommended that the Board defer request until April 19, 1990.

Mrs. Thonen made a motion to defer the request for additional time to April 19, 1990. Mr. Ribble seconded the motion which passed by a vote of 5 - 0 with Mrs. Harris not present for the vote. Mr. DiGiulian was absent from the meeting.

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Page 327, March 13, 1990 (Tape 4), After Agenda Item:

Out of Turn Hearing
Coscan Washington, SPA 89-S-006

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and explained that the request had been deferred for additional information. She stated that the deed of dedication for the subdivision had been turned over to the homeowners association. Ms. Kelsey said that the applicant will be doing the construction and is bound by an agreement with the homeowners association. She said that when staff confronted the builder's attorney with the fact that the title had been turned over to the homeowners association, he stated that the applicant did intent to fulfill their obligation to build the pool.

Mr. Hammack made a motion to deny the request. Mrs. Thonen seconded the motion which passed by a vote of 5 - 0 with Mrs. Harris not present for the vote. Mr. DiGiulian was absent from the meeting.

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Page 327, March 13, 1990 (Tape 4), After Agenda Item:

Intent to Defer
Vietnamese Buddhist Association, SP 89-S-032

Mr. Hammack made a motion to issue an intent to defer the application on April 3, 1990. Mrs. Thonen seconded the motion which carried by a vote of 5 - 0 with Mrs. Harris not present for the vote. Mr. DiGiulian was absent from the meeting.

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Page 327, March 13, 1990 (Tape 4), After Agenda Item:

Jane Kelsey, Chief, Special Permit and Variance Branch introduced the newest staff member, Michael Jaskiewicz, to the Board.

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As there was no other business before the Board, the meeting was adjourned at 2:00 p.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

Daniel W. Hammack Jr., Acting Chairman
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED June 21, 1990

APPROVED June 26, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 22, 1990. The following Board Members were present: Acting Chairman Paul Hammack; Martha Harris; Mary Thonen; Robert Kelley; and, John Ribble. Chairman Daniel Smith and Vice-Chairman John DiGiulian were absent from the meeting.

Acting Chairman Hammack called the meeting to order at 9:20 a.m. Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Acting Chairman Hammack called for the first scheduled case.

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Page 329, March 22, 1990, (Tape 1), Scheduled case of:

9:00 A.M. D.R.W. LIMITED PARTNERSHIP APPEALS, A-88-C-011 and A 88-C-012, Department of Environmental Management's decisions refusing to approve geotechnical reports and issue Residential Use Permits for nine (9) lots in Section 2 of the Chantilly Farms Subdivision, zoned R-3, Centreville District, Tax Map 45-1((6))49 and 50; 35-3((6))51, 71, 72, 73, 79, 80, 81. (DEFERRED FROM 3/21/89, 6/22/89 AND 11/14/89 AT APPLICANT'S REQUEST)

Acting Chairman Hammack noted that the appellant was requesting a deferral.

Lori Greenlief, Staff Coordinator, suggested a deferral date of May 8, 1990 at 11:45 a.m. and informed the Board that the appellant's attorney was present in the Board Room.

William Donnelly, with the law firm of Hazel, Thomas, Fiske, Beckhorn & Hanes, 3110 Fairview Park Drive, Falls Church, Virginia, came forward. He stated that the appellant would like the case deferred until July.

Mr. Hammack stated that the notices would need to be done for the deferred public hearing.

Mr. Donnelly apologized for cluttering the BZA's calendar. He stated that the appeal was filed two years ago when DEM refused to issue Non-Residential Use Permits based on a geotechnical report submitted by the appellant. Mr. Donnelly explained that the appellant's engineer plans to prepare another report at the end of winter which will then be submitted to DEM. Mr. Donnelly added that if this were not accomplished by May 8th the appellant would then request another deferral.

Ms. Greenlief informed the Board that DEM had indicated that the staff report was ready and they were prepared to go forward on May 8th.

In response to a question from Mrs. Harris, Mr. Donnelly stated that four of the five houses were occupied.

It was the consensus of the Board to defer the appeal to May 8, 1990 at 11:45 a.m. Chairman Smith and Mr. DiGiulian were absent from the meeting.

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Page 329, March 22, 1990, (Tape 1), Scheduled case of:

9:00 A.M. JOHN M. OHRNBERGER, SP 89-S-054, application under Sect. 18-401 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to allow construction of a garage addition to dwelling to 11.6 ft. from side lot line (20 ft. min. side yard required by Section 3-C07) on property located at 4363 Cub Run Road, on approximately 11,506 square feet of land, zoned RC and WS, Springfield District, Tax Map 33-4((2))311. (DEF. FROM 1/23/90 IN ORDER FOR THE APPLICANT TO MEET THE NOTICE REQUIREMENT)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Ohrnberger replied that it was. Chairman Smith then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

John Ohrnberger, 4363 Cub Run Road, Chantilly, Virginia, referenced his statement of justification submitted with the application.

Mrs. Harris asked what materials would be used to construct the garage and Mr. Ohrnberger stated that the materials would match those on the house.

There were no speakers to address this request nor any staff closing comments and Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant the application.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special permit Application SP 89-S-054 by JOHN M. OHRNBERGER, under Section 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to allow construction of a garage addition to dwelling to 11.6 feet from side lot line, on property located at 4363 Cub Run Road, Tax Map Reference 33-4((2))311, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 11,506 square feet of 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 Sections 8-903 and 8-913 of the Zoning Ordinance.

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

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

2. Under Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the special permit unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 30, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Harris made a motion to appoint Mr. Hammack as Acting Chairman in the absence of Chairman Smith and Vice-Chairman DiGiulian.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 330, March 22, 1990, (Tape 1), Scheduled case of:

9:15 A.M. EDWARD G. INGALLS, VC 90-C-001, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to 10 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 3403 Valewood Drive, on approximately 20,934 square feet of land, zoned R-2, Centreville District, Tax Map 46-1((8))93.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Ingalls replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

Edward Ingalls, 3403 Valewood Drive, Oakton, Virginia, stated that the garage must be situated in such a way to clear an existing porch and stoop, thus causing the intrusion into the side yard. He added that he would like to construct a garage 24 feet wide, that he does not believe that it will be a detriment to the neighborhood, and that the materials used to construct the garage will match those on the house.

Mrs. Harris asked why the garage could not be moved back so that it would be flush with the front of the house, thereby reducing the size of the variance. Mr. Ingalls explained that the entrance way to the basement would be blocked if the garage was moved back.

In response to a question from Acting Chairman Hammack, Mr. Ingalls replied that he did not believe that he could construct an attached 24 foot wide garage without a variance.

Acting Chairman Hammack noted that the variance was only needed for the front corner of the garage.

The Board discussed the possibility of reducing the size of the garage to reduce the size of the variance. Mr. Riegle used the viewgraph to show the Board the portion of the garage that would be cut off if the garage were flush with the house.

Mr. Kelley asked how far the garage would be from the adjacent neighbor and Mr. Riegle replied 30.8 feet. Mr. Kelley stated he did not believe that the applicant's request was that unusual as there had been other variances granted in the neighborhood and there is an easement on that side of the applicant's property.

Mrs. Thonen stated that she had tried to get the Board to establish some guidelines for the size of a garage but that this had never been done.

Mr. Riegle explained it appeared that if the applicant were to cut 4 feet off the garage he would almost meet the setback.

There were no speakers to address the request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to grant the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-001 by EDWARD G. INGALLS, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to 10 feet from side lot line, on property located at 3403 Valewood Drive, Tax Map Reference 46-1((8))93, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 20,934 square feet of land.
4. The lot lines converge.
5. If the lot was square, the applicant would not need a variance.
6. Strict application of the Zoning Ordinance would produce an undue hardship on the applicant.
7. There is no other place to construct a garage.
8. If the applicant moved the garage back, it would cut off the entrance to the basement.
9. There is no need to change the dimensions of the garage as the BZA could not determine if this would reduce the size of the variance.
10. There have been other variances granted in the area.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 30, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 332, March 22, 1990, (Tape 1), Scheduled case of:

9:30 A.M. MARY CATHERINE BEASLEY, SP 90-C-001, application under Sect. 8-901 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 1810 Clovermeadow Drive, on approximately 33,139 square feet of land, zoned R-1, Centreville District, Tax Map 27-2((7))6.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Beasley replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the application is in conformance with all applicable standards for approval. The subject property is well screened and all adjacent dwellings are in excess of 100 feet from the subject dwelling. The request will not alter the character of the neighborhood and will not afford any negative impacts to adjacent property.

Mary Catherine Beasley, 1810 Clovermeadow Drive, Vienna, Virginia, referenced the statement of justification submitted with the application. She submitted a letter from the Sunnybrook Architectural Review Board into the record.

In response to a question from Mr. Ribble, Ms. Beasley replied that John Metzger was her husband.

Acting Chairman Hammack asked if the applicant was aware at such time that her parents no longer occupy the accessory dwelling that it must be converted to become a part of the principal dwelling. Ms. Beasley stated that she understood that and she agreed with the development conditions contained in the staff report.

There were no speakers to address this request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-C-001 by MARY CATHERINE BEASLEY, under Section 8-901 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 1810 Clovermeadow Drive, Tax Map Reference 27-2((7))6, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 33,139 square feet of 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 Sections 8-903 and 8-918 of the Zoning Ordinance.

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

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

2. This approval is granted for the building and uses indicated on the plat submitted with this application, except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a Special Permit, shall require approval of this Board. It shall be the duty of the Permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this Special Permit. However, this condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.

3. This Special Permit is subject to the issuance of a building permit. Prior to obtaining building permit approval, any plans that are deemed necessary by the Director, DEM, shall be submitted and approved by DEM pursuant to Par. 3 Sect. 8-903. And plans submitted shall conform with the approved Special Permit plat and these conditions.

4. The accessory dwelling unit shall occupy no more than 982 square feet as depicted on the special permit plat.

5. The accessory dwelling unit shall contain no more than two bedroom(s).

6. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

8. This special permit shall be approved for a period of five (5) years from the approval date or with succeeding five (5) year extensions permitted with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

9. Upon termination of the accessory dwelling unit as a permitted use on the site, the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

10. Upon the approval of a special permit, the Clerk to the Board of Zoning Appeals shall cause to be recorded among the land records of Fairfax County a copy of the BZA's approval, including all accompanying conditions. Said resolution shall contain a description of the subject property and shall be indexed in the Grantor Index in the name of the property owners.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 30, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 333, March 22, 1990, (Tape 1), Scheduled case of:

9:45 A.M. MR. AND MRS. SCOTT C. SHEPARD, VC 90-A-003, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport for living space to 10.3 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 7412 Gresham Street, on approximately 10,500 square feet of land, zoned R-3, Annandale District, Tax Map 71-3((4))(30)8.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Wyllie replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

Mrs. Harris asked what the area behind the carport was used for and Ms. Greenlief replied that perhaps the applicant could respond to that question.

John Wyllie, General Contractor with Hollco Construction Co., Inc., 6427 Melina Street, Springfield, Virginia, explained that the applicants wish to enclose their carport in order to provide additional living space rather than buy another house. He added that there have been other variances granted in the neighborhood and the applicants believe that the request will enhance the value of their property.

In response to Mrs. Harris' earlier question, Mr. Wyllie stated that the area she had referred to was used for a storage area.

Mr. Hammack asked if the applicants were aware that this would preclude them from constructing a carport or garage in the rear yard in the future and Mr. Wyllie replied in the affirmative.

Mrs. Harris asked if the addition could be constructed at the rear of the house. Mr. Wyllie explained that it would require more extensive remodeling to the existing house and that there are utility meters which would have to be relocated. He added that generally he tried to design an addition without a variance to expedite the construction but it could not be done in this case because of the applicants' budget.

There were no speakers to address this request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant the request for the reasons noted in the Resolution.

Mr. Ribble stated that he would support the motion somewhat reluctantly as he did not agree with Mr. Wyllie's comments as to why the addition could not constructed in the rear of the house.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-003 by MR. AND MRS. SCOTT C. SHEPARD, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport for living space to 10.3 feet from side lot line, on property located at 7412 Gresham Street, Tax Map Reference 71-3((4))(30)8, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,500 square feet of land.
4. The addition will not be any closer to the lot line than existing carport.
5. The materials used will match those on the existing dwelling.
6. The Board should try to help citizens in constructing additions.
7. The carport is already there.
8. The lot is very narrow.
9. If the Board were to deny this application, it would place an undue hardship on the applicants.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Kelley seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 30, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 336, March 22, 1990, (Tape 1), Scheduled case of:

10:00 A.M. IRENE W. HENDRICKS GILBERT, VC 90-V-002, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 11.0 feet from rear lot line (20 ft. min. rear yard required by Sect. 3-1207), on property located at 1797 Duffield Lane, on approximately 3,808 square feet of land, zoned R-12 and HC, Mount Vernon District, Tax Map 83-4((5))65A.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Rydell replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that no other variances had been granted in the area.

Mr. Ribble stated that was not true as he was aware of at least one variance. Ms. Bettard stated that her research had not shown any other variances.

Mrs. Harris stated that the applicant had submitted photographs showing the neighbor's solarium and asked if the neighbor had obtained a variance.

Mr. Kelley noted that Mr. Rydell was not listed on the affidavit. Mr. Rydell stated that a revised affidavit had been submitted to the Clerk, Betsy S. Hurtt, in February 1990. Acting Chairman Hammack asked Ms. Bettard if she could find the revised affidavit and Ms. Bettard indicated that she could not find a copy. Ms. Hurtt advised the Board that the applicant had submitted a revised affidavit. Lori Greenlief, Staff Coordinator, assured the Board that if Ms. Hurtt accepted the affidavit then it had been through the County Attorney's office and stamped with their approval. It was the consensus of the Board to go forward.

Mrs. Harris stated that she had not gotten a response to her earlier question. Ms. Bettard explained that perhaps the solariums were an option at the time the houses were constructed and the setback was not required at that time.

Mr. Kelley wanted to know why the solarium could be an option and stated that he knows that there have been other variances granted in the area because his wife serves on the Architectural Review Committee. He asked if the builder got special consideration at the time of construction which allowed him to violate the setback requirements. Ms. Bettard stated that she could not respond to that question. Mr. Kelley added that he had no problem with the application whatsoever.

William Rydell, 8206 Collingwood Court, Alexandria, Virginia, represented the applicant. He stated that the applicants would like to construct the solarium to help defray some of the energy costs throughout the year. He added that the homeowners association has approved the request, there are other solariums in the area, and there is no other place on the property to construct the solarium.

Mr. Kelley asked what the design would be and Mr. Rydell stated that the solarium would be constructed with a wooden interior and capped with brown aluminum on the exterior.

In response to a question from Acting Chairman Hammack about how the other solariums in the neighborhood were constructed, Mr. Rydell replied that the developer had shown the solariums on the original site plan. (He submitted documents to the Board to substantiate his comment.)

There were no speakers to address the request, nor any staff closing comments, and Acting Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-002 by IRENE W. HENDRICKS GILBERT, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 11.0 feet from rear lot line, on property located at 1797 Duffield Lane, Tax Map Reference 83-4((5))65A, 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 22, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-12 and HC.
3. The area of the lot is 3,808 square feet of land.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 30, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 338, March 22, 1990, (Tape 1), Scheduled case of:

10:15 A.M. J. ROBERT BRENNAN, SP 89-C-063, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to min. yard requirements based on error in building location to allow addition to remain 12.3 feet from lot line formed by pipestem driveway (25 ft. min. yard adjacent to pipestem driveway required by Sect. 2-416), on property located at 10222 Vale Road, on approximately 20,276 square feet of land, zoned R-1 (developed cluster), Centreville District, Tax Map 37-2((11))8.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Brennan replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

J. Robert Brennan, 10222 Vale Road, Vienna, Virginia, stated that in August he obtained a building permit to enclose the existing carport and at the same time he filed an variance application for the garage. During the variance process, staff informed him that he had been issued an incorrect building permit. He added that the carport was partially enclosed when he purchased the home in 1981 and that he had acted in good faith.

There were no speakers to address the request, nor any staff closing comments, Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to grant the request for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special permit Application SP 89-C-063 by J. ROBERT BRENNAN, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 12.3 feet from lot line formed by pipestem driveway, on property located at 10222 Vale Road, Tax Map Reference 37-2((11))8, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 22, 1990; and

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

The Board has determined that:

A. The error exceeds ten (10) percent of the measurement involved, and

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, and

C. Such reduction will not impair the purpose and intent of this Ordinance, and

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

E. It will not create an unsafe condition with respect to both other property and public streets, and

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

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.

3. The applicant did go through the proper channels and try to enclose his carport and was given a building permit.

4. The applicant acted in good faith in trying to improve his property.

5. There is no reason not to grant the request.

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

1. This special permit is approved for the location and the specific additions shown on the plat included with this application and is not transferable to other land.

2. Evergreen plantings four (4) feet in height shall be provided on the western side of enclosed addition to provide screening and to soften the visual impact of the addition on the surrounding single family neighborhood. The nature, location, type and amount of these plantings shall be determined by the County Arborist. These plantings shall be in place within six (6) months of the approval date of the Board of Zoning Appeals (BZA).

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 30, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 339, March 22, 1990, (Tape 1), After Agenda Item:

Approval of January 18, 1990 Minutes

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 340, March 22, 1990, (Tape 1), After Agenda Item:

Centennial Van Dorn Appeal

Lori Greenlief, Staff Coordinator, stated that the appellant's attorney was unable to be present at the public hearing but had indicated to staff that he could be available on April 10th. She added that the Zoning Administrator's memorandum notes that this appeal should be before the Board of Supervisors rather than the Board of Zoning Appeals.

Mrs. Thonen stated that she had researched the appeal and the Zoning Ordinance stipulates that proffer interpretations are to be brought before the Board of Supervisors. She then made a motion that the Board of Zoning Appeals not accept the appeal. Mrs. Harris seconded the motion.

The Board then discussed whether or not the appeal should be before the Board of Zoning Appeals.

Ms. Greenlief read the provision from the Zoning Ordinance with respect to appeals.

Following further discussion, Mrs. Thonen reluctantly withdrew her motion not to accept the appeal.

Mr. Kelley made a motion to forego taking action on accepting the appeal until April 10, 1990 at 9:30 a.m. to allow the appellant's attorney and the Zoning Administrator, or her agent, to be present. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 340, March 22, 1990, (Tape 1), After Agenda Item:

Frederick R. Merana, VC 90-C-013
Out-of-Turn Hearing

Mr. Kelley made a motion to deny the request. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 340, March 22, 1990, (Tapes 1-2), After Agenda Item:

The Church of Jesus Christ of Latter Day Saints, SPA 86-C-037-1
Out-of-Turn Hearing

James Aulestia, with Aulestia and Associates, 12620 Garman Drive, Nokesville, Virginia, architect for the church came forward.

Lori Greenlief, Staff Coordinator, stated that staff had received the application on March 21, 1990, thus staff had not had time to prepare a cover memorandum. She added that staff did support the request as the application was the result of a "melody of errors" on the part of both the applicant and staff. Ms. Greenlief explained that apparently there was a misunderstanding with respect to the parking and shed. She added that staff would need at least 40 days in order to prepare a staff report and allow time for the applicant to meet the notice requirement.

Mr. Kelley stated that he had no problem with the request as long as staff had sufficient time to prepare as it appeared to him that the request was quite complex.

Ms. Greenlief suggested May 17th.

Mr. Aulestia explained that in 1984 the Board of Zoning Appeals approved a special permit which allowed the church and related facilities, including the shed, to be constructed. In 1986, the church came back and applied for an additional time and at that time they discovered that the parking spaces had been reduced and the shed was not shown on the plat as the church had decided to delay construction of the shed and the parking spaces because of monetary reasons. In December 1988, the church requested that the architect come back and enlarge the parking lot to the size originally approved in 1984 and to add the shed. When the church applied for the building permit, the church was told that the site had to be exactly the same as the 1983 plan. Based on that, the church submitted the 1983 plan and County staff signed off on it and the church began construction. When the church called to schedule an inspection, staff told the church that their permit was not valid and that they would have to stop work. The contractor has told the church that if the area is left unprotected it will be damaged.

In response to Mr. Hammack's question about a earlier hearing date, Ms. Greenlief replied that staff could possibly prepare a staff report by May 8th.

Mr. Hammack asked the speaker if this met with his approval. Mr. Aulestia stated that everything is exactly the same and asked why it could not be earlier. Mr. Hammack explained

Page 341, March 22, 1990, (Tapes 1-2), (THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, SPA 86-C-037-1, continued from Page 340)

that staff had to allow time for the legal ads and notices and noted that staff did support the request for an out-of-turn hearing.

Mrs. Harris made a motion to schedule the out-of-turn hearing for May 8th at 12:15 p.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 341, March 22, 1990, (Tape 2), After Agenda Item:

Approval of Resolutions

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 341, March 22, 1990, (Tape 2), Information Item:

BZA Pay Increase

Acting Chairman Hammack stated that a pay increase to $125.00 per meeting had been approved for the BZA.

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With respect to a case heard earlier in the public hearing, Irene W. Hendricks Gilbert, VC 90-V-002, Ms. Bettard informed the Board that staff had found the revised affidavit and that Mr. Rydell was on the affidavit. Acting Chairman Hammack thanked Ms. Bettard.

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Page 341, March 22, 1990 (Tape 2), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 10:58 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

Paul W. Hammack Jr., Acting Chairman
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: April 10, 1990

APPROVED: April 19, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, March 27, 1990. The following Board Members were present: Martha Harris; John DiGiulian, Vice Chairman; Paul Hammack; Robert Kelley; and John Ribble. Chairman Daniel Smith and Mary Thonen were absent from the meeting.

Mr. Hammack called the meeting to order at 9:15 a.m. and gave the invocation.

Since Chairman Smith and Vice Chairman DiGiulian were not present, Mrs. Harris made a motion that Mr. Hammack be appointed Acting Chairman. Mr. Ribble seconded the motion which carried by an unanimous vote.

Acting Chairman Hammack then called for the first scheduled case.

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Page 343, March 27, 1990 (Tape 1), Scheduled case of:

9:00 A.M. RANDALL J. LECLAIRE, VC 90-V-006, application under Sect. 18-401 of the Zoning Ordinance to allow accessory structure to cover 42% of the minimum required rear yard (no more than 30% coverage of min. rear yard allowed under Section 10-103), on property located at 2506 Massey Court, on approximately 6,340 square feet of land, zoned R-4, Mount Vernon District, Tax Map 83-3((9))(5)27. (CONCURRENT WITH SP 90-V-003)

9:00 A.M. RANDALL J. LECLAIRE, SP 90-V-003, application under Sect. 8-901 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow garage to remain 2.7 feet from side lot line and 4.0 feet from rear lot line and to allow dwelling to remain 20.0 feet from front lot line (10 ft. min. side yard and 30 ft. min. front yard required by Sect 3-407, 18 ft. min. rear yard required by Sect. 10-104), on property located at 2506 Massey Court, on approximately 6,340 square feet of land, zoned R-4, Mount Vernon District, Tax Map 83-3((9))(5)27. (CONCURRENT WITH VC 90-V-006)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. LeClaire confirmed that it was. Acting Chairman Hammack then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report and explained that the two structures on the property are in violation of minimum yard requirements. Mr. Riegle stated that the house was constructed in 1942 and has been in violation since that time. He said that staff has examined the building permit which revealed that there may have been a surveying error or a plat problem in the initial construction. He further stated that a building permit was not obtained for the partially constructed garage. Mr. Riegle stated that staff recommends approval for the house but said that the garage did not meet the necessary standards for approval.

In response to a question from Mr. Ribble in regard to the survey report that stated the garage was 14.2 feet in height, Mr. Riegle said that staff had determined that the garage was 18.0 feet in height.

The applicant, Randall J. LeClaire, 2506 Massey Court, Alexandria, Virginia, addressed the Board and confirmed that there were discrepancies as to the height and to the distance of the rear and side lot lines. Mr. LeClaire stated that he believed the garage would have a beneficial impact on the neighborhood and increase property values. He explained that the original contractor defaulted on the construction of the structure and did not obtain the necessary permits. He further stated that when the error was discovered, he engaged a different contractor and tried to resolve the situation by obtaining the required permits for the garage. Mr. LeClaire said that the structure would be similar in size to other garages in the area. Mr. LeClaire noted that he had purchased the house in good faith and had no knowledge that the structure was in violation. He stated that he felt that the primary concern of the public hearing should be with the garage.

In response to Mr. Kelley's question, Mr. LeClaire stated that construction of the garage began in November or December of 1988. He explained that the concrete slab was laid several months before the start of the construction. He said he had hired one contractor for the concrete slab and a different one to build the wooden structure.

Mrs. Harris asked Mr. Riegle if the other garages in the neighborhood had required variances, and he said that his research indicated there had been other variances granted.

In response to Acting Chairman Hammack's question, Mr. LeClaire stated that he himself had chosen the location for the slab. He said that after the slab was poured, he had hired a contractor to build the wooded structure. Mr. LeClaire explained that he did have a written contract which stated that the proper permits would be obtained by the contractor. He said he did not consult with the County before choosing the size or location of the garage.

Mr. Kelley expressed his belief that Mr. LeClaire pre-determined the location of the garage, was his own contractor, and had actually hired sub-contractors. Mr. LeClaire explained that he had worked very closely with the contractors and it was the agreement that the permits would be obtained by T & R, one of the contractors. He told the Board that he had conducted the negotiation with the concrete contractor and that T & R had no contact with them.

In response to questions from the Board, Mr. LeClaire said that when he had the concrete slab installed, neither he or T & R consulted with the County about setback regulations. He explained that when he hired T & R the contract stated that they would be responsible for obtaining the necessary permits. Mr. LeClaire said that the contractor did not live up to his obligations and was subsequently fired. He told the Board that he did not check to see if T & R had a business license in Virginia. He explained that when he checked the references provided by T & R, much of the work was done in Virginia and that he assumed that he was a qualified licensed contractor. Mr. LeClaire said that after he had been issued a Notice of Violation from the County, he questioned the contractor who told him that he had everything under control, so the construction of the garage continued. When several demands were make to produce the permits, the contractor abandoned the construction.

Acting Chairman Hammack called for speakers in support of the request.

James Green, 2511 Massey Court, Alexandria, Virginia, addressed the Board and said one of the problems on Massey Court is parking, and therefore the garage would be an asset. He stated that the garage would add to the value of the neighborhood and that he supported the request.

Charles Rocheleau, 2509 Massey Court, Alexandria, Virginia, addressed the Board and stated that the garage would enhance the neighborhood and would conform with the character of the area and expressed his support for the request.

Acting Chairman Hammack called for any additional speakers in support of the applicant, and hearing no reply called for speakers in opposition.

The president of the Fair Haven Civic Association, Violet Taylor, 2506 Fairhaven Avenue, Alexandria, Virginia, addressed the Board and stated that the Civic Association had been concerned with the construction of the garage taking place without the required permits. She explained that although the Civic Association did not received a notification letter informing them of the public hearing, the residents did contact her and ask that she attend the hearing. Ms. Taylor said that the Civic Association voted to oppose the garage and asked that the Board deny the request. She asked that the structure be removed or be built within the guidelines of the Zoning Code.

In response to Mr. Ribble's question, Mr. Riegle said that the notices were in order.

Ms. Taylor said that she felt the Civic Association should have been advised by Mr. LeClaire of the public hearing. She explained that on March 15, 1990 a meeting of the Civic Association took place, a vote was rendered in opposition to the request, and she was asked to present their views to the Board.

Barbara Evans, 2429 Byrd Lane, Alexander, Virginia, addressed the Board and stated that she believed that the garage is too large for the area and would adversely impact the neighbors to the rear of the property.

Julia Roystow, 2501 Bryd Lane, Alexander, Virginia, addressed the Board and said that when construction began she checked with the County and was informed that no permits had been obtained. She said that she registered her complaints but the work continued.

In response to a question from Mr. Kelley, Ms. Roystow stated she did not know when the slab was installed, it was only when she realized that such a large building was being constructed that she took an active interest in the project.

Norvill Jones, 3568 Trinity Drive, Alexandria, Virginia, owner of the property at 2427 Byrd Lane, Alexandria, Virginia, addressed the Board and said that the structure dominates his lot and has a detrimental impact on the neighborhood. He submitted pictures to support his standing and expressed his opposition to the request.

Acting Chairman Hammack called for any additional speakers in opposition, and hearing no reply called for rebuttal from Mr. LeClaire.

Mr. LeClaire said that neither the Civic Association or the neighbors had placed a complaint until this hearing. He explained that the houses to the rear of his property are on a steep slope, therefore giving the impression that the garage is larger than it actually is. He stated that the structure would be constructed of materials similar to the existing house and conform to the architectural character of the neighborhood.

Staff having no comments, Acting Chairman Hammack closed the public hearing

Mrs. Harris made a motion to deny VC 90-V-006 for the reason noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-006 by RANDALL J. LeCLAIRE, under Section 18-401 of the Zoning Ordinance to allow accessory structure to cover 42% of the minimum required rear yard, on property located at 2506 Massey Court, Tax Map Reference 83-3((9))(5)27, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County codes and with the by-laws of 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 27, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 6,340 square feet of land.
4. The application does not meet the nine standards required for a variance.
5. The strict application of the Zoning Ordinance will not create an undue hardship to the applicant.
6. The lot does not have an exceptional condition that would justify the granting of a variance.

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

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

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

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

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

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0; Chairman Smith and Mrs. Thonen were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 4, 1990.

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Mrs. Harris made a motion to grant-in-part SP 90-V-003 subject to the development conditions contained in the staff report dated March 22, 1990 with the changes as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-V-003 by RANDALL J. LeCLAIRE, under Section 8-901 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow garage to remain 2.7 feet from side lot line and 4.0 feet from rear lot line and to allow dwelling to remain 20.0 feet from front lot line **(THE BOARD GRANTED APPROVAL TO ALLOW THE DWELLING TO REMAIN 20.0 FEET FROM FRONT LOT LINE, THE GARAGE WAS DENIED)**, on property located at 2506 Massey Court, Tax Map Reference 83-3((9))(5)27, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 1990; and

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

The Board has determined that:

A. The error exceeds ten (10) percent of the measurement involved, and

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, and

C. Such reduction will not impair the purpose and intent of this Ordinance, and

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

E. It will not create an unsafe condition with respect to both other property and public streets, and

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This approval is granted for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 4, 1990. This date shall be deemed to be the final approval date of this special permit.

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Since Vice Chairman DiGiulian had now arrived, Acting Chairman Hammack turned the Chair over to him.

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Page 347, March 27, 1990 (Tape 1), Scheduled case of:

9:15 A.M. DONALD W. CLAYBORNE, VC 90-L-004, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a carport to 3.1 feet from side lot line (10 ft. min. side yard required by Sect. 3-407; 5 ft. max. extension allowed by Sect. 2-412), on property located at 6400 Virginia Hills Avenue, on approximately 11,542 square feet of land, zoned R-4, Lee District, Tax Map 82-4((14))(23)3.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Clayborne confirmed that it was. Vice Chairman DiGiulian then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, noted that the revised affidavit presented to the Board had been received at the public hearing. Mr. Riegle presented the staff report.

The agent for the applicant, Theresa M. Schuster, 6402 Virginia Hills Avenue, Alexandria, Virginia, addressed the Board and said that the applicant would like to protect his car from the elements. She explained that the carport would enhance the property, would be constructed under the existing roof line, similar materials to the existing house would be used, and it would add aesthetic value to the house. Ms. Schuster stated that the applicant is elderly with health problems and needs the carport to shield him in bad weather. She expressed her belief that the narrow configuration of the lot, and the position of the house on the lot, justifies the granting of the request.

In response to a question from Mr. Hammack, Ms. Schuster said that she owns the adjoining house and has no objection to the 38 foot length of the carport. She explained that there is a swimming pool with a privacy fence in her yard that acts as a screen between the two properties.

There were no speakers to address this request and no staff closing comments. Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 90-L-004 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated March 19, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-004 by DONALD W. CLAYBORNE, under Section 18-401 of the Zoning Ordinance to allow construction of a carport to 3.1 feet from side lot line, on property located at 6400 Virginia Hills Avenue, Tax Map Reference 82-4((14))(23)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 March 27, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,542 square feet of land.
4. The applicant has satisfied the nine standards required for a variance.
5. The topographic conditions, exceptional narrowness, and the converging lot lines on the site has caused 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 GRANTED with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 4, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 348, March 27, 1990 (Tapes 1 and 2), Scheduled case of:

9:45 A.M. ROBERT C. ARLEDGE, SPA 85-D-062-1, application under Sect. 8-014 of the Zoning Ordinance to amend SP 85-D-062 for a reduction to the minimum yard requirements based on error in building location to delete Condition #3 regarding landscaping, on property located at 6022 Orris Street, on approximately 46,063 square feet of land, zoned R-1, Dranesville District, Tax Map 31-2((22))2-A.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McBride confirmed that it was. Chairman Smith then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. She noted that Condition 3 required the planting of 10 trees between the garage and the rear lot line. Ms. Greenlief explained that there is a long history associated with the application and said that the conditions imposed in 1988 required the landscaping and subsequent to that approval a zoning inspection was conducted on the property and it was determined that the condition had not been met. At the request of Zoning Enforcement, the County Arborist made an inspection of the site in May of 1989, and a Notice of Violation was issued to the applicant in July of 1989. Ms. Greenlief noted that the memorandum from the County Arborist Inspector, Brian M. LeCouteur, stated that the if the existing white pines were supplemented, their root system would be severely impacted and could result in foliage loss or mortality of the trees. She

stated that staff recommended that Condition 3 be deleted. A summary of the existing conditions with possible options compiled by the County Arborist was presented to the Board. Ms. Greenlief explained that as the 30 to 40 feet pine trees grow older the lower limbs die and do not adequately screen the property. She told the Board that the County Arborist had advised planting leatherleaf viburnum and foster holly to satisfy the screening requirement. Ms. Greenlief stated that staff believed that it would be risky to plant any trees in this area.

The representative for the applicant, John McBride with the law firm of Hazel, Thomas, Fiske, Weiner, Beckhorn and Hanes, P.O. Box 12001, Falls Church, Virginia, addressed the Board and stated that Ms. Greenlief had presented a detailed report, therefore his remarks would be brief. He noted that Sarah Riefsnyder would represent, Mrs. Johnston, the owner of the adjoining property, and said that he would reserve his remarks for rebuttal. Mr. McBride asked the Board to delete Condition 3 as recommended by staff. He stated that the applicant was reluctant to disturb the trees because of the damage it may cause, therefore destroying the existing buffer.

Vice Chairman DiGiulian called for any additional speakers in support of the applicant, and hearing no reply called for speakers in opposition.

Sarah Riefsnyder, representing the adjoining neighbor, Mrs. Johnston, addressed the Board and said that the Johnstons had purchased the house about 20 years ago and had actually planted the pine trees that buffer the garage. Ms. Riefsnyder stated that the existing trees do not buffer the garage because of their height and that new vegetation should be planted. She explained that there are three garages on the Arledge property, and that the garage in question was built solely to house antique cars. Ms. Riefsnyder pointed out that the garage is situated so that it does not impact on the owners' property but does have a detrimental impact on the Johnston's lot. She further explained that when the garage was being constructed, the Johnston's had called Mr. Arledge and Zoning Enforcement because it was being built too close to the property line. The construction continued and a special permit was obtained, and again Mr. Arledge did not comply with the regulations imposed by the County. She contended that the applicant built in violation of the Zoning Ordinance and he now claims there is no room for adequate screening. Ms. Riefsnyder asked the Board to defer the case until an adequate solution to the problem can be reached.

In response to a question from Mrs. Harris, Ms. Riefsnyder explained that the Johnston's backyard patio faces the garage.

There being no further speakers in opposition, Mr. McBride returned to the podium and asked that the Board make a decision on the request. He stated that the issue facing the Board was if Condition 3 could be implemented. Mr. McBride said that staff and the County Arborist believe that the condition should be deleted and he said that a deferral would not be beneficial to either of the parties involved.

Staff having no comments, Vice Chairman DiGiulian closed the public hearing.

Ms. Reifsnyder asked permission to add one comment to the testimony and Vice Chairman DiGiulian asked her to return to the podium.

Ms. Reifsnyder stated that Mrs. Johnston and Mr. McBride did meet on the site but had not received the County Arborist's report. She asked that Condition 3 be revised because she believed without a condition, Mr. Arledge would not properly screen the property.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 85-D-062-1 subject to the development conditions contained in the staff report dated March 22, 1990 with the changes as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 85-D-062-1 by ROBERT C. ARLEDGE, under Section 8-014 of the Zoning Ordinance to amend SP 85-D-062 for a reduction to the minimum yard requirements based on error in building location to delete Condition #3 regarding landscaping, on property located at 6022 Orris Street, Tax Map Reference 31-2((22))2A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 27, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 46,063 square feet of 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 Sections 8-903 and 8-914 of the Zoning Ordinance.

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

1. This approval is granted for the location and the specific garage shown on the plat included with this application and is not transferable to other land.

2. Within an area 30 feet in length along the side of the garage which parallels the rear lot line and centers on this wall of the garage the applicant shall plant such trees, shrubs or supplemental planting as determined appropriate in the discretion of the County Arborist in order to maintain a continuous and unbroken screen of vegetation above the level of the existing 7 foot high wood fence. The number and locations of the plantings shall be determined by the County Arborist. The County Arborist shall not require supplemental plantings which will harm or destroy existing healthy vegetation but will require trees which will accomplish the purpose and intent of this development condition. The trees shall be planted within 60 days of the approval of this special permit unless the County Arborist determines that planting is not feasible because of weather conditions or availability of plants. Any trees that die shall be replaced at the discretion of the County Arborist.

Mr. Kelley seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 4, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:45 a.m. and reconvened at 11:05 a.m.

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Page 350, March 27, 1990 (Tapes 2 and 3), Scheduled case of:

10:00 A.M. GREEN TRAILS ASSOCIATES, SP 90-S-004, application under Sect. 3-503 of the Zoning Ordinance to allow community recreational facility, on property located at Green Trails Boulevard, on approximately 2.44 acres of land, zoned R-5 and WS, Springfield District, Tax Map 65-3((1))13A. (OTH GRANTED)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mattheisen confirmed that it was. Vice Chairman DiGiulian then asked for disclosures from the Board members and hearing no reply called for the staff report.

Denise James, Staff Coordinator, presented the staff report. She introduced a letter of support from Supervisor McConnell's office and a revised affidavit to the Board. Ms. James stated that the outstanding issues were screening, parking, and stormwater management. She explained that in response to an interpretation request, the special permit plat was found to be in non-conformance with the proffered Generalized Development Plan (GDP). Ms. James said that the use itself is appropriate and must be provided in this location by virtue of the GDP. The issue of non-conformance and other issues of concern must be resolved before staff can support this application.

The representative for the applicant, Michael Horwatt, 8300 Boone Boulevard, Suite 800, Vienna, Virginia, of the law firm Dickstein, Shapiro, and Morin, addressed the Board and said that members of the engineering firm were present to answer technical questions. He said that the application before the Board was the identical application that the Board had approved in February, 1987. Mr. Horwatt explained that the permit was allowed to expire, therefore the application had to be resubmitted. He further stated that the members of the community were very eager to have the request approved and if any significant changes were

required it would delay the project for two years. He presented to the Board modifications of the condition which were objectionable to the applicant. Mr. Horwatt said that the recreational facility had been presented in broad conceptional terms, and although a building was shown, no configuration in terms of length or width were shown. He stressed that a specific set of uses was present in the GPD and that the engineering details had not been stipulated. Because of topographical conditions, the engineers re-positioned the tennis court and the swimming pool, therefore, causing the need to move the clubhouse. Mr. Horwatt took issue with the screening and explained that across the street from the site was a 14 foot grassed area and then a group of trees, therefore he believed that 25 feet of screening was not necessary. With the property on one side being a dedicated school site and the property on the other side being a day care center, he said that he believed the requirement for screening for residential use did not apply. Mr. Horwatt stated that while tennis courts are provided as part of the recreational facility, the parking requirements for a tennis club should not apply. He explained that the facility serves the residents in the immediate area and many of them will walk or use their bicycle, thereby, alleviating the need for additional parking spaces.

Mr. Kelley expressed his reservations in reducing the parking requirements and Mr. Horwatt explained that the reduction would cause the configuration to be altered significantly, therefore, the engineers would have to redesign the facility.

In response to questions from the Board, Mr. Horwatt said that the facility is owned by the Homeowners Association and will serve the immediate neighborhood and that the Department of Environmental Management (DEM) had approved the site plan. He stated that the applicant would have no objection to a condition limiting the membership in order to assure the Board that no parking problems would arise.

Mrs. Harris asked if the facility would provide sidewalks or trails for the pedestrians, or a roadway to connect the interparcels. She noted, when Mr. Horwatt had used the viewgraph to show the location of the sidewalks, that the pedestrian traffic would have to use the travel lanes.

Michael Mattheisen, an attorney with the law firm of Dickstein, Shapiro, and Morin, 8300 Boone Boulevard, Suite 800, Vienna, Virginia, addressed the Board and stated that the questions Mrs. Harris had about pedestrian travel could best be answered by the engineer. He explained that an interparcel access was eliminated because of the safety considerations raised by the County and that if it were now made a requirement, it would cause a two year delay in the development of the facility.

In response to Mr. Hammack's question on the parking requirements, Mr. Mattheisen stated that the problem of parking stems from staff's position that the tennis courts constitute a tennis club.

Jack Rinker, engineer with the firm of Rinker, Detwiler and Associates, 10505 Judicial Drive, Fairfax, Virginia, addressed the Board and said that the site plan had been approved by the appropriate County agencies and the facility should not be considered a tennis club just because the courts are available.

Ms. James replied to Mr. Ribble's question by stating that the Zoning Administrator has consistently taken the position that all the uses on a site must be accommodated by providing the required parking as set for in the Zoning Ordinance. Therefore, parking must be provided for the tennis courts, swimming pool, and the community center, based upon its occupancy load. She stated that if the applicant has received a parking reduction based on proximity from the Director of DEM, that knowledge has not been made available to staff.

In response to Mr. Hammack's question, Ms. James stated that the Board could technically approve the request, however with the issue of the proffer interpretation stating "non-conformance", the application could not be processed through the site plan process. She expressed her belief that the application should not be approved until the issue is resolved. Ms. James explained that although staff had specifically asked the applicant as to whether they had received any approvals for the site plan, the information that DEM has expressed its approval was new to staff.

Mr. Rinker explained that the bulk of the residential area is to the east and that sidewalks are in existence on both sides of Greentrails Boulevard and along Rock Canyon Drive. Mrs. Harris expressed her belief that the sidewalk could be extended to allow it to hook into the walkway system at the facility to allow safer conditions for the children. Mr. Rinker asked that the existing site be approved and an amendment to the site plan be submitted so that the development of the facility could proceed.

Vice Chairman DiGiulian called for any speakers in support of the application.

Stephen Labore, 14236 Rock Canyon Drive, Centreville, Virginia; Gregory Parker, 6701 Bay Valley Lane, Centreville, Virginia; David Doane, 14209 Pony Hill Court, Centreville, Virginia; William Albers, 6570 Palisades Drive, Centreville, Virginia; Malinda Labore, 14236

Rock Canyon Drive, Centreville, Virginia; Susan Egloff, 14229 Rock Canyon Drive, Centreville, Virginia; Robert M. Cappiello, 14119 Sorrell Chase Court, Centreville, Virginia; Colin W. Morgan, 1402 Sorrell Chase Court, Centreville, Virginia; Robert Berger, 14210 Rock Canyon Drive, Centreville, Virginia; Dennis Wightman, 6607 Hamess Hill Court, Centreville, Virginia; and Vicki Boaz, 14222 Rock Canyon Drive, Centreville, Virginia, members of the community addressed the Board and expressed their support for the facility.

They explained to the Board that one of the reasons they had bought their houses was because of the recreational facility that would be available to them. Although the builder was in error by allowing the special permit to expire, they expressed their frustration with the County process. They asked the Board to approve the special permit so that they and their families would be able to enjoy the facilities.

There being no further speakers in support and no speakers in opposition, Vice Chairman DiGiulian called Mr. Horwatt back to the podium for rebuttal.

Mr. Horwatt said he would like to address the question of the BZA right, in light of the Zoning Administrator's interpretation, to grant the special use permit. There are two provisions of the Ordinance that are implicated in this decision, one says that interpretations with respect to proffers that are made by the Administrator must be appealed to the Board of Supervisors (BOS). The other says that matters that relate to permit are to be appealed to the BZA. He stated that it is the applicant's position that the issue is not an interpretation of the generalized development plan or the proffers; but that the issue is the question of whether the generalized development plan conforms to the special use permit. He expressed his belief that the issues should be decided by the BZA and not the BOS.

In reply to Mr. Hammack's question, Mr. Mattheisen said that he had submitted the letter requesting an interpretation at the request of staff.

Mr. Horwatt stated his belief that the tennis courts do not constitute a tennis club, that interparcel access is not necessary, that the repositioning of the handicap parking is for safety reasons, and that a 25 foot barrier should not be a requirement.

Mr. Hammack asked staff why the application was accepted if it was not in conformance with the GDP. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that at the time the application was submitted it was not reviewed to determine whether or not it was in conformance with the GDP. She said that when Ms. James reviewed the files of the rezoning she realized that the proffered development plan may not have been in conformance, she then consulted with Barbara Byron, Director, Zoning Evaluation Division, OCP, who determined that it was not in conformance.

In reply to Mrs. Harris' question, Ms. Kelsey said that staff does check the original rezoning plat, but that she could not say if the staff coordinator had done so in 1987 when the plans were submitted.

Vice Chairman DiGiulian closed the public hearing.

Ms. Kelsey asked if staff could have the opportunity to respond to the questions that had been raised, and Vice Chairman DiGiulian said that he was not interested in staff rebuttal.

Mr. Hammack expressed his concern about rendering a decision. He said that he would like more information on Ms. Byron's position and would also like to have available to the Board the staff report and Resolution relating to the previous application.

Mr. Hammack make a motion to defer SP 90-S-004 for decision only until the next public hearing.

The Board requested that Ms. Byron be present to state her position and to give Mr. Horwatt an opportunity to respond. They also asked that a representative from the County Attorney's office be present to address the legal aspects, if necessary.

Mrs. Harris seconded the motion.

Vice Chairman DiGiulian called for discussion

Mr. Ribble expressed his concern about staff's and the applicant's omissions on the case, but said that he would agree to a week for decision.

The motion carried by a vote of 5 - 0 with Chairman Smith and Mrs. Thonen absent from the meeting.

The Board accepted Ms. James suggested deferral date of April 3, 1990 at 8:00 p.m.

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Page 353, March 27, 1990 (Tape 3), Scheduled case of:

10:30 A.M. MEETING BETWEEN BZA, JAMES ZOOK AND BARBARA BYRON to discuss Legislative Actions from 1990 General Assembly and Annual Attitude Check

The meeting was rescheduled as Mr. Zook was absent due to a dealth in his family.

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Page 353, March 27, 1990 (Tape 3), After Agenda Item:

Additional Time
Vulcan Quarry, SPA 82-V-091-1
9800 Ox Road
Tax Map Reference 112-2((1))pt. 8, pt. 9, pt. 10.
pt. 11, pt. 12, pt. 13, and 106-4(1)pt. 54.

Mr. Ribble made a motion to grant the request. Mr. Hammack seconded the motion which carried by a vote of 4 - 0 with Mrs. Harris not present for the vote. Chairman Smith and Mrs. Thonen were absent from the meeting. The new expiration date is September 23, 1990.

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Page 353, March 27, 1990 (Tape 3), After Agenda Item:

Additional Time
St. Andrews Lutheran Church, SPA 79-S-351-3
14640 Soucy Place
Tax Map Reference 54-1((06))2A, 3A, 4A, 5A, 6A, 7A, 8A, 9A.

Mr. Ribble made a motion to grant the request. Mr. Kelley seconded the motion which carried by a vote of 4 - 0 with Mrs. Harris not present for the vote. Chairman Smith and Mrs. Thonen were absent from the meeting. The new expiration date is April 26, 1991.

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Page 353, March 27, 1990 (Tape 3), After Agenda Item:

Approval of Minutes
October 3, 1989, February 6, 1990, February 13, 1990, and February 22, 1990

Mr. Kelley made a motion to approve the BZA minutes as submitted. Mr. Hammack seconded the motion which carried by a vote of 4 - 0 with Mrs. Harris not present for the vote. Chairman Smith and Mrs. Thonen were absent from the meeting.

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Page 353, March 27, 1990 (Tape 3), After Agenda Item:

Change of Time
The Church of Jesus Christ of Latter-Day Saints, SPA 86-C-037-1
Tax Map Reference 25-1((1))27A

Mr. Hammack made a motion to change the time of the public hearing for SPA 86-C-037-1 to March 8, 1990 at 11:30. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mrs. Harris not present for the vote. Chairman Smith and Mrs. Thonen were absent from the meeting.

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Page 353, March 27, 1990 (Tape 30), After Agenda Item:

Out of Turn Hearing
Blue Ridge Arsenal, Inc., SP 89-S-007-1

Lori Greenlief, Staff Coordinator, addressed the Board and explained that the request was received on March 26, 1990. She explained that the representative for the applicant, Mr. Andrew Kenny, was present to answer questions from the Board. Ms. Greenlief said that the application would normally be scheduled to be heard on June 27, 1990, staffed on April 19, 1990 with comments due in the beginning of May.

In response to Mr. Hammack's question, Ms. Greenlief said the reason given for the request was that it is an amendment to an existing special permit.

The applicant's representative, E. Andrew Keeney, an attorney with the firm of Baker and Hostetler, 437 N. Lee Street, Alexandria, Virginia, addressed the Board and said the applicant would like to expand the facility in order to accommodate a request by members of the police force for a rifle and shotgun practice range, he added that new classroom would also be built.

Mr. Kelley made a motion to grant the request. Mr. Ribble seconded the motion which passed by a vote of 3 - 1 with Vice Chairman DiGiulian, Mr. Kelley, and Mr. Ribble voting aye; Mr. Hammack voting nay; and Mrs. Harris not present for the vote. Chairman Smith and Mrs. Thonen were absent from the meeting.

The Board accepted the suggested date of June 5, 1990, at 8:00 p.m. for the public hearing.

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

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

Daniel Hammack Jr Acting Chair
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED June 21, 1990 APPROVED June 26, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, April 3, 1990. The following Board members were present: John DiGiulian, Vice-Chairman; Martha Harris, Paul Hammack; John Ribble and Robert Kelley. Chairman Smith and Mary Thonen were absent.

Vice-Chairman DiGiulian called the meeting to order at 8:15 p.m. Mr. Hammack led the prayer.

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Page 355, April 3, 1990, (Tape 1), Scheduled case of:

8:00 p.m. PHRA VIMOLSRILAJARN, SP 89-V-061, application under Sects. 3-203 and 8-901 of the Zoning Ordinance to allow place of meditation/worship and waiver of dustless surface requirement, on property located at 8526 Old Mount Vernon Avenue, on approximately 1.9653 acres of land, zoned R-2, Mount Vernon District, Tax Map 101-4((1))63. (DEFERRED FROM 3/13/90 AT APPLICANT'S REQUEST)

William C. Thomas, Jr., P.O. Box 297, 401 Wythe Street, Alexandria, Virginia, representative of the applicant, stated that based on the meetings and conversations that had been held with the citizens in the area of the proposed place of worship, that it was in the best interest of the applicant to request a withdrawal of the application. He indicated that another application would be filed sometime in the future and, therefore, also requested a waiver of the 12 month limitation.

Vice-Chairman DiGiulian closed the public hearing.

Mr. Hammack moved that special permit application SP 89-V-061 be withdrawn. This motion was seconded by Mr. Kelley and passed by a vote of 5-0, (Chairman Smith and Mrs. Thonen being absent).

Mr. Hammack moved that the BZA grant a waiver of the 12 month limitation on rehearing applications. This motion was seconded by Mr. Ribble and passed by a vote of 5-0, (Chairman Smith and Mrs. Thonen being absent).

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Page 355, April 3, 1990, (Tape 1), Scheduled case of:

8:00 p.m. GREEN TRAILS ASSOCIATES, SP 90-S-004, application under Sect. 3-503 of the Zoning Ordinance to allow community recreational facility, on property located at Green Trails Boulevard, on approximately 2.44 acres of land, zoned R-5 and WS, Springfield District, Tax Map 65-3((1))13A. (OTH GRANTED) (DEFERRED FROM 3/27/90 FOR ADDITIONAL INFORMATION FROM THE ZONING ADMINISTRATOR'S AGENT AND APPROPRIATE COUNTY STAFF)

Barbara Byron, Director, Zoning Evaluation Division, provided background information to the BZA regarding the application. She discussed the proffered condition amendment 77-S-021 which had been approved by the Board of Supervisors on June 30, 1986. Ms. Byron explained that Special Permit SP 90-S-004 was accepted by staff on January 26, 1990 and on Feburary 6th the BZA granted the applicant an out of turn hearing. The public hearing was scheduled for March 27th leaving only 60 days for staff review and evaluation as opposed to the normal 90 days. During a review of the special permit plat by the Office of Comprehensive Planning (OCP) staff, it was determined that there were differences on the plat and the layout shown in the Generalized Development Plan. She read a note written on the GDP which specifically referred to the location of the recreation facilities and stated "due to inherent topographic limitations of the site and the need for better access the recreational facilities have been revised to a more central location within the open space of the development."

Ms. Byron stated that the layout shown in the GDP had been determined to be a feature and that any subsequent approvals, be they site plans or special permits, had to be in conformance with the GDP or amended through a proffered condition amendment. When the issue of the differences between the proffered GDP and the submitted special permit plat were uncovered, the applicant's agent was contacted on February 27th in an effort to have the agent provide support to the staff that there would be engineering data that necessitated the change which staff could base an interpretation of substantial conformance upon. She added that staff had to contact the agent twice before he provided staff some reason for change that could be justified using the perimeters of the Zoning Ordinance.

The agent contacted staff just prior to this public hearing and based upon the information he provided she stated that she could now issue a determination that the special permit plat that is before the BZA is in substantial conformance with the GDP plan. She added that this does not negate the other issues outlined in the staff report, particularly those regarding screening and parking.

Michael Horwatt, with the law firm of Dickstein, Shapiro & Morin, representative of the applicant, thanked Ms. Byron for her interpretation.

In response to a question from Mr. Kelley regarding the development conditions, Mr. Horwatt asked the BZA to communicate its sense of the situation to the Department of Environmental Management that any changes should be treated as a revision to the existing site plan.

In response to a question from Mr. Hammack, Ms. James, the Staff Coordinator, stated that the 1986 special permit application had been analyzed based upon 633 memberships.

There being no speakers, Vice-Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 90-S-004 in accordance with the Development Conditions contained in Appendix 1 of the staff report dated March 22, 1990, with the following modifications:

Development Condition #12 - delete the last sentence.
Development Condition #13 - change the minimum number of parking spaces to 55.
Development Condition #16 - delete and insert the following: "A curb cut ramp shall be provided for the sidewalk adjacent to the community center to provide handicapped access."
Development Condition #17 - delete and insert the following: "The boundaries for tree clearance shall be determined to the satisfaction of the County Arborist prior to approval of a building permit or commencement of site clearance or construction."
Development Condition #18 - delete and insert the following: "Site frontage on Green Trails Boulevard shall be planted with a combination of evergreen, flowering and deciduous plantings to screen the parking area from residences across Green Trails Boulevard to the south. A landscape plan shall be submitted to the County Arborist for review and approval which provides an effective screening along Green Trails Boulevard and appropriate building foundation plantings.
Development Condition #19 - "Any dumpster or trash receptacle shall be located and screened so as not to be overtly visible from off the site."

The motion was seconded by Mr. Hammack and passed by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

Mr. Kelley also made a motion that a communication be sent to the Department of Environmental Management that the BZA wanted substantial approval with the development conditions previously approved so the applicant is not faced with the burden of a long approval process. The motion was seconded by Mr. Ribble and passed by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-004 by GREEN TRAILS ASSOCIATES, under Section 3-503 of the Zoning Ordinance to allow community recreational facility, on property located at Green Trails Boulevard, Tax Map Reference 65-3((1))13A, 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 3, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-5 and WS.
3. The area of the lot is 2.44 acres of 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 Section 3-503 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only. However, upon conveyance of the property to the Green Trails Homeowners Association, this approval will transfer to the association. This approval is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat dated March 22, 1990, approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum number of employees on site at any one time shall be four (4).

6. The maximum number of family memberships shall be 633 from the Green Trails subdivision.

7. Swim meets shall be limited to four (4) per year and shall not begin prior to 9:00 am.

8. The hours of operation shall be limited to the following:

   - Tennis Courts - 8:00 a.m. to dusk
   - Swimming Pool - 8:00 a.m. to 9:00 p.m. for general pool hours with permission for after-hours parties as follows:

     a. Parties shall be limited to six (6) per season.
     b. Parties shall be limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year, provided written proof is submitted to the Zoning Administrator which shows that all contiguous property owners concur.
     c. Parties shall not exceed 12:00 midnight.
     d. The applicant shall request written permission from the Zoning Administrator for each individual party or activity at least ten (10) days in advance and receive permission prior to the party.
     e. Requests shall be approved for only (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after hour party.

   The use of bullhorns, whistles, loudspeakers and other similar noise making devise shall be limited to after 9:00 a.m. and shall not be permitted after hours.

9. Prior to discharge during cleaning or draining operations, sufficient amounts of lime or soda ash shall be added to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream or between a pH of 6.0 and 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters. This requires a minimum concentration of 4.0 milligrams per liter. If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

10. A soil survey shall be completed if determined necessary by the Director, Department of Environmental Management (DEM), prior to site plan approval. If high water table soils resulting from uncompacted fill, resource removal or any other circumstances resulting in instability are found in the immediate vicinity of the pool, then the pool shall be engineered and constructed to ensure pool stability, including the installation of hydrostatic relief valves and other appropriate measures, as determined by DEM.

11. The geotechnical study shall be prepared by, or under the direction of a geotechnical engineer experienced in soil and foundation engineering and shall be submitted and approved by DEM prior to submittal of the construction plan and approved measures shall be incorporated into the site plan and implemented as directed by DEM.

12. Best Management Practices (BMP's) shall be provided on site to the satisfaction of DEM in accordance with the provisions of the Water Supply Protection Overlay District (WSPOD) of the Zoning Ordinance.

13. The minimum number of parking spaces shall be a minimum of 55. All parking shall be on-site.

14. If lights are to be provided for the swimming pool and parking lot, they 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 shielded and focused so as not to project glare off-site.
   - Tennis Court lights shall not be permitted.

15. Bicycle racks shall be provided for a minimum of 20 bicycles.

16. A curb cut ramp shall be provided for the sidewalk adjacent to the community center to provide handicapped access.

17. The boundaries for tree clearance shall be determined to the satisfaction of the County Arborist before approval of a building permit or commencement of site clearance or construction.

18. Site frontage on Green Trails Boulevard shall be planted with a combination of evergreen, flowering and deciduous plantings to screen the parking area from residences across Green Trails Boulevard to the south. A landscape plan shall be submitted to the County Arborist for review and approval which provides an effective screening along Green Trails Boulevard and appropriate building foundation plantings.

19. Any dumpster or trash receptacle shall be located and screened so as not to be overtly visible from off the site.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mr. Hammack seconded the motion. The motion carried by a vote of 5-0 (Chairman Smith and Mrs. Thonen being absent).

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 11, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 358, April 3, 1990, (Tapes 1-2), Scheduled case of:

8:20 p.m. TURNER AND ELAINE ROSE, VC 89-D-147, application under Sect. 18-401 of the Zoning Ordinance to allow resubdivision of lots with proposed Lot 36A having a lot width of 10.47 feet (100 ft. min. lot width required by Sect. 3-207), on property located at 1869 Rhode Island Avenue, on approximately 99,999 square feet of land, zoned R-2, Dranesville District, Tax Map 41-1((13))(2)29, 30, 31, 32, 33, 34, 35, 36. (DEFERRED FROM 2/6/90 AT THE APPLICANT'S REQUEST)

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Rose replied that it was. Vice Chairman DiGuilian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report and advised the Board that the application did not meet standards five and six which pertain to hardship. He stated that there were subdivision options which could be pursued without the granting of the variance. In addition, the variance did not meet standards three and eight.

Turner Rose, the applicant, 1869 Rhode Island Avenue, McLean, Virginia, appeared before the Board. He explained that his land consisted of eight narrow lots which were grandfathered and that he wanted to consolidate them into four larger lots to accommodate larger houses that would be compatible with the community and allow for the preservation of more trees and vegetation. Mr. Rose stated that one of the proposed lots could only be reached by a driveway and had no road frontage.

Mr. Rose stated that the staff report contained some errors and incorrect information regarding density figures and the general character of the community.

Mr. Rose addressed the staff concern about the danger of runoff from the streams and indicated that the comments did not sound like staff had observed or walked the property. He stated that the land where the houses are proposed runs out in a gentle slope past the sites before dropping off. Also, Mr. Rose stated that his house, which had been there for thirty years, showed no sign of runoff damage.

Mr. Rose stated that the cul-de-sacs suggested by the staff would create a considerable disturbance and would require cutting down a lot of trees. He indicated that many neighbors had talked to him to offer their favorable view of the variance.

Rory Clark, with the firm of Mackall, Mackall, Walker & Gibb, 4031 Chain Bridge Road, Fairfax, Virginina, representative of the applicant, stated that he would speak during rebuttal. He handed the Board proposed development conditions that had been worked out with staff that afternoon concerning some of the issues of the application. He stated that the application was not intensifying development and would preserve the environment.

In response to a question from Ms. Harris regarding Virginia Department of Transportation (VDOT) standards for public access, Mr. Clark stated that the applicant would either construct a hammerhead cul-de-sac or a private driveway as determined by the BZA.

Vice-Chairman DiGiulian called for speakers regarding the variance application.

Herb Becker, 2009 Lorraine Avenue, McLean, representing the McLean Citizens Association, stated his support of the application due to the fact that it focused on the reduction of density, the protection of the Environmental Quality Corridor (EQC), and the minimizing of unnecessary street construction.

Mary Ellen Brown, 1840 Patton Terrace, McLean, representing the Franklin Area Citizens Association, stated that she had previously submitted a letter in support along with petitions regarding this variance application. She stated that this was a unique situation and should not set a precedent for other variance requests. Ms. Brown requested the assistance of the BZA in achieving the abandonment of Rhode Island Avenue for a park.

Steven Taube, 6267 Park Road, McLean, Director of the Franklin Area Citizens Association, supported the proposal. He emphasized that the application would preserve the character of the land.

Allen Rugg, 1877 Rhode Island Avenue, McLean, adjacent to the Rose's property, spoke in support of the application. He stated that if the land was developed by right, the environmental area and the stream bed would be destroyed. Mr. Rugg indicated that the proposal before the BZA was very reasonable and would reduce density.

Lindsey Stellwagen, 1852 Massachusetts Avenue, McLean, Lot 37A, spoke in opposition to the application. She stated that the Rose's had not met the criteria for a variance and that there were several serious problems with the proposal. Ms. Stellwagen stated that the variance did not provide adequate public access, the private driveways would create drainage problems, and there was no conservation easement proposed for large trees along her property line.

Diane Vosick, 2023 Rhode Island Avenue, McLean, spoke in opposition to the application. She indicated that she had concerns about the application regarding portions of the houses being built in the EQC, the disruption of the wildlife corridor, and the precedent that granting this variance would establish.

There were no further speakers.

Mr. Riegle clarified that the abandonment of Rhode Island Avenue would have to be taken up by the Office of Transportation and the Department of Environmental Management, before going to public hearing before the Planning Commission and the Board of Supervisors. This right-of-way vacation could not be conditioned by the Board of Zoning Appeals.

Mr. Riegle discussed staff's objection to condition number four of the development conditions that had been provided to the BZA by the applicant that evening. He stated that the decision of either a hammerhead or Y-type turnarounds should be left up to VDOT or DEM and not the individual discretion of the developer.

During rebuttal, Mr. Clark stated that any access that would be constructed would meet VDOT and DEM standards. In addition, he reiterated that all the trees in the vicinity would be protected including those on or off site that were impacted by the development.

Vice-Chairman DiGiulian closed the public hearing.

Ms. Harris moved to grant VC 89-D-147 in accordance with the development conditions that were revised on March 17, 1990, with the addition of the new condition #4 that was revised on March 22, 1990. The intent of condition #4 is that a public street should be provided from Park Street up to where the hammerhead would enter onto Rhode Island Avenue.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-D-147 by TURNER AND ELAINE ROSE, under Section 18-401 of the Zoning Ordinance to allow resubdivision of lots with proposed Lot 36A having a lot width of 10.47 feet (100 ft. min. lot width required by Sect. 3-207), on property located at 1869 Rhode Island Avenue, Tax Map Reference 41-1((13))(2)29, 30, 31, 32, 33, 34, 35, 36, Ms. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 3, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 99,999 square feet of land.
4. There is an extraordinary condition on the subject property being that it has eight grandfathered usable lots. The majority of the speakers tonight believe that it is a healthy precedent to consolidate those lots into the four lots that are proposed. This extraordinary condition is not going to adversely affect the neighboring contiguous lots. What is going to be a good precedent set is to not have the long, narrow houses that some developers are trying to put on these very tiny lots. I also believe that strict application of the Ordinance would produce a hardship due to the EQC that is there. We are trying very hard to protect that and by consolidating these lots I think we have a better opportunity of doing that. This will not be a detriment to the adjacent properties but will be there to enhance them.

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

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

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

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

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

1. This variance is approved for the subdivision of the existing eight (8) lots into four (4) lots as shown on the plat submitted with this application.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date of the variance unless this subdivision has been recorded among the land records of Fairfax County, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval of this variance. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. Pursuant to Virginia Code Section 10-152, the applicant shall, at the time of site plan approval, record among the land records of Fairfax County an open space easement to the benefit of the Board of Supervisors. The easement shall include all portions of the subject property which are located within the designated Environmental Quality Corridor. There shall be no clearing of any vegetation within this area, except for that which is necessary to provide access to the property and the clearing of dead or dying trees or shrubs. No structures of any kind shall be located within this easement except for a pedestrian trail and any necessary pedestrian bridges.

4. A public street shall be provided from Park Road to the proposed pipestem drive on the eastern boundary and from Rhode Island Avenue to the proposed point of access on the western boundary of the site. These streets shall be terminated in a hammerhead or "Y" type turn around as opposed to a cul-de-sac to prevent damage to existing vegetation and the environmental quality corridor as may be acceptable to the Virginia Department of Transportation (VDOT) and the Director, DEM.

5. Prior to subdivision plat approval, a plan showing the limits and clearing and grading shall be submitted for review and approval by the County Arborist for the purpose of identifying, locating and preserving individual mature, large and/or specimen trees and tree save areas on the site. Preliminary rough grading shall not be permitted on site prior to County Arborist approval for a tree preservation plan.

Mr. Hammack seconded the motion. The motion carried by a vote of 5-0 (Chairman Smith and Mrs. Thonen being absent).

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 11, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 361, April 3, 1990, (Tape 2), After Agenda Item #1:

Approval of Resolutions from March 27, 1990

Ms. Harris moved approval of the resolutions from March 27, 1990. This motion was seconded by Mr. Ribble and passed by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

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Page 361, April 3, 1990, (Tape 2), After Agenda Item #2:

Approval of Revised Plat
Word of Life Assembly of God
SP 81-A-078

Ms. Kelsey, Chief, Special Permit and Variance Branch, explained that the revised plat was in response to the BZA's request to move the building back ten feet and to meet the reduction in square footage as stated in the resolution.

Mr. Ribble moved approval of the revised plat for Word of Life Assembly of God, SP 81-A-078. This motion was seconded by Mr. Hammack and passed by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

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Page 361, April 3, 1990, (Tape 2), After Agenda Item #3:

Request for Date and Time
Application for Appeal
Carter V. Boehm

Mr. Ribble moved that the Carter V. Boehm appeal be scheduled for public hearing on May 29,

1990, at 10:00 a.m. This motion was seconded by Mr. Hammack and passed by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

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Page 362, April 3, 1990, (Tape 2), After Agenda Item #4:

Request for Additional Time
Holy Transfiguration Melkike Church
SPA 80-D-069-1

Mr. Hammack moved that the request for additional time for SPA 80-D-069-1, Holy Transfiguration Melkike Church be granted. The new expiration date will be April 10, 1991. This motion was seconded by Mr. Ribble and passed by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

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Page 362, April 3, 1990, (Tape 2), After Agenda Item #5:

Request for Out-of-Turn Hearing
Country Club of Fairfax
SPA 82-S-102-2

Mr. Kelley moved to defer the out-of-turn hearing request for one week to allow staff time to work out a concurrent hearing date for both the Country Club of Fairfax and the Fairfax Covenant Church which were related reports. This motion was seconded by Mr. Hammack and passed by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

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Page 362, April 3, 1990, (Tape 2), After Agenda Item #6:

Request for Out-of-Turn Hearing
Chesterbrook-McLean Little League
SP 90-D-021

Mr. Ribble moved to approve the out-of-turn hearing request and schedule Special Permit application SP 90-D-021 on June 5, 1990. This motion was seconded by Mr. Hammack and passed by a vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

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Page 362, April 3, 1990, (Tape 2), After Agenda Item #7:

Approval of Minutes
March 6, 1990

Mr. Hammack moved to approve the BZA Minutes of March 6, 1990. Mr. Hammack seconded the motion which passed by a unanimous vote of 5-0 with Chairman Smith and Mrs. Thonen absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, provided the Board members with a copy of the revised bylaws for their review prior to the worksession scheduled for the following week with James Zook, Director, Office of Comprehensive Planning.

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As there was no other business to come before the Board, the meeting was adjourned at 10:05 p.m.

Judy L. Moss, Substituting for the Clerk
Board of Zoning Appeals

John DiGiulian, Vice Chairman
Board of Zoning Appeals

SUBMITTED July 31, 1990

APPROVED August 7, 1990

363

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 10, 1990. The following Board Members were present: Acting Chairman Paul Hammack; Martha Harris; Mary Thonen; Robert Kelley; and, John Ribble. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

Mr. Hammack called the meeting to order at 9:28 a.m. and gave the invocation. Mrs. Harris made a motion that Mr. Hammack serve as Acting Chairman in the absence of both Chairman Smith and Vice Chairman DiGiulian. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote.

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Page 363, April 10, 1990, (Tape 1), Scheduled case of:

9:00 A.M. GEORGELAS AND SONS, INC. APPEAL, A 90-D-001, application under Sect. 18-301 to appeal the Zoning Administrator's determination regarding the off-street parking requirement for an emergency medical care facility for appellant's property located at 1287 Beverly Road, on approximately 11,365 square feet of land, zoned C-2, Dranesville District, Tax Map 30-2((4))(C)38, 39, 40, 41.

Acting Chairman Hammack informed the Board that staff had indicated that the notices for the appeal were not in order.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a deferral date of June 12, 1990 at 9:00 a.m.

Mrs. Thonen so moved with Mrs. Harris seconding the motion. The motion carried by a vote of 4-0 with Mr. Ribble not present for the vote; Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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Page 363, April 10, 1990, (Tape 1), Scheduled case of:

9:30 A.M. CENTENNIAL APPEAL

Acting Chairman Hammack stated that the Board had deferred accepting this appeal until such time as the appellant's attorney could be present in the Board room.

Mrs. Thonen asked if the Board members were now confident with their findings. Mr. Kelley indicated that he was still uncomfortable with the application. It was the consensus of the Board to hear staff's comments.

Peter Braham, Planner with the Zoning Evaluation Division, Office of Comprehensive Planning, appeared before the Board representing the position of Barbara Byron, Director, Zoning Evaluation Division. He stated that Mr. Lawrence, the appellant's attorney, had requested that the BZA hear an appeal of a proffer interpretation made by Barbara A. Byron acting as the agent of the Zoning Administrator. He added that it should be noted that Mr. Lawrence had also filed an appeal of the interpretation with the Board of Supervisors (BOS).

Mr. Braham stated that the interpretation was done at the request of Joseph E. Sunday, Director of the Office of Road Program Management, Department of Public Works, as the County is improving South Van Dorn Street across the frontage of the land owned by the appellant. The interpretation determined that there is proffered right-of-way associated with the proffered improvements to South Van Dorn Street, that dedication of the right-of-way in advance of a site plan would have no effect on the amount and type of development permitted pursuant to RZ 84-L-014, and that the assessment of land condemned for the improvement of South Van Dorn Street should account for the impact of the proffers.

He continued by stating that it is the position of staff that the appeal with the BZA is inappropriately filed with the BZA and cited Par. 10 of Section 18-204 of the Zoning Ordinance which specifies that: "Any person aggrieved by a decision of the Zoning Administrator regarding any proffered condition may appeal such decision to the Board," with Board referencing the BOS. Further, Section 18-301 specifies that the BZA will hear the appeal of any person aggrieved by a decision of the Zoning Administrator except "... an appeal which relates to a proffered condition... "

Mr. Lawrence has filed this appeal with the BZA based on the supposition that the effects of the Zoning Ordinance amendment adopted on December 11, 1989 may have deprived the appellant of the benefits of RZ 84-L-014 when the text of the I-4 District was amended. With the adoption of this amendment, the Board also approved grandfather provisions which stated that proffered rezonings approved on or before the date of adoption of the amendment shall be governed by the provisions of the amendment except where the amendment would conflict with a specific proffered condition which will then supersede the amendment. Mr. Lawrence then opines that the amendments may have deprived the appellants of the benefits gained pursuant to RZ 84-L-014 and the proffers may no longer be binding. Therefore, Mr. Lawrence holds that the interpretation is invalid.

In short, Mr. Lawrence has requested that BZA hear an appeal of a proffer interpretation on the supposition that there is a possibility that the proffers are invalid due to an amendment to the text of the Zoning Ordinance. There has not been a determination that the proffers

are invalid, by either the Zoning Administrator or a court of law. This property owner has filed suit with the County regarding the C and I District amendment adopted last December. That case has not been heard by the court and the County is pursuing a consent decree with the property owner. The consent decree will address whether this property is covered by the grandfather provisions adopted by the Board with the December amendment to the C and I District.

In conclusion, staff holds that this appeal has been improperly filed with the BZA. This appeal is properly heard by the Board of Supervisors (BOS) in accordance with Par. 10 of Section 18-204. Further, Section 18-301 specifically excludes appeals of proffer interpretations from the purview of the BZA. If Mr. Lawrence wishes to appeal the interpretation on the basis that the proffers are no longer applicable, a determination to that effect should be made first.

Mrs. Thonen stated that she was not trying to relinquish any of the power of the BZA but that she did not want to take on the power of the BOS. She added that everyone she had discussed this issue with agreed that the appeal should be before the BOS.

Acting Chairman Hammack questioned staff as to when Mr. Lawrence had surgery and when he first knew that he had to have surgery. Mr. Braham explained that it was his understanding that the surgery was a surprise to Mr. Lawrence. He informed the Board that Mr. Lawrence's office was presently on the telephone to the Board room. Following a telephone discussion between Jane Kelsey, Chief, Special Permit and Variance Branch, and Mr. Lawrence's secretary, Mr. Braham explained that Mr. Lawrence had surgery last week and returned to work on April 9th and is working only part time.

Acting Chairman Hammack pointed out that Mr. Lawrence was with a large law firm and could have arranged for another attorney to be present at the public hearing.

Mrs. Thonen made a motion that the Board not accept the appeal as it was not a proper appeal before the BZA because the Zoning Ordinance specifically states that proffer interpretations should go to the BOS.

Mr. Kelley seconded the motion and agreed with Mrs. Thonen's comments.

Acting Chairman Hammack stated that he would support the motion especially in view of the fact that a suit has been filed. He added that Mr. Braham's presentation had brought out pertinent facts that supported the Zoning Administrator's position.

The motion carried by a vote of 5-0 with Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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Page 364, April 10, 1990, (Tape 1), After Agenda Item:

Junior Equitation School, Inc., SP 90-S-024
Out-of-Turn Hearing

Acting Chairman Hammack noted that Sarah Reifsnyder, attorney with the law firm of Blankingship and Keith, was present in the Board room to address the request for an out of turn hearing. He asked staff if they had a chance to review the request.

Jane Kelsey, Chief, Special Permit and Variance, stated that a memorandum outlining staffing dates had been distributed to the Board. She noted the difficulty staff would encounter in trying to prepare a staff report if the Board granted an out-of-turn hearing. Ms. Kelsey stated that she was aware of ten new applications awaiting staff review and scheduling now and that did not include any applications that the Zoning Administration staff had not yet accepted.

In response to a question from Acting Chairman Hammack, Ms. Kelsey stated that June 5th was a night meeting, on June 12th there were five cases plus an appeal, and on June 21st there were eight cases.

Mrs. Thonen noted that she believed that both Mr. DiGiulian and Mr. Kelley had indicated that they would prefer extra meetings as opposed to longer meetings. Mrs. Harris stated that she agreed.

Ms. Kelsey added that the Board presently had five meetings scheduled for the month of May, four in the month of June, and six in the month of July.

Acting Chairman Hammack called the applicant's representative to the podium.

Sarah Reifsnyder, attorney with the law firm of Blankingship and Keith, 4020 University Drive, Fairfax, Virginia, stated that this was a corporation of Jane Marshall Dillon, who had been teaching riding in the Vienna area since the 1950's. Ms. Dillon has trained gold medalists and has written books on riding and has now purchased property in Clifton and would

like to relocate her school and begin lessons in September, thus the request for the out of turn hearing. Ms. Reifsnyder read an article about Ms. Dillon from one of the Washington magazines. She added that Ms. Dillon is 75 years old and is requesting a five year term on the special permit.

Mrs. Harris asked where the property was located and Ms. Reifsnyder replied at the corner of Popes Head Road and Clifton Road.

Because Mrs. Harris lives in the Clifton area, Acting Chairman Hammack asked her if she would consider this to be an easy application. Mrs. Harris stated that she believed that any time there was a commercial venture going into a residential area the homeowners association needed sufficient time to review the application, thus she would not want to rush the procedure. She added that there is presently horses on the property and believed that it would be a perfect location for this type of school.

Acting Chairman Hammack asked if the number of horses on site now would be increased. Ms. Reifsnyder stated that Ms. Dillon had not yet moved to the new site and that the use would be well below the permitted number of horses.

Mr. Kelley asked how many students would be enrolled at the school and Ms. Reifsnyder replied 60, but added that not all the students would be on the site at one time.

Mrs. Harris noted that it was her understanding that out of turn hearings were reserved for applicants who could demonstrate an overwhelming hardship that would be alleviated by an out of turn hearing. Ms. Reifsnyder pointed out that other schools had been granted out of turn hearings. Mrs. Harris stated that those were schools for educational purposes.

Mrs. Harris made a motion to deny the applicant's request for an out of turn hearing. She stated that staff should have adequate time to assess the application due to the number of students that would be enrolled and the property that the use will be located on; and, the surrounding neighbors should also have time to review the application.

Mr. Ribble seconded the motion.

Mr. Kelley stated that he would oppose the motion reluctantly as he believed that some people may see a riding school as a luxury but to others it is a necessity.

Mrs. Thonen stated that she would like to see the out of turn hearing granted but when the BZA has a lengthy meeting the members seem to disappear before the meeting is over.

Acting Chairman Hammack called for the vote and the motion carried by a vote of 4-1 with Mr. Kelley voting nay; Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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Page 365, April 10, 1990, (Tape 1), After Agenda Item:

Approval of the Resolutions for April 3, 1990

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to the Resolution with respect to Green Trails.

Acting Chairman Hammack and Mrs. Thonen expressed concern that Ms. Kelsey would interrupt the Board in the middle of a motion.

Ms. Kelsey said that she had not heard anyone make a motion.

Some of the Board members were confused as to whether or not the Green Trails Resolution had been approved on April 3, 1990.

Mr. Kelley explained that staff was merely bringing back to the Board the memo setting forth the wording of his motion from last week as he had requested. Ms. Kelsey added that Mr. Kelley had asked that a memo be prepared and sent to the Department of Environmental Management (DEM) asking DEM to expedite the site plan process and had asked staff to prepare the wording for that memo.

Mrs. Thonen stated that she believed that should be handled as a separate item.

Mr. Kelley noted that he believed staff's interruption was appropriate. Acting Chairman Hammack agreed.

Mr. Kelley asked staff if they believed this wording would be effective. Ms. Kelsey replied that she was unable to answer as she could not speak for DEM. Mr. Kelley requested staff forward a copy of the wording to the applicant and Ms. Kelsey agreed.

Mr. Kelley then made a motion to approved the Resolutions as submitted. Mrs. Harris seconded the motion.

Acting Chairman Hammack asked if the motion included Green Trails. Mr. Kelley stated that he believed that it should be a separate motion.

Acting Chairman Hammack called for a vote and the motion carried by a vote of 5-0 with Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

Mr. Kelley stated that he did not believe that a motion was needed for Green Trails. He asked staff if they would feel more comfortable if the Board made a formal motion and Ms. Kelsey indicated that she would.

Mr. Kelley made a motion to accept the wording with respect to the Green Trails Resolution as submitted by staff. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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Page 366, April 10, 1990, (Tape 1), After Agenda Item:

Approval of January 30, 1990 Minutes

Mrs. Harris made a motion to approve the Minutes as submitted by the Clerk. Mr. Ribble seconded the motion.

Mrs. Harris asked staff if Mr. and Mrs. Marquini had really withdrawn their application. Ms. Kelsey replied that was correct. She added that she and the Zoning Administrator were discussing how to flag the file since the BZA had approved the Special Permit but the applicant did not wish to utilize it.

There was no further discussion and Acting Chairman Hammack called for the vote. The motion carried by a vote of 5-0 with Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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Page 366, April 10, 1990, (Tape 1), After Agenda Item:

Sydenstricker United Methodist Church, SPA 78-S-264-3 and 4
Additional Time

Mrs. Thonen made a motion to grant the applicant an additional twelve (12) months so that they could complete the site plan process. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Vice Chairman DiGiulian absent from the meeting. The new expiration date will be April 7, 1991.

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Page 366, April 10, 1990, (Tape 1), After Agenda Item:

Fairfax Country Club, SPA 82-S-102-1
Out of Turn Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to an item deferred from the April 3rd meeting. She stated that Mr. Kelley had asked that the request be deferred to allow staff time to contact both the Fairfax Country Club and the Fairfax Covenant Church to try to reach an mutually acceptable date for the hearings. Ms. Kelsey stated that the church's attorney, Sarah Reifsnyder, was present and had agreed to June 12th.

Sarah Reifsnyder, attorney with the law firm of Blankingship and Keith, 4020 University Drive, Fairfax, Virginia, came forward. She stated that she had hoped that Mr. Best, attorney for Fairfax Country Club, would be present at the hearing and since he was not she asked the Board to defer action for one more week.

Mr. Kelley made a motion to defer action until April 19, 1990. Mrs. Harris seconded the motion. He asked staff if this would generate any problems for staff with respect to staffing the two cases. Ms. Kelsey stated that based on the Board's desire to hear the cases simultaneously Ms. Greenlief had taken steps to rearrange the staffing dates in order to accommodate the Board's wishes.

The motion carried by a vote of 5-0 with Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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Page 367, April 10, 1990, (Tape 1), AFTER AGENDA ITEM:

Workshop Between the BZA and Staff

Mrs. Thonen made a motion that the BZA adjourn to the Board Conference Room. Mr. Kelley seconded the motion.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked that the Board go into Executive Session in order to discuss personnel matters and possible legal matters.

Mrs. Thonen changed her motion to reflect personnel and legal matters. She asked staff for a clarification with respect to what particular cases the BZA would be discussing under the legal matters. Ms. Kelsey replied, it involved the Temple Baptist Church case and the legal implications involved.

The motion carried by a vote of 5-0 with Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

(The BZA went into Executive Session at 10:15 a.m. and reconvened the open meeting at 11:45 a.m.)

Mrs. Thonen 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.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 with Mr. Ribble not present for the vote; Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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It was the consensus of the Board to adjourn the meeting as two of the Board members had to leave, thus no quorum. The meeting was adjourned at 11:48 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

Paul Hammack
Acting Chairman Paul Hammack
Board of Zoning Appeals

SUBMITTED: May 17, 1990

APPROVED: May 22, 1990

Blank

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 19, 1990. The following Board Members were present: Vice Chairman John DiGuilian; John Ribble; Martha Harris; and Mary Thonen. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting.

Vice Chairman DiGuilian called the meeting to order at 9:35 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGuilian called for the first scheduled case.

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Page 369, April 19, 1990 (Tape 1), Scheduled Case of:

9:00 A.M. HAMPTON B. AND MARINDA BARNES, VC 89-P-157, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling 12.0 feet from one side lot line and 8.0 feet from the other side lot line (20 ft. min. side yard required by Sect. 3-107), on property located at 1773 Chain Bridge Road, on approximately 7,000 square feet of land, zoned R-1 and HC, Providence District, Tax Map 30-3((2))233. (DEF. FROM 2/22/90 FOR NOTICES)

Lori Greenlief, Staff Coordinator, explained that the posting of VC 89-P-157 was not in order and it would have to be deferred. The date of May 8, 1990 was suggested; but Mary Holbeck, 1608 Colonial Lane, a contiguous property owner, came forward and stated that she wished to attend the hearing and that was not a convenient date for her.

Mrs. Thonen made a motion that the hearing for VC 89-P-157 be scheduled for May 17, 1990 at 11:15 a.m. Mr. Ribble seconded the motion which carried by a 4-0 vote with Chairman Smith, Mr. Kelley and Mr. Hammack absent from the meeting.

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Page 369, April 19, 1990, (Tape 1), Scheduled case:

9:15 A.M. JOHN G. AND ANGELINA F. GEORGELAS, VC 90-D-005, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to 18.9 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-107), on property located at 1285 Ballantrae Farm Drive, on approximately 25,134 square feet of land, zoned R-1 (cluster), Dranesville District, Tax Map 31-1((20))1A.

Keith Martin, attorney with the law firm of Walsh, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th floor, Arlington, Virginia, represented the applicants. He stated that they would like to add some aerial photographs for consideration that were not currently available but would be shortly. He also stated that he would like to take a survey of the neighborhood to see how many multi-car garages there were and requested that a deferral be granted.

Mrs. Thonen made a motion to defer VC 90-D-005 until May 29, 1990 at 10:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Chairman Smith, Mr. Kelley and Mr. Hammack absent from the meeting.

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Page 369, April 19, 1990, (Tape 1), Scheduled case:

9:30 A.M. KERMIT R. POPE, VC 90-A-010, application under Sect. 18-401 of the Zoning Ordinance to allow construction of building addition to 13.5 feet from side lot line (20 ft. min. side yard required by Sect. 3-107) and to allow concrete patio (deck) to be 12.4 feet from side lot line (20 ft. min. yard required by Sect. 3-107; 5 ft. max. extension allowed by Sect. 2-412), on property located 4413 Banff Street, on approximately 24,248 square feet of land, zoned R-1, Annandale District, Tax Map 70-1((4))11.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. The applicant, Kermit R. Pope, replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and a discussion ensued concerning the sloping of the lot and drainage problems.

Kermit R. Pope, 4413 Banff Street, Annandale, Virginia, came forward and referenced the statement of justification submitted with the application. He stated that the proposed location is on the flattest side of the lot and any other placement would require major reconstruction.

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

Mrs. Thonen made a motion to grant application. Mrs. Harris seconded the motion which was carried by a 4-0 vote with Chairman Smith, Mr. Kelley and Mr. Hammack absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-010 by KERMIT R. POPE, under Section 18-401 of the Zoning Ordinance to allow construction of building addition to 13.5 feet from side lot line and to allow concrete patio (deck) to be 12.4 feet from side lot line, on property located at 1285 Ballantrae Farm Drive, Tax Map Reference 70-1((4))11, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 24,248 square feet of land.
4. The subject property was acquired in good faith.
5. The property has an exceptional topographic condition and extraordinary situation, in that the house is sited extremely close to the southeast lot line, producing an undue hardship.
6. The strict interpretation of this Ordinance would produce undue hardship.
7. Since the photographs furnished by the applicant show this lot to be heavily screened, authorization of this variance will not be of substantial detriment to the adjacent properties.

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

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

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

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

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

1. This variance is approved for the location and the specific addition and deck shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4-0. Chairman Smith, Mr. Kelley and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 27, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 371, April 19, 1990 (Tape 1), Scheduled Case of:

10:00 A.M. JAMES AND SANDRA L. MCLARY, SP 90-V-005, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow garage to remain 19.4 feet from front lot line (30 ft. min. front yard required by Sect. 3-307), on property located at 8242 Kings Arms Drive, on approximately 14,348 square feet of land, zoned R-3, Mount Vernon District, Tax Map 102-3((9))(D)15. (CONCURRENT WITH VC 90-V-008)

JAMES AND JACQUE LAPPING, VC 90-V-008, application under Sect. 18-401 of the Zoning Ordinance to allow a 6.5 foot high fence to remain in front yard (4 ft. max. hgt. for a fence in a front yard allowed by Sect. 10-104), on property located at 8242 Kings Arm Drive, on approximately 14, 348 square feet of land, zoned R-3, Mt. Vernon District, Tax Map 102-3((9))(D)15.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. The applicant, Mr. McLary, replied that it was. Vice Chairman DiGuilian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Denise James, Staff Coordinator, presented the staff report.

James McLary, 8206 Mack Street, Alexandria, Virginia, stated that the garage had been inspected several times by the County and everything seemed to be satisfactory until he tried to sell the property. The problem came to light one week before closing in January 1989. He admitted errors in measuring the footage to the lot line and admitted to being a Registered Surveyor.

A discussion followed during which the Board expressed surprise that a land surveyor could make the kind a mistake that reduced the footage to 7.1 feet as opposed to 19.4 feet from the front lot line, when 30 feet is required by the Zoning Ordinance.

Mr. Ribble made a motion to deny the applications and to require the fence to be reduced by 2.7 feet in height in order to meet the Zoning Ordinance requirement.

Mr. McLary asked if that meant that he would have to tear down the garage and Mr. Ribble replied that it could not stay in violation of the Zoning Ordinance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-V-005 by JAMES J. AND SANDRA L. MCLARY, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow garage to remain 19.4 feet from front lot line, on property located at 8242 Kings Arms Drive, Tax Map Reference 102-3((9))(D)15, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 1990; and

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

1. That the applicant is the owner of the land.

2. The present zoning is R-3.
3. The area of the lot is 14,348 square feet of land.
4. The applicant is a registered surveyor and should know the County setback requirements and how to take measurements from the edge of the property.
5. The land is very congested and the Board should not approve special permits which impact on adjacent properties.

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 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0. Chairman Smith, Mr. Kelley and Mr. Hammack were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-008 by JAMES AND JACQUE LAPPING, under Section 18-401 of the Zoning Ordinance to allow a 6.5 foot high fence to remain in front yard, on property located at 8242 Kings Arm Drive, Tax Map Reference 102-3((9))(D)15, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 14,348 square feet of land.
4. The Ordinance is very clear on the limit of 4 feet as the maximum height for a fence in a front yard.
5. There is no safety reason or other overriding reason to justify this 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.

Page 373, April 19, 1990 (Tape 1), (JAMES AND SANDRA L. MCLARY, SP 90-V-005, AND JAMES AND JACQUE LAPPING, VC 90-V-008, continued from Page 372)

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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**.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0. Chairman Smith, Mr. Kelley and Mr. Hammack were absent from the meeting.

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Page 373, April 19, 1990 (Tape 1), After Agenda Item

Request for Additional Time
Austin Zappala, VC 87-M-165

Mrs. Harris made a motion to grant an additional twelve (12) months for this variance application. Mr. Ribble seconded the motion. The motion carried by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting. The new expiration date is February 3, 1991.

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Page 373, April 19, 1990 (Tape 1), After Agenda Item:

Request for Additional Time
George Summers, VC 86-D-061

Mr. Ribble made a motion to grant two (2) years additional time for this application. Mrs. Harris seconded the motion which carried by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting. The new expiration date is April 19, 1992.

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Page 373, April 19,1990 (Tape 1), After Agenda Item:

Approval of Minutes for March 22, 1990

Mrs. Thonen made a motion to approve the Minutes for March 22, 1990. Mr. Ribble seconded the motion which carried by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting.

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Page 373, April 19, 1990 (Tape 1), After Agenda Item:

Request for Additional Time
Floris United Methodist Church, SP 88-C-057

Patrick M. Via, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn, and Hanes, P.C. representing the applicant and requested additional time, based on securing approval of the site plan.

Lori Greenlief, Staff Coordinator, explained the circumstances involved in staff's position to recommend denial of this additional time.

Mrs. Thonen made a motion to grant twelve (12) months additional time for this special permit application. Mr. Ribble seconded the motion which carried by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting. The new expiration date is May 2, 1991.

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10:15 A.M. PHILIP ANTHONY AND ELIZABETH JOHNSON, VC 90-A-012, application under Sect. 18-401 of the Zoning Ordinance to allow a garage addition 29.2 feet from a street line of a corner lot (40 ft. min. front yard required by Sect. 3-107), on property located at 10115 Glenmere Road, on approximately 26,897 square feet of land, zoned R-1, Annandale District, Tax Map 68-2((2))7.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Johnson replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

Mrs. Harris asked Ms. Greenlief to clarify the location of Gilbertson Road; she asked if it went anywhere, and whether it is a State road. Ms. Greenlief stated that it is a State road but it does not go through to either subdivision, north or south, and dead-ends at the subject property.

The applicant, Philip Anthony Johnson, 10115 Glenmere Road, Fairfax, Virginia, stated he had only been on the subject property since August and could not say what maintenance had been performed on Gilbertson Road or if it was maintained by the State.

The applicant, Elizabeth Johnson, 10115 Glenmere Road, Fairfax, Virginia, came forward and stated that, out of two snow storms she noted in the past winter, Gilbertson Road was plowed one time and the other time it was not.

Mrs. Harris asked the applicant why he could not move his garage back and in so that he would not need a variance. Mr. Johnson explained that the south side of the house has windows which face out across the yard, which is a beautiful yard, and a major factor in their purchase of the house. He stated that moving the garage back would totally block that view and also preclude the future addition of another bedroom which they planned.

There were no speakers, so Vice Chairman DiGuilian closed the public hearing.

Mr. Ribble made a motion to grant VC 90-A-012 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-012 by PHILIP ANTHONY AND ELIZABETH JOHNSON, under Section 18-401 of the Zoning Ordinance to allow a garage addition 29.2 feet from a street line of a corner lot, on property located at 10115 Glenmere Road, Tax Map Reference 68-2((2))7, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 19, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 26,897 square feet of land.
4. An exceptional topographic condition exists on this lot.
5. An extraordinary situation or condition makes the proposed location the only reasonable site for the addition to be located on the lot.
6. An extraordinary situation or condition is created by a street which abuts the property and dead-ends at that point.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4-0. Chairman Smith, Mr. Kelley and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 27, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 375, April 19, 1990 (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
Chesterbrook-McLean Little League, Inc., SP 90-D-021

Denise James, Staff Coordinator, explained to the Board that the applicant had previously been granted an Out-of-Turn hearing, which had moved the application from June 26 to June 5. Because Mrs. Thonen expressed concern that not granting another Out-of-Turn hearing would effect the playing season, Ms. James explained that play would not be affected by not granting another Out-of-Turn hearing as this was an amendment to an existing special permit.

Mr. Ribble made a motion to deny another Out-of-Turn hearing on SP 90-D-021. Mrs. Thonen seconded the motion which passed by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting.

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Page 376, April 19 1990 (Tape 1), After Agenda Item:

Request for Additional Time
Calvary Church of the Nazarene, SP 87-M-036

Mrs. Harris made a motion to grant an additional six (6) months to commence construction. Mr. Ribble seconded the motion which carried by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting. The new expiration date is October 20, 1990.

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Page 376, April 19, 1990 (Tape 1), After Agenda Item:

Intent to Defer
Robert C. Arledge Appeal, A 89-D-012

Mrs. Thonen made a motion to issue an "Intent to Defer for 60 Days" when the Appeal would be brought before the Board on April 24, 1990. Mrs. Harris seconded the motion which carried by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting.

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The Board took a five-minute recess at this time.

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Page 376, April 19, 1990 (Tape 1), Scheduled case of:

10:45 A.M. TEMPLE BAPTIST CHURCH, SP 90-S-002, application under Sect. 3-C03 of the Zoning Ordinance to allow construction of a church and related facilities, on property located at Union Mill Road, on approximately 3.854 acres of land, zoned R-C and WS, Springfield District, Tax Map 66-3((1))25.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. John Bonds, Pastor, replied that it was. Vice Chairman DiGuilian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report which recommended denial of the application for several reasons. Approval of the church would require extension of the public sewer to the property. The Comprehensive Plan recommends that this sewer line not be extended in this area. In addition, the intensity of this use on this lot with the development located toward the front of the lot indicates that this use is not in harmony with the recommendations of the Comprehensive Plan. Screening has not been provided between the church and parking lot and Union Mill Road as also recommended by the Plan.

Dr. John Bonds, Pastor of Temple Baptist Church, 3963 Rosebay Court, Fairfax, Virginia, represented the applicant and stated the congregation is presently holding services at Union Mill School. Dr. Bonds proceeded to offer justification for the application and distributed to the Board a memo from Verdia L. Haywood, Executive Assistant, regarding sewer policy. He indicated that in accordance with this policy, the sewer could be physically extended into the property.

The Board discussed the various issues involved in this request with Dr. Bonds and the results of that discussion are reflected in the resolution.

Vice Chairman DiGiulian asked if there was anyone to speak for the applicant and there was no response. He asked if there was anyone to speak in opposition and the following two individuals came forward.

Tony Pinero, 6415 Woodlawn Run, Clifton, Virginia, spoke in opposition to the application. He stated that his back yard faces Union Mill Road, across from the proposed building site. Mr. Pinero expressed concern about the potential increase in traffic and the possible overflow parking problem. He stated he had a petition from all of his neighbors whose back yards face Union Mill Road, Lots 1 through 9, who feel they would be adversely effected by the application and are opposed to granting this request. He submitted the petition for the record.

Tom Thompson, 6405 Woodland Run Court, Clifton, Virginia, also spoke in opposition to the application. He also expressed concern about potential traffic problems and congestion.

Vice Chairman DiGiulian asked Dr. Bonds if he would like rebuttal time.

Dr. Bonds had no rebuttal except to state that the future would probably see the building of many more churches in this area of Fairfax County.

Mrs. Harris referred to the problem of overflow parking which was mentioned by one of the gentlemen who spoke in opposition to this application. She stated that this is a great concern since the applicant is providing only the minimum required parking spaces.

Dr. Bonds stated they would need to find some legal way to solve the problem without parking on Union Mill Road. Mrs. Harris said there did not seem to be any available place. Dr. Bonds asserted that twenty-five parking spaces would be adequate for their needs at the present time, but they do hope to grow; then they will request additional parking.

Ms. Greenlief referred to the handout which the applicant had given to the Board regarding the sewer policy. She stated that it appeared to staff that the handouts indicated that sewer connections were possible to the adjacent area if certain conditions were met and if the church could be sewered by gravity. Ms. Greenlief stated there is a question about topography in relation to the existing sewer line which is not in Union Mill Road. There is an existing sewer line within Little Rocky Run and there is another at another location in the area. She reiterated that the Comprehensive Plan recommends against sewering on the subject property.

Mrs. Thonen made a motion to deny SP 90-S-002 for the reasons outlined in the Resolution.

Vice Chairman DiGuilian asked the applicant if he wished to have the Board waive the twelve-month limitation on filing a new application and he said he did.

Mr. Ribble made a motion to waive the twelve-month limitation on refiling. Mrs. Thonen seconded the motion which carried by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-002 by TEMPLE BAPTIST CHURCH, under Section 3-C03 of the Zoning Ordinance to allow construction of a church and related facilities, on property located at Union Mill Road, Tax Map Reference 66-3((1))25, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 19, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 3.954 acres of land.
4. The R-C District has a maximum of .2 dwelling units per acre, and the Plan has a .1 to .2 range so they have to come up with a unique design and a lot of extra things in order to come in to meet the .1 and this would fall more in a .2 since there are different conditions.
5. It is not in an approved sewershed.
6. The Plan language specifically precludes the extension of the public water and sewer service into this sector.
7. It is not in harmony with the Comprehensive Plan.
8. The soils on this entire site have high clay content so, of course, there would be poor drainage and poor foundation support.
9. The parking is minimal and, although it meets the standard requirement, there is concern about all the activities where there is overflow parking and there is reluctance to put a condition on any church that would restrict their activities.

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 and the additional standards for this use as contained in Sections 8-006 and 8-303 of the Zoning Ordinance.

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

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0. Chairman Smith, Mr. Kelley, and Mr. Hammack were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 27, 1990.

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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: May 17, 1990 APPROVED: May 22, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, April 24, 1990. The following Board Members were present: Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. Chairman Daniel Smith, and John DiGiulian, Vice Chairman, were absent from the meeting.

Mr. Hammack called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation.

Since Chairman Smith and Vice Chairman DiGiulian were not present, Ms. Harris made a motion that Mr. Hammack be appointed Acting Chairman. The motion was seconded, voted upon and Mr. Hammack was so appointed.

Acting Chairman Hammack then called for the first scheduled case.

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Page 379, April 24, 1990 (Tape 1), Scheduled case of:

9:00 A.M. ROBERT ARLEDGE APPEAL, A 89-D-012, to appeal the Zoning Administrator's decision that appellant is in violation of Par. 1 of Sect. 8-004 by not complying with Condition #3 of Special Permit SP 85-D-062 for a structure on property located at 6022 Orris Street, zoned R-1, Dranesville District, Tax Map 31-2((22))2A. (DEF. FROM 10/31 AT APPLICANT'S REQUEST. DEF. FROM 1/30/90 TO ALLOW THE BOARD TO HEAR THE SPECIAL PERMIT)

Denise James, Staff Coordinator presented a letter dated April 3, 1990 from the appellant requesting a deferral.

Mr. Kelley stated that the letter indicated that the Special Permit Admendment A 85-D-062 had been approved by the BZA on March 27, 1990 and an appeal would not be necessary.

Mr. Kelley made a motion to grant the deferral of A 89-D-012 for 60 days and did not set a specific date and time. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

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Page 379, April 24, 1990 (Tape 1), Scheduled case of:

9:15 A.M. JERRY A. WOLFORD AND NANCY W. WOLFORD, VC 90-S-011, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage with second story addition 12.1 feet from side lot line such that side yards total 33.3 feet (12 ft. min. side yard required, 40 ft. min. total side yards required by Sect. 3-107), on property located at 5806 Fitzhugh Street, on approximately 25,000 square feet of land, zoned R-1 (developed cluster), Springfield District, Tax Map 78-2((3))24.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Wolford confirmed that it was. Acting Chairman Hammack then asked for disclosures from the Board members and hearing no reply called for the staff report.

Denise James, Staff Coordinator, presented the staff report.

Jerry A. Wolford, 5806 Fitzhugh Street, Burke, Virginia, explained that with a growing family there is a need for more living space. He said that the well and septic tank on the property have restricted the options on where an addition could be located on the proposed site. Mr. Wolford showed the Board a sketch of the existing dwelling with the proposed addition and stated that the addition would enhance the existing structure.

In response to a question from Mrs. Harris, he pointed out to the Board the position of the septic tank and explained that there is a 6 foot restriction in that area.

Mrs. Thonen questioned Mr. Wolford on the material that would be used in the construction of the addition and he stated that the materials would be similar to those on the existing structure, the roof line would be the same, and the addition would add aesthetic value to the community. He explained that most of the houses in the area are substantially larger and the addition would bring his house in conformity with the neighboring houses.

In response to Mr. Hammack's question, Mr. Wolford said the neighboring house on Lot 23 is approximately 20 feet from the property line.

There being no speakers to address this request and no staff closing comments, Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to grant VC 90-S-011 for the reason noted in the Resolution and subject to the development conditions contained in the staff report dated April 17, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-011 by JERRY A. WOLFORD AND NANCY W. WOLFORD, under Section 18-401 of the Zoning Ordinance to allow construction of garage with second story addition 12.1 feet from side lot line such that side yards total 33.3 feet, on property located at 5806 Fitzhugh Street, Tax Map Reference 78-2((3))24, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-1 (developed cluster).
3. The area of the lot is 25,000 square feet of land.
4. The location of the septic tank precludes the addition from being constructed behind the house.
5. The application is for a minimum variance and would cause undue hardship if not granted.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 381, April 24, 1990 (Tape 1), Scheduled case of:

9:30 A.M. DONALD H. AND CLAIRE F. MILLER, SP 90-D-008, application under Sect. 8-901 of the Zoning Ordinance to allow decks to remain 2.5 feet from the side lot line and to allow carport to remain 7 feet from side lot line (15 ft. min. side yard allowed by Sect. 3-207; 5 ft. max. extension allowed by Sect. 2-412), on property located at 1462 Waggaman Circle, on approximately 32,576 square feet of land, zoned R-2, Dranesville District, Tax Map 31-1((7))15. (CONCURRENT WITH VC 90-D-015)

9:30 A.M. DONALD H. AND CLAIRE F. MILLER, VC 90-D-015, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 7 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 1462 Waggaman Circle, on approximately 32,576 square feet of land, zoned R-2, Dranesville District, Tax Map 31-1((7))15. (CONCURRENT WITH SP 90-D-008)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Miller confirmed that it was. Acting Chairman Hammack then asked for disclosures from the Board members and hearing no reply called for the staff report.

Denise James, Staff Coordinator, presented the staff report and explained that there were two concurrent applications before the Board, the special permit for a building in error and the application requesting a variance to enclose an existing carport. Ms. James noted that although the carport had originally been advertised as being a building in error it was constructed as part of the dwelling and was not built in error.

In response to Mrs. Harris question, Ms. James told the Board that the applicant had removed the front yard fence.

Donald Miller, 1462 Waggaman Circle, McLean, Virginia, addressed the Board and said that he had purchased the property in July of 1988 and almost immediately decided that he would like to enhance the property by enclosing the carport. He presented an architectural drawing to the Board. He explained that when he filed for the variance he was told that he would also need a special permit. Mr. Miller said that the topographic conditions prevent the construction of a garage in the backyard.

In response to Mrs. Harris' question, Mr. Miller explained that the width of the base of the garage would be 10 feet, the overhang would be an additional 3 feet, and the garage wall would be 7 feet from the property line.

Mr. Miller stated that there has been an ongoing drainage problem that has caused runoff onto his neighbors property and he intends to correct this situation during the proposed construction.

Acting Chairman Hammack called for speakers in support of the request.

Anne Carroll, 1460 Waggaman Circle, McLean, Virginia, addressed the Board and stated that she was in favor of the request because Mr. Miller has promised to correct the drainage problem.

There being no further speakers in support and no speakers in opposition, and no staff closing comment, Acting Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to grant SP 90-D-008 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated April 19, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-008 by DONALD H. AND CLAIRE F. MILLER, under Section 8-901 of the Zoning Ordinance to allow decks to remain 2.5 feet from the side lot line and to allow carport to remain 7 feet from side lot line, on property located at 1462 Waggaman Circle, Tax Map Reference 31-1((7))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 April 24, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 32,567 square feet of land.
4. The non-compliance was done in good faith and through no fault of the property owner.
5. There will be no adverse impact on the community.
6. The granting of the application will not create an unsafe condition with respect to other properties and public streets.
7. Compliance to setback requirements would cause an undue hardship upon the owner.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

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

2. A plat showing the approved location and dimensions of the decks in accordance with this special permit shall be submitted and attached to the original building permit.

This approval, contingent on the above-noted conditions, shall not relive the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards. This Special Permit shall not be valid until this has been accomplished.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Ribble not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley made a motion to grant VC 90-D-015 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated April 19, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-015 by DONALD H. AND CLAIRE F. MILLER, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 7 feet from side lot line, on property located at 1462 Waggaman Circle, Tax Map Reference 31-1((7))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 April 24, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 32,576 square feet of land.
4. The applicant has met the nine standards required for a variance.
5. The topographic conditions and the exceptional size of the lot justify the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. Drainage from the garage structure shall be controlled so as not to adversely impact adjacent properties.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Ribble not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 1990. This date shall be deemed to be the final approval date of this variance.

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9:45 A.M. LINCOLNIA ACADEMY, INC., SPA 81-M-058-1, application under Sect. 3-203 of the Zoning Ordinance to amend SP 81-M-058 for a private school of general education and child care center, and to increase parking, number of students, building addition, and change of permittee, on property located at 4905 Lincoln Avenue, on approximately 31,234 square feet of land, zoned R-2, Mason District, Tax Map 72-3((10))2.

Acting Chairman Hammack called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hill confirmed that it was. Acting Chairman Hammack then asked for disclosures from the Board members and hearing no reply called for the staff report.

Denise James, Staff Coordinator, presented the staff report and explained that the applicant was requesting an increase to 70 children and an increase to 13 parking spaces. She stated that the facility currently operates from 7 a.m. to 6:00 p.m., Monday through Friday with a total of 4 employees. Ms. James stated that staff believes the request to expand the use on this site for the child care center and the kindergarten is not in conformance with the Comprehensive Plan's recommendations for this area, nor is it compatible with the existing residential area. Staff recommends that this application be approved in-part to allow the change in permittee only.

In response to Mrs. Harris' question on parking, Ms. James explained that while there is an open asphalt area, it has not been striped for parking.

Robert Hill, 8000 Towers Crescent Drive, Vienna, Virginia, an attorney with the firm of Arent, Fox, Kintner, Plotkin and Kahn, represented the applicant and told the Board that the site is an ideal location for a day care center. He explained that there is no employee parking on the property, therefore additional parking spaces are not necessary. Mr. Hill said that the circular driveway allows rapid drop off and pickup of the students. He explained to the Board that in the short time the applicant has run the school they have upgraded the site and have a high quality child care center. Mr. Hill stated that because of the location, the traffic to and from the school flows from Duke Street, and has very little impact on the residents in the area. He further stated that economics necessitates a minimum enrollment of 70 students in order to run a first rate day care center. He stated that the County Arborist has been consulted about screening concerns and the applicant had met with community representatives to discuss any concerns they may have with the request. Mr. Hill said that 80 percent of the students attending the day care center were from Lincolnia Park and therefore the center serves the community in which it is located.

Mrs. Thonen explained that the Board must address the land use issue only and asked that the citizens addressing the request speak to this issue.

Mrs. Harris expressed her concern about the redesigned driveway and stated that it would not be as efficient as the previous layout.

In response to Acting Chairman Hammack's question, Mr. Hill stated the 25 student increase would be at the kindergarten level. He added that the hours would be from 9:30 a.m. to 3:30 p.m thereby eliminating peak hour traffic.

Nolewood Olstead, 3605 Freeport Court, Dale City, Virginia; Dawn Morningstar, 490 Naylor Place, Alexandria, Virginia;, Andrea Christy, 6527 Jay Miller Drive, Falls Church, Virginia; Hassan Jundah, 4578 Airlie Way, Annandale, Virginia; William Tabot, 4436 Venable Avenue, Alexandria; Magda Gomez-Garcia, 685 W. Mt. Lubnentia Close, Largo, Maryland; Robert Brickson, 7466 DeMille Court, Annandale; Helene Alexander, 5902 Ambassador Way, Alexandria, Virginia; and Edgar Barrientos, 6306 8th Street, Alexandria, Virginia, addressed the Board.

The citizens said that the Lincolnia Academy is an excellent school and the parents urged the Board to grant the request. They stated that they had never experienced a traffic or parking problem due to the presence of the school. They explained to the Board that the applicant has greatly improved the physical and educational excellence of the school and could not continue to upgrade the facility unless an enrollment increase was granted.

Thomas Dennis, 5001 Lincoln Avenue, Alexandria, Virginia, addressed the Board and stated that he has been a neighbor of the school since it started and has never had a problem with traffic generated as a result of the facility. He stated that the additional enrollment of 25 students would be an asset to the community in light of the need for quality day care.

In response to a question from Acting Chairman Hammack, Mr. Dennis stated that he has lived on Lincoln Avenue since 1958 and that there is no traffic problems generated by the Academy.

There being no further speakers in support, Acting Chairman Hammack called for speakers in opposition.

Penelope Gross, the immediate past president of the Lincolnia Park Civic Association and Chairman of its Ad Hoc Committee on the application of Lincolnia Academy, 6417 5th Street, Alexandria, Virginia, addressed the Board and stated that at the April 18, 1990 meeting, the Association had voted on the issue. Ms. Gross said the Civic Association supported the change of permittee, a student body of 35 students, improvements on the property, and visual and acoustic buffering on the property.

Ms. Gross said that although the students do come from a two mile radius only one student is actually a Lincolnia Park resident. She added that although the Academy is a clean, well run child care facility, it is a commercial enterprise based within the stable single family residential neighborhood. She asked the Board to protect the community from further development.

Mrs. Thonen said it was her understanding that the Civic Association would like the Academy to improve the facility but not expand. Ms. Gross again said that they did not oppose the change in permittee. She added that they did not want an increase in the number of students and would like the buffering improved.

Shannon Montgomery, 4909 Lincoln Avenue, Alexandria, Virginia, addressed the Board and stated Lincolnia Academy has always been a small school and as the adjacent neighbor would like the school to remain at its present level. She said that the present screening is inadequate and expressed her belief that an increase in the number of students would be detrimental to the neighborhood. Ms. Montgomery told the Board that there was a drainage problem from the school onto her property.

Mrs. Harris asked staff if there were 8 parking places on the site and Ms. James said that number was correct. She stated that if the Board approved the increase to 70 students, then 14 parking spaces would be required.

Acting Chairman Hammack called Mr. Hill back to the podium for rebuttal.

Mr. Hill stated that he did not know the boundaries of Lincolnia Park but assured the Board that approximately 80 percent of the students were from the immediate area. He said that the applicant would like to retain the tranquility, provide adequate screening, and improve the quality of the day care. Mr. Hill stated that Ms. Montgomery purchased the property about one year ago with full knowledge that the school was in existence and that her property is in the floodplain.

In response to Mrs. Harris' question about the playground, Mr. Hill explained that the playground area is 15,000 square feet and meets the requirement for 70 children. Mr. Hill said that the only waiver requested was the 4 foot screening waiver on the south side of the property.

Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to grant-in-part SPA 81-M-058-1 for the reason noted in the Resolution and subject to the development conditions contained in the staff report dated April 19, 1990 with the changes as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-M-058 by LINCOLNIA ACADEMY, INC., under Section 3-203 of the Zoning Ordinance to amend SP 81-M-058 for a private school of general education and child care center, and to increase parking, number of students, building addition and change of permittee (**THE BOARD GRANTED THE CHANGE OF PERMITTEE ONLY**), on property located at 4905 Lincoln Avenue, Tax Map Reference 72-3((10))2, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 31,234 square feet of land.
4. An increase in the number of students would not be in harmony with the Comprehensive Plan.
5. An increase in the number of students would not allow the site to be in harmony with the zoning district.
6. The applicant meets the eight standards with the present level of 35 students.
7. The present level of traffic does not adversely effect the neighborhood.
8. The property is not adequately screened and the noise attenuation measures have not been put into place.
9. The inadequate property drainage system should be addressed in the development conditions.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by A.H Fahema, dated January 1, 1990 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. The maximum daily enrollment shall be limited to a total of 35 children for the combined child care center and private school of general education, (Kindergarten), with a corresponding number of parking spaces as may be determined by the Director of the Department of Environmental Management. All parking shall be on site.

6. The hours of operation shall be limited to 7:00 am to 6:00 pm, Monday through Friday.

7. In order to mitigate noise and visual impacts from the use, Transitional Screening 1 (25') shall be provided around all lot lines with the following modification: the southern lot line which shall be planted with as much of the Transitional Screening 1 plantings as may be accommodated in conjunction with the provision of a barrier without interfering with the site entrance and parking lot travel aisle as determined by the County Arborist. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Arborist. Building foundation landscape plantings shall be provided around the existing and proposed structure to the satisfaction of the County Arborist. The brick paved area to the rear of the site shall be removed from the Transitional Screening yard.

8. A soil survey shall be provided if determined necessary by the Director, Department of Environmental Management (DEM) prior to site plan approval.

9. Barrier F shall be provided along the southern lot line in order to reduce noise and visual impacts from the site on adjacent properties.

10. Stormwater management shall be provided to the satisfaction of DEM and controlled so as not create drainage problems on adjacent properties.

11. The final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible substantial individual trees or stands of trees and existing vegetation which may be impacted by construction on the site. This condition shall not preclude the removal poor quality trees or vegetation in order to plant and ensure the long term survival of transitional screen plantings.

12. A handicapped parking space shall be provided.

13. The existing parking lot configuration with the turn around shall be retained.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

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Mr. Ribble seconded the motion. The motion carried by a vote of 5 - 0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

Mrs. Harris made a motion that the twelve month time limitation requirement be waived. Mr. Kelley seconded the motion which carried by a vote of 5 - 0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 11:00 a.m. and reconvened at 11:10 a.m.

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Page 387, April 24, 1990 (Tape 2), Scheduled case of:

10:00 A.M. MARIA E. HUNT AND BRADLEY T. HUNT, VC 90-P-014, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing deck to 15.6 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 2005 Wolftrap Oaks Court, on approximately 8,854 square feet of land, zoned R-3, Providence District, Tax Map 39-1((28))15.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hunt confirmed that it was. Acting Chairman Hammack then asked for disclosures from the Board members and hearing no reply called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

Bradley T. Hunt, 2005 Wolftrap Oaks Court, Vienna, Virginia, addressed the Board and stated that the shallowness, the downhill slope, and the stormdrain easement on the lot have cause the need for a variance. He said the proposed location is the only feasible site on which to construct a porch. He used pictures of the property to point out the hardship caused by the slope of the lot. Mr. Hunt explained that the existing deck would be screened and there would be no further expansion into the yard. Mr. Hunt stated that his neighbors and the homeowners association have expressed their approval of the request.

Mrs. Harris thanked Mr. Hunt for addressing the variance requirements only and told him the Board would take the topographic conditions of his lot into consideration.

There being no speakers to address this request and no staff closing comments, Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-P-014 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated April 17, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-014 by MARIA E. AND BRADLEY T. HUNT, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing deck to 15.6 feet from rear lot line, on property located at 2005 Wolftrap Oaks Court, Tax Map Reference 39-1((28))15, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 8,854 square feet of land.
4. The screening and the fence on the property provides privacy to the neighbors.
5. There will be no adverse impact on the neighbors.
6 The odd shape of the lot and the position of the house on the lot has caused the need for a variance.
7. The topography and the steep slope of the lot justifies the need for a variance.
8. The deck is in existence and will only be closed in.

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

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

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

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

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

1. This variance is approved for the location and the specific addition (screened porch) shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5 - 0 with Chairman Smith and Mr. DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 388, April 24, 1990 (Tape 2), Scheduled case of:

10:15 A.M. MOST REVEREND JOHN R. KEATING/ST. PAUL CHUNG CATHOLIC CHURCH, SP 90-V-009, application under Sect. 3-E03 of the Zoning Ordinance to allow a church and related facilities, on property located at 10511 Gunston Road, on approximately 7.75 acres of land, zoned R-E, Mount Vernon District, Tax Map 114-3((1))13.

Acting Chairman Hammack called the attorney for the applicant, H. Kendrick Sanders, 3905 Railroad Avenue, Suite 200N, Fairfax, Virginia, to the podium. Mr. Sanders addressed the Board and asked for a deferral so that he could respond to issues raised by the community.

Greg Riegle, Staff Coordinator, stated that staff had received a letter requesting a deferral at 4:00 p.m. the day before this public hearing, therefore staff had not had an opportunity to review the request.

Mrs. Thonen expressed her concern with Mr. Sanders requesting a deferral without giving the Board or staff the time to study the material and to make an informed decision. She stated that in the week preceding the hearing that she reviews the cases in order to be as well informed as possible and then finds that she has wasted her time because of a last minute deferral request.

Mr. Sanders said that while he understood Mrs. Thonen's concern, he did not make it a policy to ask for a deferral. He further explained that the complexity of the case has caused the need for the request. He said that members of the community have concerns that the applicant believes should be resolved before the public hearing.

Acting Chairman Hammack asked if the issued in question could be resolved within thirty days, Mr. Sanders replied that they could.

In response to Acting Chairman Hammack's question, Mr. Riegle said staff would have to review the new plat, restaff the case, publish a new addendum, research the new proposals, and suggested to the Board a slightly longer deferral.

Acting Chairman Hammack asked if there was anyone present that was in support or opposition to a deferral, and hearing no reply asked staff for a deferral date.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a deferral date of June 21, 1990 at 9:00 a.m.

The Board expressed their concern with the overall bulk, the floor area ratio, the size of the building, the septic problems, and asked that they be addressed by the applicant before the new scheduled public hearing. Mr. Sanders was advised that the plat should be submitted as soon as possible and that new material be submitted at least one week before the public hearing in order for the Board to give the request proper consideration.

Because staff would be required to submit the new plat to the appropriate County agencies, Ms. Kelsey asked that the new plats be submitted within one week.

Mrs. Thonen made a motion to defer SP 90-V-009. Mr. Ribble seconded the motion which carried by a vote of 5-0. Chairman Smith and Mr. DiGiulian were absent from the meeting.

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Page 389, April 24, 1990 (Tape 2), Scheduled case of:

10:30 A.M. VULCAN REVIEW, Annual Review Pursuant to Sect. 8-104 of the Zoning Ordinance.

The agent for the applicant, David Houston, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, addressed the Board and stated that the site plan has been approved and the applicant is in compliance with all the conditions.

Greg Riegle, Staff Coordinator, stated that there were several issues concerning the environment and the watershed protection that staff and the applicant had discussed. He noted the applicant's letter dated March 29, 1990, and said that the applicant has been open to staff suggestions regarding the protection of the environment and has already taken steps to alleviate the situation. He noted that staff and other appropriate County agencies would be conducting periodical inspections.

In response to Mrs. Harris' question, Mr. Riegle stated that although the landscaping requirements had been met, the County Arborist was working with the applicant to ensure that the plantings in the northern buffer zone were viable and healthy.

There being no speakers to address this issue, Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to approve the 1989 Annual Report for Vulcan Quarry. and adopt the staff recommendations pertaining to screening, and protection of the EQC and the adjacent watershed. Mrs. Harris seconded the motion which carried by a 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

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10:45 A.M. RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-3, application under Sect. 3-E03 of the Zoning Ordinance to amend SP 82-D-101 to relocate tennis courts, to provide additional parking, and to modify existing club house, on property located at 9901 Beach Mill Road, on approximately 151.3 acres of land, zoned R-E, Dranesville District, Tax Map 8-1((1))22, 23, 41 and 8-3((1))4.

Acting Chairman Hammack called the agent for applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. O'Flaherty stated a new affidavit had been submitted on April 10, 1990 and confirmed that it was. Acting Chairman Hammack then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and said that staff's primary concern is with the screening and while there are some large evergreen trees along the north side of the property, staff suggested that they be supplemented along the area of the new tennis courts. She further added that staff recommended an evergreen hedge along one side of the parking lot. Ms. Greenlief said that the applicant had been very cooperative and that staff does recommend approval of the application.

Elaine O'Flaherty, 3540 Chain Bridge Road, Fairfax, Virginia, a planner with Hunton and Williams, addressed the Board and explained that the applicant was requesting to relocate the tennis courts, provide additional parking, and to construct a small addition to the clubhouse. She stated that there would be no increase in membership or in the hours of operation. Ms. O'Flaherty said that the two sheds shown on the original plats had been removed, therefore the new plats dated April 23, 1990 have been submitted to the Board. Although the applicant had no problems with the development conditions, she stated while they would agree to plant evergreen trees as required in Condition Number 10, they intend to preserve the four cherry trees on the west side of the tennis court. She added that development condition 13 would no longer be necessary because the plat had been corrected. Ms. O'Flaherty stated that the applicant would agree to a new condition requiring the planting of an evergreen hedge on the north side of the proposed parking lot.

In response to a question from Mrs. Thonen, Ms. O'Flaherty stated that there would also be interior parking lot landscaping.

There being no speakers in support of the application, Acting Chairman Hammack called for speakers in opposition.

Joan Martly, 9813 Beach Mill Road, Great Falls, Virginia, addressed the Board and said that her property boarded on the north side the County Club where the proposed parking lot would be located. Ms. Martly stated that she would like to ensure that there would be adequate landscaping.

In response to Mrs. Harris' question, she said that an evergreen hedge would be acceptable.

There being no further speakers to this request, Acting Chairman Hammack called for staff comments.

Ms. Greenlief stated that the date of the plats in Condition Number 2 would have to be changed to April 23, 1990.

In response to Mr. Ribble's questions, Ms. Greenlief said that staff had intended that the existing cherry trees, referred to by Ms. O'Flaherty, be preserved.

Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to grant SPA 82-D-101-3 subject to the development condition contained in the staff report dated April 19, 1990 with the changes as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 82-D-101-3 by RIVER BEND GOLF AND COUNTRY CLUB, INC., under Section 3-E03 of the Zoning Ordinance to amend SP 82-D-101 to relocate tennis courts, to provide additional parking, and to modify existing club house, on property located at 9901 Beach Mill Road, Tax Map References 8-1((1))22, 23, 41 and 8-3((1))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 April 24, 1990; and

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

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1. That the applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 151.3 acres of 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 Sections 8-403 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat by BDLK, Inc. dated April 23, 1990 (revised) 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 use shall be subject to the provisions set forth in Article 17, Site Plans.

5. The hours of operation shall be limited to the following:

   Clubhouse - 11:00 a.m. to 1:00 a.m.
   Swimming Pool - 7:30 a.m. to 10:00 p.m.
   Golf Course - 7:30 a.m. to Dusk
   Outdoor Tennis Courts - 7:30 a.m. to 11:00 p.m.
   Enclosed Tennis Courts - 6: 00 a.m. to 11:00 p.m.

6. The lights at the tennis courts, including those associated with the bubble, shall continue to be controlled by an automatic shut-off device.

7. The inflation of the bubble shall be permitted only between October 1 and May 31.

8. Club membership shall be limited to 600 persons with a corresponding minimum of 150 parking spaces. There shall be a maximum of 163 parking spaces. All parking shall be on site. Handicapped spaces shall be provided in accordance with County Code.

9. Parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

10. The row of trees which line the entrance drive in the area of the relocated tennis courts shall be preserved. The relocated tennis courts may be shifted slightly to the east to ensure the preservation of these trees. The trees to be removed on the west side of the proposed parking lot shall be transplanted to the east side of the proposed parking lot or the east side of the proposed tennis courts. A row of evergreen trees, six feet in planted height, 10 feet on center, shall be planted along the western and northern sides of the relocated tennis courts to screen the visual impact of the fencing and lighting of the courts. The type, number and location of these trees shall be reviewed and approved by the County Arborist and may include those trees relocated from the proposed parking lot area.

11. Sediment detention basins and/or redundant siltation control measures shall be provided during all grading and construction activities. Such measures shall be designed to achieve sediment trapping efficiencies of at least 80% and shall be designed in substantial accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the 1980 Virginia Erosion and Sediment Control Handbook.

12. Prior to discharge during cleaning or draining operations, sufficient amounts of lime or soda ash shall be added to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream or between a pH of 6.0 and 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters. This requires a minimum concentration of 4.0 milligrams per liter. If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

13. A four foot hedge shall be planted on the northeast side of the parking lot in accordance with the approval of the County Arborist

14. The septic field shall be appropriately designed and considered sufficient by the Health Department to accommodate the sewer loads that may result from an increase in the square footage of the clubhouse.

15. The existing evergreen trees and additional plantings required pursuant to the approval of SPA 82-D-101-2 shall be maintained in the area between the new parking lot and tennis bubble and the Club View Ridge subdivision.

16. There shall be no further construction or paving in the area of the floodplain. In addition, vegetation shall be maintained immediately to the southeast of the existing paved area to promote filtration of stormwater runoff prior to its entry into the swale.

17. Any lighting of the tennis courts shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twenty-one (21) feet.
    - The lights shall focus directly on the subject property.
    - Shields shall be installed, if necessary to prevent the light from projecting beyond the facility or off the property.

Applicable previously approved development conditions have been incorporated into these 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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 2, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 392, April 24, 1990 (Tape 2 and 3), Scheduled case of:

11:00 A.M. KATIE H. BARR, SP 90-S-006, application under Sects. 3-C03 and 8-901 of the Zoning Ordinance for a Kennel and waiver of dustless surface requirement, on property located at 7121 Bull Run Post Office Road, on approximately 28.403 acres of land, zoned RC and WSPOD, Springfield District, Tax Map 64-1((1))36.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Barr confirmed that it was. Acting Chairman Hammack then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. She explained that in July 1987, the Board had approved a special permit but the applicant had not obtained site plan approval, therefore the special permit had expired. She stated that the operation was essentially the same as in 1987 and the plat and statement before the Board were used at the 1987 meeting. She told the Board that staff's concerns were with the conditions of the kennel as cited by the Health Department and with the number of dogs currently cared for by the applicant. Ms. Greenlief stated that staff could not recommend approval of a use that was not in compliance other County regulations, and therefore staff recommended approval only with the implementation of the development conditions in Appendix 1 that stipulated the use comply with the Health Department regulations.

Katie Barr, 7121 Bull Run Post Office Road, Centreville, Virginia, addressed the Board and said the attorney representing her at the 1987 hearing had failed to obtain the site plan approval and that was the reason the special permit was allow to expire. She stated that she is trying to sell the property and does not want to invest a great deal of money modernizing the facilities. She expressed her belief that the kennel is clean and the animals well cared for. Ms. Barr said that the limitation of 53 dogs was unacceptable to her and that the facility could easily care for 100 dogs. She further explained that she cared for mistreated and malnourished dogs for the Friends of Homeless Animals.

In response to Acting Chairman Hammack's question, Ms. Barr said that there are current 80 dog on the premises many of which have been abandoned by their owners. She said that she intends to sell the kennel and move to West Virginia. Ms. Barr stated that the cost involved in taxes, employee wages, electric bills, and feed require that she board more than 53 dogs and she would have to remove the abandoned dogs if the BZA enforces 53.

Ms. Greenlief replied to Acting Chairman Hammack's question by stating that Ms. Barr would be allowed to keep approximately 100 pet dogs on the property by right based on the acreaged involved, but since it is a commercial enterprise the number was limited.

In response to Mrs. Thonen concerns on the feeding and watering of the animals, Ms. Barr said that the water is changed daily and the utensils are washed after the feeding of the animals. She stated that Larry Spivack who had submitted a letter to the Board has never visited the kennel.

There being no speakers in support of the applicant, Acting Chairman Hammack called for speakers in opposition.

Larry Spivack, 9200 Dorothy Lane, Springfield, Virginia, addressed the Board and said that he has been a volunteer for the Friends of Homeless Animals for 5 years. He explained that the organization uses two kennel facilities, one being Stonehedge Dog Ranch near Gilbert's Corner, and the other being the Barr Kennel. He stated that the Stonehedge facility is open to the public on the weekends to allow for adoption of the animals. Mr. Spivack explained that volunteers are encouraged to donate their time and attention to grooming, feeding, and socializing the dogs with the objective of finding them a good home. He stated that the Barr Kennel took good physical care of the animals but that he was concerned with the refusal to allow the volunteers accessibility to the kennel.

Acting Chairman Hammack explained to Mr. Spivack that the Board must vote on the land use issue only and could not impose contractual conditions on Ms. Barr. Mr. Spivack said that he understood the position of the Board but asked that a list of suggestions he had submitted to the Board be given consideration.

In response to a question from Mrs. Harris, Mr. Spivack stated that Ms. Barr was paid a daily fee by Anne Lewis, President of the Friends of Animals, and Ms. Lewis makes all decisions about adoption of the animals. He further explained that no one is allowed to view the dogs without the permission of Ms. Lewis and that there are no set times for public viewing of the animals.

Debbie Becker, 2356 Horse Ferry Court, Reston, Virginia, addressed the Board and said that she had been a volunteer for the Friends of Animals for the past two years. She stated that the dogs at the Barr Kennels are locked in cages for long periods of time and she believed the special permit should be renewed only if strict conditions are imposed by the Board. Ms. Becker expressed her concern that the animals boarded at the kennel are not spayed or neutered. She further stated that the puppies born at the facility are housed in the attic of the barn without human contact. Ms. Becker informed the Board that when the dogs are approximately 6 months old they are taken to the Stonehedge facility to be viewed for adoption but because of their previous isolation, they are terrified of people.

In response to Mrs. Harris' question, Ms. Becker stated that the volunteers are not allowed on the Barr Kennel property even though they have expressed their desire to help care for the animals.

Jim Armstrong, Sanitarian Supervisor with the Fairfax County Health Department, addressed the Board and stated that the Health Department inspects kennels on a complaint basis but does not conduct routine inspections of kennels. He stated that when he inspected the kennel he found new gravel in the runs and on the driveway, the backyard was clean of dog feces, and there were approximately 80 dogs housed on the facility. Mr. Armstrong said he agreed with the condition limiting the number of dogs to 53.

In response to questions from the Board, Mr. Armstong said the April inspection was at the request of the Office of Zoning in regard to the public hearing. He explained that some of the restrictions are imposed by the State Water Control Board. Mr. Armstrong said that the disposal of waste material is regulated by the Health Department. He said that a representative from Environmental Service conducted an inspection to evaluate the two compartment sink to see if the drainline needed to be connected to a septic system, a gray water pit, or sewer system and it was found that the amount of runoff did not necessitate this action. He stated that he did not know where the dogs were bathed or what flea or tick control measures are taken.

Acting Chairman Hammack called Ms. Barr back to the podium for rebuttal.

Ms. Barr stated that Ms. Becker had never toured the kennel and explained that the pregnant dogs were brought to the kennel in that condition and that it is a policy of the kennel to neuter or spay. She noted that most of the dog kept in cages are recovering from illness and must be confined. She stated that the grounds are cleaned every morning and every evening. Ms. Barr told the Board that she runs ads in the newspaper and constantly shows dogs to the public.

In response to Acting Chairman Hammack's question, Ms. Barr stated that she would welcome volunteer help but found that most volunteers do more harm than good. She noted that when two pregnant dogs were brought to her kennel in March of 1990, she had to house them in the barn to keep them and the newborn puppies warm and dry.

When Mrs. Thonen asked if she would be willing to have a licensed veterinarian examine the dogs once a month, Ms. Barr said she had a broad knowledge of dogs and is perfectly capability of deciding which dogs need medical care. She said she would agree to having a viewing of the dogs for adoption if Anne Lewis gave her permission.

The Board expressed their agreement that Ms. Barr must take the responsibility for the conditions imposed by the Board.

Acting Chairman Hammack called for staff comment.

Ms. Greenlief noted that one of the conditions on the previous application said that the maximum number of animals on the site should be limited to 53.

Acting Chairman Hammack called the Fairfax County Director of Animal Control, Barbara Snow, 14374 Greensby Court, Centreville, Virginia, to the podium. Ms. Snow explained that the Barr Kennel is used as a warehouse for dogs collected by Anne Lewis. She expressed her professional opinion that there are too many animals for Ms. Barr and one employee to care for properly. She stated that although the animals suffer no physical harm, they are being harmed sociologically. Ms. Snow stated that the Animal Control Department would be willing to cooperate with the Friends of the Animals and even provide room at the Animal Shelter.

In response to Mrs. Thonen's concern, Ms. Snow said that she had inspected the animals and also had concerns about the situation. She said she suggested to Ms. Barr that the animals not be kept in the attic of the barn. She noted that Ms. Barr is running a business and the management of the kennel should be the issue being addressed. She expressed her interest in keeping an inventory of the animals at the kennel so that she there is a history of every animal on record.

Ms. Snow explained, in response to Mr. Ribble's question, that while the law is explicit as far as the physical cruelty to animals, there is no law to cover the sociological cruelty. She explained that when Animal Control confronts such a situation they try to educate, inform, and generally help the people to correct the conditions. She explained that she believed that there is a management problem at the kennel, the animals do not get enough exercise, their shelter is not adequate, the animals are overcrowded, and there is not sufficient help to care for the animals.

In response to Mrs. Harris' question, Ms. Snow said that Animal Control has the authority to confiscate an animal if its physical health is in jeopardy. She said that in her professional opinion it is not a good situation to have an animal confined to a cage year after year with no hope for adoption and would be willing to cooperate with Ms. Barr to alleviate the situation.

Mrs. Thonen said that in 1987 the Board limited the kennel to a maximum of 53 dogs on site and 3 years later were informed that there are 81 dogs on the property.

The Board expressed their intent to ensure that all the mandatory conditions are enforced even if it means that Board members personally inspect the kennel.

Ms. Barr said in rebuttal that her animals are well cared for and that she has never been cited for cruelty.

Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant SP 90-S-006 subject to the development conditions contained in the staff report dated April 19, 1990 with the changes as reflected in the Resolution.

The Board discussed the problem of having the animals neutered or spayed and Ms. Snow stated Northern Virginia Community College has a cooperative program in which they render this service at no charge.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-006 by KATIE H. BARR, under Sections 3-C03 and 8-901 of the Zoning Ordinance to allow a kennel and a waiver of dustless surface requirement, on property located at 7121 Bull Run Post Office Road, Tax Map Reference 64-1((1))22, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1990; and

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

1. That the applicant is the owner of the land.
2. The present zoning is RC and WSPOD.
3. The area of the lot is 28.403 acres of 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 these uses as contained in Sections 8-603, 8-608, 8-903, and 8-915 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat by Fred T. Wilburn, dated November 13, 1986 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 use shall be subject to the provisions set forth in Article 17, Site Plans. Within 60 days of the final approval date of this special permit, the applicant shall apply for a site plan waiver or the applicant shall apply for site plan approval and thereafter, obtain approval of the site plan in accordance with Article 17 of the Zoning Ordinance.

5. The applicant shall comply with all regulations deemed applicable by the Health Department contained in Article 5 of the County Code. A Non-Residential Use Permit shall not be issued until compliance with this and all development conditions is achieved.

6. Waste material collected from the kennels, if not removed from the property, shall be covered and placed in a location to be determined by the Department of Environmental Management to prevent stormwater runoff in the watershed streams.

7. The waiver of the dustless surface shall be granted for a period of one (1) year to commence with the final approval date of this special permit. The gravel areas shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), and shall include but may not be limited to the following:

   - Travel speeds in the parking areas shall be limited to 10 mph.

   - During dry periods, application of water shall be made in order to control dust.

   - Routine maintenance shall be performed to prevent surface unevenness, wear-through or subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

   - Runoff shall be channeled away from and around the parking areas.

   - The property owner shall perform periodic inspections to monitor dust conditions, drainage functions, compaction, and migration of stone.

8. The maximum number of dogs on site at any one time shall be 53.

9. Existing vegetation and fencing shall be deemed to satisfy the Transitional Screening and Barrier requirements. The existing vegetation outside of the developed kennel area shall remain undisturbed.

10. The driveway shall be widened to Virginia Department of Transportation requirements as determined by the Department of Environmental Management at the time of site plan review.

11. The entrance shall meet the requirements of the Virginia Department of Transportation with respect to sight distance as determined by the Department of Environmental Management at the time of site plan review.

12. A minimum of six (6) parking spaces shall be provided on site.

13. The existing open space on the site shall be determined to satisfy the Best Management Practice requirement if deemed appropriate by the Department of Environmental Management.

14. For a period of one year the kennel shall be inspected monthly by Fairfax County Animal Control, Fairfax County Health Department, and by Fairfax County Zoning Enforcement.

15. An evaluation of the animals and a viewing with the Friends of the Homeless shall be held on the first Saturday of every month from 10:00 a.m. to 1:00 p.m. for adoption.

16. The Board supports the continuation of the Barr Kennel policy to have all their animals spaded or neutered.

17. This special permit is approved for a period of one (1) year.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twelve (12) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 396, April 24, 1990 (Tape 3), Scheduled case of:

11:15 A.M. DAVID A., LISA M., CHARLES G. AND LILLIAN R. IOSCO, SP 90-S-015, application under Sect. 3-103 of the Zoning Ordinance to allow an accessory dwelling unit on property located at 8613 Meadow Edge Terrace, on approximately 16,572 square feet of land, zoned PDH-1, Springfield District, Tax Map 106-2((10))(14)14.

Acting Chairman Hammack called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Russell 4510 Daly Drive, Suite 100, Chantilly, Virginia, with the Drewer Development Corporation, confirmed that it was. Acting Chairman Hammack then asked for disclosures from the Board members and hearing no reply called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that staff had no concerns with the application and recommended approval.

The applicant, Charles Iosco, 1600 N. Oak Street, Unit 1006, Arlington, Virginia, addressed the Board and stated that he is a co-owner of the property and intended to live in the accessory dwelling. He explained to the Board that the reason that he has chosen to reside with his son is that due to a heart condition; he had undergone a triple by-pass.

In response to Acting Chairman Hammack's question, Mr. Iosco said he understood the development conditions and that the special permit had a time limitation of 5 year.

Acting Chairman Hammack called for speakers in support of the application.

Ann Peterson, P.O. Box 7430, Fairfax Station, Virginia, a representative of Crosspointe Swim and Racquet Inc. Board of Trustees, addressed the Board and stated that the property is subject to a declaration of covenant, conditions, and restrictions. She said that the applicant would have to apply to the new construction committee to get approval for the new design of the house.

The Board informed Ms. Peterson that there would be no exterior changes of the structure.

There being no further speakers to address the request and no staff comments, Acting Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to grant SP 90-S-015 for the reasons noted in the Resolution and subject to the development conditions stated in the staff report dated April 19, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-015 by DAVID A., LISA M., CHARLES G. AND LILLIAN R. IOSCO, under Section 3-103 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 8613 Meadow Edge Terrace, Tax Map Reference 106-2((10))(14)14, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 24, 1990; and

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

1. That the applicant is the contract purchaser.
2. The present zoning is PHD-1.
3. The area of the lot is 16,572 square feet of land.
4. The applicant has met the criteria necessary for an accessory dwelling unit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-918 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicants only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This approval is granted for the building and uses indicated on the plat submitted with this application by Dewberry and Davis dated November 27, 1989 (revised). This condition shall not preclude the applicant from erecting structures or establishing uses that are not related to the accessory dwelling unit and would otherwise be permitted under the Zoning Ordinance and other applicable codes.

3. This Special Permit is subject to the issuance of a building permit which reflects the addition of the accessory dwelling unit to the property. Prior to obtaining building permit approval, any plans that are deemed necessary by the Director, DEM, shall be submitted and approved by DEM pursuant to Par. 3 Sect. 8-903. And plans submitted shall conform with the approved Special Permit plat and these conditions.

4. The accessory dwelling unit shall occupy no more than 1,247 square feet as depicted on the special permit plat.

5. The accessory dwelling unit shall contain no more than one bedroom.

6. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

8. This special permit shall be approved for a period of five (5) years from the final approval date* with succeeding five (5) year extensions permitted in accordance with Sect. 8-012 of the Zoning Ordinance.

9. Upon termination of the accessory dwelling unit as a permitted use on the site, at least one of the components which causes the accessory dwelling unit to be considered a dwelling unit shall be removed and the accessory dwelling unit shall be internally altered so as to become an integral part of the main dwelling unit.

Mr. Ribble seconded the motion. The motion carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

Mrs. Harris make a motion to waive the eight day time limitation period. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 24, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 1:30 p.m. and reconvened at 1:35 p.m.

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Page 398, April 24, 1990 (Tape 3), After Agenda Item:

Request for Additional Time
Rebecca Ann Crump, SP 84-S-079
Ox Road between Butts Corner and Burke Lake Road
Tax Map Reference 87-1((1))11

Mrs. Harris made a motion to grant the request. The motion carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting. The new expiration date is December 16, 1991.

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Page 398, April 24, 1990 (Tape 3), After Agenda Item:

Request for Additional Time
Temple Baptist Church, SPR 85-D-009-2
1545 Dranesville Road
Tax Map Reference 10-2((1))7 and 7A

Mrs. Harris made a motion to grant the request. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting. The new expiration date is September 28, 1991.

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Page 398, April 24, 1990 (Tape 3), After Agenda Item:

Request for Additional Time
Groveton Baptist Church, SP 88-V-079
6511 Richmond Highway
Tax Map References 93-1((7))1 and 2, 93-1((1))27

Mrs. Thonen made a motion to grant the request. Mrs. Harris seconded the motion which carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting. The new expiration date is April 26, 1991.

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Page 399, April 24, 1990 (Tape 3), After Agenda Item:

Approval of Minutes
November 14, 1989

Mrs. Harris made a motion to approve the BZA Minutes as submitted. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

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Page 399, April 24, 1990 (Tape 3), After Agenda Item:

Request for Reconsideration
James and Sandra L. McLary, SP 90-V-005 and
James and Jacque Lapping VC 90-V-008
Tax Map Reference 102-3((9))9D)15

The attorney for the applicant, James Hannagan, with Dawkins, Hannagan, McCarthy and Singel, 805 Cameron Street, Alexandria, Virginia, addressed the Board and explained that he had been contacted by the applicant the day before the public hearing and asked the Board for a deferral on the consideration until he could familiarize himself with the case.

Acting Chairman Hammack said that he would be agreeable to a deferral because he had not been at the previous hearing, therefore did not consider himself qualified to vote on the issue.

Mr. Hannagan said that the Lapping's were out of town and had expressed their desire to attend the public hearing. He explained that as part of the request for reconsideration the applicants plan to withdraw their request for a variance.

Jane Kelsey, Chief, Special Permit and Variance Branch, said that a formal motion would be needed to delay the approval of the resolution and to reconsider at a date and time set. She explained that the application would have to be readvertised, reposted, and renoticed if a reconsideration hearing was approved. Ms. Kelsey stated that she wanted to inform the applicant's attorney that approval of a request for reconsideration would not actually change the decision of the Board until such time as the Board actually held a reconsideration hearing and made a new decision.

Mrs. Thonen made a motion to defer making a decision whether the Board should reconsider the request until May 8, 1990. Mrs. Harris seconded the motion which passed by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

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Page 399, April 24, 1990 (Tape 3), After Agenda Item

Approval of Resolutions from April 19, 1990

Mrs. Harris made a motion to approve the Resolutions with the exception of SP 90-V-005 and VC 90-V-008. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and explained that in the Temple Baptist Church, SPR 85-D-009-2 Resolution, the finding of facts number 4 had been reworded to include the words "dwelling" and "plan".

Mrs. Thonen made a motion to approve the rewording of the Resolution. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Mr. Kelley not present for the vote. Chairman Smith and Mr. DiGiulian were absent from the meeting.

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Page 399, April 24, 1990 (Tape 3), After Agenda Items:

Tentative BZA Fall Schedule

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and said that a tentative schedule for future BZA meetings was included in the Board's package and asked that they review the dates for approval at the next scheduled hearing.

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Page 400, April 24, 1990, (Tape 3), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 1:51 p.m.

400

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

Daniel W. Hammack Jr. Acting Chair
Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: June 21, 1990

APPROVED: June 26, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, May 1, 1990. The following Board members were present: John DiGiulian, Vice-Chairman; Paul Hammack; Mary Thonen and Martha Harris. Chairman Daniel Smith, John Ribble, and Robert Kelley were absent.

Vice-Chairman DiGiulian called the meeting to order at 8:10 p.m. Mrs. Thonen led the prayer.

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Page 401, May 1, 1990, (Tape 1), Matters of the Board:

Mrs. Harris stated that on April 27, 1990, she had attended a United Way awards breakfast and that Judy Moss, who was substituting for the Clerk, had represented the Fairfax-Falls Church Community Services Board, and had received a platinum award for achieving 100% participation in the 1990 United Way campaign with $100 per person donation.

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Page 401, May 1, 1990, (Tape 1), Scheduled case of:

8:00 p.m. DR. MARK A. LAWRENCE AND SELDEN RING, SP 89-D-051, application under Sect. 3-E03 of the Zoning Ordinance to allow a home professional office, on property located at 8612 Tebbs Lane, on approximately 6.2757 acres of land, zoned R-E, Dranesville District, Tax Map 20-1((1))48, 52. (DEFERRED FROM 12/21/89 AT APPLICANT'S REQUEST AND FOR ADDITIONAL INFORMATION. DEFERRED FROM 2/13/90 AT APPLICANT'S REQUEST)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McDermott replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report and advised the Board that a previous request for a special permit had been denied by the BZA in September 1987. At that time, the proposal included only Lot 52 with access from Tebbs Lane. She stated that there were changes in the current application which included the addition of Lot 48 with an additional access from Towlston Road. Ms. Bettard indicated that the Staff Report Addendum dated April 24, 1990, contained the revised proposed development conditions as Attachment 4.

In response to a question from Mr. Hammack, Ms. Bettard stated that Mr. Lawrence did not currently have a special permit to see patients at his home.

Frank McDermott, with the law firm of Hunton & Williams, Suite 600, 3040 Chain Bridge Road, P.O. Box 1147, Fairfax, Virginia, focused the Board's attention on the fact that this use was minor in nature, and pointed out that the circumstances and changes made in the application showed that substantial effort had been exerted by the applicant to further improve upon and minimize the nature of impacts, if any, to be derived from the proposed use. He stated that the trips generated by this use were fewer than the trips that would be generated if the property was developed in accordance with its zoning.

Mr. McDermott provided the Board members with photos of the property which he identified. He also provided a comparison chart of the 1987 application and the current application which showed 1) two acres added to the site; 2) reduction of the offices hours; 3) a commitment to no group therapy sessions; 4) no more than one client per hour; 5) the parking spaces had been reduced from four to two; and 6) access would only be from Towlston Road.

In response to a question from Mr. Hammack, Mr. McDermott replied that Dr. Lawrence had not had patient activity at his home since he had appeared before the Board in 1987. The letters in support that mentioned patient activity referred to the time prior to 1987.

Mr. Hammack questioned whether the screening requirements were agreeable with the applicant and Mr. McDermott answered that they were.

Vice Chairman DiGiulian called for speakers regarding the special permit application.

John Edwards, 829 Towlston Road, Lot 48B, stated that he had lived on his property since 1975; he indicated that there had been no problems when Dr. Lawrence had previously been seeing patients at his home and that he did not anticipate any problems with the current application.

John and Barbara Adams, 8546 Georgetown Pike, Lot 47, spoke in support of the application. They indicated that the Lawrences had been very careful about keeping the character of the residential neighborhood intact. Mr. Adams stated that he was the President of the Georgetown Pike Homeowner's Association and that he had only had one neighbor contact him who had expressed concern about the location of the proposed parking lot. A meeting with the Lawrences and a look at their plans had caused the neighbor to withdraw his objection.

Roger Greenwald, 801 Towlston Road, Lot 46, directly adjacent to the applicant's property, spoke in support of the application. He stated that the Lawrence's had been very careful in locating their driveway so there would be no objection from the neighbors or any negative impact to them. Mr. Greenwald stated that the Lawrence's had a beautiful, well-maintained home and that they were helping to preserve the property values in the neighborhood.

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Lynne Kohn, 1058 Rocky Run Road; Stephen Brucker, 839 Towlston Road, Lot 76; John Chomeau, 8538 Georgetown Pike; Robert Grindle, 8527 Georgetown Pike, Lot 40; Henry Ahari, 8533 Georgetown Pike, Lot 41; Katherine Sodergren, 8621 Tebbs Lane, Lot 55B; and Michael West, 4357 Cub Run Road, Chantilly, all spoke in support of the application.

Maryan Smith, 11501 Stuart Mill Road; Virginia Child, 7831 Enola Drive; and Katherine Simpson, 4921 Hogan's Lake Place, patients of Dr. Lawrence, explained how the private, tranquil setting of a home office was more beneficial and therapeutic to the patients as opposed to a commercial office setting.

Mary Ellen West, 8601 Tebbs Lane, Lot 37, submitted photos showing local roads and the entrance onto Georgetown Pike and spoke in opposition to the application. She stated that the proposed access from Towlston Road rather than Tebbs Lane for the proposed home professional office was not a satisfactory solution to the problem of access. Ms. West indicated that Towlston Road itself, between Old Dominion Drive and Georgetown Pike was circuitous, winding and narrow with steep grades and limited visibility. She referred to a six foot high wall that had been constructed at the Georgetown Pike/Towlston Road intersection which interfered with visibility.

Gary Hoskinson, 1938 Pimmit Drive, Falls Church, a friend of Mary Ellen West, spoke in opposition to the application. He stated that he had seen a lot of traffic going in and out of the Lawrence's driveway onto Tebbs Lane in the last few years.

Mrs. Harris questioned how many roundtrips a single family house would have per day. Ms. Bettard answered that it would be approximately ten trips per day.

During rebuttal, with respect to the six foot high wall that Ms. West had referred to, Mr. McDermott stated that this had been approved by the Department of Environmental Management and that there was adequate sight distance at both intersections under the Office of Transportation and the Virginia Department of Transportation standards.

Mrs. Thonen stated that she was concerned about granting home professional offices due to the availability of commercial space and that she was looking at the application strictly as a land use issue. She referred to the special permit that had been denied in 1987 and asked why the applicant had dropped the lawsuit that had been filed against the BZA. Mr. McDermott answered that the applicant had preferred to come back and address the concerns brought up by the BZA.

Mr. Hammack asked whether Mr. Ring, the co-applicant and owner of Lot 48, had any objections to the conditions that would be placed on his property regarding the use he could make of it as long as he was a co-applicant with Dr. Lawrence. Mr. McDermott stated that Mr. Ring was Mrs. Lawrence's father and that he had no objections to the limitations.

Mr. Hammack referred to the letter of justification in the December 1989 staff report which stated that Dr. Lawrence did not see acutely disturbed psychiatric patients; he asked for a clarification of the definition of acutely disturbed.

Dr. Lawrence answered that the term "acutely disturbed" meant at risk of hospitalization due to the fact that the patient would be disturbing to the surrounding environment in an unpredictable way. He stated that he had no hospital privileges or practice so he couldn't take any patients who might be at risk of hospitalization. In addition, Dr. Lawrence stated that he did not have any drug abuse patients.

Mrs. Harris questioned Mr. McDermott about the development condition regarding the lighting issue; Mr. McDermott stated that he had no objection to limiting the lights to ground level.

There being no further speakers, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SP 89-D-051 with changes in the development conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-D-051 by DR. MARK A. LAWRENCE AND SELDEN RING, under Section 3-E03 of the Zoning Ordinance to allow a home professional office, on property located at 8612 Tebbs Lane, Tax Map Reference 20-1((1))48, 52, 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 1, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-E.
3. The area of the lot is 6.2757 acres of 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 Section 3-E03 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

5. No sign shall be permitted for this use.

6. The maximum number of employees including the applicant shall be one (1).

7. The hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday.

8. Parking for the residential use shall be on Lot 52 and shall be a minimum of two (2) parking spaces. Parking for the proposed Special Permit use shall be located exclusively on Lot 48, and shall contain two (2) spaces. Patients visiting the site shall be prohibited from entering the site from Tebbs Lane or from parking on Lot 52.

9. Existing vegetation along all lot lines shall be deemed to satisfy the Transitional Screening required. A landscaping plan indicating additional plantings shall be provided to screen the proposed parking area on Towlston Lane. The location, type and size of the plantings shall be provided to the satisfaction of the County Arborist; however, the screening around the parking area shall include a combination of the existing vegetation and additional plantings that are coniferous in nature. The barrier requirement shall be waived.

   A tree preservation plan/and or final limits of clearing and grading shall be established in coordination with and subject to approval by the County Arborist in order to preserve to the greatest extent possible existing trees or stands of trees which may be impacted by construction on the site.

10. Any new lighting of the parking areas or the trail shall be limited to those that are at ground level; and at such an intensity so as to minimize disturbance to the surrounding residential areas.

11. The home professional office is to be limited to 663 square feet within the dwelling.

12. There shall be no group therapy sessions or training sessions on the site and no more than one client shall visit the site per hour.

13. The entrance and driveway from Towlston road shall be constructed to a minimum width acceptable to VDOT and DEM.

14. There shall be no residential development of Lot 48 or other use permitted of Lot 48 during the term of the Special Permit or extensions thereof.

15. This permit shall automatically expire without notice, three (3) years from the date of approval.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 (Chairman Smith, Mr. Ribble and Mr. Kelley were absent from the meeting).

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 9, 1990. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 9:25 p.m. and reconvened at 9:30 p.m.

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Page 404, May 1, 1990, (Tapes 1-2), Scheduled case of:

8:15 p.m. NINA GRACE FIORE, SP 90-L-007, application under Sect. 3-301 of the Zoning Ordinance to allow three (3) dogs to remain on property located at 7419 Bath Street, on approximately 11,102 square feet of land, zoned R-3, Lee District, Tax Map 80-3((2))(32)21.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Fiore replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Denise James, Staff Coordinator, presented the staff report which recommended that the request be denied. In response to a question from Mrs. Harris, Ms. James replied that the trail adjacent to the applicant's property led from Floyd Street as an access to the Crestwood Elementary School and was not owned by the applicant.

Nina Fiore, 7419 Bath Street, the applicant, appeared before the Board and explained her request as outlined in the statement of justification contained in the staff report. She stated that she had purchased the property in 1987 and neither she nor her real estate agent had been aware of the Zoning Ordinance restrictions concerning pets. She indicated that there were several other neighbors in the immediate area that owned three dogs.

Ms. Fiore stated that no one had ever contacted her personally but had complained to the Zoning Enforcement Branch without giving her the opportunity to address the issue. She stated that she had never before lived in a neighborhood where people did not talk to one another and would choose to meet under these circumstances.

Ms. Fiore stated that she tried to be a responsible pet owner and that the dogs were never left out after dark and were only left out if the weather permitted.

With respect to the staff report that stated " . . . the applicant has not indicated any willingness to erect a wooden fence or to keep the dogs indoors during the daytime hours", Ms. Fiore referred to her letter dated January 15, 1990, in which she offered to try taking out a loan and erecting a privacy fence in the back of her yard.

Vice Chairman DiGiulian called for speakers regarding the special permit application.

Joe Gardner, 8166 Willowdale Court, Springfield; John Jones; Mary Cole; and Barbara Espisito, 7508 Essex Avenue, Springfield, spoke in support of the application. They expressed the great pride Ms. Fiore had in her dogs and their welfare. They also pointed out the concern that had been shown for the neighbors when a higher fence had been erected to prevent one of the dogs from escaping out of the yard.

Austin McHale, 7417 Bath Street, the complainant, spoke in opposition to the application. He stated that he had lived at this address for 22 years and that the dogs annoyed him. Mr. McHale stated that the dogs barked and ran along the fence which disturbed his family; he indicated that he had filed a formal complaint with the Zoning Enforcement Branch.

Mrs. Harris asked Mr. McHale if the erection of a six foot high solid fence would be satisfactory to him. Mr. McHale stated that he did not know to what extent that would help and he had not been aware that this condition had been imposed on the applicant.

In response to a question from Mr. Hammack, Mr. McHale stated that the dogs were not out during the evening but that sleeping during the day was difficult due to the barking.

During rebuttal, Ms. Fiore indicated that Mr. McHale was surrounded by neighbors with dogs yet, to her knowledge, no complaints had been filed against them. She stated that this complaint did not prove that her dogs were a greater irritation than any of the other neighbor's dogs.

Mrs. Harris asked Ms. Fiore if she agreed with installing a solid fence. Ms. Fiore stated that she would agree to the fence provided that she could find financing.

There being no further speakers, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SP 90-L-007 with changes in the development conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-007 by NINA GRACE FIORE, under Section 3-301 of the Zoning Ordinance to allow three (3) dogs to remain, on property located at 7419 Bath Street, Tax Map Reference 80-3((2))(32)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 May 1, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 11,102 square feet of 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 Section 8-903 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board and is for the location indicated on the application and is not transferable to other land.

2. A copy of this special permit shall be made available to all departments of the county during working hours.

3. The yard shall be kept free of animal debris. The applicant shall remove and dispose of animal waste from the rear yard not less that three (3) times a week.

4. The applicant shall install a six (6) foot high board on board fence, solid from the ground up in the rear yard along the southern and eastern lot lines within three (3) months from the date of approval of this special permit.

5. This approval shall be for the applicant's existing three dogs. If any one of these specific animals die, or is sold or given away, reducing the number to two, that animal shall not be replaced.

6. When the dogs are outside, they shall be kept within the fenced area shown on the plat.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinance, regulations or adopted standards.

Mrs. Harris seconded the motion. The motion carried by a vote of 4-0 (Chairman Smith, Mr. Ribble and Mr. Kelley were absent from the meeting).

Page 406, May 1, 1990, (Tapes 1-2), (NINA GRACE FIORE, SP 90-L-007, continued from Page 405)

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 9, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 406, May 1, 1990, (Tape 2), Scheduled case of:

8:30 p.m. YOUNG HO KIM, SPR 83-D-040-2, application under Sect. 3-303 of the Zoning Ordinance to renew SP 83-D-040 for an antique retail shop, on property located at 6919 Old Dominion Drive, on approximately 11,250 square feet of land, zoned R-3, Dranesville District, Tax Map 30-2((7))(11)9, 10, 11. (DEFERRED FROM 3/6/90 AT APPLICANT'S REQUEST - NOTICES WERE NOT IN ORDER)

Mr. Hammack moved that the application be deferred to May 29, 1990, at 11:30 a.m. This motion was seconded by Mrs. Thonen and passed by a vote of 4-0, (Chairman Smith, Mr. Ribble and Mr. Kelley were absent from the meeting).

In addition, Mrs. Thonen stated that the application would be administratively withdrawn if the notices were not completed properly for the May 29 hearing.

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Page 406, May 1, 1990, (Tape 2), After Agenda Item #1:

Request for Out-of-Turn Hearing
Robert Diamond
SP 90-D-031

Mr. William Donnelly, with the firm of Hazel, Thomas, Fiske, Weiner, Beckhorn and Hanes, was present to represent Mr. Diamond's request for an out-of-turn hearing. He stated that three contracts were in danger of expiring if this application was not heard before May 30, 1990.

Steve Kerr, Assistant Director of the Zoning Evaluation Division, stated that under the current schedule, if this application was set for May 29, 1990, it would give staff only one week to prepare a staff report and notification. He stated that this was an unrealistic timeframe due to the current workload.

Mrs. Thonen moved to approve the out-of-turn hearing request and schedule Special Permit application SP 90-D-031 for May 29, 1990, at 11:45 a.m. This motion was seconded by Mrs. Harris and passed by a vote of 4-0, (Chairman Smith, Mr. Ribble and Mr. Kelley were absent from the meeting).

Mrs. Thonen apologized to staff for the inconvenience this would cause them.

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Page 406, May 1, 1990, (Tape 2), After Agenda Item #2:

Request for Out-of-Turn Hearing
Steve Wallman
VC 90-D-050

Mrs. Thonen moved to approve the out-of-turn hearing request and schedule Variance application VC 90-D-050 on June 21, 1990. This motion was seconded by Mr. Hammack and passed by a vote of 4-0, (Chairman Smith, Mr. Ribble and Mr. Kelley were absent from the meeting).

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Page 406, May 1, 1990, (Tape 2), After Agenda Item #3:

Approval of Resolutions from April 24, 1990

Mrs. Thonen expressed concern that the resolution for SP 90-S-006, KATIE H. BARR, did not reflect her motion and intent correctly. She stated that development condition number 6 should have been deleted. In addition, development condition number 16 should read: "An evaluation of the animals and a viewing with the Friends of the Homeless shall be held on the first Saturday every month from 10:00 a.m. to 1:00 p.m. for adoption. Mrs. Thonen directed staff to listen to the tapes of the meeting and recheck the wording of the resolution.

Mrs. Thonen moved approval of the resolutions from April 24, 1990, with the exclusion of SP 90-S-006, Katie H. Barr, which needed further review. This motion was seconded by Mr. Hammack and passed by a vote of 4-0, (Chairman Smith, Mr. Ribble and Mr. Kelley were absent from the meeting).

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Mrs. Thonen stated that Jane Kelsey, Chief, Special Permit and Variance Branch, was not present at the public hearing due to a medical emergency in her family.

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As there was no other business to come before the Board, the meeting was adjourned at 10:20 p.m.

Judy L. Moss, Substituting for the
Clerk to the Board of Zoning Appeals

Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED May 29, 1990

APPROVED June 6, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on May 8, 1990. The following Board Members were present: Vice Chairman John DiGiulian, John Ribble, Martha Harris, Mary Thonen, and Mr. Hammack. Chairman Smith and Mr. Kelley were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 1:35 p.m. and Mrs. Thonen gave the invocation. There were no matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 409, May 8, 1990 (Tape 1), Scheduled Case of:

9:00 A.M. FREDERICK R. MERANA, VC 90-C-013, application under Sect. 18-401 of the Zoning Ordinance to allow building addition to 9.7 feet from rear lot line (25 ft. min. rear yard required by Sects. 3-307 and 6-106), on property located at 412 East Street NE, on approximately 12,482 square feet of land, zoned PDH-3, Centreville District, Tax Map 38-2((59))10.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. The applicant, Mr. Merana, replied that it was except for the 5th item that he wished to clarify. Vice Chairman DiGiulian then asked for disclosures from the board members and, hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report to the Board. There were no questions for staff and the applicant was called forward.

Frederick R. Merana, 412 East Street, N.E., Vienna, Virginia, wished to explain his justification for how his application met the nine requirements for a variance. He stated that he has an extremely narrow lot and a large storm sewer which is a breeding place for mosquitoes. He also indicated that although he initially indicated that similar hardship does apply within the neighborhood, the others are to a much lesser extent. The other houses in the neighborhood do not have storm sewers on their properties.

There being no others to speak in support or in opposition to the application, the public hearing was closed.

Mrs. Thonen made a motion to grant the application subject to the development conditions contained in the staff report, with one addition: "A row of evergreen trees will be planted along the rear property line so as to screen the porch from the adjacent property."

The applicant was asked if he understood the motion and would agree to it. Mr. Merana stated that he did and would.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-013 by FREDERICK R. MERANA, under Section 18-401 of the Zoning Ordinance to allow building addition to 9.7 feet from rear lot line on property located at 412 East Street NE, Tax Map Reference 38-2((59))10, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is PDH-3.
3. The area of the lot is 12,482 square feet of land.
4. The applicant has an unusually shaped yard and the placement of the house gives it a shallow rear lot.
5. There is a storm drainage easement to the right of the house prohibiting building on that side.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;

E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. A row of evergreen trees will be planted along the rear property line so as to screen the porch from the adjacent property.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack abstaining. Chairman Smith and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 410, May 8, 1990, (Tape 1), Scheduled case of:

9:15 a.m. EDWARD HOLLAND, JR., SP 90-C-013, application under Sect. 8-901 of the Zoning Ordinance for a reduction to minimum yard requirements based on error in building location to allow a detached shed to remain 4.9 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 12105 Wayland Street, on approximately 21,137), square feet of land, zoned R-2, Centreville District, Tax Map 46-1((8))75.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Holland replied that it was. Vice Chairman DiGiulian then asked for disclosures from the board members and, hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report.

Edward Holland, Jr., 12105 Wayland Street, Oakton, Virginia, stated that he and his wife purchased their house eleven years ago and at that time there was a metal shed on a concrete

slab in the same location as the one that he has constructed. As years went by, the existing shed deteriorated and he decided to replace it with a new one. He discussed this with their neighbor who owns the property closest to the shed. The neighbor has a contractor's license in Fairfax County and it was his opinion that a permit would not be necessary for the construction because there was already an existing structure in the location and because it was a temporary structure and not a dwelling unit. Mr. Holland also said that he was unaware of the need for a variance, so the shed was constructed. It was only in the Fall when an attorney friend was visiting and inquired about the shed that he learned of the need for a permit and the variance. He then called the County and secured the appropriate applications.

Jerome Shipp, 12103 Wayland Street, Oakton, Virginia, who owns the property nearest the shed, submitted a letter in support of the application. He could not appear because it would require time off from work.

There being no others to speak in support or in opposition to the application, the public hearing was closed.

Mr. Hammack made a motion to approve the application subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-C-013 by EDWARD HOLLAND, JR., under Section 8-901 of the Zoning Ordinance for a reduction to minimum yard requirements based on error in building location to allow a detached shed to remain 4.9 feet from side lot line, on property located at 12105 Wayland Street, Tax Map Reference 46-1((8))75, 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 8, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 21,137 square feet of 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 Sections 8-903 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This special permit is approved for the location and the specified shed shown on the plat submitted with this application and not transferable to other land.

2. A building permit shall be obtained within three (3) months of the final approval date of this special permit which shows the as-built location and size of the shed.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0. Chairman Smith and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 1990. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. DENNIS L. DRESS, VC 90-A-017, application under Sect. 18-401 of the Zoning Ordinance to allow building addition to 14 feet from the rear lot line (25 ft. min. required by Sect. 3-307), located at 10914 Rippon Lodge Drive, on approximately 10,422 square feet of land, zoned R-3 (developed cluster), Annandale District, Tax Map 68-3((11))23.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Dress replied that it was. Vice Chairman DiGiulian then asked for disclosures from the board members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. There were no questions for staff and the applicant came forward to present his justification.

Dennis L. Dress, 10914 Rippon Lodge Drive, Fairfax, Virginia, said that he had built a deck four years ago with no intention of enclosing it at that time. He added that by the time the plans were submitted for a permit, the construction had been upgraded so that it could be enclosed if it became desirable to do so. He indicated that he was unaware that the requirements for an enclosure would be different.

He continued by stating that a similar application had been denied on October 31, 1989. Mr. Dress indicated that he merely used the same justification that his neighbor used when his variance was granted in 1983. Mr. Dress described the property by noting that the lot is located on a cul de sac which makes it exceptionally shallow and it has four natural springs on it and is wooded in the back. Because of the springs, the property stays wet in the back most of the time and is a breeding place for insects and without enclosing the deck his family would not have full utility of the deck.

Mr. Dress submitted a letter to the Board from James Williams, 8221 Old Courthouse Road, Suite 104, Vienna, Virginia, the owner of the property adjacent to the rear of his lot. The letter states that there will be 68 to 72 feet between the porch and his house and there is good screening.

Mr. Ribble made a motion to grant the application subject to the development conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-017 by DENNIS L. DRESS, under Section 18-401 of the Zoning Ordinance to allow building addition to 14 feet from rear lot line on property located at 10914 Rippon Lodge Drive, Tax Map Reference 68-3((11))23, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 8, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 10,400 square feet of land.
4. The lot is exceptionally shallow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat (screened porch) included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0. Chairman Smith and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 413, May 8, 1990, (Tape 1), Scheduled case of:

9:45 A.M. LISBETH A. JACOBSON, VC 90-D-007, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with proposed lot D-1 having a lot width of 92.3 and the proposed lot D-2 having a lot width of 12 feet (100 ft. min. yard width required by Sect. 3-206), at property located at 1915 Valley Wood Road, on approximately 1.654 acres of land, zoned R-2, Dranesville District, Tax Map 41-1((13))(14)D.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Holle affirmed the affidavit as agent for Mrs. Jacobson. Vice Chairman DiGiulian then asked for disclosures from the board members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report.

Henry Holle, 1250 South Washington Street, Alexandria, Virginia, stated that he was there to represent Mrs. Jacobson as a friend of long standing. Because of a recent eye operation and other health reasons, Mrs. Jacobson must now move into an apartment. She can no longer drive and it is a very long walk up the hill, especially during inclement weather conditions. She often finds herself shut-in and must rely on friends for help. Mrs. Jacobson tried to sell the property as is, but found most responses from contractors were contingent upon subdivision into three lots. Responses from potential users were very low.

The property is of unique configuration in the subdivision as no other lot has a street frontage of 100 feet and a rear property line of over 380 feet. One enters the property from Valley View Road and drives up a steep road to a plateau, with a commanding view, which falls away to three sides. The existing residence sits in the extreme southeast corner of the property and an equally attractive second building site exists to the north of the Jacobson

residence. The site is heavily wooded and mostly in its natural state. The existing driveway could serve both properties and the front part of the lot, to the left, was intended to stay as a buffer zone in its present natural state.

Mr. Holle presented visual overlays to the Board and reviewed the points necessary for granting of a variance. He stated that Mrs. Jacobson's lot is three (3) times the size required for R-2 zoning. Denial of the variance would result in hardship, as it would result in Mrs. Jacobson's inability to sell the property in the near future. While Mrs. Jacobson can and does live on the property now, she will not be able to for much longer. She is quite desperate to get into an apartment as soon as possible and this subdivision would enable her to sell the property much more quickly in order to achieve her goal. There would be no adverse impact, since it is removed from the street and shielded by mature vegetation.

Vice President DiGiulian called for speakers in support of the application. There being no response he then called for speakers in opposition.

Donald McCreary, 1909 Valley Wood Road, stated his opposition to the proposed subdivision and that he knew of others who were also opposed to it. He previously submitted a letter of opposition to the Board.

Vice President DiGiulian acknowledged his letter, as well as a letter from the Franklin Area Citizens Association, in opposition to the application.

Mrs. Harris then made a motion to deny the application for the reasons noted in the Resolution. Mrs. Thonen seconded the motion to deny, stating that pipestems of 266 feet were much too long.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-007 by LISBETH A. JACOBSON, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with proposed lot D-1 having a lot width of 92.3 feet and the proposed lot D-2 having a lot width of 12 feet, on property located at 1915 Valley Wood Road, Tax Map Reference 41-1((13))(14)D. Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 1.654 acres of land.
4. The property does have an unusual shape.
5. Financial hardship is not a hardship that is recognized by the Zoning Ordinance.
6. The applicant does have use of the property and granting of this variance would not clearly remove a demonstrable hardship approaching confiscation and would be looked at more as a special privilege or a convenience sought by the applicant.
7. The application does not meet four (4) of the nine (9) Standards necessary for approval.

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.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 415, May 8, 1990, (Tape 1), Scheduled case of:

10:00 A.M. SUONG XUAN LE, SP 90-M-012, application under Sect. 3-303 of the Zoning Ordinance to allow a home professional office on property located at 6415 Arlington Boulevard, on approximately 19,436 square feet of land, zoned R-3 and HC, Mason District, Tax Map 51-3((5))7B.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Thomas replied that it was. Vice Chairman DiGiulian then asked for disclosures from the board members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report and stated that staff's primary concern was the impact on the residents in the surrounding area and recommended denial of the application.

Mrs. Harris questioned the present use as a home office and whether any violations had been issued. Mr. Riegle explained that the Zoning Ordinance did permit an accessory use of the dwelling as a home occupational office and that the applicant is currently in compliance with the Ordinance.

William Thomas of the firm of Fagelson, Schonberger, Payne and Deichmeister, at 401 Wythe Street, Alexandria, Virginia, elaborated on the guidelines for the use of a home office. There are three levels of office use--1) The home occupation permit (which Mr. Le has), 2) Hybrid use of a home and office with no more than four employees, including the applicant, and 3) Special Exception which would require zoning in a commercial district which would permit the conversion of the home into a commercial office. He was not sure that was made clear to the residents in a citizens meeting that he attended concerning the application.

Mr. Thomas stated that Mr. Le does maintain his home very well with landscaping and screening and he desires to maintain the residential character of the neighborhood and would be amenable to changing his plans for the driveway construction. He already has changed the plans to allow for a four (4) foot high brick wall instead of hedging to mitigate any impact from the driveway.

He also stated that the real estate office would not be an intense use and should not be considered "commercial creep". As Mr. Le would not be commuting, the traffic impact would be negligible. Mr. Thomas also pointed out that he had submitted a petition in support of the application.

Vice Chairman DiGiulian stated that the Board had received a petition in support of the application with approximately six names on it, also a letter in support from Mrs. Holland. He also stated that the Board had received several letters in opposition and a petition in opposition to the application with approximately thirteen signatures.

Vice Chairman DiGiulian called for speakers in support of the application.

Albert Riveros, 6443 Arlington Blvd, Falls Church, Virginia, represented two family members who are the owners of Lots 13 and 12; and Donald G. Lowry, Great Falls, Virginia, friend of the family came forward. They voiced their support of the application and stated that they believed there would be no negative traffic impact.

Vice Chairman DiGiulian called for other speakers in support of the application. There being no response he then called for speakers in opposition.

Frederick E. Webb, 6436 Sleepy Ridge Road, Falls Church, Virginia, which is in Sleepy Hollow subdivision, representing the Sleepy Hollow Citizens Association came forward. He stated that the citizens were in opposition to the application as represented by 324 signatures obtained from 175 families in Sleepy Hollow and explained the main points of opposition.

William Rice, 6431 Overhill Road, Falls Church, Virginia, and William Holman, 4137 Orchard Drive, Fairfax, Virginia, both voiced their opposition to any commercialism. John Rector, 6424 Spring Terrace, Falls Church, Virginia, property owner whose back yard would overlook the proposed parking lot, and John Holman, 3001 Aspen Lane, Falls Church, Virginia, both stated their opposition. Arlene Whitter, 3015 Aspen Lane, Falls Church, Virginia, said that she also spoke for residents at 3019 and 3011 in being opposed to the application.

Mr. Thomas was called forward for rebuttal. He pointed out that this is on a commercial frontage, although it is in a residential neighborhood. Mr. Le has every intention of maintaining the property in good condition and is amenable to landscaping along the sections of the frontage that would require it.

The public hearing was closed.

Mr. Hammack made a motion to deny the application.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-M-012 by SUONG XUAN LE, under Section 3-303 of the Zoning Ordinance to allow a home professional office, on property located at 6415 Arlington Boulevard, Tax Map Reference 51-3((5))7B, 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 8, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the property.
2. The present zoning is R-3, HC.
3. The area of the lot is 19,436 square feet of land.

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 and the Additional Standards for this use as contained in Section 3-303 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mrs. Harris seconded the motion. The motion carried by a vote of 5-0. Chairman Smith and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 1990.

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The Board recessed at 3:00 p.m. and reconvened at 3:15 p.m.

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10:15 A.M. ROBERT L. POTTERFIELD III AND SANDRA S. POTTERFIELD, VC 90-S-016, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling to 16.5 feet from one side lot line and 16.5 feet from the other side lot line (20 ft. min. side yard required by Sect. 3-C07), on property located at 12513 Bunche Road, on approximately 44,625 square feet of land, zoned R-C and WS, Springfield District, Tax Map 66-2((4))108.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Potterfield replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report to the Board.

Sandra S. Potterfield, 13850 Wakley Court, Centreville, Virginia, presented the statement of justification contained in the staff report. She said that she thought they were prepared to submit for a building permit when they found out about the yard requirements. They decided to split the difference in the side yard requirements and center the house on the lot. The lot is mostly wooded, with some hardwood trees and a lot of shrubs, so that it appears to be all covered. They intend to keep as many trees on the lot as possible, especially on the sides of the house. She stated that they have already begun to build a buffer and are prepared to build a privacy fence, if it becomes necessary. The applicant believes that this lot is very narrow to have such large side yard requirements. If the Ordinance is strictly applied it will mean a loss of architectural fees, and other pre-construction costs already expended.

Raquel Trumbach, 12517 Bunche Road, Fairfax, Virginia, spoke in support of the application but requested that a condition be added that a buffer would have to be built.

The Board had some questions they wished Mrs. Potterfield to clarify and there was discussion with the applicants and the Board members about the possible alternative placements of the house on the lot.

Mrs. Harris made a motion to deny the application for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-016 by ROBERT L. POTTERFIELD III AND SANDRA S. POTTERFIELD, under Section 18-401 of the Zoning Ordinance to allow construction of a dwelling to 16.5 feet from one side lot line and 16.5 feet from the other side lot line, on property located at 12513 Bunche Road, Tax Map Reference 66-2((4))108. Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owners of the land.
2. The present zoning is R-C and WSPOD.
3. The area of the lot is 44,625 square feet of land.
4. The property does not have exceptional shape or size compared with other lots in the general area.
5. The strict application of this Ordinance would not produce a hardship considering that the dwelling is not yet built and could be reconfigured to fit within the setback requirements of this lot.
6. The denial of this variance will not produce a demonstrable hardship approaching confiscation of the property. A house could be built with the same square footage and reconfigured to meet the setback requirements.

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. The motion carried by a vote of 5-0. Chairman Smith and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 1990.

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Page 418, May 8, 1990 (Tape 2), Scheduled Case of:

10:30 A.M. DARWIN S. CRANDALL AND SHARON Y. CRANDALL, VC 90-S-018, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a detached garage 6 feet from the side and rear lot lines (12 ft. min. rear yard required by Sect. 3-307), on property located at 8110 Dabney Avenue, on approximately 15,860 square feet of land, zoned R-3, Springfield District, Tax Map 79-4((2))151.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Crandall replied that it was. Vice Chairman DiGiulian then asked for disclosures from the board members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Darwin S. Crandall, 8110 Dabney Avenue, Springfield, Virginia, then came forward to present his justification. He stated that he wanted to build a two-car garage to be used primarily as a storage area, with a work area, to replace two deteriorating storage sheds.

The Board questioned Mr. Crandall about other alternative placements and there was some discussion about the shape and topography of the lot. Mr. Crandall stated that there was no place on the lot that would preclude the necessity for a variance and this site was chosen as it is the furthest distance from the lot lines and there is a heavily wooded floodplain to the rear.

There was further discussion about the size and intended use of the structure. Mr. Crandall stated that he submitted plans for the largest structure feasible, with the thought in mind that it could always be made smaller.

Mrs. Thonen made a motion to deny the application for the reasons noted in the Resolution.

Mrs. Harris made a motion to waive the 12 month waiting period required for reapplication.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-018 by DARWIN S. CRANDALL AND SHARON Y. CRANDALL, under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage 6 feet from the side and rear lot lines, on property located at 8110 Dabney Avenue, Tax Map Reference 79-4((2))151. Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 15,860 square feet of land.
4. A 24' x 24' garage located at the designated site is too large an accessory building, much too close to the property line.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance.

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0. Chairman Smith and Mr. Kelley were absent from the meeting.

Mrs. Harris made a motion to waive the 12 month waiting period required for reapplication. Mrs. Thonen seconded the motion and it carried by a vote of 4-0. Mr. Ribble was not present for the vote. Chairman Smith and Mr. Kelley were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 16, 1990.

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10:45 LEONARD B. FITCH, VC 90-M-019, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling to 23.0 feet from the front lot line of a corner lot (35 ft. min. front yard required by Sect. 3-207), on property located at 6799 Alpine Drive, on approximately 32,400 square feet of land, zoned R-2 and HC, Mason District, Tax Map 71-2((5))58, 59, 60.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit was complete and accurate. Mr. Fitch replied that it was. Vice Chairman DiGiulian then asked for disclosures from the board members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Leonard B. Fitch, 6799 Alpine Drive, Annandale, Virginia, then came forward to present his justification as contained in his application. A petition was presented to the Board signed by adjacent property owners supporting the variance.

Mr. Fitch conveyed his belief that if the Zoning Ordinance were strictly applied it would result in unbuildable lots; and, a hardship is created by the Zoning Ordinance itself. Since these lots have not been subdivided since the 1930s, they should be grandfathered in.

There was some discussion about the shape of the lots, their extreme narrowness, placement of the house, and setbacks.

Mrs. Thonen moved to grant the variance for the reasons noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-M-019 by LEONARD B. FITCH, under Section 18-401 of the Zoning Ordinance to allow construction of a dwelling to 23.0 feet from the front lot line of a corner lot, on property located at 6799 Alpine Drive, Tax Map Reference 71-2((5))58, 59, 60, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 8, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-2 and HC.
3. The area of the lot is 32,400 square feet of land.
4. The applicant has consolidated three lots and could not consolidate any more without creating a hardship on adjacent lots.
5. The double front yard set backs for the corner lot equals more than 50% of the lot.
6. The applicant has taken care in the placement of his house.
7. These lots were part of a subdivision recorded in the 1930's and have not been resubdivided since; therefore, they should be grandfathered and the Zoning Ordinance should not apply.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Hammack seconded the motion. The motion carried by a vote of 4-0. Mr. Ribble was not present for the vote. Chairman Smith and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 8, 1990. This date shall be deemed to be the final approval date of this variance. (The Board waived the eight-day waiting requirement.)

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Page 421, May 8, 1990, (Tape 2), Scheduled Case of:

11:15 A.M. FORTHWAY CENTER FOR ADVANCED STUDIES, INC., SPA 78-C-307-1, application under Sect. 3-E03 of the Zoning Ordinance to permit renewal of existing use and to amend SP 78-C-307 for a private school of special education, to construct a building, to provide additional parking, and to delete land area, on property located at 10415 Hunter Station Road, on approximately 11.4926 acres of land, zoned R-E, Centreville District, Tax Map 27-2((1))21A, 21B.

Vice Chairman DiGiulian stated that there had been a request for a deferral. Jane Kelsey, Chief, Special Permit and Variance Branch, said that this would need to be readvertised and new notices sent out. It was the consensus of the Board to schedule the public hearing for June 12, 1990 at 10:45 a.m., as suggested by staff.

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Page 421, May 8, 1990 (Tape 2), Scheduled Case of:

11:30 A.M. THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, SPA 86-C-037-1, application under Sect. 3-103 of the Zoning Ordinance to amend SP 86-C-037 for a church and related facilities to allow decrease in land area, additional parking, and addition of dumpster and shed, on property located at 2727 Centreville Road, on approximately 3.7947 acres of land, zoned R-1, Centreville District, Tax Map 25-1((1))27A. (OUT OF TURN HEARING GRANTED)

Chairman Smith called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Aulestia replied that it was. Vice Chairman DiGiulian then asked for disclosures from the board members and, hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. She said that the staff's primary concerns about this application are primarily the visual impact on other properties in the area and also, access to the site which has been an issue since 1983. This has been resolved with a service drive be constructing by the developer of the adjacent subdivision when the Centreville Road is completed by the developer of the adjacent subdivision.

Mr. Harris wanted to know how part of the property was sold without coming before the BZA first to delete the land from the plat. Mr. Hammack added that he wanted to know how building permits were issued on land that is subject to Special Permit Plat.

Mrs. Greenlief said she was unsure. This was apparently missed at the time of the rezoning. It came to the staff's attention at the time this application was filed; they noted there had been additional land on the earlier application.

James A. Aulestia, AIA, 12620 Garman Drive, Nokesville, Virginia, certified architect and agent of the owner and applicant, presented justification for the application and said that it was essentially the same as that presented in 1983, with the additional parking.

A letter from a neighbor to the South requested the addition of a condition that a fence must be built around the trash receptacle. Mr. Aulestia stated that there was no objection to this requirement and one could easily be constructed.

Mrs. Harris asked Mr. Aulestia if he had reviewed the development conditions and if he had a problem with any of them. Mr. Aulestia responded that he was uncertain what would be involved with Centreville Road access but since this has not been completed and it would be some time yet before this would have to be done, he could foresee no problem.

Mr. Hammack wanted to know why the church needed 25 more parking spaces. Mr. Aulestia stated that he did not feel that the County's parking requirements were up to date to meet current needs. Mrs. Greenlief indicated that there had been no apparent problems indicated with parking off-site.

Mrs. Harris wanted to know how far off the lot line the houses on lots 37 and 38 are being placed. Mrs. Greenlief indicated that staff only had the subdivision plan, not the grading plan.

Mrs. Harris said that she had not been on the Board when the church was approved but it was apparently done so with parking at the back because of the extra property that was included in the plat. She said she had a hard time looking at the increase in parking in the area considering that property was sold off and now it is residential. She also expressed a concern about the impact and whether there is enough screening there.

Mr. Hammack pointed out that the architect was not the same agent as in the 1983 presentation, but the extra land was a very important consideration in the decision. He said he would not be willing to approve the application without more information.

Vice Chairman DiGiulian called for speakers in support of the application.

David Turner, 13154 Glen Dundee Drive, Herndon, Virginia, came forward. He said that he was a lay minister for one congregation of the Franklin Chapel in Centreville. He stated that it was a concern to have ample parking for the congregation at all times because the congregation had grown.

Mr. Hammack moved to defer action until June 21, 1990 at 11:45 in order to obtain more information as follows:

1) More testimony from the church, County and/or other appropriate parties to explain how the land included in the Special Permit was rezoned and sold.

2) More up-to-date information from VDOT on traffic patterns and traffic impact of this proposal.

3) Information on the positioning/location of the proposed dwellings on the adjacent subdivision, their distance from the property lines, with some input from the County Arborist concerning the buffering.

4) Also, how it slipped through the cracks at DEM for the purpose of avoiding this happening in the future.

Mrs. Harris seconded the motion and stated that when the Board approves a plat she feels that it stays that way until the Board deletes it. If the church had not come back with this application, the Board would have been unaware that this happened. She added that when something is governed by an approved plat, it should be governed by that plat. This could lead to the precedent of having people acquire or semi-acquire pieces of property to add to a plat that could be taken off at any time which would be a very poor precedent.

The motion carried by a 4-0 vote. Mr. Ribble was not present for the vote and Chairman Smith and Mr. Kelley were absent from the meeting.

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11:45 A.M. D.R.W. LIMITED PARTNERSHIP APPEALS, A-88-C-011 and A 88-C-012, Department of Environmental Management's decisions refusing to approve geotechnical reports and issue Residential Use Permits for nine (9) lots in Section 2 of the Chantilly Farms Subdivision, zoned R-3, Centreville District, Tax Map 45-1((6))49 and 50; 35-3((6))51, 71, 72, 73, 79, 80, 81. (DEFERRED FROM 3/21/89, 6/22/89, 11/14/89 AND 3/22/90 AT APPLICANT'S REQUEST. NOTICES NEED TO BE DONE)

Vice Chairman DiGiulian called the above cited case.

Jane Kelsey, Chief, Special Permit and Variance Branch, said that Joe Bakos of the Department of Environmental Management would be presenting the staff report.

Vice Chairman DiGiulian noted that it takes four members to reverse a decision of an administrative officer.

William Donnelly, attorney with Hazel, Thomas, Fiske, Beckhorn & Hanes, P.C., P.O. Box 12001, Falls Church, Virginia, represented the appellant and requested a deferral. They had previously requested a longer deferral than was granted. They have been working with DEM to resolve the geotechnical issues involved with the case. Although they have made some progress they have been unable to resolve the issues.

The Board expressed concern over the length of time this matter has been going on.

Mr. Donnelly replied that there was no current urgency in the matter. He stated that a new soils report has been submitted and they have met with the County on site for inspection and had a meeting in an effort to resolve the issues. He said that they are making progress but are not there yet. He added that this is a case of concurrent jurisdiction. The BZA has jurisdiction but the local Board of Building Code Appeals also has jurisdiction, primary jurisdiction.

Mrs. Harris stated that there are multiple issues involved, instead of just the geotechnical; there is the issuance or non-issuance of Residential Use Permit (RUP) which does fall under the BZA jurisdiction. She wanted to know why this one aspect of the case could not be heard and decided upon at this time.

Mr. Donnelly stated that the reason for non-issuance of the RUP is the geotechnical report. If the geotechnical report is approved then, the RUP would be issued. The two questions are really intertwined and one cannot be considered without considering the other.

Vice Chairman DiGiulian requested Mr. Bakos to respond to the request for deferral. Mr. Bakos said that DEM recognized the issue has been pending for many years and are anxious to have it resolved and are prepared to move forward with the RUP issue which could be resolved. He also stated that DEM had met with DRW and were making progress in resolving the issues of this very old problem.

Mr. Bakos stated that he was in disagreed with Mr. Donnelly, that the approval of the geotechnical reports would resolve the RUP issue. He stated that if the geotechnical reports are approved there will be remediation requirements that will mean work in the field, upgrading certain conditions that exist there and passing inspections prior to the issuance of Residential Use Permits (RUP). He added that the Geotechnical and Materials Testing, Inc. (GMTI) report substantially caused DEM to lose confidence in the engineering certificates that were issued for the site, for the building pad preparation and installation. Once the certifications became suspect and the subgrade materials, additional tests were performed by GMTI which led DEM to draw conclusions that the sub-bases were not constructed in accordance with the approved plan.

In response to a question by Mr. Hammack, Mr. Bakos stated that DEM was in agreement with Mr. Donnelly that progress was being made but did not believe that progress would be held up by the appeal issue. DEM has asked Mr. Donnelly to withdraw the appeal.

Mr. Hammack pointed out that there could be legal ramifications if they were to withdraw.

There was some discussion on how the Board could help expedite resolving the issues.

Mr. Hammack made the motion to defer in order to give the parties a little more time to try to work this out. Mrs. Thonen seconded the motion to defer until July 24, 1990 at 9:00 a.m. Mrs. Harris stated that for her to support the motion that this would have to be the last deferral as staff has made it clear what kind of results are needed. The motion carried by a vote of 4-0 with Mr. Ribble not present for the vote; Chairman Smith and Mr. Kelley absent from the meeting.

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Page 424, May 8, 1990 (Tape 3), After Agenda Item:

Request for Reconsideration for James and Sandra L. McLary
SP 90-V-005

Patrick Via, attorney with Hazel, Thomas, Fiske, Beckhorn & Hanes, P.C., P.O. Box 547, Fairfax, Virginia, represented the applicants, James L. and Sandra L. McLary SP 90-D-005, requested that the Board reconsider its decision of April 19, 1990.

Mr. Via reviewed the resolution and clarified the ownership of the property by stating that the McLary's bought the home from Mr. Lapping and are currently living there.

He said that Mr. Lapping was a registered agent in Indiana in 1969 but has never been registered in Fairfax County nor is he a practicing surveyor. The key testimony would come from the Lapping's, who were unavailable for the scheduled hearing on the April 19th. The Lappings presently live on the property and they will be most affected by the Board's decision. If the denial continues as is, three possibilities exist.

1- The garage would have to be removed. This would result in it not being the same house that the Lapping's purchased.

2- They could reconstruct the garage so that it is within the limits. That would require tearing down the garage that exists, moving it back, within the 30 foot setback, which would require tearing down some existing trees which would also change the nature of their property. (Mr. Via showed some pictures that showed the amount of trees that would have to be knocked down.)

3- Finally the other option would be to allow it to remain as is and the Lappings could continue to live as they had planned.

Other information which was not before the Board during the last hearing concern a misunderstanding regarding the actual construction. Mr. Lapping did not do the survey on the property. He did, however, draw the garage on the plat with the 30 foot setback. The mistake came when he measured from the curb line and not the actual property line. Mr. Via showed some pictures that indicated that there is nothing to indicate where that line would actually be. He also, pointed out that the County came out and approved this and if the mistake was so obvious the County should have caught it during these two inspections. He offered to the Board the inspection certificates, stamped and marked as being in compliance with what was drawn.

Concerning the impact upon the neighborhood, Mr. Via submitted additional letters written by the neighbors with information they want the Board to have. The letters clearly indicated that they are happy with the garage.

Finally, if the garage were reconstructed it would have to be relocated elsewhere and that would cause an open space in one area of the property or, the removal of a lot of substantial existing trees.

Mrs. Thonen stated that she had been upset by the ten foot mistake at the April 19th hearing but there are two front yards which added to the problem. She added that she was under the impression that Mr. Lapping was a registered, practicing surveyor and that she expects better of professionals, but if he has not practiced for 21 years she could see how it could happen. Mrs. Thonen moved that the Board accept the request for Reconsideration.

Mr. Hammack seconded the motion stating that he had not been present for the hearing and had no feelings either way. Staff suggested July 10, 1990 at 9:00 A.M. for the Reconsideration Hearing.

The motion carried with a 4-0 vote. Mr. Ribble was not present for the vote; Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 424, May 8, 1990 (Tape 3), After Agenda Item

Approval of Resolution for Katie Barr
Deferred from May 1, 1990

Mrs. Thonen made a motion that the Resolution be approved with item #6 deleted and #8 changed to read "one year".

Mr. Hammack seconded the motion which carried by a 4-0 vote. Mr. Ribble was not present for the vote and Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 425, May 8, 1990 (Tape 3), After Agenda Item

Approval of Resolutions from May 1, 1990

Mrs. Harris made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote and Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 425, May 8, 1990 (Tape 3), After Agenda Item

Approval of Minutes from December 5, 1989

Mrs. Harris moved to approve the Minutes as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote and Chairman Smith and Mr. Kelley 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 5:20 p.m.

Claudia J. Brooks, Substituting for
the Clerk, Board of Zoning Appeals

John DiGiulian, Vice Chairman
Board of Zoning Appeals

SUBMITTED: May 29, 1990

APPROVED: June 5, 1990

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, May 17, 1990. The following Board Members were present: Vice Chairman DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. Chairman Smith was absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:22 a.m. Mrs. Thonen gave the invocation.

Mrs. Harris made a motion that the Clerk forward a letter to the Circuit Court noting the Board's support of the reappointment of Mr. Hammack to another term on the Board of Zoning Appeals. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote; Chairman Smith absent from the meeting.

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Page 427, May 17, 1990, (Tape 1), Scheduled case of:

9:00 A.M. BIRGIT HAMAN-BAWELL, VC 89-L-150, application under Sect.18-401 of the Zoning Ordinance to allow construction of dwelling to 8 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 8522 Highland Lane, on approximately 5,600 square feet of land, zoned R-2 and HC, Lee District, Tax Map 101-3((7))42. (DEF. FROM 2/13/90 AT APPLICANT'S REQUEST)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Page replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report.

Bert Page, 3837 Inverness Road, Fairfax, Virginia, represented the applicant and stated that the applicant is currently overseas. Mr. Page read the statement of justification contained in the staff report into the record. He added that if the variance were denied and the applicant had to comply with the Zoning Ordinance the proposed dwelling would be 10 feet wide which is unreasonable.

Mrs. Thonen asked if the applicant could consolidate any of the surrounding lots. Mr. Page replied that the applicant has been pursuing that option but the parcel in which he is interested is currently tied up in a multi party inheritance. He assured the Board that the applicant planned to continue that pursuit.

Mrs. Thonen noted that all the lots in the area of the subject property are small and narrow. She pointed out that if the applicant were to purchase an additional lot and then build the dwelling it would not be economically in line with the existing neighborhood.

Mr. Page added that there are houses in his neighborhood twice the size of the proposed dwelling on the same size lots. He asked the Board to grant the request.

There were no speakers either in support or in opposition to the request and Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated February 6, 1989.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-L-150 by BIRGIT HAMAN-BAWELL, under Section 18-401 of the Zoning Ordinance to allow construction of dwelling to 8.0 feet from side lot line, on property located at 8522 Highland Lane, Tax Map Reference 101-3((7))42, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land
2. The present zoning is R-2 and HC.
3. The area of the lot is 5,600 square feet of land.
4. The subject property is long and narrow.
5. If the variance is denied, the applicant would be denied all use of the land because the applicant could not construct a house on the lot without a variance.

6. There will be no adverse impact on the neighborhood because all of the lots in the neighborhood that are built on are similarly shaped and the subdivision was done in the late 1940's or early 1952's.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the location and the specific dwelling shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0 with Mr. Hammack not present for the vote; Chairman Smith absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 428, May 17, 1990, (Tape 1), Scheduled case of:

9:15 A.M. MARY ROSE GREENE APPEAL, A 90-S-002, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination regarding the developability of property located on Billingsgate Lane, on approximately 1.8328 acres of land, zoned R-8, Springfield District, Tax Map 53-4((3))R.

Mrs. Thonen stated that she would have to abstain from participating in the case as she had been out of town and had not had an opportunity to review the staff report.

Mr. Ribble stated that he would also have to abstain as he had not received the staff report in time to review the case. He recommended that the case be deferred.

Vice Chairman DiGiulian called for the appellant. James R. Hart, Esquire, attorney with the law firm of Dixon & Smith, 4122 Leonard Drive, Fairfax, Virginia, came forward to represent the appellant.

Vice Chairman DiGiulian asked staff for a suggested date and time for the deferral. Mrs. Thonen suggested that perhaps the Board could hear from the appellant and the Zoning Administrator and then defer taking action on the appeal until all the Board members could review the staff report. Vice Chairman DiGiulian agreed.

Mrs. Thonen made a motion that the Board hear from all interested parties but defer taking action. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. Hammack and Mr. Kelley not present for the vote; Chairman Smith was absent from the meeting.

Jane Gwinn, Zoning Administrator, used the viewgraph to point out the subject property to the Board as requested by Vice Chairman DiGiulian.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hart replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mr. Hart stated that the appellant is the owner of Parcel R and is appealing the decision of the Zoning Administrator as outlined in the January 19, 1990 memorandum. He asked that the Board vacate the Zoning Administrator's decision until such time as the appellant wishes to develop the property or until the pending litigation between the homeowners and the appellant is resolved. Mr. Hart explained that the basic problem is that he believed that the Zoning Administrator acted in secret without any input from or any contact with the appellant. There is no statutory authority which allows the Zoning Administrator to play favorites or issue an opinion at the request of one litigant in an case that is already pending, or to make a hypothetical determination about property in the absence of a development plan or submission of an application. The litigation was instituted by the Londontowne Homeowners Association regarding the subject property and two other properties. The appellant purchased the property in January 1989 at an escheat sale that was conducted for Fairfax County. Parcel R was originally a part of Section 5 in Londontowne and created in 1969. He stated that none of the lettered parcels in Section 5 were conveyed by the original developer to the Homeowners Association. Parcel S was originally the swimming pool and it was later reconfigured into the Hancock Court Townhouses which are right below the subject parcel. The other parcels, Parcel P right across the street, is now about one-third of what it used to be because the other two-thirds were vacated and resubdivided into lots. Parcel Q is still in the name of the developer, Parcels T and U were also vacated and resubdivided into lots in the early 1970's. In 1988 when the Homeowners Association was notified that the taxes had not been paid on Parcel R, they went to the sale but were outbid and the appellant purchased Parcel R. Parcel P was purchased by another individual who subsequently sold the parcel back to the homeowners. The homeowners, subsequent to the escheat sale, filed three suits listing six counts against the appellant and the other purchasers and the suits were consolidated and two trials were held. In July 1989, five of the six counts were dismissed and the Judge ruled that the purchasers owned the property not the Homeowners. That decision was appealed to the Virginia Supreme Court which found no reversible error. What was remaining then in the case to be tried was an issue of what the use restrictions were on the property. That trial was held in January 1990 and Judge Kenney has issued an opinion which was included in the Zoning Administrator's staff report. There has been no Final Order entered and there are two pending motions which have not yet been heard which hopefully will be resolved within the next two weeks.. He stated that whatever the outcome he believes that the other side will appeal the determination. The Judge ruled that Parcel R, as opposed to the other common area, is a lot and is not common area within the meaning of the covenants. He found that there is an implied open space restriction which is the subject of the Motion to Reconsider. He stated that Sect. 15.1-491 of the Virginia Code authorizes counties to enact reasonable regulations in zoning matters but it does not give them the authority to make a determination as to the developability of land without the submission or an application by an owner. Mr. Hart noted that Dillon's Rule, which is enforced in Virginia, requires that the State specifically delegate authority to a local government body before it has the authority and in this case that has not been done. He cited that the Gwinn v. Alward case referenced in the Zoning Administrator's memorandum is not applicable because in that case the appellant had asked for a specific use and it was determined that there was a zoning violation.

Mr. Hart addressed what he considered to be erroneous conclusions contained the Zoning Administrator's opinion. He stated that the report dealt with the RTC-10 zoning which was the zoning classification at the time Section 5 was originally approved but the applicable zoning should be R-8 which is what the property is currently zoned. He disagreed that all parcels were conveyed to the Homeowners Association as noted on page 7 of the May 11, 1990 memorandum. He stated that while it is true that the density calculations included Parcel R as open space at the time each of the subdivisions/resubdivisions occurred, the calculations were redone in each case and in the most recent recalculation in 1980 46.2 percent of the area in lots was left. On page 14 which references Judge Kenney's opinion, he stated that

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the Judge had determined that the subject property is a lot and not common area. He added that he also believes that the Zoning Administrator has determined that the appellant should convey the land to the Homeowners Association. Mr. Hart asked that the appellant be treated fairly.

Mrs. Harris pointed out that it was her understanding that the Zoning Administrator's action had been the result of a direct request from the Board of Supervisors in a public hearing. Mr. Hart agreed that is how the action began but the appellant was never given an opportunity to offer any input into the final report.

In response to questions from Mrs. Harris, Mr. Hart replied that it was his understanding that the entire area was rezoned to R-8 in the 1970's. He stated that it was unclear as to whether it was the County's responsibility to see that the developer conveyed the land or if the developer intentionally failed to do so.

Ms. Gwinn stated that it had been a directive from the Board of Supervisors which prompted her action to make a determination as to the developability of the subject land. Sect. 18-301 of the Zoning Ordinance provides that any question involving any interpretation of any provision of the Ordinance shall be presented to the Zoning Administrator. That section does not contain any limitations on how the question may be addressed, or who may present the question, or contain any requirement that requires that the owner must be notified that someone has asked a question with regard to the owner's property. She stated that a review of the Virginia Code provides that the Zoning Administrator administer and enforce the Zoning Ordinance, which also includes interpretations. In many instances, letters are submitted by property owners requesting interpretations to assist them in making decisions as to whether or not to make an application for a particular use on a particular piece of property. She noted that the court case referenced in the staff report was not directly on point, only a similar argument. Ms. Gwinn stated that she had made her determination based on the subdivision plat as well as the Zoning Ordinance provisions. She forwarded a copy of her decision to all the owners involved by certified mail on the same day that she forwarded a copy to the Board of Supervisors. The record plat contains several notations regarding the subject parcel and notes that it is subject to public ingress/egress easements, sidewalk, and a private street that is privately owned and maintained. There is also a note that the parcel is open space and was to be conveyed to the Homeowners Association. She stated that it is her position under the Zoning Ordinance provisions at the time that the property was zoned RT-10 which provided that the property could be developed under the RTC-10 which was an residential townhouse cluster option. The Zoning Ordinance provisions which are applicable are listed on pages 2 through 4. Those provisions provide that at that time all land that was not contained in lots and streets was either to be conveyed to the County for a public purpose or to be conveyed to the Homeowners Association. This was approved by the County and recorded as open space that was required under the Zoning Ordinance in effect at that time, and regardless of the ownership, it is limited to open space. She noted that the litigation had to do solely with the covenants and the easements and the Judge had ruled based on the covenants not the Zoning Ordinance. Ms. Gwinn agreed that the R-8 zoning is applicable to the property and any redevelopment would be subject to that zoning, but to make a determination in this instance the Zoning Ordinance provisions at the time the parcel was created were applicable. In conclusion, she stated that she did not believe that she had acted in secret and that the property is open space and cannot be developed by right.

In response to questions from the Board, Ms. Gwinn replied that she did know who would have been responsible for paying the taxes. She added that she had not issued a Notice of Violation.

Mrs. Thonen stated that she was sure that the appellant had not bought the land to convey to the Homeowners Association. Ms. Gwinn agreed that this is an unfortunate circumstance for all the parties concerned.

Vice Chairman DiGiulian called for speakers in support of the Zoning Administrator.

William Arnold, attorney with the law firm of Cowles, Rinaldi and Arnold, Ltd., 10521 Judicial Drive, Suite 204, Fairfax, Virginia, represented Londontowne Homeowners Association, and stated that the court case has not been determined based on the Zoning Ordinance. He disagreed that Ms. Gwinn had acted in secret and called the Board's attention to the letters from the homeowners as well as one from himself. With respect to the Zoning Administrator acting in secret, Mr. Arnold asked the Board to determine if the appellant had brought out any facts at the public hearing that Ms. Gwinn had not considered in making her decision. The appellant had the option to get her money back but did not choose to do so but chose to proceed with the litigation. Regarding the issue as to the responsible party for assuring that the land was conveyed, the Judge found that the deed of dedication notes that the developer would convey the land to the homeowners association as is noted on the plat and in the Zoning Ordinance. The tax bills were forwarded to the developer because the County tax records showed the developer as the owner. Since homeowners associations do not pay taxes on open space, there was no way for the homeowners to know that the taxes were not paid.

Haidee M. Adkins, President, Londontowne Homeowners Association, read a prepared statement into the record in support of the Zoning Administrator. She asked that Parcel R be left as open space as it is important to the community and submitted a petition signed by the homeowners to the Board.

In response to a question from Mrs. Thonen as to what she would consider as a fair compromise between the homeowners and the appellant, Ms. Adkins stated that there are no guarantees nor warranties in an escheat sale.

During rebuttal, Mr. Hart commented that the plat used as an exhibit was only half of the record plat but agreed that the notation was on the plat stating that the parcels would be conveyed. Judge Kenney did not address the zoning issue because he believed it to be premature until such time as an application was submitted. He stated that he believed that the developer had gotten and was probably still getting the tax bills. There was testimony at the trial that the homeowners association knew in the early 1970's of the developer's refusal to convey the land but did nothing at that time. The covenants for the subdivision which required that the common area be transferred prior to the conveyance of the first lot. In 1988 when the homeowners association became aware of the tax sale, they made the decision to bid for the land but they were outbid. He argued that the appellant should have had input into the Zoning Administrator's determination.

Mrs. Thonen stated that the Zoning Administrator served at the pleasure of the Board of Supervisors and when she is requested to do something she had to do what was requested.

Mrs. Harris asked what type of information the appellant would have provided based on the land use issues. Mr. Hart stated that the appellant could have perhaps clarified some of the erroneous conclusions of the Zoning Administrator about the conveyance of the other parcels, the ownership of the other parcels, and the absence of any information about the homeowners failure to do anything prior to now. In response to a question from Mrs. Harris about the procedure the appellant could have followed to get her money back, Mr. Hart replied at the beginning she could have but not now. He added that the appellant was not aware of all the encumberances until the litigation had begun.

Mrs. Thonen made a motion to defer decision only on this for two weeks. She added that the Board would consider only new information submitted in writing.

Mr. Kelley stated that he did not believe that any new information was needed.

Mr. Hammack seconded the motion for purposes for discussion. He stated that he had not been there for the first few minutes and asked why a deferral was needed.

Mr. Ribble explained that he and Mrs. Thonen had received their packages late and wanted to review the staff report before making a decision.

Mr. Kelley noted that two weeks would be the Tuesday after Memorial Day. It was the consensus of the Board to defer for three weeks. Staff suggested a deferral date of June 5, 1990 at 9:00 p.m.

The motion carried by a vote of 5-1 with Mr. Kelley voting nay; Chairman Smith absent from the meeting.

Mrs. Thonen noted that Mr. Kelley must have been prepared to go forward and he replied that if the vote had been taken at this public hearing he would have voted to uphold the Zoning Administrator.

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Page 431, May 17, 1990 (Tapes 1 and 2), Scheduled case of:

9:45 A.M. MR. AND MRS. FARHOUMAND, VC 90-D-022, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into three (3) lots, proposed Lot 2 having a lot width of 10.56 feet and proposed Lot 3 having a lot width of 21.11 feet (150 ft. min. lot width required by Sect. 3-106), on property located at 929 Seneca Road, on approximately 5.015 acres of land, zoned R-1, Dranesville District, Tax Map 6-4((1))24A.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that staff did not believe that the applicant meets standards 2, 3, 4, 5, 6, 7, and 9.

Mrs. Thonen commented that staff never supported variances.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that staff has supported one or two variances and pointed out that staff reviews each case on an individual basis and evaluates how each particular application meets the standards.

Mr. Ribble called staff's attention to page 4 of the staff report where staff noted that the Board had approved a variance that staff had not supported.

Ms. Kelsey stated that staff had used that variance as an example as staff believed that it had a bearing on this variance with respect to the conditions.

Mrs. Thonen pointed out that the Board was not bound by staff's recommendations.

Keith Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Thirteenth Floor, Arlington, Virginia, represented the applicant. He stated that the property was acquired in good faith, it has exceptional narrowness, it could be subdivided into five lots without a variance, it is the only parcel that has sewer available, and the applicant has an approved preliminary plan for three lots.

He continued by stating that the applicant wants to be a good neighbor and because the surrounding property owners voiced objection to the location of the road the applicant decided to try to obtain a variance in order to relocate the access on the property. The relocation of the road would diminish the impact on the neighbors as well as allow the applicant to retain a greater number of the mature trees on the property. Mr. Martin stated that the owner of Lot 31 was granted a variance in 1988 and the Great Falls Citizens Association supports the request.

With respect to the development conditions, Mr. Martin stated that the applicant agrees with the conditions with the exception of the second sentence in condition number 5. He asked that the condition be revised by replacing the words "to match" with "additional right-of-way may be dedicated to coincide with the right-of-way dedication on Lot 31 which will not substantially alter the configuration of Lot 1 as shown on the variance plat."

A discussion took place between Mrs. Harris and Mr. Martin regarding the inadequate sight distance at the curve on Seneca Road in front of both the subject property and Lot 31. Mrs. Harris stated that she did not want the corrections done by the owners of Lot 31 diminished by the granting of this variance. Mr. Martin assured the Board that the applicant's engineer had conducted a field run survey showing that there is adequate sight distance and this would be made available to the Board.

Mr. DiGiulian stated that it appeared to him that the right-of-way dedicated with Lot 31 seemed to be back from Seneca Road almost to the rear lot line of proposed Lot 1. Mr. Martin stated that was correct and explained that Seneca Road would be aligned in such a way as to soften the curve. He stated that many of the citizens did not want a straight road because they feared that it would encourage people to use excess speed while traveling on Seneca Road.

Mr. Hammack asked if Mr. Martin had received a copy of the letter from the Daleabouts with respect to the wells. Mr. Martin replied that he had not. (Jane Kelsey, Chief, Special Permit and Variance Branch, provided Mr. Martin with a copy from the public copies which are always provided in the front of the Board Room.)

After reading the letter from the Daleabouts, Mr. Martin stated that there is sewer within 400 feet to the subject property only which was a surprise to the applicants when they purchased the property.

In response to additional questions from Mr. Hammack, Mr. Martin explained there was an approved preliminary plat with a three lot subdivision with a public street. The public street ran on the same line with the public road and the neighbors objected to the design as many of the trees would have to be removed. The applicants have delayed subdividing the lot for a year in order to come up with a better design by obtaining a variance. He added that the property is going to be developed but the applicant is trying to stay in keeping with the character of the surrounding neighborhood.

With respect to the wells, Mr. Martin stated that he was not an engineer but was sure that a solution could be reached.

There were no further questions for Mr. Martin and Vice Chairman DiGiulian called for speakers in support of the request.

Vivian Lyons, Vice President, Great Falls Citizens Association, 10808 Nichols Ridge Road, Great Falls, Virginia. She stated that the Association was torn by the applicant's request as there were a lot of pros and cons and a lot of unusual things about the request. Ms. Lyons pointed out that the Association had never been contacted by the Daleabouts, therefore the question of the wells was never brought to the Association's attention. The Association supports the request even though the Association agrees with staff that it does not meet all the criteria set forth in the Ordinance, but do believe that the variance would be less impact environmentally on the heavily wooded site. She noted that the approval was contingent on certain conditions that have been addressed in the staff report. The Association believes that the right of way dedication should be compatible on the Ellis property as the subject property is located on an extremely dangerous stretch of Seneca Road. She stated that she had talked with the Department of Environmental Management (DEM) and was assured that the property could be reconfigured in order to satisfy the right of way frontage requirement and still be subdivided into three lots. Ms. Lyons added that if the applicant encounters any kind of problem with getting sewer on the property the Association will oppose bringing the sewer to the property.

Mrs. Thonen questioned why the Association would change its stand based on the sewer. Ms. Lyons explained that if sewer comes to the applicant's property theoretically it can "spider" to surrounding lots. The Association wishes to keep the area as it is, a semi rural low density community and sewer makes it very difficult to do.

Richard Erdmann, 907-A Seneca Road, Great Falls, Virginia, came forward and represented himself and four other neighbors. He stated that they had worked with the applicants who had been very cooperative. The property was subdivided approximately a year before the applicants purchased and it is his understanding that there is only one perk site on the property. He expressed his concern with the inadequate sight distance on Seneca Road and asked that the Board defer action until such time as the issue of the realignment of Seneca Road has been resolved. If the Board chooses not to defer action, he asked that the Board grant the variance based on the issues of sight distance, sewer, and screening be resolved.

Mr. Hammack asked if Mr. Erdmann had seen the letter from the Daleabouts regarding the sewer. Mr. Erdmann replied that he had not seen the letter but that through discussions with the prior owner it is his understanding that there is only one perk site on the property.

Susan Falkson, 907-B Seneca Road, Great Falls, Virginia, asked that if the Board did grant the request that it be conditioned that the road be aligned with Sanders Haven rather than the private road on the north.

Vice Chairman DiGiulian called for speakers in opposition to the request.

Charlotte Daleabout, 945 Hickory Run Lane, Great Falls, Virginia, owner of Lot 24B, stated that she had just settled on the abutting lot the beginning of May and was not aware of any problems regarding the sewer or egress. She stated that she had discussed this with the Health Department and had been assured that since her site has been approved and accepted perk field and has been recorded she would have no problem.

Mr. Harris asked if there is only one perk site on her property and Ms. Daleabout replied that was correct.

During rebuttal, Mr. Martin stated that the applicant's engineer has indicated that there is flexibility in relocating the wells and therefore will not impact on the Daleabouts perk site. He added that the property will be developed but the applicant is trying to develop it in a way that will be best for the neighborhood.

There was no further discussion and Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to defer action for ninety days as he believed that it was a difficult case but that he was not prepared to support the variance request due to the number of unresolved issues. He expressed concern with the road alignment and dedication, the location of the wells, the egress and ingress easement, and for the submission of new plats showing the reconfiguration of the proposed lots. Mr. Hammack added that he would not support the variance if it prevents the Daleabouts from developing their property.

Mrs. Harris seconded the motion. The Board then discussed an appropriate deferral date and it was the consensus of the Board to defer the case to September 11, 1990.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked for a clarification with respect to a road profile for the applicant's benefit. She added the road profile is normally the way that sight distance is determined. Mr. Hammack stated that he was interested in seeing how the road was going to line up after the lots were reconfigured and if it takes a road profile so be it. Vice Chairman DiGiulian noted that the Board also needed input from DEM. Mrs. Harris agreed.

Mr. Ribble called for the question.

Mr. Martin disagreed with a September date due to the time the applicant has already delayed in developing the property. He asked the Board to consider a July date.

Following a discussion among the Board and staff, Ms. Kelsey suggested July 31, 1990 at 9:00 a.m.

Mrs. Harris asked Mr. Martin to submit the plats in a timely manner to allow staff ample time to review, to comment, and to submit the new plats and comments to the Board at least one week prior to the hearing. Mr. Martin agreed.

It was the consensus to change the date to July 31, 1990 at 9:00 a.m. The motion carried by a vote of 5-0 with Mrs. Thonen not present for the vote and Chairman Smith absent from the meeting.

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The Board took a short recess.

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10:00 A.M. DOUGLAS R. AND JUDITH A. MARVIN, VC 90-A-021, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition 11.2 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-207), on property located at 4501 Demby Drive, on approximately 12,280 square feet of land, zoned R-2 (developed cluster), Annandale District, Tax Map 69-1((10))144.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Marvin replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Denise James, Staff Coordinator, presented the staff report.

Douglas Marvin, 4501 Demby Drive, Fairfax, Virginia, stated that the subject property abuts floodplain which is owned by the homeowners association and behind the open space is Calvary Memorial Gardens. Mr. Marvin added that there are no objections from the neighbors, the property was acquired in good faith, the property has an exceptional rectangular shape, the house is sited at an angle to the rear of the lot, the hardship is not shared by other property owners, and the addition would not be detrimental to nor would it be visible to the neighbors.

In response to a question from Mr. Hammack, Mr. Marvin replied that there is an easement between his lot and Lot 145 and there is approximately 60 feet between his house and his neighbor's house.

Mrs. Harris asked how the addition would be designed and Mr. Marvin answered that he and his wife had not made a final decision as yet but assured the Board that the addition would not be any higher than the existing dwelling.

There were no speakers to address the application either in support or in opposition and Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated May 8, 1990.

Mr. Hammack asked Mr. Ribble if he would add an development condition which read, "If the addition is constructed on pillars, the applicant will provide landscaping in order to screen the pillars from the adjacent neighbor.

Mr. Ribble agreed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-021 by DOUGLAS R. AND JUDITH A. MARVIN, under Section 18-401 of the Zoning Ordinance to allow construction of an addition 11.2 feet from rear lot line, on property located at 4501 Demby Drive, Tax Map Reference 69-1((10))144, 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 17, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owners of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 12,280 square feet of land.
4. The subject property has exceptional shallowness and backs up to an open space within a floodplain, therefore nothing will be built to the rear of the applicant's property.
5. The subject property has an exceptional shape as it is pie shaped with converging lot lines toward the front of the lot.
6. The proposed location is the only place for the applicant to construct the addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;

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E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. If the addition is constructed on pillars, the applicant will provide landscaping in order to screen the pillars from the adjacent neighbor.

Mrs. Harris seconded the motion. The motion carried by a vote of 6-0 with Chairman Smith absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 435, May 17, 1990, (Tape 2), Scheduled case of:

10:15 A.M. EDWARD G. WHITE AND BETTY L. WHITE, VC 90-C-023, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot and an outlot into three (3) lots, proposed Lot 2B having a lot width of 110.54 feet (150 ft. min. lot width required by Sect. 3-106), on property located at 3112 Hunt Road, on approximately 4.1753 acres of land, zoned R-1, Centreville District, Tax Map 46-2((1))45 and 36-4((6))A.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Harrison replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Denise James, Staff Coordinator, presented the staff report.

John E. Harrison, attorney with the law firm of Harrison, Golden & Hughes, P. O. Box 6625, McLean, Virginia, came forward to represent the applicant.

Mr. Hammack questioned why the outlot had been created. Ms. James explained that the Outlot A exists now and the applicant wishes to incorporate the outlot into proposed Lot 2B.

Mr. Harrison stated that the property does not exceed the zoning density and the applicant's engineer has indicated that the lot does not contain highly erodable soils. If a roadway is brought back into the site, the existing dwelling and the pool will be lost and the applicants have lived on the property for 27 years. Mr. Harrison addressed the standards that staff believes the application does not meet. In addition, he stated that there are no objections from the surrounding neighbors, the character of the area will not be changed, and there are no outstanding issues.

Mrs. Harris asked Mr. Harrison to address the environmental issues. Mr. Harrison stated that the engineer report indicates that there will not be substantial impact by the request on the environment. He added that the property is not located in the Difficult Run EQC. In response to a question from Mrs. Harris, Ms. James used the viewgraph to point out the are that is covered by Difficult Run.

Brooke McCauley, 3111 Hunt Road, Oakton, Virginia, stated that he supported the request.

There were no speakers in opposition to the request.

In response to questions from Mrs. Harris, Ms. James explained that if the applicant came in with a cul de sac or a public street it would destroy more of the existing trees but there are other options. One being the development of the subject property into two lots by right which would require only two driveways and no public street. She stated that the environmental concerns are overriding in the area because of the close proximity of the subject property to the Difficult Run Stream Valley and is within the headwaters of the Difficult Run Region which is distinct from the EQC property itself. She clarified that staff does not presume that the applicant met all the standards that were not mentioned in the staff report.

During rebuttal, Mr. Harrison again stated that the existing dwelling and pool would have to be done away with if the property were to be subdivided into two lots rather than three.

Mr. Hammack made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated May 8, 1990.

Mrs. Thonen stated that she would support the motion as she believed that the request would impact both the community and the environment to a lesser degree.

Mrs. Harris stated that she did not like to see anything developed at a density over the Comprehensive Plan recommendation but would support the motion as the applicant almost met the road frontage requirement without a variance. She added that if the request had been for a pipestem she would not have supported the request.

Mr. Ribble stated that the applicant had convinced him albeit narrowly that this is a better design as compared to what could be done by right that would cause an adverse impact on the environment.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-023 by EDWARD G. AND BETTY L. WHITE, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot and an outlot into three (3) lots, proposed Lot 2B having a lot width of 110.54 feet, on property located at 3112 Hunt Road, Tax Map Reference 46-2((1))45 and 36-4((6))A, 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 17, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owners of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.1753 acres of land.
4. The subject property is a narrow lot for the depth compared to the frontage on the road.
5. The strict application of the Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property.

6. The use will not be of substantial detriment to the adjacent properties.
7. The character of the zoning district will not be changed.
8. The variance would be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to the public interest.
9. Although staff presented good arguments with respect to the environment, the granting of the variance would allow the development which is permitted by present zoning and will protect the environment more than if the property is developed by right.
10. It is a very close case.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the subdivision of Lot 45 and Outlot A into three (3) lots as shown on the plat prepared by Dove & Associates, dated February 6, 1990 (revised) and submitted with this application.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A tree preservation plan shall be implemented in coordination with and to the satisfaction of the County Arborist prior to preliminary clearing and grading approval in order to preserve existing quality trees or stands of trees to the greatest extent possible as determined by the County Arborist. The tree preservation plan shall be submitted with the preliminary plat and prior to the submission of the subdivision plat.

4. Driveway access to Lots 2A and 2B shall be consolidated into a single access point and shall be constructed to Public Facilities Manual standards. The driveway easements shall be recorded among the land records of Fairfax County with deeds to the property to ensure future access to these lots via a common driveway.

Mrs. Thonen seconded the motion. The motion carried by a vote of 5-0 with Mr. Kelley not present for the vote; Chairman Smith absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 438, May 17, 1990, (Tape 2), Scheduled case of:

10:30 A.M. DALE H. SCHUSTERMAN, SP 89-D-024, application under Sect. 8-901 of the Zoning Ordinance to allow waiver of dustless surface requirement for office in the R-3 District, located at 1446 Ingleside Avenue, on approximately 9,375 square feet of land, zoned R-3, HC, SC, Dranesville District, Tax Map 30-2((7))(1)20A, 21A and 22A. (CONCURRENT WITH SE 89-D-049)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. O'Brien replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Lori Greenlief, Staff Coordinator, presented the staff report. Ms. Greenlief stated that staff has no problem with the waiver but does believe that it should run concurrent with the special exception approved by the Board of Supervisors (BOS) which was approved for a period of one year. Ms. Greenlief added that the development conditions contained in the staff report had been modified to be in line with the approval of the special exception.

In response to questions from the Board, Ms. Greenlief replied that staff did not believe that the impact would be that great from the use as since the special exception runs for less then a year. Regarding the development conditions, she suggested a change to conditions 5, 6, 9 and 10 as noted in the Resolution. She explained that the site plan requirement was included in the conditions because it is a requirement of the Ordinance.

David O'Brien, attorney with the law firm of Hazel, Thomas, Fiske, Weiner, Beckhorn & Hanes, P.C., P. O. Box 12001, Falls Church, Virginia, outlined the background of the application and explained that the applicant's predecessor had obtained the special permit. The original special exception was granted for five years with a provision that a request for a renewal must be submitted each year after the five years had expired. The extensions were asked for and granted each year until 1989 when he was told that the permit had expired three years ago. On May 14, 1990 the Board of Supervisors approved the special exception for approximately ten months. He explained that the reasoning behind that is that the McLean community has spent a great deal of time and effort on a downtown central business central plan which has not yet been adopted. Because the applicant has been there for ten years, the BOS granted him ten months in order to wrap up his practice.

Regarding the development conditions, Mr. O'Brien asked that the Board delete condition number 4 and 10 noted that staff had done a good job incorporating the changes made by the BOS.

Mr. Hammack told Mr. O'Brien that the BZA did not have the authority to waive the site plan requirement. Mr. O'Brien stated that he understood. He asked the Board to waive the eight day waiting period.

There were no speakers to address the request, either in support or in opposition, and Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated May 8, 1990 and revised as follows:

"Delete conditions 4 and 10 renumber.
4. Landscaping shall be provided as indicated on the SP plat.
5. This Special Permit shall expire on March 1, 1991.
8. The maximum number of employees on site at any one time shall be two (2)."

The Board granted a waiver of the 8-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 89-D-024 by DALE H. SCHUSTERMAN, under Section 8-901 of the Zoning Ordinance to allow waiver of dustless surface requirement for office in the R-3 District, on property located at 1446 Ingleside Avenue, Tax Map Reference 30-2((7))(1)20A,

21A, and 22A, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 17, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.
2. The present zoning is R-3, HC, and SC.
3. The area of the lot is 9,375 square feet of 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 Sections 8-903 and 8-915 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted for a waiver of the dustless surface only in the areas shown on the plat submitted with this application by Rinker-Detwiler and Associates, dated revised through January 22, 1990.

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. Landscaping shall be provided as indicated on the SP plat.

5. This Special Permit shall expire on March 1, 1991.

6. Hours of operations shall be limited to 8:00 a.m. to 5:00 p.m.

7. The maximum number of patients scheduled to be on-site at any one time shall be limited to three (3).

8. The maximum number of employees on site at any one time shall be two (2).

9. The gravel areas shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), and shall include but may not be limited to the following:

   - Travel speeds in the parking areas shall be limited to 10 mph.

   - During dry periods, application of water shall be made in order to control dust.

   - Routine maintenance shall be performed to prevent surface unevenness, wear-through or subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

   - Runoff shall be channeled away from and around the parking areas.

   - The property owner shall perform periodic inspections to monitor dust conditions, drainage functions, compaction, and migration of stone.

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.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, twenty-four (24) months after the approval date* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request of additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4-0 with Mrs. Harris and Mr. Kelley not present for the vote; Chairman Smith absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 17, 1990 as the Board also waived the eight day time limitation. This date shall be deemed to be the final approval date of this special permit.

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Page 440, May 17, 1990, (Tapes 2 and 3), Scheduled case of:

10:45 A.M. DOUGLAS HARRIS, VC 90-M-020, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to 19.7 feet from one front lot line, 34.7 feet from other front lot line, and 14.3 feet from side lot line (35 ft. min. front yard, 15 ft. min. side yard required by Sect. 3-207), on property located at 4861 Cherokee Avenue, on approximately 8,250 square feet of land, zoned R-2 and HC, Mason District, Tax Map 72-3((8))(E)1, 2, 3. (CONCURRENT WITH SP 90-M-014)

11:00 A.M. DOUGLAS HARRIS AND A. A. PIETROPAOLI, SP 90-M-014, application under Sect. 8-901 of the Zoning Ordinance to allow an addition to remain 12.2 feet from rear lot line and to allow covered deck to remain 10.8 feet from side lot line (15 ft. min. side and rear yard required by Sect. 3-207), on property located at 4861 Cherokee Avenue, on approximately 8,250 square feet of land, zoned R-2 and HC, Mason District, Tax Map 72-3((8))(E)1, 2, 3. CONCURRENT WITH VC 90-M-020)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. O'Neil replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

The Board discussed the fact that Mr. O'Neil was not shown as the agent on the affidavit. It was the consensus of the Board that Mr. O'Neil could not represent the applicants.

The applicant, Douglas Harris, 4861 Cherokee Avenue, Alexandria, Virginia, came forward and explained that he had asked Mr. O'Neil to speak on his behalf due to his speech limitation.

Lori Greenlief, Staff Coordinator, presented the staff report for both the special permit and the variance.

Mr. Harris stated that he had purchased the property in 1986 and at that time it had an existing paved driveway and a parking bed that provided an ideal location for a garage. The property faces on two streets and the variance is only needed for the portion that faces Third Street. He stated that the property is a handsome property now and will be even more so after the addition is constructed. There is no objection from the neighbors.

Mr. Hammack asked if the shed was part of the application and Mr. Harris replied that it was not. In response to a question from Mr. Hammack, Mr. Harris stated that the nearest neighbor was approximately 15 feet from the shared property line.

There were no speakers to address the request, either in support or in opposition, and Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant the variance request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated May 8, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-M-020 by DOUGLAS HARRIS, under Section 18-401 of the Zoning Ordinance to allow construction of addition to 19.7 feet from one front lot line, 34.7 feet from other front lot line, and 14.3 feet from side lot line, on property located at 4861 Cherokee Avenue, Tax Map Reference 72-3((8))(E)1, 2, and 3, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 17, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicant is the owner of the land.

2. The present zoning is R-2 and HC.
3. The area of the lot is 8,250 square feet of land.
4. The applicant has met the standards in particular that the subject property is shallow and has double 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 **GRANTED** with the following limitations:

1. This variance is approved for the location and the specified addition shown on the plat submitted with this application and not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justified in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

4. The overhang on the addition and the garage shall be at least 10 feet in height and shall not extend more than 3.7 feet beyond the wall of the addition.

This approval, contingent on the above-noted conditions, shall not relive the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards. This Variance shall not be valid until this has been accomplished.

Mr. Hammack seconded the motion. The motion carried by a vote of 4-0 with Mrs. Harris and Mr. Kelley not present for the vote; Chairman Smith absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 1990. This date shall be deemed to be the final approval date of this variance.

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Mr. Ribble then made a motion to grant the special permit under the Mistake Section.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-M-014 by DOUGLAS HARRIS AND A. A. PIETROPAOLI, under Section 8-901 of the Zoning Ordinance to allow an addition to remain 12.2 feet from rear lot line and to allow covered deck to remain 10.8 feet from side lot line, on property located at 4861 Cherokee Avenue, Tax Map Reference 72-3((8))(E)1, 2, and 3, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 17, 1990; and

WHEREAS, the Board has made the following findings of fact:

The Board has determined that:

A. The error exceeds ten (10) percent of the measurement involved, and

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, and

C. Such reduction will not impair the purpose and intent of this Ordinance, and

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity, and

E. It will not create an unsafe condition with respect to both other property and public streets, and

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner.

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED, with the following development conditions:

1. This special permit is approved for the location and the specified enclosed porch and covered deck shown on the plat submitted with this application and not transferable to other land.

2. A building permit shall be obtained for the enclosed porch and the covered deck.

This approval, contingent on the above-noted conditions, shall not relive the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards. This Special Permit shall not be valid until this has been accomplished.

Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. Kelley not present for the vote; Chairman Smith absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 1990. This date shall be deemed to be the final approval date of this special permit.

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11:15 A.M. HAMPTON B. AND MARINDA BARNES, VC 89-P-157, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a dwelling 12.0 feet from one side lot line and 8.0 feet from the other side lot line (20 ft. min. side yard required by Sect. 3-107), on property located at 1773 Chain Bridge Road, on approximately 7,000 square feet of land, zoned R-1 and HC, Providence District, Tax Map 30-3((2))233. (DEF. FROM 2/22/90 FOR NOTICES. DEF. FROM 4/19/90 FOR POSTING CORRECTION)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Barnes replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She pointed out that the applicant has a similar application on the adjacent piece of property which is scheduled to be heard on July 3rd.

Hampton B. Barnes, 4760 South 6th Street, Arlington, Virginia, stated that he purchased the property in 1945 in good faith with the thought of either building on the land or using it as an asset during his retirement years. Mr. Barnes added that there is a pending purchase contract based on three lots but because the lots do not conform with the current setbacks he may be forced to eliminate one of the lots that he originally purchased. He pointed out that there are other homes in the neighborhood already built on identical lots and asked that the Board grant the request.

Mrs. Thonen asked staff what the setbacks were 45 years ago. Jane Kelsey, Chief, Special Permit and Variance, replied that she believed it was either 15 or 20 feet. She was not sure.

Mr. Ribble noted that the Board had been given the plat for Lot 234 rather than 233 and asked why the 2 foot difference in the lot size. Mr. Barnes stated that he did know that one lot was slightly larger then the other.

John Wideline, Dover Farm, Middleburg, Virginia, came forward and explained that he had been assisting the applicants with their request. He stated that all the homes in the neighborhood were built on similar lots and the precedent had already been set.

Vice Chairman DiGiulian called for speakers in opposition to the request.

Earl Allison, 1624, Seneca Avenue, McLean, explained that the neighbors have submitted a rezoning application hoping that a developer will come in and upgrade the neighborhood. He asked that the Board defer decision until the Tysons Corner Study has been completed.

Mary H. Holbeck, 1608 Colonial Lane, McLean, Virginia, submitted a map to the Board showing the surrounding area and how they are now developed. She stated that she has lived in the neighborhood for 12 years and that she believed that most of the neighbors suffer from the same hardship as the applicants. Ms. Holbeck stated that she believed that the granting of this variance would set an undesirable precedent.

Fred Daniels, 1616 Seneca Lane, McLean, Virginia, came forward and asked that the Board defer action on this application until such time as the Tysons Corner Task Force can submit a report.

Andrew H. Brown, Jr., 1604 LaSalle Avenue, McLean, Virginia, stated that his house sits on two lots and that he owns four lots in the neighborhood and that he would like to see the area stay as it is now. He agreed with the other speakers request for the deferral.

During rebuttal, Mr. Barnes stated that many of the neighbors have been trying to sell the property for five years but since nothing was happening he decided to proceed on his own. He added that to combine the two lots would not be economically feasible.

In response to a question from Mr. Hammack with respect to Lots 230 and 231, Mr. Barnes replied that he knew nothing about those two lots as he did not own them.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant-in-part the request for the reasons noted in the Resolution subject to the development conditions contained in the staff report dated February 17, 1990.

The Board explained to the applicant that he would have to submit new plats conforming with the granting before the Resolution could be released. The applicant indicated that he understood.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 89-P-157 by HAMPTON B. AND MARINDA BARNES, under Section 18-401 of the Zoning Ordinance to allow construction of a dwelling 12.0 feet from one side lot and 8.0 feet **(THE BOARD ALLOWED CONSTRUCTION OF DWELLING TO 12.0 FEET FROM BOTH SIDE LOT LINES)** from the other side lot line, on property located at 1773 Chain Bridge Road, Tax Map Reference 30-3((2))233, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 17, 1990; and

WHEREAS, the Board has made the following findings of fact:

1. That the applicants are the owners of the land.
2. The present zoning is R-1 and HC.
3. The area of the lot is 7,000 square feet of land.
4. The subject property has exceptional narrowness.
5. If the variance is denied, the applicant could construct only a 10.0 foot wide house which is not practical and would preclude the use of the land.
6. The lot is a buildable lot and grandfathered.
7. The variance is too great for the width of the lot as it is a substandard lot but will allow the applicant to construct within 12.0 feet from both side 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;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location of the specific dwelling shown on the plat included with this application and is not transferable to other land.

2. Under Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, twenty-four (24) months after the approval date* of the variance unless construction has started and is diligently pursued, or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of approval. A request for additional time must be justifies in writing and shall be filed with the Zoning Administrator prior to the expiration date.

3. A Building Permit shall be obtained prior to any construction.

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0 with Mrs. Harris and Mr. Kelley not present for the vote; Chairman Smith absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 445, May 17, 1990, (Tape 3), After Agenda Item:

Robert L. Potterfield III and Sandra S. Potterfield VC 90-S-016
Reconsideration

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the applicants in VC 90-S-016 was requesting that the Board reconsider its action of May 8, 1990 to deny their requests. She stated that since the eight day waiting period had passed it precluded the Board from granting the reconsideration.

Ms. Potterfield explained that she had submitted the request for reconsideration two days after the hearing.

A discussion took place among the Board members regarding the eight day reconsideration policy and the waiver of the twelve month limitation. Vice Chairman DiGiulian suggested that an amendment was in order. The other Board members agreed.

Mr. Ribble made a motion to deny the request for reconsideration. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. Kelley not present for the vote; Chairman Smith was absent from the meeting. Vice Chairman DiGiulian asked the applicant if she would like to request a waiver of the twelve month limitation and Ms. Potterfield indicated that she would not.

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Page 445, May 17, 1990, (Tape 3), After Agenda Item:

Approval of May 8, 1990 Resolutions

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. Kelley not present for the vote; Chairman Smith was absent from the meeting.

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Page 445, May 17, 1990, (Tape 3), After Agenda Item:

Wolftrap Meadows Appeal, A 89-D-018

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that A 89-D-018 was scheduled for 9:00 a.m. on May 22, 1990 and the appellant had requested a deferral.

Mrs. Thonen made a motion that the Board issue an intent to defer for approximately sixty days in order to allow the appellant and citizens time to try and resolve the appeal. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mr. Kelley not present for the vote; Chairman Smith was absent from the meeting.

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Page 445, May 17, 1990, (Tape 3), After Agenda Item:

Robert C. Arledge Appeal A 89-D-012

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the appellant had requested a withdrawal of A 89-D-012. She stated that the Board could either issue an intent to defer or withdraw the appeal and direct staff to remove it from the agenda.

Vice Chairman DiGiulian suggested removing the case from the agenda and hearing no objection the Chair so ordered.

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As there was no other business to come before the Board, the meeting was adjourned at 1:15 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

Daniel Smith, Chairman
Board of Zoning Appeals

SUBMITTED: June 12, 1990

APPROVED: June 21, 1990