The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on May 22, 1990. The following Board Members were present: Vice Chairman John DiGuilian; Mary Thonen; Martha Harris; John Ribble; Robert Kelley; and Paul Hammack. Chairman Daniel Smith was absent from the meeting.

Vice Chairman DiGuilian called the meeting to order at 9:10 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.

At Mr. Hammack's suggestion, since there was a request for deferral of the first scheduled case, the Board decided to consider the After Agenda Items at this time.

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Page 1, May 22, 1990 (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
Crossroads Baptist Church, SP 90-M-036

Mr. Hammack requested advice from staff on whether the request to hear this case two weeks earlier would create a problem. Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Board of the heavy caseload and deadlines to be met between now and the August recess. Further, Ms. Kelsey stated, several planned BZA meeting dates had to be cancelled because she had just now received word that the Board of Supervisors decided to meet on those dates, necessitating adjustments in the already heavy schedule.

A conversation ensued during which Ms. Kelsey attempted to project the contemplated changes in the schedule.

Mrs. Thonen made a motion to deny the request. Mrs. Harris seconded the motion which failed by a vote of 3-3; Mr. Ribble, Mr. Kelley and Mr. Hammack voted nay. Chairman Smith was absent from the meeting.

Mr. Hammack asked the applicant's agent to come forward and address the request for the out-of-turn hearing. Arline L. Pripeton, Attorney for Crossroads Baptist Church, 10195 Main Street, Fairfax, Virginia, stated the applicant's contract to purchase the property had a contingency dependent upon them securing the Special Permit within 120 days of the contract. The contract was entered into on March 10, 1990, and it took their engineer and architect approximately a month to get their work done; their contract runs out July 10.

Mr. Ribble asked if the applicant could get an extension of the contract. Ms. Pripeton stated they could get a short extension but could not get an extension to July 31st.

Ms. Pripeton pursued the possibility of simultaneous processing of the site plan and the special permit and Mr. DiGuilian informed her that the Board of Zoning Appeals was not empowered to do that. Ms. Kelsey stated that only the Board of Supervisors could approve the simultaneous processing.

In view of the facts discussed, Mr. Hammack made a motion to grant an out-of-turn hearing for SP 90-M-036, to be heard on July 10, 1990. Mr. Ribble seconded the motion, which carried by a vote of 5-1; Mrs. Thonen voted nay. Chairman Smith was absent from the meeting.

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Page 1, May 22, 1990 (Tape 1), After Agenda Item:

Approval of May 17, 1990 Resolutions

Mr. Hammack made a motion to approve the resolutions as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 1, May 22, 1990 (Tape 1), After Agenda Item:

Approval of April 10 and April 19, 1990 Minutes

Mr. Hammack made a motion to approve the minutes as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 1, May 22, 1990 (Tape 1), Information Items:

The Board discussed the Information Items consisting of a memo from the Zoning Administrator regarding A 90-SO-005, Carter v. Boehm; additional time request for SPA 80-M-078-2, St. Gabriel's Day Care Cener; and additional time request for VC 88-M-161, W.C. Wills Subdivision.

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Page 2, May 22, 1990 (Tape 1), Scheduled case of:

9:00 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. (DEF. FROM 3/13/90 AT APPLICANT'S REQUEST)

Vice Chairman DiGuilian advised the Board that a letter had been received from the applicant requesting deferral of this appeal.

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the Board that the previous week the Board had passed a motion of "intent to defer." She stated that the appellant, the developer and the County have all agreed to a deferral until September.

Mr. Hammack made a motion to schedule A 89-D-110 to be heard September 20, 1990 at 9:00 a.m. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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The Board took a short recess and returned to hear the case scheduled for 9:30 a.m.

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Page 2, May 22, 1990 (Tape 1), Scheduled case of:

9:30 A.M. MARLO G. ACOCK, VC 90-C-027, application under Sect. 18-401 of the Zoning Ordinance to allow construction of detached storage shed 5.0 feet from side lot line and 5.0 from rear lot line (20 ft. min. side yard required by Sect. 3-107 and 13 ft. min. rear yard required by Sect. 10-104), on property located at 3122 West Ox Road, on approximately 1.271 acres of land, zoned R-1, Centreville District, Tax Map 35-2((1))47.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Acock replied that it was. Vice Chairman DiGuilian 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, introduced a new Staff Coordinator, Mike Jaskiewicz, to the Board. The Board welcomed Mr. Jaskiewicz.

Mr. Jaskiewicz presented the staff report.

Marlo G. Acock, 3122 West Ox Road, Herndon, Virginia, again stepped forward and presented his justification for this request. He stated that there is presently a termite-ridden building on the site which he would like to replace. The new structure would be used for storage purposes.

During the discussion of this request, several of the Board Members stated they believed the size of the proposed structure was excessive and that it did not need to be so large. Locating the proposed structure in another area was also discussed.

Vice Chairman DiGuilian asked if there was anyone to speak for or against the application. Since there were no speakers, the public hearing was closed.

For the reasons outlined in the Resolution, Mr. Hammack made a motion to deny application VC 90-C-027. Mrs. Harris seconded the motion, which carried by a vote of 4-2; Mr. Kelley and Mr. Ribble voted nay. Chairman Smith was absent from the meeting.

Mr. Kelley apprised the applicant of the possibility of securing a waiver of the twelve-month limitation on refiling.

Mr. Acock inquired about what changes in his application would be necessary in order for him to comply with the Zoning Ordinance. Jane Kelsey, Chief, Special Permit and Variance Branch, clarified the requirements for an accessory structure to meet the Zoning Ordinance. She stated 600 square feet would require prior approval of the Zoning Administrator, as a rule of thumb. Ms. Kelsey, however, gave an example of a structure of only 150 square feet in size. Although it would not need a building permit insofar as the square footage, if the height was in excess of 8.5 feet, it would still need to meet the requirments of the Zoning Ordinance, specifically Sect. 10-104 which specifies requirements of accessory structures.

Mr. Kelley made a motion to waive the twelve-month limitation on refiling. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Chairman Smith was 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-C-027 by MARLO G. ACOCK, under Section 18-401 of the Zoning Ordinance to allow construction of detached storage shed 5.0 feet from side lot line and 5.0 feet from rear lot line, on property located at 3122 West Ox Road, Tax Map Reference 35-2((1))47, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 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 1.271 acres of land.
4. The applicant has not satisfied the nine (9) required standards for variances in Section 18-404. In particular, the structure is too large to place in the corner of the site, notwithstanding the fact that the neighbors have no objections.
5. The applicant requires maximum variances to fit the structure into the proposed location.
6. There are other locations on the site which appear to be possible locations which do not require variances.
7. Under existing guidelines, variances are not supposed to be granted simply for convenience, and this request falls into that category.

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 4-2; Mr. Kelley and Mr. Ribble voted nay. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 1990.

Mr. Kelley made a motion to grant a waiver of the twelve-month limitation on refiling. Mr. Ribble seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 4, May 22, 1990 (Tape 1), Scheduled case of:

9:45 A.M. ALICE UTTERBACK, VC 90-D-025, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into three (3) lots with proposed Lots 2 and 3 each having a lot width of 9 feet (150 ft. min. lot width required by Sect. 3-107), on property located at 11007 Georgetown Pike, on approximately 5.53685 acres of land, zoned R-1, Dranesville District, Tax Map 12-1((1))12.

Lynne Strobel with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th floor, Arlington, Virginia, came forward to represent the applicant.

Vice Chairman DiGuilian asked if the revised affidavit before the Board was complete and accurate. Ms. Strobel 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.

Mrs. Harris asked Mr. Reigle whether there was a standard about how far two driveways needed to be apart from each other because of the sight distance. Mr. Reigle stated that the request was reviewed by the Office of Transportation and they did not cite that as an issue. He stated that issue was within the purview of the Office of Transportation or the Virginia Department of Transportation.

Ms. Strobel explained that she was filling in for Keith Martin who, for personal reasons, could not be there. Ms. Strobel recited the information contained in the statement of justification. She stated that the engineer involved in this project and Mrs. Utterback, the owner of the property, were also present.

Mrs. Thonen querried Ms. Strobel regarding the presence of the stand of beautiful trees in the pictures submitted, and whether they would be allowed to remain if the pipestem was allowed. Ms. Strobel said they would, and added that a great number of trees would have to be taken down if the pipestem was not allowed.

Vice Chairman DiGuilian asked Ms. Strobel to confirm that the existing driveway would be used for access to the three lots, which she did.

Vice Chairman DiGuilian asked if there was anyone else to speak in favor of the application and Alice Utterback, owner of the property, came forward. She stated the reason they were "trying to go this route" was because of the trees.
Mrs. Utterback went on to explain why she was requesting this variance. She pointed out that she was trying to preserve the character of the neighborhood.

Vivian Lyons, Vice President of the Great Falls Citizens Association, came forward to state that the Association does support the variance because it would cause less impact on the area than other possible options.

Since there were no other speakers, Vice Chairman DiGuilian closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-D-025 for the reasons outlined in the Resolution, and with the addition of development condition number 7: "Purchasers of Lots 2 and 3 shall be granted an access easement permitting them to use the existing driveway to access their lots".

Mrs. Harris stated that she thought the Board should be very careful about Lots 18, 14, 6, etc., which are very similar and could also be easily developed with pipestems. She expressed concern about having multiple pipestems on a road, and could not support the motion because of this.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-025 by ALICE UTTERBACK, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into three (3) lots with proposed Lots 2 and 3 each having a lot width of 9 feet, on property located at 11007 Georgetown Pike, Tax Map Reference 12-1((1))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 May 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 5.53685 acres of land.
4. Anytime you can do as little disruption of a neighborhood as possible, it's good.
5. The trees are one of the best things to have with the BMP's that are requested here as far as the Occoquan and such things go.
6. It is a good layout.
7. Using the pipestem will definitely not impact as much as putting in a public road.
8. This is a long and narrow lot and the intensity would be less if it is developed this way.

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

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

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

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

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

1. This variance is approved for the subdivision of the existing lot into three (3) lots as shown on the plat drawn by Gordon and Associates, dated February 26, 1990) 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. 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.

4. The underground storage tank associated with the existing gas pump shall conform to requirements established by Chapter 62 of the Fairfax County Code.

5. If determined necessary by the Department of Environmental Management (DEM) a geotechnical study shall be provided to ensure that the location of additional dwellings on the site will not negatively impact drainage patterns.

6. Stormwater Best Management Practices (BMP's) in the form of infiltration trenches and vegetative swales shall be provided in conjunction with the development of Lots 2 and 3 as determined necessary by DEM.

7. Purchasers of Lots 2 and 3 shall be granted an access easement permitting them to use the existing driveway to access their lots.

Mr. Ribble seconded the motion. The motion carried by a vote of 5-1; Mrs. Harris voted nay. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 6, May 22, 1990 (Tape 1), Scheduled case of:

10:00 A.M. RICHARD A. AND MARIE T. ZYVOLOSKI, SP 90-M-016, application under Sect. 8-901 of the Zoning Ordinance to allow a reduction to minimum yard requirements based on error in building location to allow a garage to remain 24.5 feet from a street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), on property located at 3116 Olin Drive, on approximately 11,410 square feet of land, zoned R-3, Mason District, Tax Map 51-4((2))(F)9. (TO BE HEARD CONCURRENT WITH VC 90-M-024)

10:00 A.M. RICHARD A. AND MARIE T. ZYVOLOSKI, VC 90-M-024, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a second story addition 24.5 feet from a street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), on property located at 3116 Olin Drive, on approximately 11,410 square feet of land, zoned R-3, Mason District, Tax Map 51-4((2))(F)9. (TO BE HEARD CONCURRENT WITH SP 90-M-016)

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Richard A. Zyvolosky, 3116 Olin Drive, Falls Church, Virginia, 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.

Mrs. Harris asked when the house was built and the applicant replied that it had been built in 1941, on the same site where it now stands.

Mr. Zyvolosky presented his statement of justification.

Mrs. Harris asked the applicant what kind of construction he was planning to use.

Mr. Zyvolosky replied he was planning to use Tudor type construction, picking the primary colors of the stones to blend in with the existing materials.

There were no speakers, so Vice Chairman DiGuilian closed the public hearing.

Mrs. Harris made a motion to grant SP 90-M-016 for the reasons outlined 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-M-016 by RICHARD A. AND MARIE T. ZYVOLOSKI, under Section 8-901 of the Zoning Ordinance to allow a reduction to minimum yard requirements based on error in building location to allow a garage to remain 24.5 feet from a street line of a corner lot, on property located at 3116 Olin Drive, Tax Map Reference 51-4((2))(F)9, 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 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.

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

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

Mr. Ribble seconded the motion.

The motion carried by a vote of 5-0. Mr. Kelley was not present for the vote and Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 1990. This date shall be deemed to be the final approval date of this special permit.

Mrs. Harris made a motion to grant VC 9-M-024 for the reasons outlined 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-024 by RICHARD A. AND MARIE T. ZYVOLOSKI, under Section 18-401 of the Zoning Ordinance to allow construction of a second story addition 24.5 feet from a street line of a corner lot, on property located at 3116 Olin Drive, Tax Map Reference 51-4((2))(F)9, 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 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 11,410 square feet of land.
4. The property presents an extraordinary situation or condition in that the applicant is simply going to construct a second story on top of the garage/den.
5. The footprint will not be increased.
6. The dwelling has been there for 50 years, so it will not be detrimental to the neighboring properties.
7. Requiring the applicant to conform to the setback requirement would cause a hardship by having the existing structure with a larger base and then have the new construction go in from that base, which would also not be visually acceptable.

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

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

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

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

Mr. Ribble seconded the motion. The motion carried by a vote of 5-0; Mr. Kelley was not present for the vote and Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 30, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 9, May 22, 1990 (Tape 1), INFORMATION ITEM:

At approximately 10:20 a.m. the Board recessed until the next scheduled case was due to be heard at 11:00 a.m.

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Page 9, May 22, 1990 (Tape 1), Scheduled case of:

11:00 A.M. DAVID C. BUCKIS APPEAL, A 90-C-003, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that Special Permit, SP 86-C-021, to allow the operation of a home professional dental office has expired, on property located at 3238 West Ox Road, on approximately 2.0010 acres of land, zoned R-1, Centreville District, Tax Map 35-4((1))35B.

Vice Chairman DiGuilian advised the Board that he had a note stating that the notices were not in order.

John B. Connor, with the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, 8280 Greensboro Drive, McLean, Virginia, came forward to represent the applicant. He stated he had not received the notice package dated April 6, 1990, a copy of which was provided to him at this time by the Clerk. Mr. Connor requested that this appeal be rescheduled to the earliest possible time.

Mrs. Thonen asked Mr. Conner if he had not received any telephone calls from the staff about the notices. Mr. Connor stated that he had received a call from Mrs. Bepko, Deputy Clerk, a couple of weeks ago but he had not returned the call. He stated that he thought his contact with Mr. Shoup sufficed. Mrs. Thonen stated that he has been doing this for so long, he should have known that Mr. Shoup had nothing to do with sending notices and that notices were required in all such cases.

Mr. Hammack made a motion to defer A 90-C-003 until June 12, 1990, at 11:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0; Mr. Kelley was not present for the vote. Chairman Smith was absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked that Mrs. Bepko, Deputy Clerk, present the new notice package to Mr. Connor, for the record. This was formally done.

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Page 9, May 22, 1990 (Tape 1) Information Item:

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

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

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

SUBMITTED: July 26, 1990

APPROVED: July 31, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, May 29, 1990. The following Board Members were present: Vice Chairman DiGiulian; Martha Harris; Mary Thonen; and John Ribble. Chairman Daniel Smith; Paul Hammack; and Robert Kelley were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:25 a.m. and Mrs. Thonen gave the invocation. There were no Board matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 11, May 29, 1990 (Tape 1), Scheduled case of:

9:00 A.M. NORTHERN VIRGINIA ELECTRIC COOPERATIVE, SP 90-S-011, application under Sect. 8-901 of the Zoning Ordinance to waive the dustless surface requirement for proposed electric substation, on property located at 12700 Popes Head Road, on approximately 5.029 acres of land, zoned R-C and WS, Springfield District, Tax Map 66-4((3))1. (CONCURRENT WITH SE 89-S-072)

The agent for the applicant, Scott H. Bonner, 10323 Lomond Drive, P.O. Box 2710, Manassas, Virginia, addressed the Board and asked that SP 90-S-011 be deferred to June 12, 1990 at 11:30 a.m. as discussed with staff. This will allow the Planning Commission to hear SE 89-S-072.

Mrs. Thonen made a motion to defer SP 90-S-011 to June 12, 1990 at 11:30 a.m. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Chairman Smith, Mr. Hammack, and Mr. Kelley absent from the meeting.

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Page 11, May 29, 1990 (Tape 1), Scheduled case of:

9:15 A.M. COSCAN WASHINGTON, INC., SPA 89-S-006, application under Sect. 3-203 of the Zoning Ordinance to amend SP 89-S-006 for a community swimming pool and to modify previously imposed conditions by allowing an increase in membership, a modification of the transitional screening and barrier, and reconfiguration of deck/pool and parking area, on property located east of Blythewood Drive on Ashleigh Road, on approximately 2.65 acres of land, zoned R-2 and WSPOD, Springfield District, Tax Map 66-2((5))U1.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mahaffee confirmed that it was. Vice Chairman he 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 stated the applicant was requesting approval of an amendment to an existing Special Permit. Ms. Bettard said that while supportive of the request, staff did not support a waiver for the barrier on the eastern portion of the property or a waiver of the transitional screening on the north. She explained that due to the location of the residential dwellings on the northern portion of the property and the fact that single family dwellings are planned for the eastern portion of the property, staff believes these areas should be protected by a barrier and transitional screening. Ms. Bettard stated that staff recommended approval of the application in conjunction with the development conditions contained in the staff report. She noted that the Board had been given a revised copy of the affidavit and a revised copy of Appendix 8 of the Staff Report. Ms. Bettard stated that the rezoning number on line 3, page 2, of Appendix 8 of the staff report should read "RZ 78-S-119".

The agent for the applicant, Michael Mahaffee, 11211 Waples Mill Road, Fairfax, Virginia, senior architect with the firm of Greenhorn and O'Mara, addressed the Board and said that the applicant agreed to the development conditions, but asked that the words "on site" be deleted from Condition 16. He explained that the pool is part of a community in which storm water management ponds are provided in areas other than the pool site and the words "on site" might be misleading. He stated that the modifications to the transitional screening are being requested on the northern portion of the site because there would be no purpose in screening open space from open space. He noted that the landscape planting plan shows the existing vegetation in the area of transitional screening as well as the existing vegetation in the open spaces off the site. He explained that the requirement for a 6 foot wood fence barrier along the east side would create a situation where the pool fence and the barrier fence would be built side by side. Mr. Mahaffee said that the project is presently under construction and that although there has been some plantings, the applicant does understand that the transitional screening requirements have not been met.

Mrs. Thonen stated that although the adjoining property has not yet been developed, she is concerned about waiving the transitional screening on the eastern side of the site. She stated that in some of the other areas she believes supplemental landscaping would be sufficient.

Mr. Mahaffee addressed Condition 13 and explained that the area has already been graded and asked that line 2 be modified to state "Transitional Screening area where existing vegetation is to be preserved". He explained that the condition, as presently worded, would limit construction grading in the area.

Mr. Mahaffee asked that the 6 foot wooden fence be allowed to suffice when both the wooden and chain link fence are required in the same area.

There being no speakers to address the application, Vice Chairman DiGiulian closed the public hearing.

Lori Greenlief, Staff Coordinator, replied to Mr. Ribble's question on swimming pool hours by stating that the hours are reviewed on a case to case basis. She explained that the pool is only allowed to open at 8:00 a.m. for swim team practice.

The Board discussed their policy and decided that the swimming pool should not be opened until 9:00 a.m.

Mrs. Thonen made a motion to grant-in-part SPA 89-S-006-1 subject to the development conditions contained in the staff report dated May 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

GRANTED-IN-PART

In Special Permit Amendment Application SPA 89-S-006-1 by COSCAN WASHINGTON, INC., under Section 3-203 of the Zoning Ordinance to amend SP 89-S-006 for a community swimming pool and to modify previously imposed conditions by allowing an increase in membership, a modification of the transitional screening and barrier, and reconfiguration of deck/pool and parking area, **(THE BOARD DID NOT GRANT A MODIFICATION OF THE TRANSITIONAL SCREENING AND BARRIER)** on property located east of Blythewood Drive on Ashleigh Road, Tax Map Reference 66-2((5))U1, 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 29, 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 WSPOD.
3. The area of the lot is 2.65 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-IN-PART** with the following limitations:

1. This approval is granted to the applicant only. However, upon conveyance of the property to the Hampton Chase 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 drawn by Greenhorne and O'Mara, Inc., April 24, 1990 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:

   Community Room - 9:00 a.m. to 12:00 a.m.
   Swimming Pool - 9:00 a.m. to 11:00 a.m. for swim team and swimming lessons, 11:00 a.m. to 8:00 p.m. for general pool hours with permission for after-hours parties as follows:

a. limited to six (6) per season
b. limited to Friday, Saturday and pre-holiday evenings.
c. shall not exceed beyond 12:00 midnight
d. 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 one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after hour party.

6. The maximum number of employees on the premises at any one time shall be five (5).

7. The maximum family memberships shall be limited to five hundred and fifty-four (554) families. All eleven sections in the Hampton Forest Subdivision shall be offered annual right of first refusal prior to offering annual membership to anyone other than Hampton Forest residents.

8. A minimum of fifty-five (55) and a maximum of fifty-seven (57) parking spaces shall be provided. All parking for this use shall be on-site.

9. Transitional Screening 1 and Barrier D, E, or F shall be provided along the northern, western and eastern lot lines. Existing vegetation shall be used to fulfill the screening requirement, and supplemental coniferous plantings shall be provided where necessary to fulfill the requirements of Transitional Screening 1 as determined by the County Arborist. A modification of the screening and barrier requirements shall be granted along the southern lot line to allow landscape plantings.

10. The type, quantity, size and location of all plantings shall be reviewed and approved by the County Arborist. An evergreen hedge four feet in planted height, shall be located within this landscaped area on the southern lot line. The purpose of this hedge is to screen the parking and to mitigate any adverse visual impact of the recreation center.

11. The barrier requirement shall be waived on the northern, southern, and western lot lines. A solid, six foot wooden fence shall be provided on the eastern lot line to fulfill the barrier requirement.

12. Foundation plantings shall be provided around the existing community clubhouse to soften the visual impact of the structure and to ensure compatibility with the residential area. The type, quantity, size and location of these plantings shall be approved by the county Arborist.

13. The limits of clearing and grading where existing vegetation is to be preserved shall not encroach on the Transitional Screening area and shall be limited to that which is indicated on the Special Permit Plat. 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. Where the Transitional Screening area contains existing vegetation, the limits of clearing and grading shall preserve these areas.

14. If lights are provided for the 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 for the pool and parking lot.

    The lights shall be focused directly on the facility.

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

15. Pool water shall be treated to achieve a pH of 7 or as close as possible to the receiving stream and a minimum dissolved oxygen content of 4.0 milligrams per liter prior to being discharged into the natural drainage system. Also, if pool water is discolored or cloudy, it should be allowed to stand until most of the solids settle out and the water is relatively clear prior to being discharged.

16. Best Management Practices (BMP's) shall be provided to the satisfaction of DEM in accordance with the provisions of the Water Supply Protection Overlay district (WSPOD) of the Zoning Ordinance.

17. Swim meets shall not be conducted during times when the community room is being used for other activities so as to eliminate the need for off-street parking. All parking shall be on-site.

18. The use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code and shall not be waived. There shall be no loudspeakers, bullhorns, or whistles used prior to 9:00 a.m. or after 9:00 p.m.

19. Interior parking lot landscaping shall be provided in accordance with Article 13.

20. Construction of the entrance ingress/egress shall be provided in accordance with VDOT standards.

21. In order to meet the intent of Proffer #6 in RZ 79-S-119, a tree preservation plan shall be submitted for approval by the County Arborist that preserves specimen trees on the site to the greatest extent possible. If the preservation plan and the plat conflict, the applicant shall amend the special permit.

22. A soil survey shall be completed prior to pool construction if determined necessary by the Director, Department of Environmental Management. If high water table soils resulting from uncompacted fill, resource removal or any other circumstances result 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.

23. There shall be a maximum of two (2) handicapped parking spaces included in the fifty-seven (57) parking spaces shown on the submitted plat.

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 Chairman Smith, Mr. Hammack, 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 June 6, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 14, May 29, 1990 (Tape 1), Scheduled case of:

9:30 A.M. ROSS F. ROGERS AND JANE A. ROGERS, VC 90-D-028, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with Lot 2 having a lot width of 40 feet (200 ft. min. lot width required by Sect. 3-E06), on property located at 1426 Crowell Road, on approximately 6.5220 acres of land, zoned R-E, Dranesville District, Tax Map 18-2((3))4.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Rogers confirmed 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 stated that density of the development proposed for the property is within the general land use and density guidelines established for the area in the Comprehensive Plan. However, staff is concerned with the use of pipestem lots as a method of achieving that density and with the possible precedent that may be set for development by variance in this area. She explained that there are several large irregular shaped lots in the area currently served by outlet roads. Ms. Greenlief said that in 1978 there was a variance granted to the south of the property to subdivide a single lot into 3 lots, and another variance granted in 1978 on Lots 2a and 3a to the north of the subject property was granted but never implemented.

Ross F. Rogers, 1426 Crowell Road, Vienna, Virginia, addressed the Board and stated that he had purchased the property approximately 29 years ago with the intention of subdividing the property at a later date. He said that the application submitted to County about 3 years ago was lost so the application was resubmitted on February 6, 1989. He further explained that this application was also lost but that in May 1989, it was located in the County Library.

Being assured that the application was in good order and would be approved shortly, his son sold his house, arranged financing, and hired a contractor. Mr. Rogers explained that on May 19, 1989, he received a new request from the County asking him to prepare plans and specifications regarding stormwater containment and a fee of $500.00, all of which was submitted on June 9, 1989.

Mr. Rogers explained that he was never informed of the July 1, 1989 deadline revising the requirement for frontage to 200 feet and in mid July the County ask for $1,100 to install a stormwater containment downstream. He stated that he had also complied with this request and paid the money. Since both checks were cashed by the County, he assumed that the application was acceptable. On September 25, 1989, he was told that the application was disapproved because of the July 1, 1989 deadline. After many conversations with County staff members, Mr. Rogers stated that in January 1990, he received a letter from Irving Birmingham, Director, Department of Environmental Management, stating that a variance would be needed. He said he believed the shape of the lot constituted a hardship.

Mrs. Thonen stated that she believes that the lack of frontage and the long narrow shape of the lot presented a hardship of land.

Mr. Rogers explained that the lack of frontage and the shape of the lot did not present a problem because pipestems had been authorized until July 1, 1989. (Mr. Rogers is alluding to a State Code concerning the provision allowing a subdivision with the requirement to be regulated by the County Subdivision Ordinance which was amended effective July 1, 1989.)

The Board asked Tom Basham, an engineer with Basham Associates, 8805 Sudley Road, Suite 102, Manassas, Virginia, to come to the podium. He explained that when the engineer working with Mr. Rogers on the subdivision of the land died, he was asked to take over. Mr. Basham stated that when the County could not find the original application, a new one was submitted in February 1989 and a waiver for stormwater detention was requested. After four or five weeks, he was informed that the application was accepted and would be processed as soon as the detention waiver was issued. When he did not hear from the County, he made many inquiries and in May 1989 was told that a new policy requires that a plan for a pond together with a set fee be submitted. Again, there was a six week delay before he was told more money would be required. *Mr. Basham stated that he was never informed about the Board of Supervisors' (BOS) Ordinance to effect a change to the gift lot subdivision. In September 1989, the County requested more money and Mr. Rogers again paid the fee. It was in late September 1989 that the applicant received a letter informing them of the BOS decision that when a gift lot subdivision is created all the lots created by the gift lot must meet all requirements of the Zoning Ordinance. Since Mr. Rogers' lot would not have a 200 foot frontage on the State maintained road, the application was refused. (*Added for clarification purposes. The speaker inadvertently referred to the Board of Supervisors when it was the State Code which was amended.)

In response to Mrs. Harris' question, Mr. Basham stated that the extreme narrowness of the property and the lot being created with such shallow frontage created a hardship.

There being no speakers in support of the request, Vice Chairman DiGiulian called for speakers in opposition.

Olwen Woodier-Busch, 1432 Crowell Road, Vienna, Virginia, addressed the Board and stated that she did not object to the subdivision of the lot but did object to dual entrances on the property because of the narrowness of the road.

Mr. Rogers spoke in rebuttal and said that limiting the property to one driveway would create further expense and would also mean that many trees would have to be removed.

Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 90-D-028 for the reason noted in the Resolution and subject to the development conditions contained the staff report dated May 22, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-028 by ROSS F. and JANE A. ROGERS, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with Lot 2 having a lot width of 40 feet, on property located at 1426 Crowell Road, Tax Map Reference 18-2((3))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 May 29, 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 6.5220 acres of land.
4. The applicant has met the nine standards required for a variance.
5. The lot is exceptionally narrow.
6. The gift lot provision expired on the applicant.
7. Lots 3A and 3B are completely different from the subject property and variances may not be warranted on those lots.

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

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

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

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

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

1. This variance is approved for the subdivision of the existing lot into two (2) lots as shown on the plat drawn by Basham Associates, dated February 19, 1990 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 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. 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.

4. Only one entrance shall be allowed to the two lots from Crowell Road. The driveway easements shall be recorded with the deeds to the properties to ensure future access to the lots via a common driveway.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack, 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 June 6, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 17, May 29, 1990 (Tape 1), Scheduled case of:

9:45 A.M. CONGREGATION BETH EMETH, SPA 84-C-008-3, application under Sect. 3-103 and 8-901 of the Zoning Ordinance to amend SP 84-C-008 for a synagogue and related facilities to allow nursery school, increase in the number of parking spaces, and waiver of the dustless surface requirement, on property located at 12523 Lawyers Road, on approximately 5.20 acres of land, zoned R-1, Centreville District, Tax Map 35-2((1))15A.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Travesky 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 and said that the applicant would like to amend the current special permit by adding a nursery school for 50 student, 10 parking spaces, and to request a waiver of the dustless surface requirement. She stated that staff supported the request and recommended approval subject to the Revised Development Conditions dated May 25, 1990.

In response to the Boards' question about the gravel outlet road near the play area, Ms. Travesky stated that the road had to be vacated when the special permit was granted. She further explained that the neighbor, Barbara Versage, does not share the access road but shares the major road as required by the County.

Ms. James explained that Condition 6 was revised to reflect the hours of operation for the nursery school only and Condition 15 was revised to include a requirement for a left turn lane. She said that the revisions were made to accommodate instructional classes held by the synagogue during the weekday peak traffic period. Ms. James told the Board that Angela Rodeheaver, Office of Transportation, was present to answer question relating to the transportation issues.

The applicant's agent, Marie Travesky of Travesky and Associates, Ltd., 3900 Jermantown Road, Suite 350, Fairfax, Virginia, addressed the Board and said that the applicant would like to add a nursery school with a maximum enrollment to the uses of an existing synagogue. She explained that car pooling was encouraged and that left turns entering and exiting the property would be prohibited. Ms. Travesky stated that the adjacent property owners were invited to a meeting to discuss issues of concern and since no one attended the meeting the applicant has been under the impression that the neighbors have no objections. She explained that she had discussed the request with the owner of Lot 4 who did not object to the nursery school. Ms. Travesky said that the applicant's lot slopes downward and the 30 foot tall synagogue is situated 4 feet above the lowest point. Although the neighboring lot has similar terrain, the houses are so large that the screening leaves the top floor exposed. She showed slides of the property and explained that the landscaping exceeds the County requirements for screening.

Mrs. Thonen asked about the letter received from Dr. Florian Deltgen, 12417 Macao Court, Herndon, Virginia, regarding parking. Ms. Travesky explained that the parking would not be moved any closer to the property line.

The President of the Congregation, Jay Myerson, 12523 Lawyers Road, Herndon, Virginia, addressed the Board and explained that when he became aware of the concerns expressed by Mr. Deltgen he tried to contact him. He left many messages on the answering machine, but the calls were never returned. He said that an electrician has redirected the lighting and when he received no further communication from Mr. Deltgen, he assumed that the problem had been resolved. He told the Board that he would be willing to install shields.

Ms. Travesky addressed Condition 15 and said the applicant has already dedicated the 57 foot right-of-way and said that the ancillary easement would be a temporary easement for construction. She explained to the Board that the applicant believes that a left turn lane requirement should be deleted. In May 1990 at a hearing on the reconstruction of Lawyers Road, Virginia Department of Transportation (VDOT) said that they were in the process of acquiring right-of-way and construction has been advertised for June 1991. Ms. Travesky stated that she believes there is no justification in building the left turn lane which would be in existence for less than a year. She explained that the applicant has very strict requirements on the way the congregation enters and leaves the property.

In response to Mrs. Harris' question, Ms. Travesky said that the property has a circular driveway with the ability to stack cars if necessary. She further explained that when a car drives in to pick-up a student, a staff member who is stationed outside by the driveway uses a walky-talky to communicate the information to the classroom.

Ms. Travesky said that the applicant has agreed to provide a wooden fence along Lot 14 and also to provide shrubbery along the east side; however, she asked that the southern perimeter be left clear to allow visibility to the play area. She explained that there are two temporary sides to the building, which is where they propose to expand in the future, and asked that the landscaping be limited to shrubbery along the very end of the building so that the lights are shielded.

Vice Chairman DiGiulian called for speakers in support of the application and members of the synagogue stood to acknowledge their support.

There being no further speakers in support, and no speakers in opposition, Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SPA 84-C-008-3 subject to the development conditions contained in the staff report dated May 22, 1990 with the revision dated May 25, 1990 and with the changes as reflected in the Resolution.

In response to Mr. Ribble's request, Mr. Myerson assured the Board that the applicant would address the concerns expressed by the neighbors.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 84-C-008-3 by CONGREGATION BETH EMETH, under Section 3-103 and 8-901 of the Zoning Ordinance to amend SP 84-C-008 for a synagogue and related facilities to allow nursery school, increase in number of parking spaces, and waiver of the dustless surface requirement, on property located at 12523 Lawyers Road, Tax Map Reference 35-2((1))15A, 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 29, 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 5.20 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, 8-305, 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 prepared by William L. Matthews, dated March 30, 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 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 nursery school shall be limited to a total daily enrollment of fifty (50) children. There shall be no more than twenty-four (24) children in the building for the nursery school use on any one day.

6. The hours of operation for the nursery school shall be limited to 9:15 am to 1:15 pm, Monday through Friday.

7. The maximum seating capacity shall be limited to a total of 200.

8. Transitional Screening 1 shall be provided along all lot lines with the following modifications:

   - Building Foundation planting shall be planted around the building and additional plantings shall be planted along the front lot line to soften the visual impact of the building.

   - The amount, type and location of the plantings shall be to the satisfaction and approval of the County Arborist.

9. A five foot wide staggered transitional buffer strip shall be planted around the entire perimeter of the play area except on the south side subject to review and approval of the County Arborist. A four foot high chain link fence shall be provided around the entire play area.

10. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 as determined by DEM and shall be a maximum of 62 spaces. All parking shall be on site and shall be a gravel surface.

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

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

    - The lights shall focus directly onto the subject property.

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

12. The uses on the subject site shall not exceed the design capacity of the existing on-site sewerage system as set forth in the Health Department letter dated September 13, 1989 attached to these development conditions (Attachment 1).

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 (5) 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.

    - 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.

14. All required handicapped parking areas shall be paved with a dustless surface.

15. Right-of-way to fifty-seven (57) feet from the centerline of Lawyers 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. Ancillary easements to fifteen (15) feet behind the right-of-way for future road improvement shall be provided.

16. The nursery school use shall be limited to a term of five (5) years concurrent with the term of the modification of the dustless surface.

17. Vehicles entering the site shall adhere to a counter-clockwise flow of circulation around the building. In order to permit access for emergency vehicles or access to Lot 14, vehicles shall not park or stand in the travel aisles or fire lane. Signage shall be erected at appropriate locations on the site to direct on-site circulation.

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. Ribble seconded the motion. The motion carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack, 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 June 6, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:53 a.m. and reconvened at 11:05 a.m.

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Page 20, May 29, 1990 (Tape 2), Scheduled case of:

10:00 A.M. CARTER V. BOEHM APPEAL, A-90-S-005, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed subdivision of Cliffs of Clifton will result in two lots within Fairfax County which are not buildable lots, on property located at 7028 Cold Point Drive, on approximately 4.3613 acres of land (parcel 40A) and 1.9169 acres of land (parcel 40B), zoned R-C, Springfield District, Tax Map 75-4((1))40A, pt. 40B.

The appellant's representative, Ira Saul, 4114 Leonard Drive, Fairfax, Virginia, with the law firm of Saul and Barclay, P.C., addressed the Board and asked that the appellant be allowed to withdraw the appeal. He explained that the Zoning Administrator has rescinded the letter from which the appellant is appealing because notification was never received by Warren and Deborah Pitkin, the owners of Lot 40A. Mr. Saul said that a follow-up letter notifying the neighbors that a withdrawal would be requested at this public hearing was sent as requested by Betsy Hurtt, Clerk to the BZA. He stated that the Zoning Administrator will reissue the letter to include Lot 40A which would also be impacted by the decision and the appellant will then return for a public hearing.

William Shoup, Deputy Zoning Administrator, addressed the Board and stated that the Zoning Administrator supported the request and that the reissue letter would be sent the next day.

Mrs. Thonen made a motion to grant a withdrawal to A 90-S-005. Mrs. Harris seconded the motion which carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack, and Mr. Kelley absent from the meeting.

In response to a question from Mrs. Harris, Mr. Shoup explained that although part of the property is in the town of Clifton, the property is a split jurisdiction lot.

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Page 20, May 29, 1990 (Tape 2), Scheduled case of:

10:30 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. (DEF. FROM 4/19/90 AT APPLICANT'S REQUEST)

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin confirmed 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 noted that on September 27, 1988 the BZA voted to deny VC 88-D-118, an identical application to the current proposal.

Keith Martin, with the law firm, Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the Board and stated the issue was one of relevance. He explained that necessity in McLean varies in degree from that

in Annandale or Springfield and establishing hardship for a variance likewise varies geographically and economically. He stated that nothing has changed since the last application that was denied by the Board; however, a review of the facts and how they relate to the criteria to establish hardship is appropriate. Mr. Martin stated that a three car garage is necessary in order to house a third car and also for the structure to be compatible to the houses in the neighborhood, noting that there are 18 homes within the immediate neighborhood with three or four car garages. He stated that the property has an extraordinary condition in that it is isolated from the rest of the neighborhood, surrounded on two sides by homeowners open space, on a third side by stormwater management pond, and on the fourth side by a public street. He further explained that the proposed site is to the rear of the house and with the present screening would be not be visible to any neighbors. Mr. Martin stated that without the granting of the variance, valuable personal property would be subjected to constant deterioration from the elements. He further added that the Ballantrae Farms Homeowners Association has recommended approval.

In response to questions from the Board, Mr. Martin said that Lot A-1 was owned by the homeowners association and the request was for an garage expansion of 11.9 feet.

There being no speakers to address the application, Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 90-D-005 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated April 19, 1990. Mr. Ribble seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mrs. Thonen stated that she believed that the request was for convenience and did not constitute a hardship, therefore she would not be able to support the motion.

Mr. Ribble noted that an extraordinary situation exists on the property because of the shallowness of the lot. He said he believed that the Board had granted many variances in the past with the same footprint and if the two car garage was not in existence, that the Board would grant a variance.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-005 by JOHN G. AND ANGELINA F. GEORGELAS, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to 18.9 feet from rear lot line, on property located at 1285 Ballantrae Farm Drive, Tax Map Reference 31-1((20))1A, 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 29, 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 25,134 square feet of land.
4. There is an extraordinary condition on the property being that it is surrounded by homeowners open space.
5. The lot is adequately wooded which would shield it from any other houses.
6. The only people that might possibly see the garage are the people using Dolly Madison Drive.
7. The garage that now exists is less than that which the Board normally grants and the applicant is asking for the minimum addition to the property.
8. The character of the zoning district would not be changed and there is no substantial detriment to the adjacent properties.
9. The request is in harmony with the intended spirit and purpose of the Zoning Ordinance.
10. If the house had been located just a little bit more forward on the property, the applicant could have added the garage by right.

Page 22, May 29, 1990 (Tape 2), (JOHN G. AND ANGELINA F. GEORGELAS, VC 90-D-005, continued from Page 21)

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

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

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

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

4. The addition shall be similar to the existing dwelling in regard to style, color and materials.

Mr. Ribble seconded the motion which **FAILED** by a vote of 2 - 2 with Mrs. Harris and Mr. Ribble voting aye; and Mrs. Thonen and Vice Chairman DiGiulian voting nay. Chairman Smith, Mr. Hammack 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 June 6, 1990.

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Page 22, May 29, 1990 (Tape 2), Scheduled case of:

11:00 A.M. W. L. AND GERALD E. PLAUGHER APPEAL, A 90-L-004, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's refusal to issue a building permit for a 1,440 square foot Butler building as an accessory structure on a lot, on property located at 4714 Franconia Road, on approximately .80 acres of land, zoned R-3, Lee District, Tax Map 82-3((28))9.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Via replied that he had been told that a revised

affidavit was not necessary and William Shoup, Deputy Zoning Administrator, confirmed that he was correct. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mr. Shoup presented the staff report and stated that the appellant was appealing the Zoning Administrator's determination that a 1,440 square foot proposed garage/storage structure is not a permitted accessory use. He stated that the dwelling on the property contained approximately 3,000 square feet of living space with a building footprint size of 1,042 square feet. Mr. Shoup pointed out the location of the house on the viewgraph and explained that there is a detached garage, two storage structures, and a workshop on the property. He explained that on January 8, 1990 the appellant applied for a building permit to construct a 40 by 36 foot freestanding, one story aluminum structure to be used as a combination garage/storage and workshop. He said that building approval for the proposed structure was denied based on the determination that the structure does not comply with the accessory use definition contained in the Zoning Ordinance. He stated that because of the footprint size of the proposed building compared to that of the dwelling, it is the Zoning Administrator's position that the proposed building is not subordinate to the principle use. In addition, an aluminum butler building of this size is not customarily found in association with a single family dwelling in the R-3 District, therefore it does not meet the accessory use definition.

Patrick Via, with the law firm of Hazel, Thomas, Fiske, Weiner, Beckhorn and Hanes, P.C., P.O. Box 547, Fairfax, Virginia, represented the appellant and stated that the purpose of the butler building is to garage a 28 by 10 foot motor home as well as other vehicle, as a storage area, and as workshop. He stated that the building permit was denied on the basis that the proposed structure was not an accessory use that would be permitted in an R-3 District. Mr. Via stated that a letter dated February 13, 1990 stated that the use exceeded the size limitation of the Zoning Ordinance, therefore was not an accessory. He noted that the Zoning Ordinance does not set forth any maximum size for a garage although it does set forth a maximum size for a storage structure. He expressed his belief that the proposed structure does satisfy the requirement of an accessory structure in the Zoning Ordinance. Mr. Via noted that accessory garages are permitted by the Zoning Ordinance, there is no size limitation set forth by the Ordinance, and asked that the Zoning Administrator's interpretation be overturned.

Mrs. Thonen explained to Mr. Via that it has been the Board's policy to limit the size for a garage to 22 feet wide and the proposed structure is much larger.

There being no speakers to address the appeal, Vice Chairman DiGiulian called for staff comments.

Mr. Shoup explained that Mr. Via was correct in saying that a garage is a permitted accessory use but the Zoning Administrator has determined that this particular structure is not a permitted accessory use because its footprint is much larger than the dwelling on the lot. Although the Zoning Ordinance does not set forth size restrictions for a garage, the size must be considered when making a determination. He stated that a butler building with a steel frame aluminum facade would not be consistent with the type of accessory buildings that are permitted in a R-3 District.

Vice Chairman DiGiulian called Mr. Via to the podium for rebuttal.

Mr. Via stated that the Zoning Ordinance does not in any way contemplate the type of architecture or material to be used in building. He said that the purpose of the Zoning Administrator's office is to interpret the Zoning Ordinance and although the Zoning Ordinance does limit the size of a storage structure it does not limit the size of a garage.

Mrs. Thonen stated that the Board should uphold the Zoning Administrator because the footprint for the accessory structure is a larger footprint than that of the primary dwelling. She stated that it has been the Board's policy to ensure that the facade of a proposed building be coordinated with the existing structure. Mrs. Thonen stated that the proposed structure is too large, it would have an detrimental impact on the neighborhood, it is next to a school, and that the size of the building would be more suitable for commercial use.

Mrs. Thonen made a motion to uphold the decision of the Zoning Administrator.

Mrs. Harris seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mr. Ribble stated that because of the size of the lot he could not support the proposed structure.

Mrs. Harris stated that she could not support the accessory structure because it would not be subordinate to the primary dwelling.

The motion carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack, and Mr. Kelley absent from the meeting.

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11:30 A.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. (DEF. FROM 3/6/90 AT APPLICANT'S REQUEST - NOTICES WERE NOT IN ORDER. DEF. FROM 5/1/90 AT APPLICANT'S REQUEST - NOTICES WERE NOT IN ORDER)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Kim confirmed 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 stated that the Planning Commission recommended denial but that staff recommended approval. The Board of Supervisors has deferred action on the request indefinitely until the Comprehensive Plan for the area is finalized. She explained that the applicant is requesting renewal of a special permit for an antique shop for a period of 5 years. Ms. Bettard stated that a request for a previous renewal was granted by the BZA on March 22, 1988 and that no changes are requested from the original application. The hours of operation will be 11:00 a.m. to 4:00 p.m., the number of patrons expected per day is 5, and the applicants are the only employees associated with the use. She stated that since this is a continuation of an existing use, staff would support a one year term with the potential of an additional year upon the reevaluation of the use by the Zoning Administrator. Ms. Bettard noted that the development conditions must be implemented by September 23, 1990 or the Non-Residential Use Permit will not be issued. She stated that Condition 12 had been added because staff noted during a site visit that the previous conditions have not been implemented.

In response to questions from the Board, Ms. Bettard stated that the March 22, 1988 special permit expired on December 31, 1989. She said that Condition 12 was in reference to the landscaping as required in Condition 7 and was included because the landscaping required in previous conditions had not been implemented and no new landscaping was being requested.

Young Ho Kim, 6919 Old Dominion Drive, McLean, Virginia, addressed the Board and stated that he had planted the required landscaping but that much of it has died. He explained that although he had watered and cared for the new plantings they did not survive because the area is very shady.

Mrs. Thonen informed Mr. Kim that it was his responsibility to ensure that the landscaping requirements are met and he agreed to fulfill the obligation.

Mr. Kim asked the Board to renew the special permit with the Zoning Administrator having the authority to grant multiple extensions. He stated that it would create a financial hardship if he would be required to reapply each year.

In response to Mrs. Harris' question, Mr. Kim said that he knew that the property was subject to redevelopment and in transition. He pointed out to the Board that the Comprehensive Plan has not been implemented in the McLean area, and asked that the Board consider giving him a longer period of time so that he would not have to pay the $1,800 fee each year.

It was the Board's consensus that the applicant should be required to provide the landscaping conditions previously imposed by the BZA.

The Board discussed the Board of Supervisors (BOS) and the Planning Commission recommendations and expressed reluctance to impose a time limit on the application based on a plan that might be adopted sometime in the future.

In response to a question from the Board, Ms. Greenlief explained that according to Condition 9, the Zoning Administrator would ensure that the development conditions were being implemented. She would then determine whether the Comprehensive Plan had been changed and adopted in that area and would have the authority to extend the special permit for a period of one year. She stated that the fee for the extension would be one-eighth of the prevailing fee.

There being no speakers to address this request, Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SPR 83-D-040-2 subject to the development conditions contained in the staff report dated February 27, 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 Renewal Application SPR 83-D-040-2 by YOUNG HO KIM, under Section 3-403 of the Zoning Ordinance to amend SP 83-D-040 for renewal of an antique retail shop, on property located at 6919 Old Dominion Drive, Tax Map Reference 30-2((7))(11)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 May 29, 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 11,250 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 8-703 and 8-704 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 his 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. If a site plan waiver is granted, the landscape plan shall be submitted to the County Arborist for review and approval.

5. There shall be five (5) parking spaces provided in the lot to the rear of the dwelling. No parking spaces shall be located in any required side or rear yard.

6. The existing six (6) foot high stockade fence shall be retained and the broken boards on the east side shall be replaced to ensure no visual break in the fencing.

7. Transitional Screening and barrier requirements shall be modified provided additional evergreen plantings are provided in the twelve (12) foot strips between the stockade fencing and the eastern, western and southern lot lines. The amount, size and location of these plantings shall be determined by the County Arborist, provided that plants shall be at least eight (8) feet in height and shall be generally located as shown on the special permit plat approved in conjunction with SP 83-D-040-2 and submitted with this application.

8. There shall be no freestanding sign associated with this use. One (1) building mounted sign may be erected in accordance with Article 12 of the Zoning Ordinance provided it is no more six (6) square feet in size. The existing freestanding sign shall be removed.

9. This special permit shall expire on March 14, 1991. Five - one (1) year extensions beyond that time may be granted by the Zoning Administrator for up to a five (5) year time increment. Such extension shall be based on a determination by the Zoning Administrator that the McLean CBD Comprehensive Plan Amendment has not been approved by the Board of Supervisors or that approval of the extension would not hinder implementation of the adopted Comprehensive Plan.

10. The entrance width shall be as approved by DEM and the Virginia Department of Transportation standards. The driveway shall be located in conformance with the required Virginia Department of Transportation distance from a lot line.

11. The hours of operation shall be limited to 10:00 a.m. to 4:00 p.m., Monday through Saturday.

12. The planting as required by the special permit shall be installed, the freestanding sign removed, the fence repaired and a new Non-Residential Use Permit shall be issued by September 23, 1990 or this special permit shall become null and void.

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 Section 8-015, the Special Permit shall expire September 23, 1990, unless activity authorized has been established.

Mrs. Thonen seconded the motion. The motion carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack 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 June 6, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 26, May 29, 1990 (Tapes 2 and 3), Scheduled case of:

11:45 A.M. ROBERT M. DIAMOND, SP 90-D-031, application under Sect. 8-901 of the Zoning Ordinance to allow reduction in minimum yard requirements based on error in building location to allow existing dwelling to remain 26.8 feet from front lot line (40 ft. min. front yard required by Sect. 3-107), 11.0 feet from side lot line (20 ft. min. side yard required by Sect. 3-107), and existing deck to remain 18.6 feet from side lot line (20 ft. min. side yard required by Sect. 3-107), on property located at 1000 Turkey Run Road, on approximately 1.5002 acres of land, zoned R-1, Dranesville District, Tax Map 22-3((1))14.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Donnelly 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 was the contract/purchaser of the dwelling. He noted that Condition 3 requires the applicant to provide additional plantings along the front yard due to the fact that the existing trees are in the public right-of-way of Turkey Run Road. Mr. Riegle said that the existing landscaping provided adequate screening for a residential area and that staff and the applicant had agreed that the addition plantings could be provided at such time as the road is improved or the existing trees are removed.

In reply to Mrs. Harris' question Mr. Riegle stated that it is standard procedure for the County to inspect structures to ensure they are built in the proposed location but that he did not know what the procedure was in the late 1970's, when this construction took place.

It was the consensus of the Board that wall checks were not required before the 1980's.

The applicants representative, William E. Donnelly, with the law firm of Hazel, Thomas, Fiske, Weiner, Beckhorn and Hanes, P.C., P.O. Box 12001, Falls Church, Virginia, addressed the Board and stated that when the property was surveyed it showed that the additions on the southern and eastern side of the house had been built too close to the property line. Upon checking with the owner, Ronald Stivers, it was found that an error had been made as to the location of the property line. He explained that when the building permit was obtained for the additions in 1978, Mr. Stivers drew the house and the proposed addition on an old plat of the vacant lot, then walked off the distance from the proposed addition to the property line. He was under the mistaken impression that the front property line corresponded with the street line, and that the side property line corresponded with the fence line. Mr. Donnelly stated that the error had been made in good faith and asked for relief from the mistake. He introduced letters of approval from the Turkey Run Citizen Association; Ronald Banks, 6470 Redleston Court, McLean, Virginia; and John Milholland, 1001 Turkey Run Road, McLean, Virginia.

Mr. Donnelly stated that the applicant believed that the existing row of 25 foot cedar trees along the front of the property would suffice until such time as road improvement are made and asked that a modification of the language in Condition 3 be adopted. He presented a copy of the proposed modification to the conditions along with a drawing of a landscaping plan for the side yard.

Mrs. Thonen expressed her concern about revised development conditions being presented to the Board at the public hearing. She stated that the removal of the existing tree should be the present owner's responsibility.

Mr. Ribble asked for a clarification of the side lot line error, Mr. Donnelly stated that Mr. Stivers had been led to believe that the fence ran along the property line. He explained that Mr. Stivers had believed that he was well within the required setback because the fence line is approximately 40 to 50 feet beyond the property line.

Mrs. Harris questioned Mr. Donnelly as to why Mr. Stivers had not used the three metal pipe markers that appear on the site plan to assure that he built within the required setback. Mr. Donnelly explained that Mr. Stivers should have had the property surveyed before he added

the addition but because he believed that the property ran to the fence, he thought he was well within the Code requirement. He further stated that because the pie shaped lot runs back at an angle, it was difficult to judge the exact measurements.

Vice Chairman DiGiulian called for speakers in support of the request.

Peter Finkin, representing Goodman Homes, 6820 Elm Street, McLean, Virginia, addressed the Board and stated that Goodman Homes is the owner of the adjacent property Lot 8. He said that Mr. Stivers' house is 11 feet from the property line and he believed that the visual impact as a result of close proximity of the existing house affects Lot 8's property value. Mr. Finkin asked the Board to provide a provision to include substantial landscape screening along the full length of the property line. He further asked that the applicant be required to grant a temporary construction easement to Goodman Homes when construction begins on Lot 8.

In response to Mrs. Harris' question, Mr. Donnelly explained that the garage with a second story addition was added to the original structure in 1978. He stated that the original structure was within the building restrictions until the garage was added. He referred to the 20 foot Dogwood shown on the landscape drawing, stating that although it is approximately 30 feet beyond the property line it had been planted with the belief that it was on Mr. Stivers' property.

Mr. Donnelly stated that the applicant had tried to purchase a section of Lot 8 so that the special permit would not be necessary but the owner believed that this would not be in his best interest. He expressed the applicant's willingness to provide landscaping in the area of the encroachment. Mr. Donnelly asked that the 8 day waiting period be waived.

There being no further speakers in support and no speakers in opposition, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen explained that it would not be legal for the Board to grant an easement on the applicant property to a neighbor. She expressed her belief that the landscaping plan submitted by the applicant was satisfactory. She then made motion to grant SP 90-D-031 subject to the development conditions contained in the staff report dated May 22, 1990 with the change as reflected in the Resolution and with the landscape plan submitted by the applicant.

Vice Chairman DiGiulian called for discussion.

Mr. Ribble expressed his support of the application because the planting of the Dogwood tree on the adjoining lot showed that the previous owner had believed the fence ran along the property line and proved that the error had been made in good faith.

Mrs. Harris stated that she would support the application because the signed exhibit submitted shows that there was final approval subject to a wall check and indicates that there was an error made as to the location of the property line.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-031 by ROBERT DIAMOND, under Section 8-901 of the Zoning Ordinance to allow reduction in minimum yard requirements based on error in building location to allow existing dwelling to remain 26.8 feet from front lot line, 11.0 feet from side lot line, and existing deck to remain 18.6 feet from side lot line, on property located at 1000 Turkey Run Road, Tax Map Reference 22-3((1))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 May 29, 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

Page 28, May 29, 1990 (Tapes 2 and 3), (ROBERT M. DIAMOND, SP 90-D-031, continued from Page 27)

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:~~

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.

1. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified dwelling shown on the plat (prepared by Alexandria Surveys and dated April 13, 1990) submitted with this application and not transferable to other land.

2. The existing basketball pole and goal shall be removed or relocated to an area in conformance with the location regulations for accessory structures contained in Sect. 10-104 of the Zoning Ordinance.

3. In the event that a substantial number of the existing evergreen trees along the property's frontage to Turkey Run Road are removed or damaged, a 160 foot long row of mixed evergreen trees shall be planted parallel to the property's frontage to Turkey Run Road in a location extending north from the southeast corner of the lot to the edge of the existing tree line of the wooded area. All plantings shall be placed outside of the dedicated public right-of-way. A landscape plan shall be submitted to the County Arborist for review and approval to ensure compatibility and viability of all tree plantings. At a minimum all trees shall be four (4) feet in planted height and shall be placed ten (10) feet on center.

4. Supplemental planting, as shown on the landscape plan dated May 29, 1990 and prepared by Green Thumb Enterprises, Inc., will be installed adjacent to Lot 8, subject to approval by the County Arborist.

Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack, 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 29, 1990. This date shall be deemed to be the final approval date of this special permit.

Mrs. Thonen made a motion to grant a waiver of the eight day waiting period. Mrs. Harris seconded the motion which carried by a vote of 4 - 0 with Chairman Smith, Mrs. Hammack, and Mr. Kelley absent from the meeting.

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Page 28, May 29, 1990 (Tape 3), After Agenda Item:

May 22, 1990
Approval of Resolutions

Mrs. Thonen made a motion to approve the Resolutions from May 22, 1990 as submitted by the clerk. Mr. Ribble seconded the motion which carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack, and Mr. Kelley absent from the meeting.

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Page 28, May 29, 1990 (Tape 3), After Agenda Item:

Mana Krisnathevin Appeal

Mrs. Harris made a motion to accept the appeal as being complete and timely filed and scheduled the public hearing for July 31, 1990 at 11:00 a.m.. Mrs. Thonen seconded the motion which carried by a vote of 4 - 0 with Chairman Smith, Mr. Hammack, and Mr. Kelley absent from the meeting.

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Page 29, May 29, 1990 (Tape 3), After Agenda Item:

Rescheduling of BZA Meeting

The Clerk had submitted a letter to the Board informing them that the July 19, 1990 public hearing would be cancelled for lack of a quorum and that the July 24, 1990 public hearing has been rescheduled for July 26, 1990.

In response to Vice Chairman DiGiulian's question, Lori Greenlief, Staff Coordinator, stated that the July 19, 1990 cases had been redistributed to July 10, 1990 and July 26, 1990 BZA meetings..

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Page 29, May 29, 1990 (Tape 3), After Agenda Item:

As there was no other business to come before the Board, the meeting was adjourned at 12:45 p.m.

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

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

SUBMITTED: June 26, 1990

APPROVED: July 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 June 5, 1990. The following Board Members were present: Acting Chairman Hammack; Martha Harris; Mary Thonen; Robert Kelley; and John Ribble. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

Paul Hammack called the meeting to order at 8:07 p.m. and Mrs. Thonen led the invocation.

Mrs. Harris made a motion to appoint Mr. Hammack Acting Chairman in the absence of both Chairman Smith and Vice Chairman DiGiulian. Mr. Ribble seconded the motion which carried by a vote of 5-0.

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Page 31, June 5, 1990, (Tape 1), Scheduled Case of:

8:00 P.M. BLUE RIDGE ARSENAL, INC., SPA 89-S-007-1, application under Sect. 5-503 of the Zoning Ordinance to amend SP 89-S-007 to allow an expansion of indoor firing range, located at 14725R Flint Lee Road, on approximately 6.08 acres of land after dedication of 5.7 acres, zoned I-5 and WSPOD, Springfield District, Tax Map 34-3((1))39B. (OUT-OF-TURN HEARING GRANTED 3/27/90)

Acting Chairman Hammack noted that a request for a deferral had been received from the applicant.

Bernadette Bettard, Staff Coordinator, suggested a date of September 20, 1990 at 9:30 a.m.

E. Andrew Kenney, Esq., attorney with the law firm of Baker & Hostetler, 437 North Lee Street, Alexandria, Virginia, represented the applicant and agreed with the date and time suggested by staff.

Mrs. Thonen so moved. 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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The Board took action on the After Agenda Items as it was not yet time for the next scheduled case.

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Page 31, June 5, 1990, (Tape 1), After Agenda Item:

John G. and Angelina F. Georgelas, VC 90-D-005, Reconsideration

Mrs. Thonen made a motion to deny the request for reconsideration. Mr. Ribble 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 31, June 5, 1990, (Tape 1), After Agenda Item:

Approval of May 29, 1990 Resolutions

Mrs. Thonen made a motion to approve the resolutions as submitted by the Clerk. 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 31, June 5, 1990, (Tape 1), After Agenda Item:

Approval of May 1, 1990 and May 8, 1990 Minutes

Mrs. Thonen made a motion to approve the minutes as submitted by the Clerk. Mr. Ribble 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 31, June 5, 1990, (Tape 1), After Agenda Item:

Langley School, VC 90-D-056
Out of Turn Hearing Request

Mr. Kelley asked staff why the applicant was requesting an out of turn hearing if the variance was for buildings that already existed.

Bernadette Bettard, Staff Coordinator, explained that in September the applicant had been granted a special exception. She added that the variance was in conjunction with that approval but had been overlooked when the application was going through the site plan process.

The Board expressed confusion as to whether the request was for new buildings or for proposed buildings. Mrs. Thonen stated that she was hesitant to act as she had not had time to review the request. Ms. Bettard explained that the applicant was requesting approval to expand the existing administration building and allow an existing garage to remain.

Mrs. Harris stated that the applicant's letter stated "before construction can commence." Jane Kelsey, Chief, Special Permit and Variance Branch, stated that in staff's haste to get the out of turn hearing request to the Board they had overlooked the fact that it was for new construction.

Due to the lack of time to fully review the request, Mrs. Harris made a motion that the Board defer action on the request until June 12th. 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 32, June 5, 1990, (Tapes 1-2), Scheduled case of:

8:15 P.M. CHESTERBROOK-MCLEAN LITTLE LEAGUE, INC., SP 90-D-021, application under Sects. 3-303 and 8-901 of the Zoning Ordinance to amend Special Permit granted in 1959 to allow lighting of third field, change of hours, waiver of dustless surface requirement, existing T-ball field and batting cage, fourth baseball field, reduction in parking, and miscellaneous structures to remain, on property located at 1836 and 1840 Westmoreland Street, on approximately 7.21958 acres of land, zoned R-3, Dranesville District, Tax Map 40-2((1))42, 46. (OUT-OF-TURN HEARING GRANTED 4/3/90)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McBride replied 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. She stated that because the site is surrounded by residential neighborhoods, in a floodplain, and part in a Environmental Quality Corridor (EQC) there are many outstanding land use, environmental, and transportation issues which remain unresolved. Ms. James explained that these issues have to do with the lack of sufficient on site parking, lack of environmental controls, noise and glare associated with the addition of lights, and the extension of the hours for playing time. Thus, staff found that the application as submitted does not meet the applicable Zoning Ordinance requirements for special permit uses. She stated that staff does recommend approval of the waiver of the dustless surface requirement and recommended allowing the batting cage and the enlarged concession stand to remain, subject to the development conditions in the staff report. Staff recommended denial of lighting of the third field, extension of the hours, and the request to allow the parking and two additional ballfields to remain unchanged.

Ms. James then introduced Connie Crawford, with the Environmental Planning Branch, Office of Comprehensive Planning, who was present to answer environmental questions. Also, Mike Jaskiewicz, Staff Coordinator with the Special Permit and Variance Branch, was present to respond to questions regarding the site as he had done numerous site visits in conjunction with this application.

John McBride, attorney with the law firm of Hazel, Thomas, Fiske, Beckhorn, P.O. Box 12001, Falls Church, Virginia, stated that the presentation would be twofold beginning with Dale Howell and ending with his summation.

Dale Howell, 6601 Briar Hill Court, McLean, Virginia, outlined the history of McLean Little League and explained how the League operates. He stated that he has been involved with the League for the past seven years and has also served as President and on the Board. Mr. Howell said that he is very supportive of the League objectives and of working with the neighbors. The League is made up of volunteers, receives no government funding, and provides the children of McLean a place to enjoy sports. He explained that the League must follow the guidelines established by the Little League Headquarters with respect to the number of games and the scheduling of those games.

Mr. Howell continued by stating that the field has virtually been unchanged until the batting cage was constructed in 1984. The four ballfields and parking lot has existed since 1959. In 1988, the McLean Foundation offered the League a $7,000 matching grant earmarked for the construction of a T-ball field in order to provide a safe place for the 6 and 7 year olds to play. He stated that it was not the League's intent to willfully bypass the County process and pointed out that last year the League had minor renovations done to the snack bar which were approved by the County. The McLean Foundation has again offered the League a matching grant in the amount of $10,000 for lighting of field three which they hope will help to eliminate scheduling problems at the field.

In conclusion, he stated that this will not result in an increase in the total number of games played at the park and will not intensify the use but will allow the games to be

staggered at peak times so there will not be as many cars coming and going simultaneously. He stated that the League is willing to work with the neighbors and the Board to try to alleviate the parking problem on Westmoreland Street.

A discussion took place between Mrs. Harris and Mr. Howell with respect to the hours of play being extended to 10:30 p.m. Mr. Howell explained that the time should be 10:00 p.m. and that request to extend hours to 10:30 p.m. was in error. He added that there were older children who used the field late in the evening but that all play ended by 10:00 p.m.

Mrs. Harris referenced the 1959 minutes which stated that the use would be from 150 to 160 children and that the Little League had promised to carpool as they were aware of the parking problem. She noted that there are ten times as many children using the field now and asked what the League proposed to do to alleviate the parking problem. Mr. Howell replied that the ~~League does not support the illegal parking that occurs, but because of the influx of~~ children that has taken place, the League is trying to accommodate everyone.

Mrs. Thonen pointed out that the Board understood the League's position but that the League has to understand that when a use is under special permit all parking must be on site. She stated that she was aware of the amount of time and work involved in operating a Little League but that she believed that the parents had to set an example for their children by obeying the rules of the special permit. Mrs. Thonen added that if the parking situation is not rectified that Zoning Enforcement Division could issue a Notice of Violation and close down the fields. Ms. Howell stated that Mr. McBride would address the parking.

In response to questions from Mr. Hammack, Mr. Howell explained that the season runs for ten weeks a year but the fields are used for practice in July for the teams that will be advancing to the All Star games in the State tournament. He added that occasionally there is a fall league but that some months the fields are not used at all. Mr. Howell added that the League would commit to all parking being on site at the end of the regular season.

Mr. McBride came forward and stated that the League is requesting approval to extend the hours from 9:30 p.m. to 10:00 p.m. which will allow for cleanup after the latest games which begin at 7:40 p.m. He added that the use will not be intensified, the use is consistent with the intent of the Comprehensive Plan for the area, and the use is also consistent with the Park Authority guidelines. In 1968 when the lights were approved for two of the fields, there was a condition placed on the use that stipulated that the park be closed at 9:30 p.m. with a qualifier that sometimes games would run past that time. The League leaves the lights on until people have left the field for safety reasons.

With respect to the concession stand and miscellaneous structures, Mr. McBride explained that the concession stand was recently rebuilt under the appropriate permits. The League believes that the batting cages, score board, and other miscellaneous structures are allowed under the original approval and does not intensify the use.

Regarding the waiver of the dustless surface requirement and additional parking, Mr. McBride stated that the League would like to extend the existing parking lot to accommodate 100 cars. He added that the extended parking would be gravel and would be subject to the approval of the Department of Environmental Management DEM) as well as the Northern Virginia Soil and Water Conservation District.

Mrs. Harris asked where the additional parking would be located. Mr. McBride explained that it would be an extension toward the T-ball field and toward field 1, which is the closest to Westmoreland. The applicant's engineer has assured the League that this can be accomplished by extending the gravel area and restriping the existing paved area as the spaces are wider than necessary. Mrs. Harris stated that it was her understanding that there should be 35 parking spaces per field. Ms. McBride explained that is a guideline used by the Park Authority for the adult league fields but there is no parking requirement in the Zoning Ordinance for this use. He added that field 1, located adjacent to Kent Gardens Recreation Area, was shown on the original application as an gravel accessway and over the years it has been expanded 12 to 13 feet and is used primarily for emergency access and the service access to the concession stand. Mr. McBride stated there is no major difference between what was originally approved and what the applicant is now requesting. He assured the Board that the driveway would be maintained as stipulated in the development conditions.

With respect to the parking problem, Mr. McBride stated that there are off site parking areas that the applicant can utilize such as Longfellow School which is located about a quarter of a mile past the property on Westmoreland Street and this has been discussed with the school. There is also public parking available on the streets adjacent to the park but there have been parking violations in the past which have generated problems with the neighbors. He continued to address the parking by stating that 100 parking spaces will be provided on site and any additional parking areas that are constructed will be gravel and will be buffered from the Pimmit Run Stream by shrubbery, mulch, and curb stops to discourage parking in that area. All of this will be coordinated through DEM and the Northern Virginia Soil and Water Conservation District to eliminate the impacts upon the stream. He stated that the League proposes the following procedures in order to mitigate any adverse impacts on the surrounding properties and reduce illegal participants. First, the League will notify the police department in writing prior to each season listing the dates that games will be played and request the parking be enforced. Secondly, the League handbook will specifically state where

parking is not allowed in the surrounding neighborhoods. Thirdly, the League will appoint a carpool coordinator to encourage carpooling among teens and to coordinate off site shuttle parking areas, primarily Longfellow School and possibly the Kent Gardens Recreation Club.

Mrs. Thonen pointed out that shared parking agreements have to be approved by the Board of Supervisors. Mr. McBride agreed.

Mr. McBride stated that mulch and shrubbery tolerant of floodplain soils would be provided between the parking areas and Pimmit Run, as approved by Virginia Power, in order to preserve water quality in Pimmit Run. He noted that there is a 50 foot Virginia Power easement and a Fairfax County sanitary sewer easement which prohibits plantings within that area.

Mr. McBride stated that the third request is for the installation of six poles, two 50 feet ~~high, four 40 feet high, with metal halide lights positioned at a 45 degree angle with low~~ dispersion characteristics to light the third field. The lights would have housing around the lights to prevent the glare from being dispersed onto the surrounding neighbors.

Mrs. Thonen asked if the lights would be shielded and Mr. McBride replied that they would.

He stated that there have been no complaints about the lights on fields 1 and 2 and that the applicant believes that the proposed lights will be less intrusive than the existing lights. Adjacent property owners have submitted letters to the Clerk voicing no objection to the proposed lights. Mr. McBride submitted a photograph to the Board showing the existing buffer around field 3 which he believes to be very substantial and adequate to provide a good buffer to the existing lights and to the proposed lights.

In response to a question from Acting Chairman Hammack, Mr. McBride replied that the lots back up to the subject property and in between some of the lots is Kirby Park. He added that the closest residences are on Foxhall Road positioned in a loop. (Mr. McBride used the viewgraph to point out the properties to the Board.) The other lots are located on a pipestem surrounded by several large trees with Park Authority property between the houses and the field where the lights will be installed. He stated that the lights will be directed onto the field.

Mr. McBride continued by stating that the use will not be intensified, the use is consistent with the Comprehensive Plan, the use is similar to Park Authority lighting in residential areas, and there is adequate screening. He added that children at this age like to play under lights as it makes them feel more grown up. Mr. McBride submitted a diagram to the Board showing the proposed lights.

Mr. Hammack asked if Mr. McBride had completed his presentation and Mr. McBride indicated that he was getting close. Mr. Hammack asked him to conclude as the Board had allowed him to speak at least 40 minutes. (The BZA By-Laws allows a maximum of ten minutes.)

Mr. McBride requested approval of the fourth ball field as it has been in existence for 30 years and the parking problems that presently exist relate to its use, therefore it is not in addition to the existing problems. He stated that he believes that the parking and environmental concerns have been addressed. He called the Board's attention to a letter from the Northern Virginia Soil and Water Conservation District which lists very specific recommendations and states that the pollution and erosion can be addressed and still retain the fields. The applicant has already taken some measures to mitigate erosion along the stream bank and pointed that the ball parks in Olney Park are approximately two feet from the edge of the stream.

Acting Chairman Hammack again asked Mr. McBride to conclude and Mrs. Thonen agreed. The Chairman polled the audience to determine the number of speakers who wished to speak and asked them to address land use issues. He then called for speakers in support of the request.

Robert H. Hampton, 7010 Girand Street, McLean, Virginia, stated that he believes this is a wonderful program for the children and diverts their attention from other less desirable activities and that many of the neighbors use the area as a park during off season. With respect to the erosion, Mr. Hampton stated that he has a degree in Agricultural Engineering specializing in soil and water conservation issues, therefore he is very concerned with erosion. He stated that he believes that the densely grassed areas that the League has maintained along Pimmit Run serves as a buffer to greatly reduce the soil runoff which comes primarily from the wooded slope just south of the League's property. When heavy rains have tended to erode or destabilize the stream bank of Pimmit Run, the Fairfax County Public Works Department has provided rip-rap for 75 or 100 foot of the stream which was at risk. He added that the League is willing to comply with all recommendations regarding the measures to be taken to prevent erosion. Mr. Hampton encouraged the BZA to grant the request.

In response to questions from Mrs. Thonen with respect to erosion controls, Ms. Crawford stated that there are signs of erosion control along the stream bank but there are also several outlet areas where there are signs of erosion. There is also a substantial eroding away of the stream bank on the western corner where one tributary meets the main stream bank of Pimmit Run.

Mrs. Thonen asked if staff agreed that ball fields would be the less intrusive use in the area. Ms. Crawford stated that staff does not disagree with the use but the 50 foot minimum buffer needs to be looked at because when a recreation area is located within an EQC it cannot conflict with conservation goals and objectives. She added that the buffer area is now a State requirement in reference to the Chesapeake Bay Preservation laws.

Mrs. Thonen stated that she believed that everyone should work together to resolve this issue as the League has been providing a service to the community for all those years that the County should have been providing.

Mr. Hampton indicated that the League is willing to work with staff and pointed out that the League has instigated the improvements that have been taken to stabilize the stream bank over the past 20 years.

~~Mr. Kelley questioned staff about Olney Park. Ms. Crawford replied that she could not~~ comment and suggested that perhaps the Board could request the information from the Park Authority.

Leeta Dail Keller, 6732 Towne Lane Court, McLean, Virginia, stated that she had been a staff member of former Supervisor Falck and read a portion of a letter from Ms. Falck into the record. In the early 1980's, the Little League came to Ms. Falck and indicated that they were experiencing flooding of the ball fields from Pimmit Run. Ms. Falck walked the site with staff from the Department of Public Works and found that with the construction of the connector road to Dulles Airport there had been considerable dumping added to the stream. Public Works contacted the FAA who in turn contacted their contractor and rechanneled a fair amount of the water and the dumping stopped. At the same time they discovered that several large boulders that had been placed in the stream a number of years earlier had been washed away from the side. The boulders were replaced and rip-rap was added and basically the problem was resolved. In addition, the Virginia Department of Transportation came along and cleaned out Pimmit Run under the bridge which also helped with the problem. She stated that during telephone conversations with Public Works last week, they indicated there has been no complaints in that particular section since that time.

In response to questions from Mrs. Harris regarding the parking, Ms. Keller replied that parking could be increased on site but agreed that people will continue to park there unless the police enforce the parking restriction. She added that over the past five years there have been nine accidents, only two occurred during ball games. Ms. Keller stated that the League has contacted the School Board about utilizing Longfellow School and running a shuttle would help immensely.

Mrs. Thonen asked if all the cars shown in the pictures parking along Westmoreland were connected with the League. Ms. Keller stated that there is a swim club in the area. She again stated that she believed that the police would need to help enforce the parking.

Paul Shiffman, 1139 Crest Lane, McLean, Virginia, stated that the League is committed to increase the on site parking, to a shuttle system, and an on site parking attendant. He stated that the fourth field was depicted on the plat when the League applied for the permit to expand the snack bar and it was not questioned. Regarding the T-ball field, the League has constructed a fence in order to protect the children. He added that having three games at 7:30 p.m. generated less cars than when there were five games.

A discussion took place between Mrs. Harris and Mr. Shiffman regarding the hours of play.

Mrs. Thonen commented that she liked to hear that the League was trying to police themselves. Mr. Shiffman stated that the League is willing to work with the neighbors and that he believed that the use has not intensified since 1968.

Senator Dan Coats, 7251 Springside Way, McLean, Virginia, stated that he is a resident of Indiana but has resided at the Virginia address since 1981. He added that the Little League has had a remarkable impact on this family and provides a sense of community and togetherness to the McLean area. (He submitted a letter into the record.)

Jim Todd, 6634 Madison McLean Drive, McLean, Virginia, stated that he was shocked to read a staff report that he believed missed the fundamental issue which is, how to preserve a program privately owned, how to preserve a program that serves 1,000 young people, and how to preserve a program that the County cannot fund itself. He added that the program runs for only a 10 week period and there are no complaints on file. Mr. Todd stated that to remove any of the fields will remove half the League and remove the opportunity for half of the young people to participate in recreation. He asked the Board to work with the League to try to find a way to keep five fields and not eliminate two fields.

Jeff Porter, 1203 Stable Gate Court, McLean, Virginia, stated that he has been playing in the League for seven years beginning with T-ball and that he believes it is a great program and does not want it to change.

Ren Morani, 200 Apple Blossom Court, Vienna, Virginia, represented the Chairman of the Fairfax County Baseball/Softball Advisory Council, and supported the lighting of the third

field at the park. He stated that the Council believes this to be necessary, practical, and cost effective. The County Park Authority has also concluded that lighting existing fields makes good sense and has developed a County program to that effect. Mr. Morani noted that there is an insufficient number of playing fields now and McLean Little League is the only District 4 team which has both baseball and softball programs and probably could not handle both without the existing lighted fields. Beginning this fall, there will be a baseball and softball program in the Little League program throughout the County which will also increase the demand for existing fields.

Richard Porter, 1203 Stable Gate Court, McLean, Virginia, stated that he was surprised at the staff report and noted that there have been no substantial objections to the program over the years. The League is trying to police themselves, is willing to expand the on site parking, is willing to reestablish carpools, and ask the police to enforce the parking. He objected to the development conditions contained in the staff report and asked the BZA to let the League keep the fields, keep the program, and do what is needed to be done within reason to make it better.

Karen Vagley, 1096 Old Cedar Road, McLean, Virginia, stated that she was before the Board as a parent, a manager of Girls Little League, and as a Board member. With regard to the lights, she explained that the grant for the lights will expire in December if it is not used. Secondly, as a parent, she stated that she believed that it is a good program for her children. Thirdly, she remembered that as a young girl she could not play softball and believes that if the program is cut back the young girls will be the ones to suffer.

Mrs. Thonen stated for the citizens benefit and for the record that staff has one job to do and that is to make a recommendation based on the Zoning Ordinance and land use and not based on how the Little League operates.

Ms. Vagley stated that she understood and added that the League just wants to work with the BZA and staff to resolve the parking problem.

Peter J. Fitzgerald, 7327 Georgetown Pike, McLean, Virginia, stated that he had listened to the testimony presented and it appears that the parking problem is the most important issue. He used the viewgraph to point out a parcel of land owned by the Board of Supervisors and suggested that the land be leased to McLean Little League for $1.00 a year, install a pedestrian controlled light, and let the League use that field for additional parking. Mr. Fitzgerald asked the Board to make such a recommendation to the Board of Supervisors.

Mrs. Harris noted that the BZA nor the staff was trying to take something from the League but sometime over the years the use was intensified without obtaining the proper permits. She stated that she believed that more work needed to be done on the plat that was presently before the BZA.

Mr. Hammack told the speaker that the BZA does not have the authority to make such a recommendation and could only act on the land shown on the plat before the BZA.

Wendell E. Primus, 7714 Lear Road, McLean, Virginia, supported the request and reiterated many of the remarks made by the previous speakers and stated that he believed this is very important and asked the BZA not to cut back on the program.

As there were no additional speakers in support, Acting Chairman Hammack called for speakers in opposition to the request.

Harry Gaghan, 1839 Westmoreland Street, McLean, Virginia, an adjacent property owner stated that he had helped organize the League. (He submitted a petition to the BZA and then read a prepared statement into the record. A copy is contained in the file.) Mr. Gaghan objected to the over flow parking due to the insufficient number of parking spaces on site. He stated he objected to any expansion of the use.

David Capitano, 1915 Westmoreland Street, McLean, Virginia, stated that he had played ball at the field and understood how important it is to a child. He also objected to any expansion because of the overflow parking and asked the League to demonstrate how the parking problem would be resolved.

Mr. Hammack asked if a shared parking agreement between the League and Longfellow School would satisfy Mr. Capitano's concerns with regard to parking. Mr. Capitano replied that he did not believe that it would because the school is so far from the field that the people would not ride the shuttle.

Mr. Capitano added that there used to be additional parking where the T-ball field is now located although that area was never paved. He suggested that the League use the field located at Longfellow School for T-ball.

David Dosa, 1924 Foxhall Road, McLean, Virginia, pointed out that the speakers in support of the request do not live adjacent to the ball field. He stated that he and his parents live 25 feet from field 3. Mr. Dosa read a portion of a letter from Mr. and Mrs. Mack, residents at 1926 Foxhall Road, McLean, Virginia, into the record withdrawing their support of the

request. He then read a portion of a letter from his parents into the record which objected to the playing time of 10:00 p.m., the overflow parking, and the addition of lights on the third playing field.

In response to questions from Mrs. Harris, Mr. Dosa explained that the third field is directly behind his house and the lights would be disruptive. He added that the lights are always on until 10:30 p.m. at night and noted that everyone on his block had signed a petition against the lights being installed.

James R. Audet, 1944 Foxhall Road, McLean, Virginia, stated that he is a consulting electrical engineer and has worked with various Boards on land use planning. He added that he was surprised at the testimony that had been given as he believed that the issues have been glossed over. Mr. Audet agreed that the parking issue has to be resolved and stated that the applicant should have provided a better plat for the Board and citizens to review and should have worked more closely with the citizens. He reiterated the comments of the previous speakers.

Mrs. Harris asked if he had been contacted by his homeowners association about this application and Mr. Audet replied he had not. He stated that he became aware of it when he saw the posted sign listing the date and time of the public hearing.

Mr. Audet continued by stating that he objected to the lighting of another ball field.

Jay Epstein, 1922 Foxhall Road, McLean, Virginia, used the viewgraph to show the location of his property. He stated that he shared the sentiments of the previous speakers although he is very supportive of McLean League and the good work that it does. Mr. Epstein added that he does not believe that the League has adequately addressed the growth that has occurred and that adjacent neighbors do have legitimate grievances with respect to the parking, the expansion of the use, and the lights. He noted that sometimes unsupervised children leave the field and wander into private yards.

John L. Gordon, 1843 Westmoreland Street, McLean, Virginia, stated that the only objection that he had was the children's safety due to the overflow parking affecting the sight distance on Westmoreland Street.

Blanche L. Kane, 6704 Kirkley Avenue, McLean, Virginia, objected to the proposal to construct a parking lot adjacent to her property.

Mr. Hammack explained that was not part of the application before the Board.

During rebuttal, Mr. McBride stated that the applicant is not proposing an expansion of the use and no reduction in the parking. He added that he believes that the applicant has presented workable solutions and would like the opportunity to implement them.

There was no further discussion Acting Chairman Hammack closed the public hearing.

Mrs. Harris stated that she hopes that the applicant realizes that neither the Board nor the staff are trying to hurt the Little League but that an intensification was done against County regulations and that must be corrected. She directed the applicant to work with the citizens and staff to try to resolve outstanding issues with respect to the parking, lights, and environmental issues and arrive at development conditions that were agreeable to both sides. She then made a motion to defer decision on the application.

Mr. Ribble seconded the motion. He pointed out that several of the speakers indicated that there were no complaints on file but that many of the neighbors had openly voiced complaints during the hearing. Mr. Ribble agreed with Mrs. Harris' comments.

Mrs. Thonen agreed with a deferral for a short period of time and stated that she did not believe that the Little League should have to solve all the problems as there are other clubs in the area.

Mrs. Harris agreed and noted that additional testimony should be submitted to the Board one week prior to the public hearing to allow the Board to review the material. Mr. Ribble agreed.

Mr. Kelley asked if a shared parking agreement was necessary. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that Article 11 does not address baseball fields but the Zoning Ordinance stipulates that when a use is not addressed staff must look at a similar use. She added that staff has not discussed this with the Zoning Administrator, but had used criteria that is used by the Park Authority. The required number of parking spaces will be determined by the BZA.

Mr. Kelley agreed with a short deferral.

Mr. Hammack also agreed with a deferral and also agreed that there are many outstanding issues. He explained that the BZA needs additional time to review the development conditions submitted by Mr. McBride.

Page 38, June 5, 1990, (Tapes 1-2), (CHESTERBROOK-MCLEAN LITTLE LEAGUE, INC., SP 90-D-021, continued from Page 37)

Following a discussion between the BZA, Mr. McBride, and staff regarding a deferral date, Ms. Kelsey suggested July 31, 1990 at 10:00 a.m.

It was the consensus of the BZA to allow additional testimony. Mrs. Harris accepted the dated and time suggested by staff and amended her motion to hold the record open for additional written testimony and to allow both the support and opposition a total of ten minutes each of verbal testimony.

Mr. Ribble accepted the amendment. The motion carried by a vote of 4-1 with Mrs. Thonen voting nay; Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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The Board recessed at 10:50 p.m. and reconvened at 10:57 p.m.

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Page 38, June 5, 1990, (Tape 2), Scheduled case of:

8:30 P.M. MRS. SHELDON K. ELLIS, SP 90-V-017, application under Sect. 3-203 of the Zoning ordinance to allow accessory dwelling unit, on property located at 7107 Coventry Road, on approximately 19,873 square feet of land, zoned R-2, Mount Vernon District, Tax Map 93-3((9))(5)7.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Whitcomb replied 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 in the absence of Lori Greenlief, the Staff Coordinator, who had prepared the report. Ms. James stated that staff believed that the use meets all applicable standards with the exception of parking. She explained that two spaces are required by the Zoning Ordinance for the principle dwelling. Staff recommended approval of the use subject to the development conditions being implemented which requires that a parking pad be constructed.

Mrs. Harris called staff's attention to a discrepancy in the plat contained in the staff report. Ms. James stated that perhaps the applicant's representative could better address the question.

Acting Chairman Hammack pointed out that it was his understanding that all accessory uses had to be recorded among the land records. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that it appeared that staff had inadvertently overlooked such a condition and asked that the Board add a condition to reflect that this be done.

Carol Whitcomb, with Community Systems and Services, Inc., 8300 Greensboro Drive, #240, McLean, Virginia, represented the applicant and explained that her firm has been engaged by Fairfax County to facilitate the development of accessory dwelling units as an affordable means of housing in the County. She stated that the applicant is a 76 year old widow who is interested in remaining in her house by establishing an accessory dwelling unit to increase her income and provide security as she lives alone. Ms. Whitcomb added that the applicant had a last minute change of heart and she would now like to have two renters as opposed to one.

The Board questioned if the applicant could rent to a couple rather than one person and staff indicated that she could.

Ms. Whitcomb continued by stating that she disagreed with staff regarding the parking pad and pointed out that the driveway is 18 1/2 feet wide at the head and it is possible to park two cars side by side. (She submitted photographs to the Board showing the applicant's driveway.)

Mrs. Thonen noted that if the applicant now wished to rent to a couple that might mean two additional cars. Ms. Whitcomb stated that the people occupying the accessory dwelling unit could park one behind the other thereby not creating an inconvenience to the applicant or themselves. She added that she believed that the construction of a parking pad would change the character of the applicant's front yard, thus impacting the neighborhood.

Ms. Whitcomb addressed Mrs. Harris' earlier question by stating that the entrance was changed to an exterior entrance following meetings with the Department of Environmental Management (DEM). Therefore, the plat was revised to reflect a deck with an exit off the rear of the house.

Mrs. Harris asked if there would be a connecting sidewalk between the driveway and the accessory dwelling unit. Ms. Whitcomb explained that it is the applicant's intent to have flagstone steps installed. She added that many of the units that will come before the Board will be financed by the Department of Housing and Community Development.

Jeremy Novack, 2005 Halyard Lane, Reston, Virginia, represented the Department of Housing and Community Development, and explained that the plat was the reverse of what would actually be constructed. He added that there is a proposed deck because there is an existing greenhouse on the back. Mr. Novack objected to the construction of the parking pad as he did not believe that it was necessary as the use is similar to a single-family dwelling.

Following questions from the Board, Mr. Novack explained that a single-family is defined as one family and two boarders. He added that the only thing that will be different is that there will be second cooking area in the accessory dwelling unit.

There were no speakers to address the application and Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to grant the request subject to the development conditions contained in the staff report dated May 29, 1990. Mr. Ribble revised the development conditions by revised condition number 5 to reflect "one couple" and with two additions:

"10. An appropriate instrument shall be recorded among the land records of Fairfax County, Virginia, by the Clerk to the Board of Zoning Appeals, which states that the accessory dwelling unit does not convey upon resale of the property.

11. The applicant shall submit a corrected plat showing the deck and stairs as set forth in the rendering 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-V-017 by MRS. SHELDON K. ELLIS, under Section 3-203 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 7107 Coventry Road, Tax Map Reference 93-3((9))(5)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 June 5, 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 19,873 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 by Edward S. Holland, Jr., dated July 22, 1948. 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 for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 558 square feet.

5. The accessory dwelling unit shall contain no more than one bedroom and shall be rented to no more than one couple.

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.

10. An appropriate instrument shall be recorded among the land records of Fairfax County, Virginia, by the Clerk to the Board of Zoning Appeals, which states that the accessory dwelling unit does not convey upon resale of the property.

11. The applicant shall submit a corrected plat showing the deck and stairs as set forth in the rendering contained in the staff report.

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

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 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 June 13, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 40, June 5, 1990, (Tape 3), Scheduled case of:

8:45 P.M. ROSEMARIE T. SHEEHY, SP 90-D-018, application under Sect. 3-203 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 859 Constellation Drive, on approximately 22,111 square feet of land, zoned R-2, Dranesville District, Tax Map 13-1((3))64.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Whitcomb replied 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 in the absence of Lori Greenlief, the Staff Coordinator, who had prepared the report. Ms. James stated that staff has determined that the use meets all of the standards for approval with the exception of the parking. She stated that the Zoning Ordinance requires two spaces for the principle dwelling and further states that the BZA shall determine the number of parking spaces necessary. Ms. James explained that the driveway is only wide enough for one car width which means that the car associated with the accessory dwelling unit will not have direct access to the street, thus staff is recommending that a parking pad be constructed. With the provision of a parking pad as a development condition, staff recommended approval of the request.

In response to a question from Mrs. Harris, Ms. James replied that in the previous application the applicant had requested only one person and staff simply reiterated the applicant's request into the development conditions.

Carol Whitcomb, with Community Systems and Services, Inc., 8300 Greensboro Drive, #240, McLean, Virginia, represented the applicant and explained that the applicant is in her early 60's, lives alone, and is retired on disability. The applicant would welcome the opportunity to have increased income so that she can afford to stay in her house. Ms. Whitcomb agreed with all the development conditions and in this case did not object to the parking pad. She asked that the applicant's brother, Father McCathrey, come forward to address the Board.

Father McCaffrey, 26 Grant Circle, Washington, D.C., stated that he believed that it is important that his sister be allowed to stay in her house as she has lived there for many years. He explained that she retired from a government job due to a disability and her income is limited and he helps her generate funds to supplement her income. Because the doctors have advised the applicant against experiencing any stress, she can never work again.

Jeremy Novack, 2005 Halyard Lane, Reston, Virginia, agreed with the addition of the parking pad but asked that one space be required rather than two.

A discussion took place between the Board Mr. Novack with respect to the parking pad.

Mrs. Harris asked if the County was paying for the parking pad since they were financing the project. Mr. Novack explained that Housing and Community Development was lending the money to the applicant which would be paid back in monthly installment. He added that this application and the previous application would deplete the funds for this year.

Mrs. Harris stated that she believes that if a larger number of these applications are going to be coming before the Board that it is imperative that good land use planning be implemented.

Mr. Novack stated that the County is trying to review each case on an individual basis with respect to the parking.

The applicant, Rosemarie Sheehy, 859 Constellation Drive, Great Falls, Virginia, came forward and stated that she has lived in her house for 25 years and asked the Board to grant the request.

In response to questions from Mrs. Harris, Ms. Whitcomb stated that she agreed with the development conditions but would prefer one parking pad rather than two.

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

Mr. Kelley made a motion to grant the request subject to the development conditions contained in the staff report dated May 29, 1990 with one addition:

"11. An appropriate instrument shall be recorded among the land records of Fairfax County, Virginia, by the Clerk to the Board of Zoning Appeals, which states that the accessory dwelling unit does not convey upon resale of the property."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-018 by ROSEMARIE T. SHEEHY, under Section 3-203 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 859 Constellation Drive, Tax Map Reference 13-1((3))64, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 5, 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 22,111 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 by Carlisle and Cook dated August 2, 1965. 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 for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 654 square feet.

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.

10. An additional parking pad shall be added to either side of the driveway to accommodate two vehicles and which will allow direct access to the street for one of the two vehicles and for one of the other vehicles parked in the driveway which is for the principal dwelling.

11. An appropriate instrument shall be recorded among the land records of Fairfax County, Virginia, by the Clerk to the Board of Zoning Appeals, which states that the accessory dwelling unit does not convey upon resale of the property.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 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 June 13, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 42, June 5, 1990, (Tape 3), Scheduled case of:

9:00 P.M. MARY ROSE GREENE APPEAL, A 90-S-022, 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. (DEFERRED FROM 5/17/90 FOR ADDITIONAL INFORMATION)

Acting Chairman Hammack noted that this case had been deferred from May 17, 1990 for decision only and to allow the Board members to review the staff report which was submitted at a late date.

The Board took a few minutes to review a letter from the Londontowne Homeowners Association.

Mrs. Thonen stated that she had now thoroughly reviewed the staff report and she believed that the parcel was open space and added that the appellant purchased the property knowing

Page 43, June 5, 1990, (Tape 3), (MARY ROSE GREENE APPEAL, A 90-S-022, continued from Page 42)

that it was "buyer beware." She then made a motion to uphold the Zoning Administrator's decision.

Mrs. Harris and Mr. Kelley seconded the motion.

Mr. Ribble stated that he would support the motion but pointed out that the homeowners association could have stopped the auction if they had indicated that they had an interest in the property.

Mr. Hammack supported the motion because he believed that the Zoning Administrator was correct in her determination and agreed that the land should have been dedicated by the developer.

Mrs. Harris also supported the motion and added that the Zoning Administrator had acted at the request of the Board of Supervisors, had not acted in secret, and the appellant was notified as soon as the report was prepared.

The motion carried by a vote of 5-0 with Chairman Smith and Vice Chairman DiGiulian absent from the meeting. This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 13, 1990.

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As there was no other business to come before the Board, the meeting was adjourned at 11:43 p.m.

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

Paul W. Hammack Jr.
Paul Hammack, Acting Chairman
Board of Zoning Appeals

SUBMITTED: June 24, 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 June 12, 1990. The following Board Members were present: Vice Chairman John DiGuilian; Mary Thonen; Martha Harris; Paul Hammack; and John Ribble. Chairman Daniel Smith and Robert Kelley were absent from the meeting.

Vice Chairman DiGuilian called the meeting to order at 9:20 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 45, June 12, 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. (DEFERRED FROM APRIL 10, 1990 - NOTICES NOT IN ORDER)

Jane W. Gwinn, Zoning Administrator, presented the staff report.

Keith Martin of the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 13th floor, 2200 Clarendon Boulevard, Arlington, Virginia, represented the appellant and presented a history of events leading to this appeal. He stated that, on July 27, 1987, the Board of Supervisors approved rezoning application RZ 87-D-009, which rezoned the subject property from the R-3 to C-2 with proffered conditions, which included a commitment to develop in accordance with the Generalized Development Plan which projected office use and showed a total of fifteen (15) parking spaces, which was based on the current Code of 4.5 spaces for 1,000 square feet of net floor area. Mr. Martin contended that the appellant assumed that, if the number of parking spaces available were adequate for medical facilities, even though that use originally was not specified, it would be acceptable; i.e., six (6) spaces per practitioner, or twelve (12) spaces for two practitioners.

Mr. Martin entered letters into the record from Cheryl Bell, President of the Beverly Manor Citizen's Association; Stephen Hubbard, who was then Chair of the McLean Planning Committee; and the McLean Planning Committee President, John Fredericks. Those letters were offered to attest that the appellant's presentation stated that the proposed use was intended to possibly include medical office use. He stated the twelve (12) spaces were incorporated into the fifteen (15) spaces shown on the site plan.

Mr. Martin stated that, on September 19, 1988, the Board of Supervisors adopted a Zoning Ordinance Amendment to revise the parking requirement for office and combine the two medical use categories, medical or dental clinic and medical or dental practitioner's office, into a single category, and set forth a separate parking requirement of five (5) spaces per 1,000 gross square feet for medical office use, putting in a grandfather provision which provided that future uses would comply to the extent possible with the provisions of the amended Ordinance, provided such compliance did not preclude fulfillment of any proffered condition.

Mr. Hammack asked Mr. Martin why he had not appealed the proffered condition to the Board of Supervisors, since it seemed to him that was the appropriate purview.

Mr. Martin stated that it seemed at the time that this was a Zoning Ordinance interpretation question, rather than a proffer interpretation.

Mr. Hammack expressed reservations about having this heard by the Board of Zoning Appeals. He stated the Board of Supervisors amended the Ordinance and they wrote the grandfather provision. Mr. Martin stated he understood that could be one possible interpretation of the appeal.

Mrs. Thonen asked Mr. Martin if he was appealing the fact that there was a change in the Ordinance. Mr. Martin stated he was appealing the formula for determining required parking spaces and the time of calculation.

Mrs. Thonen questioned why this issue had not been raised earlier, since two years had passed.

Mr. Hammack asked Ms. Gwinn if it was correct that, at the time the proffer condition was adopted and agreed to by the County Board of Supervisors, the appellant could have built a medical office building if it had been approved prior to the Ordinance amendment, with fifteen (15) spaces.

Ms. Gwinn responded that it was dependent upon the number of doctors. She said that, at the time the zoning was approved and the time the site plan was filed, there were separate parking requirements set forth in the Zoning Ordinance for medical type office uses.

Ms. Gwinn stated that, at the time of rezoning, the applicant requested a rezoning to C-2 and said they were going to build for office use. That is what they proposed and proffered to do.

Mrs. Thonen asked if they said medical at all and Ms. Gwinn replied that they had not. She stated they subsequently filed a site plan for this building, specifically citing 4.5 spaces per 1,000 net square feet, which was the parking required for general office at that time.

Ms. Gwinn said it was very common to see site plans that reflected a certain percent of medical office space or a certain percent of regular office space. Under the Ordinance in effect at the time, the requirement was six (6) spaces per practitioner. The use would meet the Ordinance if he only accommodated two practitioners.

Ms. Gwinn explained that it was not unusual for applicants to submit site plans before they had their tenants lined up and subsequently decided to lease to medical professionals. This created a problem when there was not sufficient parking on the site. In cases like those, the applicants would be required to submit a revised parking tabulation to ensure sufficient parking.

Mrs. Harris asked Ms. Gwinn if that was true at the time of the subject rezoning and presently and Ms. Gwinn answered in the affirmative.

Mr. Hammack pursued with Ms. Gwinn the flexibility enjoyed by applicants who might plan the maximum number of parking spaces allowed under the Ordinance to cover any potential or unforeseen use.

Mr. Hammack asked Ms. Gwinn if the appellant originally could have stipulated medical office use, which required only twelve (12) spaces, and had it approved, thereby later having it grandfathered. Ms. Gwinn said that many things could have been done, but she would assume that the appellant did not want to commit or did not want the flexibility at that time.

Ms. Gwinn submitted to Mr. Hammack that there were two stages: the rezoning, and the site plan at a later time and date. She stated there was also a proffer interpretation issue, and a proffer interpretation appeal, which should have been filed with the Board of Supervisors. Ms. Gwinn explained that the parking requirement for medical office was changed as a result of a specific Board of Supervisors' request, because there was a feeling that the requirements were not adequate. A study was done and it was decided that the requirements were not adequate and the Board of Supervisors adopted an amendment to the Zoning Ordinance to this effect, stating they believed that five (5) spaces per 1,000 square feet were required. They provided for a grandfather provision when they adopted the amendment.

It was Ms. Gwinn's judgment that the subject application does not qualify under the grandfather provision, because the application originally did not address medical office, just general office.

Mrs. Thonen inquired if, at the time of the rezoning to C-2, the appellant or any applicant might not have foreseen the future inability to comply with the restrictions.

Ms. Gwinn stated she believed this has happened many times over the years, in the case of someone building an office building or warehouse building, and later encountering uses limited by the parking requirements on the site plan.

Mrs. Harris pointed out that the appellant changed the stated use after the Ordinance had been amended, precluding him from being grandfathered.

Mr. Hammack stated that amendments were published and provided for a developer to submit a new site plan before December 28 that said medical offices. Since the appellant did not do so, he could not be grandfathered. Mrs. Thonen asked Mr. Martin if he had followed through on the appellant's site plan by having it adjusted to be eligible for grandfathering. He stated that he had been involved in the original rezoning but not involved at the time of the amendment.

Tom Georgelas, 1430 Springhill Road, McLean, Virginia, stated he was the registered architect and one of the developing partners on this project. Mr. Georgelas stated he had done projects over the past fourteen years, similar to the subject project. He said under C-2 he would put general office. He said he knew as an architect that under general office, if he laid out 4.5 parking spaces per 1,000 net square feet, he could put in his normal offices, put in doctors' offices, and put in dentists' offices, with an asterisk for the last two. The asterisk, he said, would mean you could subtract six (6) spaces per practitioner from your parking pool, not 4.5 per 1,000 net square feet. He stated there were four projects on the map that he could point out which were handled that way. He stated there was never any question from the County, nor any revised site plan submission.

Mr. Georgelas went on to describe other projects and compare this project with them in regard to parking provided.

Mrs. Harris asked Mr. Georgelas why he had not specified medical offices on the site plan. Mr. Georgelas stated that they had never done so in over fourteen years of doing business. He again described the process he used to calculate parking.

Mr. Hammack asked if the projects referred to by Mr. Georgelas had not been constructed before the Ordinance was amended and Mr. Georgelas said they were approved and construction had begun before the Ordinance was amended, as was this project.

Page 47, June 12, 1990 (Tape 1), (GEORGELAS AND SONS, INC. APPEAL, A 90-D-001, continued from Page 46)

Mrs. Harris referred back to Ms. Gwinn's statement that, when applicant's did tabulations that had general office and medical office uses, they were divided out.

Mrs. Harris asked a rhetorical question of Mr. Georgelas: If he had specified medical office, would he not have avoided being before the Board of Zoning Appeals at this time, because the project would have been grandfathered. Mr. Georgelas stated that was the technical issue. He agreed that, if they had specified medical office, they would not be before the Board at this time.

Mrs. Harris noted that Mr. Georgelas is very experienced in this area and asked him why he had not filed a new site plan to change the use so that the project could have been grandfathered when the Ordinance was changed. Mr. Georgelas stated he thought they were covered because they had been approved under the old Ordinance.

Since the zoning says office and the site plan says office, and the site plan tabulation very clearly is based on office, i.e. 4.5 spaces per 1,000 net square feet, Ms. Gwinn stated she would be concerned about setting a precedent which would allow anyone who had previously received site plan approval for general office to be grandfathered for the previous parking requirement for medical offices forever. She stated she particularly was concerned because the previous parking requirement for medical offices was determined to be inadequate.

Mr. Martin made a brief summation of the appeal.

Mr. Hammack stated that he believed the appellant should have gone before the Board of Supervisors for a proffer interpretation instead of coming before the Board of Supervisors. He went on to say that, given the nature of zoning and the fact that ordinances can be changed, the Zoning Administrator is correct in her interpretation of the Ordinance. He stated he believed the result was equitable and the reason he came to that conclusion is that, even though the property was rezoned in 1987, the County Board of Supervisors publishes all of its Zoning Ordinance Amendments; thus, putting everyone on notice, including the appellant, that they would remove or change the definition of medical office space from the general office category, and that they were going to revise the manner in which parking is tabulated. Furthermore, they gave a grandfather provision relief that, had the applicant made himself aware of the amendment, he would have been able to do what he now wants to do, if he had simply refiled a site plan to show medical office space; which had to be done prior to 12:01 a.m., September 20, 1988. It was a typical Ordinance amendment with a typical grandfather provision and the appellant may not use the space for medical office space. Mr. Hammack reiterated that he agreed with the Zoning Administrator's decision.

Mr. Hammack moved to uphold the decision of the Zoning Administrator in the Appeal of Georgelas & Sons, Inc., Appeal A 90-D-001.

Mrs. Thonen seconded the motion. She stated she regretted the work and expense that had gone into this application; but, the site plan could have been grandfathered and the applicant is knowledgeable enough to have accomplished this. She stated that the Board of Zoning Appeals is not able to make policy; it can only vote on what is, not what might be.

Mrs. Harris stated that she leaned toward Mr. Hammack's opinion that this issue could have been better served by a proffer interpretation.

The motion carried unanimously. Chairman Smith and Mr. Kelley were absent from the meeting.

Vice Chairman DiGuilian pronounced the Zoning Administrator's decision on A 90-D-001 to be UPHELD.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 20, 1990.

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Page 47, June 12, 1990 (Tape 1), Scheduled case of:

9:30 A.M. JAMES R. AND CHARLOTTE M. HALL, VC 90-D-029, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a garage addition to 11.7 feet from the side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 1867 Massachusetts Avenue, on approximately 20,265 square feet of land, zoned R-2, Dranesville District, Tax Map 41-1((13))(1)22, 23.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hall replied that it was. Vice Chairman DiGuilian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that James and Charlotte Hall, owners of Lots 22 and 23, received prior Board of Zoning Appeals' approval in 1987 for an addition, basically the same as the current request; however, they did not commence construction prior to the eighteen (18) month time limit to begin construction.

They then requested and received approval for twelve (12) months additional time. Their last request for additional time was not received prior to the expiration date of the variance, necessitating a new variance application, which was now before the Board.

Mrs. Harris asked Mr. Jaskiewicz if her assumption that the proposed one-car garage would be located in the same place as the existing garage was correct and he said that it was.

The applicant, James R. Hall, 1867 Massachusetts Avenue, McLean, Virginia, presented his statement of justification, explaining that there would be a breezeway between the house and the garage.

There were no speakers, so Vice Chairman DiGuilian closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-D-029 for the reasons outlined in the Resolution and subject to the development conditions contained in the staff report dated June 5, 1990.

Mrs. Thonen made a motion to waive the eight-day waiting period.

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VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-029 by JAMES R. AND CHARLOTTE M. HALL, under Section 18-401 of the Zoning Ordinance to allow construction of a garage addition to 11.7 feet from the side lot line, on property located at 1867 Massachusetts Avenue, Tax Map Reference 41-1((13))(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 June 12, 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 20,265 square feet of land.
4. The lot has exceptional narrowness and topography.
5. The property is located in one of the older sub-standard subdivisions with very narrow lots.
6. The garage shows substantial deterioration and should be replaced.
7. The existing hardship is not shared by the surrounding property owners.

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is 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. 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 June 12, 1990; Mrs. Thonen made a motion to waive the eight-day limitation. Mr. Ribble seconded the motion, which passed unanimously. Chairman Smith and Mr. Kelley were absent from the meeting. This date shall be deemed to be the final approval date of this variance.

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Page 49, June 12, 1990 (Tape 1), Scheduled case of:

9:45 A.M. MARK C. MICKLEM AND ELIZABETH HILL MICKLEM, VC 90-V-031, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to 4.8 feet from side lot line (10 ft. min. side yard required by Sect. 3-407), on property located at 6043 Edgewood Terrace, on approximately 8,957 square feet of land, zoned R-4, Mount Vernon District, Tax Map 83-3((14))(4)12.

Vice Chairman DiGuilian called the applicants to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Micklem replied that it was. Vice Chairman DiGuilian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and stated that staff recommended approval in accordance with the development conditions contained therein.

Mark C. Micklem, 6043 Edgewood Terrace, Alexandria, Virginia, presented the statement of justification.

Vice Chairman DiGuilian asked Mr. Jaskiewicz to confirm that the proposed addition would be no closer to the side line than the existing dwelling, which Mr. Jaskiewicz did confirm.

Mrs. Thonen asked Mr. Jaskiewicz if the existing garage already was in violation. Jane Kelsey, Chief, Special Permit and Variance Branch, interjected that the existing structure was built a long time ago and met the requirements of the previous Ordinance. Mrs. Thonen said that it looked like it was underground and Ms. Kelsey said that it was.

Mr. Micklem stated that the house was constructed in 1936 and did not violate the Ordinance in effect at that time. He stated he had letters of support from his neighbors.

Mrs. Harris asked Mr. Micklem about a four-foot wall and a four-foot farm fence shown on the plat.

Mrs. Micklem answered that the wall belonged to their neighbor. Mrs. Harris asked if they had talked to their neighbor about extending the wall or putting some kind of shrubbery on their side of the fence. Mr. Micklem stated they had discussed this with their neighbors. He stated the retaining wall is below ground on their side. He stated the wire fence is covered with greenery and for visual purposes it is screened off. Mrs. Micklem stated they intended to extend the fence and maintain the greenery barrier and agreed with their neighbors to do that.

There were no speakers, so Vice Chairman DiGuilian closed the public hearing.

Mrs. Harris made a motion to grant VC 90-V-032 for the reasons outlined in the Resolution, and subject to the development conditions contained in the staff report dated June 5, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-031 by MARK C. MICKLEM AND ELIZABETH HILL MICKLEM, under Section 18-401 of the Zoning Ordinance to allow construction of an addition to 4.8 feet from ~~side lot line, on property located at 6043 Edgewood Terrace, Tax Map Reference~~ 83-3((14))(4)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 June 12, 1990; and

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

1. That the applicant is owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,957 square feet of land.
4. The subject property was acquired in good faith.
5. Because of the age of the house and prevailing conditions at the time of construction, it was situated very close to the southeast lot line.
6. The addition will not encroach into the side yard any further than the existing structure.
7. Strict application of the Ordinance will produce an undue hardship.

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

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

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

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

Page 51, June 12, 1990 (Tape 1), (MARK C. MICKLEM AND ELIZABETH HILL MICKLEM, VC 90-V-031, continued from Page 50)

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 building 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. 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 June 20, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 51, June 12, 1990 (Tape 1), Scheduled case of:

10:00 A.M CENTREVILLE ASSEMBLY OF GOD CHURCH, SPA 80-S-088-1, application under Sect. 3-103 of the Zoning Ordinance to amend S-80-S-088 for a church and related facilities to permit addition of two trailers to the site, located at 14821 Lee Highway, on approximately 1.721 acres of land, zoned R-1 and WS, Springfield District, Tax Map 64-2((1))3.

Vice Chairman DiGuilian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Johnson 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 and stated that staff recommended approval in accordance with the development conditions contained therein.

Marion Johnson, 14821 Lee Highway, Centreville, Virginia, presented the statement of justification, stating that the trailers would be used for Sunday School classrooms with the same hours during which the church operates now, with no increase in number of people.

Mrs. Thonen questioned Ms. Greenlief about the landscaping, saying she did not see any landscaping or buffer in the rear yard. Ms. Greenlief stated there are heavy woods in that area, and that the clearing line would come right up to the trailers.

Mrs. Harris asked Mr. Johnson if there would be any objection to a condition that the trailers would be used only on Sunday for Sunday School.

Pastor Phil Derry, 14821 Lee Highway, Centreville, Virginia, came forward to state that the trailers would also be used on Wednesdays for a children's program during the hours of 7:30 p.m. and 9:00 p.m.

There were no speakers, so Vice Chairman DiGuilian closed the public hearing.

Mr. Ribble made a motion to grant SPA 80-S-088-1 with development conditions as amended.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 80-S-088-1 by CENTREVILLE ASSEMBLY OF GOD CHURCH, under Section 3-103 of the Zoning Ordinance to amend S 80-S-088 for a church and related facilities to permit addition of two trailers to the site, on property located at 14821 Lee Highway, Tax Map Reference 64-2((1))3, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 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 1.721 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 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 in the main area of worship shall be limited to 60.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a maximum of 18 spaces. All parking shall be on site.

7. Existing vegetation along all lot lines shall be deemed to satisfy the Transitional Screening requirements. The barrier requirement shall be waived.

8. The trailers shall be approved for a period of two (2) years from the final approval date of this special permit. Use of the trailers shall be limited to Sunday School classes on Sundays and from 7:30 p.m. to 9:00 p.m. on Wednesdays.

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. 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 June 20, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 53, June 12, 1990 (Tape 1), Scheduled case of:

10:15 A.M. HOPE LUTHERAN CHURCH AND HOPE MONTESSORI SCHOOL LTD., SPA 80-A-055-1 application under Sect. 3-403 of the Zoning Ordinance to amend SP 80-A-055 for church and related facilities and private school of general education to allow building addition, on property located at 4604 Ravensworth Road, on approximately 2.97 acres of land, zoned R-4, Annandale District, Tax Map 71-1((1))57A, 62.

Vice Chairman DiGuilian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Gregg 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, submitted the revised affidavit to which Ms. Gregg had attested and presented the staff report, which recommended approval in accordance with the development conditions contained therein.

Pamela Gregg, CEN Architects, Inc., 8294-B Old Courthouse Road, Vienna, Virginia, stated the application was submitted to alleviate overcrowded conditions and that the applicant had no objection to any of the conditions.

There were no speakers, so Vice Chairman DiGuilian closed the public hearing.

Mr. Hammack made a motion to grant SPA 88-A-055-1 with conditions contained in the staff report dated June 5, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 80-A-055-1 by HOPE LUTHERAN CHURCH AND HOPE MONTESSORI SCHOOL, LTD., under Section 3-403 of the Zoning Ordinance to amend SP 80-A-055 for church and related facilities and private school of general education to allow building addition, on property located at 4604 Ravensworth Road, Tax Map Reference 71-1((1)(1)57A, 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 June 12, 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 2.97 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, 8-305 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 prepared by CEN Architects, Inc. dated May 15, 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 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 of the Hope Lutheran Church sanctuary shall be limited to 150 seats. The maximum daily enrollment for the Hope Montessori School shall be limited to a total of 82 children for the combined child care center and private school of general education. The existing 84 parking spaces shall be maintained and no additional parking shall be required or constructed. All parking shall be on site.

6. The hours of operation for Hope Montessori School shall be limited to 7:30 am to 6:00 pm, Monday through Friday.

7. The existing vegetation shall be used to satisfy the transitional screening requirement provided it is maintained and protected in accordance with the Public Facilities Manual. No additional screen plantings shall be required. Replacement trees shall be provided for those trees removed by construction on site. Location, size and type of replacement trees shall be determined and approved by the County Arborist.

8. The barrier requirement shall be waived.

9. Stormwater management shall be provided to the satisfaction of DEM and controlled so as not create drainage problems on adjacent properties. The vegetated swale to the rear of the church shall be re-designed to ensure adequate channelization of run-off in accordance with the Public Facilities Manual.

10. Right-of-way to 35 feet from existing centerline of Ravensworth 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 to fifteen (15) feet behind the required right-of-way dedication.

11. The shed which is shown on the plat to be within the minimum required side yard shall be relocated to comply with minimum side yard requirement of 10 feet.

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. 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 June 20, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 54, June 12, 1990 (Tapes 1 and 2), Scheduled case of:

10:30 A.M. SMC-MCLEAN LIMITED PARTNERSHIP, SP 90-D-019, application under Sect. 8-901 of the Zoning Ordinance to waive the dustless surface requirement for off-street parking, on property located at 8647 Lewinsville Road, on approximately 23,382 square feet of land, zoned R-1, Dranesville District, Tax Map 29-1((1))pt. 5C. (CONCURRENT WITH SE 90-D-004)

Vice Chairman DiGuilian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lawrence 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 stated that staff recommended approval in accordance with the development conditions contained therein.

Mrs. Thonen asked Mr. Riegle whether the Board of Zoning appeals could approve off-site parking. Mr. Riegle and Jane Kelsey, Chief, Special Permit and Variance Branch, replied that the applicant had already received a Special Exception from the Board of Supervisors for the parking in a residential district.

continued from page 54)

Mrs. Harris addressed the expiration aspect of the special permit and asked if the Board of Zoning appeals should remove the five-year term. Mr. Riegle advised that the Zoning Ordinance stipulates that these permits are subject to a five-year term and quoted from Section 8-915.

Robert A. Lawrence of the law firm of Hazel, Thomas, Fiske, Weiner, Beckhorn & Hanes, P.C., P.O. Box 12001, Falls Church, Virginia, advised the Board that this was part of a consideration of a cluster subdivision that was approved by the Board of Supervisors, wherein the developer agreed to provide parking for the Pleasant Grove Church, which was actually a condition which was imposed in the approval of the cluster. A Special Exception was obtained for parking in an R District from the Board of Supervisors and this is a final act to complete the obligation. Because the Board of Zoning Appeals routinely conditions its approvals to be issued to the applicant only, Mr. Lawrence stated he wished to advise that this area ultimately would be transferred to a Homeowners Association, as part of the common area of the Homeowners Association. Mr. Lawrence stated that he was pointing this out in anticipation of the applicant having to come back before the Board at a later date to change the name of the applicant.

Mr. Lawrence addressed Condition 8, concerning the gravel areas, and said that the proposal was actually for grasscrete, rather than gravel. The maintenance of these areas would come into play, he said, under this condition. Mrs. Thonen stated the Board could change the development conditions.

Ms. Kelsey stated that, in cases such as this, Condition 1 was routinely changed to read that, "...at such time as this land is transferred to the Homeowners Association, the applicant's name shall be changed to the name of the Homeowners Association." Insofar as a homeowners association being responsible for the maintenance of a parking lot which serves a church, Ms. Kelsey stated she had no previous knowledge of this and was not immediately prepared to offer a solution. After a short discussion, rewording of Condition 1 was proposed to cover this situation. Ms. Kelsey questioned what affect this change would have on Condition 8, involving maintenance. Mr. Lawrence stated that, when the land was transferred to the Homeowners Association, an agreement would provide for the responsibility of maintenance to also transfer to the Homeowners Association. The land is currently held in the name of the developer.

Mr. Hammack asked if the Homeowners Association had already been formed and Mr. Lawrence advised that it had not. There was some discussion about whether the Homeowners Association would want this property. Mr. Lawrence stated that this land, immediately adjacent to Tysons Corner, was considered to be very desirable and valuable and doubted people who could afford homes in this subdivision would not want to take possession of this land.

There were no speakers, so Vice Chairman DiGuilian closed the public hearing.

Mrs. Thonen made a motion to grant SP 90-D-109 with conditions (Conditions 1 and 8 modified and Condition 3 deleted).

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-019 by SMC-MCLEAN LIMITED PARTNERSHIP, under Section 8-901 of the Zoning Ordinance to waive the dustless surface requirement for off-street parking, on property located at 8647 Lewinsville Road, Tax Map Reference 29-1((1))pt. 5C, 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 June 12, 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 23,382 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 for the location indicated on the application. It is not transferable to other land; however, this approval may be transferred to a Homeowners Association at such time as one may be established for the approved cluster subdivision in which the subject property is an outlot.

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 prepared by Gordon and Associates and dated April 11, 1990.

3. Landscaping shall be provided as indicated on the special permit plat and shall include nine (9) trees a minimum of 2 1/2 inch diameter at breast height. The nine (9) trees shall be interplanted with shrubs a minimum of 2 feet in height within the landscaped strip around the property, the shrubs shall have a mature height of a minimum of 42 to 48 inches. All plantings shall be subject to the review and approval by the County Arborist.

4. The Barrier Requirement shall be waived.

5. This Special Permit shall expire five (5) years from its approval date by the Board of Zoning Appeals.

6. The entrance and exit to the site shall be paved 25 feet from the right-of-way of Lewinsville Road into the site.

7. The gravel and grasscrete 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.

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 June 20, 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 returned at 11:10 a.m. Mrs. Harris did not return to the meeting after the recess.

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10:45 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 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. (DEF. 5/8/90 FOR NEW NOTICES, ADVERTISING, AND POSTING)

Vice Chairman DiGuilian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Calabrese 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 and stated that staff recommended approval in accordance with revised development conditions which she distributed to the Board.

Antonio J. Calabrese of the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, McLean, Virginia, presented the statement of justification, stating that the plat indicates the cottage to be one story when, in fact, it is two stories.

Mr. Ribble requested that Mr. Calabrese have the plat corrected to show the cottage to be two stories.

Mr. Ribble asked what the present term of the permit was. Ms. James stated that the previous term was ten years and this was a renewal. Staff had no objection to continuation of use without term as there were no complaints associated with this application on file with the Zoning Administration. Mr. Calabrese stated that the original term was granted for five years, with three renewals of one year each, totaling eight years.

Vice Chairman DiGuilian asked if there was anyone else to speak in support of the applicant.

John Newfeld, 10551 Hunter Station Road, Vienna, Virginia, came forward to speak in support of this application, stating that his neighbors Bob Abt and Dick McCormick joined him in this support.

There were no other speakers, so Vice Chairman DiGuilian closed the public hearing.

Mr. Ribble made a motion to grant SPA 78-C-307-2, with revised development conditions as amended. Condition 4 was amended by adding, "The BZA has no objection to a site plan waiver." Condition 13 was added, stating, "This Special Permit shall be without term."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 78-C-307-1 by FORTHWAY CENTER FOR ADVANCED STUDIES, INC., under Section 3-E03 of the Zoning Ordinance to allow renewal of existing use and 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, Tax Map Reference 27-2((1))21A, 21B, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 12, 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 11.4926 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 8-307 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Cervantes and Associates, dated May 21, 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. The Board of Zoning Appeals has no objection to a site plan waiver.

5. The limits of clearing and grading shall be maintained as shown on the special permit plat. This condition shall not preclude the removal of dead or diseased trees and vegetation as determined by the Fairfax County Arborist.

6. The number of memberships shall not exceed 100 members per activity and no more than 100 persons shall be on the property at any one time.

7. The hours of operation shall be 9:00 am to 5:00 pm on Sundays all year.

8. Special activities may take place on a Saturday or on special holidays, such as Christmas and Easter, between the hours of 8:00 am and 10:00 pm. These activities shall not exceed ten (10) in number per year.

9. There may also be weekday activities by one or more craft groups between the hours of 9:00 am to 5:00 pm. These activities shall not exceed ten (10) in number per year.

10. The maximum number of parking spaces shall be 25.

11. The entrance widths shall be as determined by VDOT and DEM.

12. The barrier shall be waived.

13. This special permit shall be without term.

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.

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 4-0. Mrs. Harris 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 June 20, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 58, June 12, 1990 (Tape 2), Scheduled case of:

11:00 A.M. DAVID C. BUCKIS APPEAL, A 90-C-003, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that Special Permit, SP 86-C-021, to allow the operation of a home professional dental office has expired, on property located at 3238 West Ox Road, on approximately 2.0010 acres of land, zoned R-1, Centreville District, Tax Map 35-4((1))35B. (DEFERRED FROM 5/22/90 - NOTICES NOT IN ORDER)

William E. Shoup, Deputy Zoning Administrator, presented the staff report.

John B. Connor of the law firm of Verner, Liipfert, Bernhard, McPherson and Hand, 901 15th Street, N.W., Washington, D.C., stepped forward to represent the appellant and distributed a memorandum to the Board.

Mrs. Thonen asked Mr. Connor if the information contained in the memorandum was something the Board had previously seen. Mr. Connor said it was not. Mrs. Thonen stated she did not like this being handed to her at this time, when she did not have time to read it thoroughly.

Mr. Connor stated that the facts presented by Mr. Shoup were correct. He stated that the question remains as to whether Dr. Buckis complied with the requirements and went on to give a chronology of events leading up to the appeal. Mr. Connor stated that the deceleration lane was now in and all the work was done. Mr. Connor stated that the reason the Non-RUP (Non-Residential Use Permit) has not and could not be issued by DEM (Department of Environmental Management) was because the appellant's permit had expired. Mr. Connor requested that the Board waive the date for the purpose of allowing the appellant to apply to DEM for the Non-RUP.

Mrs. Thonen noted that the Board had allowed part of the land to be taken out of the special permit. She said it was her impression that the people who bought that land were putting in the road in question. Mr. Connor stated that Dr. Buckis contracted with the new owners, the Harmon Company, to do the work. Mrs. Thonen said it was also her impression when she looked at the plat that part of Dr. Buckis' driveway, which was needed for the road, was swapped for some of the land in the back for part of the driveway. Mr. Connor called Dr. Buckis forward to answer this question.

Dr. David C. Buckis, 3238 West Ox Road, Herndon, Virginia, came forward and stated that the builder to whom he sold the property was required by the State to put the entrance to his property opposite Bennett Road, so that there would be an alignment of Bennett Road and the access. To achieve that, he had to take part of Dr. Buckis' driveway. In return, Dr. Buckis requested and received another piece of property. Mrs. Thonen stated Dr. Buckis was responsible for the road and she did not understand how he could make the builder responsible for the road. Mrs. Thonen stated she did not understand how Dr. Buckus could legally again swap land which was beyond what the Board had removed from the special permit. Mr. Connor asked if he could be allowed to address this issue and Mrs. Thonen said he could. He said Dr. Buckis did contract with Harmon Company to put in the road, utilizing the property which the Board had removed from the special permit. He gave a chronology of events and reasons which he believed had held up this project. Mr. Conner stated he was not sure he had answered Mrs. Thonen's question and Mrs. Thonen stated that he had not answered her question, which was: Can you take land under special permit and swap it for land that the Board has removed from the special permit?

Mrs. Thonen referred to the initial special permit which Dr. Buckis got on July 26, 1983, which contained a condition that he build a deceleraton lane, which was never done. She said it is now seven years later, and the work was not begun until eleven months after the second special permit had expired. Mrs. Thonen said she didn't see how the Board could not uphold the determination of the Zoning Administrator when the aforementioned facts were documented. Mr. Connor stated that Dr. Buckis' version of events was a series of contracts with the Harmon Company and other people and misunderstandings noted in the staff report.

Mrs. Thonen stated that she believed the Board had gone overboard in trying to accommodate the appellant, giving extensions, and working with him over all these years. Mrs. Thonen questioned the legality of not upholding the Zoning Administrator's determination.

Dr. Buckis came forward again and recounted the series of events leading up to the appeal. He discussed his initial approval of a special permit for his dental office.

Mrs. Thonen pursued the issue of the deceleration lane and asked Dr. Buckis if the Director of DEM had determined the deceleration lane was necessary. Dr. Buckis said, if he did, he wasn't aware of it; because he had been given a building permit without meeting that requirement. Mr. Shoup stated that the Director of DEM would make the determination during the review of the site plan and, since a site plan was never submitted subsequent to the approval of the original special permit, the Director had never reached the point of making a determination on that issue.

Mrs. Thonen asked how they got by without a site plan being filed. Mr. Shoup stated that was part of the original violation, never getting site plan approval.

Mr. Shoup referred to Mr. Connor's claim that the work on the deceleration was now done. Mr. Shoup stated that the work was substantially done, but he did not know if there was a final sign-off on that. In an effort to clear up some of the confusion, Mr. Shoup said, he would point out a plat that had been approved by the Board of Zoning Appeals for SP 86-C-021, showing the entrance to Dr. Buckis' property. He stated that, subsequent to the approval of SP 86-C-021, there was subsequent site plan approval and approval of a site plan waiver for certain types of improvements and a deceleration lane was required. There was an arrangement with the developer of the remaining property to construct the deceleration lane, which they did. He thought they constructed it in such a manner that the entrance would tie in with Bennett Road. He stated that one of the problems is that the developer is trying to subdivide the property and get a subdivision plan approved. In response to Mrs. Thonen's question about swapping property, he stated there has not yet been any recordation of an exchange of property, but he thinks it will have to occur. The current proposal to accommodate the subdivision is to construct a public street, leading into the subdivision,

that will come across a portion of what was shown back in the special permit as Dr. Buckis' property and, he stated, he believed Dr. Buckis will have an entrance off that public street. To accommodate all of that, it will be necessary to take some of Dr. Buckis' property, make some minor adjustment of the parking area and, in exchange, there will be a lot line change at the rear of the property, so that Dr. Buckis retains, essentially, the same land area.

Mrs. Thonen asked if Dr. Buckis was legally allowed to do this.

Mr. Shoup stated that all the changes would have required Dr. Buckis' special permit to be amended; but, the question is moot because the permit has expired. Mr. Shoup stated the legal establishment of the use is at issue and it was submitted that the construction of the deceleration lane started eleven months after the expiration date.

Mr. Shoup stated that the bottom line is that the use needed to be established with a Non-RUP approved before the expiration date, and that has not occurred. If the permit were still valid, the deceleration lane would have to be completed and signed off and all other conditions would need to be checked for compliance before the Non-RUP could be issued.

Mrs. Thonen made a motion to defer making a decision until the next meeting date of the Board of Zoning Appeals in order for the Board to read the new material submitted by the appellant. The appeal was scheduled for June 21, 1990, at 12:00 Noon.

Mr. Ribble seconded the motion which carried by a vote of 4-0; Mrs. Harris was not present for the hearing or the vote. Chairman Smith and Mr. Kelley were absent from the meeting.

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The Board took a five minute recess.

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Page 60, June 12, 1990 (Tape 2), Scheduled case of:

11:30 A.M. NORTHERN VIRGINIA ELECTRIC COOPERATIVE, SP 90-S-011, application under Sect. 8-901 of the Zoning Ordinance to waive the dustless surface requirement for proposed electric substation, on property located at 12700 Popes Head Road, on approximately 5.029 acres of land, zoned R-C and WS, Springfield District, Tax Map 66-4((3))1. (CONCURRENT WITH SE 89-S-072) (DEFERRED FROM 5/29/90 TO ALLOW BOARD OF SUPERVISORS TO HEAR SE 89-S-072)

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Regina Murray, Staff Coordinator with the Rezoning and Special Exception Branch of Zoning Evaluation Division, and the Board welcomed Ms. Murray. Ms. Kelsey stated Ms. Murray was the Staff Coordinator for the Special Exception for the use, which was approved by the Board of Supervisors.

Vice Chairman DiGuilian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Scott Bonner, 10323 Lomand Drive, Manassas, Virginia, replied that it was. Vice Chairman DiGuilian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Ms. Murray presented the staff report and stated that staff recommended approval in accordance with development conditions contained therein.

Mr. Bonner said that the Cooperative concurred with the recommendations of the staff and requested approval of the special permit with the conditions as stated.

there were no speakers, so Vice Chairman DiGuilian closed the public hearing.

Mr. Hammack made a motion to grant SP 90-S-011 in accordance with the development conditions contained in the staff report dated May 22, 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-011 by NORTHERN VIRGINIA ELECTRIC COOPERATIVE, under Section 8-901 of the Zoning Ordinance to waive the dustless surface requirement for proposed electric substation, on property located at 12700 Popes Head Road, Tax Map Reference 66-4((3))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 June 12, 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 5.029 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 8-915 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 approval is granted for the gravel surfaces indicated on the plat submitted with this application, except as qualified below.

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 gravel surfaces shall be maintained in accordance with the Public Facilities Manual standards and the following guidelines. The waiver of the dustless surface shall expire five (5) years from the date of approval of this special permit.

   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. 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 or calcium chloride shall be applied to control dust.

   Runoff shall be channelled 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.

5. The driveway shall be paved at least twenty-five feet into the site from the right-of-way of Popes Head Road to prevent gravel from spreading onto Popes Head Road and to allow for safe acceleration from the driveway onto Popes Head Road.

6. This Special Permit shall be approved for a period of five (5) years from the date of final approval; provided however, that this permit may be renewed in accordance with the provisions of Section 8-013 of the Fairfax County Zoning Ordinance.

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

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.

Page 62, June 12, 1990 (Tape 2), (NORTHERN VIRGINIA ELECTRIC COOPERATIVE, SP 90-S-011, continued from Page 61)

Mr. Ribble seconded the motion. The motion carried by a vote of 4-0; Mrs. Harris 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 June 20, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 62, June 12, 1990 (Tape 2), Information Item:

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that Lori Greenlief, Staff Coordinator, was in the process of distributing to them copies of agendas through August 7, 1990, for their information. She advised them that there were ten other applications which had not yet been scheduled on those agendas.

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Page 62, June 12, 1990 (Tape 2), After Agenda Item:

Approval of Resolutions for June 5, 1990 Meeting

Mrs. Thonen made a motion to approve the minutes as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 4-0; Mrs. Harris was not present for the vote. Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 62, June 12, 1990 (Tape 2), After Agenda Item:

Request for Hearing Date for D.R.W. Appeal

Mrs. Thonen made a motion to schedule this appeal for July 26, 1990 at 9:45 a.m., the same date as two other D.R.W. appeals were scheduled. She said that at that time the Board would decide what would and would not be heard. Mr. Ribble seconded the motion which carried by a vote of 4-0; Mrs. Harris was not present for the vote. Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 62, June 12, 1990 (Tape 2), After Agenda Item:

Request for Out-of-Turn Hearing
Langley School, VC 90-D-056

This request was deferred from June 5, 1990, to afford the Board time to review the application. Jane Kelsey, Chief, Special Permit and Variance Branch, explained the applicant's request. Mrs. Thonen asked when the case would be heard without an out-of-turn hearing, which Ms. Kelsey stated would be July 31, 1990.

Mrs. Thonen made a motion to deny the request because there was a lot of work to be done on the application. Mr. Ribble seconded the motion which carried by a vote of 4-0; Mrs. Harris was not present for the vote. Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 62, June 12, 1990 (Tape 2), After Agenda Item:

Request for Out-of-Turn Hearing
Valewood Church of the Nazarene/Montessori School of Oakton, SPA 84-C-024-2

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the application and request for an out-of-turn hearing had been received the previous day. Ms. Kelsey stated the applicant was under the impression that they could start operating the minute the Board of Zoning Appeals approved the application. She said staff had called the applicant and advised them of having to go through the site plan review process, which would take a bit longer.

Mrs. Thonen made a motion to deny this request. Mr. Hammack seconded the motion which carried by a vote of 4-0; Mrs. Harris was not present for the vote. Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 63, June 12, 1990 (Tape 2), Information Item:

As there was no other business to come before the Board, the meeting was adjourned at 12:10 p.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

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

SUBMITTED: 8/30/90

APPROVED: 9/4/90

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on June 21, 1990. The following Board Members were present: Vice Chairman DiGiulian; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. Chairman Smith and Martha Harris were absent from the meeting.

Vice Chairman DiGuilian called the meeting to order at 9:25 a.m. and Mrs. Thonen gave the invocation. Vice Chairman DiGiulian then called for Board matters.

Jane Kelsey, Chief, Special Permit and Variance Branch, announced that Martha Harris was absent from the Board meeting in order to attend the Board of Zoning Appeal Certified Program in Richmond, Virginia.

Mrs. Thonen made a motion to request the Clerk to prepare a memorandum to the County Executive requesting legal fees in the amount of $2,500 to engage Brian McCormack, with the law firm of Dunn and McCormack, to represent the Board of Zoning Appeals. This representation will be in the pending court case of the Pulte Appeal by Irving Birmingham, Director, Department of Environmental Management; and Jane W. Gwinn, Zoning Administrator versus the Board of Zoning Appeals. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mrs. Harris were absent from the meeting.

Vice Chairman DiGuilian called for the first scheduled case.

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Page 65, June 21, 1990 (Tape 1), Scheduled case of:

9:00 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. (DEFERRED FROM 4/24/90 AT APPLICANT'S REQUEST FOR POSSIBLE REDESIGN OF SITE)

Vice Chairman DiGuilian 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. 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 responded to staff's concerns by reducing the square footage of the building by 12,000 feet, the FAR proportionally, the seating to 650, the height of the building, the parking area, and by providing a left turn lane. He noted that the structural pond is now shown to be a Best Management Practice (BMP) and used the viewgraph to indicate revisions to the plat. Mr. Riegle said that the Health Department had verbally indicated that the current proposal may be within the limits of feasibility for sewerage disposal methods but that the proposal must be reviewed by the State Water Quality Control Board for final approval.

Although the intensity of the proposal has been reduced, staff believed that when viewed in context of an area whose development and land use pattern is characterized by regional parks, wildlife refuges, and low density residential use, there are concerns about the impacts that would be generated by the use. Mr. Riegle said that although the size of the building and the parking area have been reduced they still exceed that envisioned by the Comprehensive Plan. He stated that the current proposal to screen two sides of the building should be expanded to include all four sides. Mr. Riegle noted that staff concerns include the use impact that would be generated on Gunston Road, the only road in and out of Mason Neck, and the heavy weekend traffic due to the park and recreation facilities. As the addendum notes, staff continues to find that the impacts exceed levels that could be considered in harmony with the Comprehensive Plan and as a result staff recommended denial.

Mr. Riegle introduced Randy Stouder, Environmental Planner, OCP, to the Board and explained that he would be present to answer any questions concerning the environmental impact.

H. Kendrick Sanders, attorney with the law firm of Gilliam, Sanders, and Brown, Suite 200N, 3905 Railroad Avenue, Fairfax, Virginia, addressed the Board and stated that Gunston Road contains uses which are similar to the uses proposed by the applicant explaining that just a short distance from the proposed church is a school, a fire station, a park, and two churches. He said that the Comprehensive Plan does not state that churches are inappropriate in Mason Neck and the Zoning Ordinance specifically states that churches are a compatible use in this area. He expressed his belief that the intensity of the use with a building FAR of .1 is appropriate on the 7.7 acre site.

In response to Mrs. Thonen's question regarding the soil and drainage study, Mr. Sanders said extensive studies had been done and that the engineers were present to answer questions of a technical nature.

Mr. Sanders referred to the plat and stated the highest point of the proposed structure is 45 feet and would be harmonious to the residential area, the applicant will provide 29 shade trees in the parking area, 10 large trees, 11 medium evergreen trees, 35 evergreen shrubs, and 1,200 ground cover plants along the front for screening. He further stated that although the site is surrounded by woods, the applicant would be willing to provide more trees if necessary.

Mr. Sanders stated that the church would consist of a Korean Congregation and would be owned and operated by the Diocese of Arlington. He explained that there would be a single mass on Sunday, limited small group uses in the evenings, that the church will have no effect on business day traffic, and the applicant will provide a full left turn lane on Gunston Road.

In response to Mr. Hammack's question regarding activities incidental to the church services, Mr. Sanders said that the applicant fully understood and agreed that all activities would be governed by the development conditions.

Mr. Kelley questioned Mr. Sanders with respect to the letter of opposition from Gary Knipling, Chairman, Mason Collar Civic Association, stating that the church would be a regional facility. Mr. Sanders explained that the church would serve the Korean community throughout the Northern Virginia area.

There being no speakers in support of the request, Vice Chairman DiGiulian called for speakers in opposition.

The following citizens came forward to voice there opposition.

The President of the Mason Neck Citizens' Association, Paul Haluza, P.O. Box 612, Lorton, Virginia; the representative of the Mason Collar Civic Association, Diana Rock, 11840 Harley Road, Lorton, Virginia; the representative of the Friends of Mason Neck and the Gunston Manor Property Owners' Association, Randy Streufert, 5801 Nicotine Trail, Lorton, Virginia; Joseph Flakne, 11388 Dorcey Place, Lorton, Virginia; Tim Coad, 10513 Gunston Road, Lorton, Virginia; and Roxana McCarter, 6800 Springfield Road, Lorton, Virginia.

All expressed their concerns regarding the size of the structure, the impact on the environment, the increase in traffic, the fact that the church would be a regional facility, the sewerage problems in the area, and the potential runoff from the parking area. They emphasized the environmental sensitivity of the area and expressed their belief that the Board should deny the application and preserve the open space and the low density character of the community.

Huey Evans, 9501 Saluda Court, Lorton, Virginia, represented the owner of the land, Maurice Bushrod, and asked the citizens in opposition if he needed the approval of the organizations to sell the land.

There being no further speakers, Vice Chairman DiGiulian called for rebuttal.

Mr. Sanders stated that he did not believe that the church would adversely affect the environment, that the site is entirely surrounded by trees, the screening of the structure would be more than adequate, it would be a benefit to the community, and that a left turn lane would alleviate any traffic problems.

In reference to Mr. Hammack's previous question on activities, Mr. Sanders confirmed that weddings and funerals would be held at the church.

In response to Mr. Kelley's question, Mr. Riegle stated the due to the reduction in seating and in services, the estimated vehicle trip generation per day as stated in the original staff report should be reduced proportionately.

Mr. Sanders emphasized that the stormwater control is committed to be a BMP.

In response to Mr. Ribble's question, Mr. Riegle stated that staff had expressed concerns to the applicant about the intensity of use, the size of the building, and the amount of parking in such a low density characterized area.

In response to a question from the Board about the reduction of the building's footprint, Mr. Sanders stated that the footprint had been reduced by 25 percent and that the site is approximately two miles from the intersection of Gunston Road and Route 1.

In response to Mr. Hammack's question on the approval of the septic system, Mr. Riegle again stated that the Health Department has verbally approved the system but that the State Water Quality Control Board will have to evaluate the issues of water mounding and nitrate loading.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that although the application has been revised, he had reservations as to whether the church application meets the standards and specifically whether it meets the water quality and septic standards. He expressed concern as to whether the Board could legally limit the number of masses or related uses on the property after the use is granted. Mr. Hammack stated that he believed more information from both the County and the State Water Quality Control Board on the capacity of the septic system is needed before a decision could be made. He expressed concern about the future expansion of the use with the sewerage problems in the area and said he would prefer to defer the decision in order to allow the applicant and staff time to provide further information regarding the septic system.

Mr. Hammack made a motion to defer the decision for the purpose of taking additional testimony on the septic capacity.

Mr. Kelley seconded the motion, stating that he believed the site is near ideal for a church.

Mrs. Thonen said that she did not believe that the land use criteria could be met because the property does not have drainage capacity. She further stated the size of the proposed structure would not be harmonious with the community.

Mrs. Thonen made a substitute motion to deny SP 90-V-009 because of environmental reasons, the fact that it is not in harmony with the community, that the soils are not compatible for a large church, and because of the septic related problems which may require the future installation of sewers.

Mr. Ribble used photographs of the site to discuss the drainage problems with Mrs. Thonen and stated that he supported a deferral.

The substitute motion died for lack of a second.

The original motion carried by a vote of 4-1 with Mrs. Thonen voting nay. Chairman Smith and Mrs. Harris were absent from the meeting.

In response to Vice Chairman DiGiulian's request, Greg Riegle suggested a deferral date of October 30, 1990 at 9:00 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed Mr. Sanders that the application would have to be readvertised, renotified, and reposted because it was deferred for more than 90 days.

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Page 67, June 21, 1990 (Tape 1), Scheduled case of:

9:15 A.M. HENRY F. REDDICK, VC 90-P-026, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to 6 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 3407 Hartwell Court, on approximately 10,880 square feet of land, zoned R-3, Providence District, Tax Map 59-2((8))(G)18.

Vice Chairman DiGiulian said that his firm had prepared the plats for the application and asked Mr. Hammack to Chair the meeting. Mr. DiGiulian left the room.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Reddick 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.

The applicant, Henry F. Reddick, 3407 Hartwell Court, Falls Church, Virginia, addressed the Board and explained that the location of the house on the long and narrow lot has caused the need for a variance.

There being no speakers to address this request, Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-P-026 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated June 12, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-026 by HENRY F. REDDICK, under Section 18-401 of the Zoning Ordinance to allow construction of addition to 6 feet from side lot line, on property located at 3407 Hartwell Court, Tax Map Reference 59-2((8))(G)18, 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 June 21, 1990; and

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

1. That the applicant is owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,880 square feet of land.
4. The lot is long and narrow.
5. The addition will not extend any further into the yard than the existing garage.
6. The house is situated at an angle on the lot causing the need for a variance.
7. The hardship was not of his own making.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Mr. DiGiulian abstaining; Chairman Smith and Mrs. Harris absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 69, June 21, 1990 (Tape 1), Scheduled case of:

9:30 A.M. UNITY OF FAIRFAX CHURCH OF THE DAILY WORD, SPA 73-P-007-3, application under Sect. 3-103 of the Zoning Ordinance to amend SPA 73-P-007-2 for a church and related facilities to allow modification of the size of temporary building, on property located at 2854 Hunter Mill Road, on approximately 5.31 acres of land, zoned R-1, Providence District, Tax Map 47-2((1))17C,18.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Travesky 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 explained that the amendment would allow a minor change in the size and configuration of the temporary trailers with two long narrow trailers double stacked side by side as opposed to one wide trailer. He further stated that one sentence in development condition 9 of SPA 73-P-007-2 had been erroneously omitted and asked that it be included. Mr. Riegle said that staff had no land use concerns with the request and recommended approval.

The applicant's agent, Marie Travesky, with Travesky and Associates, Ltd., 3900 Jermantown Road, Suite 350, Fairfax, Virginia, addressed the Board and stated that the application was straight forward and she had nothing to add to the staff report.

There being no speakers to address this request, Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SPA 73-P-007-3 subject to the development conditions contained in the staff report dated June 12, 1990 with the change in condition 9 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 73-P-007-3 by UNITY OF FAIRFAX CHURCH OF THE DAILY WORD, under Section 3-103 of the Zoning Ordinance to amend SPA 73-P-007-2 for a church and related facilities to allow modification of the size of temporary building, on property located at 2854 Hunter Mill Road, Tax Map Reference 47-2((1))17C,18, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 21, 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 5.31 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 3-303 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 (prepared by Runyon, Dudley, Anderson Associates, Inc., dated August 12, 1987, revised through January 18, 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 seating capacity for Unity of Fairfax Church of the Daily Word shall be limited to a total of 295.

6. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of 152 spaces. All parking shall be on site. Handicapped parking shall be located in accordance with the County Code.

7. Transitional Screening 1 (25') shall be provided along northern, western and southern lot lines. 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 along the site frontage on Hunter Mill Road shall be modified to allow the existing landscaping and natural vegetation to be maintained with no additional plantings required. Vegetation and trees which are located outside of the limits of clearing and grading or which are specifically designed to be preserved by the County Arborist and which are removed or damaged during construction shall be replaced with equivalent plantings as determined by the County Arborist. Interior parking lot landscaping shall be provided in accordance with the provisions of Sect. 13-106 of the Ordinance.

8. The barrier requirement shall be waived.

9. Right of way dedication to 45 feet from the existing centerline of Hunter Mill 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 access easements to 15 feet behind the 45 feet of right-of-way dedication shall be provided to facilitate these improvements. The existing entrances to Hill House from Hunter Mill Road shall be closed.

10. 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 on the subject property.

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

11. 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.

12. The modification to the dustless surface requirement is approved for the parking area and driveway shown on the plat except that the entrance shall be paved 25 feet into the site. 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. At the request of the Director, Department of Environmental Management, a pro-rata participation shall be provided for the implementation of proposed regional pond D-31.

14. The use of the temporary parco buildings is approved for a period of five (5) years beginning from the date of final approval of this special permit or until the building addition approved in conjunction with SPA 73-P-007-2 is completed, whichever occurs first. With appropriate approvals from DEM, the temporary parco buildings may be placed on the site prior to final site plan approval for the building addition.

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 establishmdprocedures, 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 and Mr. Kelley seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 71, June 21, 1990 (Tape 1), Scheduled case of:

9:45 A.M. DANIEL VINCENT GEARING, VC 90-L-034, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of carport for an attached garage to 10.8 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 5006 Treetop Lane, on approximately 11,732 square feet of land, zoned R-3, Lee District, Tax Map 82-3((11))12.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Gearing confirmed 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, present the staff report.

The applicant, Daniel V. Gearing, 5006 Treetop Lane, Annandale, Virginia, addressed the Board and stated that his application is very straight forward and he had nothing to add to the staff report.

In reply to Mrs. Thonen's question, Mr. Gearing confirmed that the existing carport would be enclosed and there would be no further intrusion into the side yard.

There being no speakers to address this request, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 90-L-034 subject to the development conditions contained in the staff report dated June 12, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-034 by DANIEL VINCENT GEARING, under Section 18-401 of the Zoning Ordinance to allow enclosed of carport for an attached garage to 10.8 feet from side lot line, on property located at 5006 Treetop Lane, Tax Map Reference 82-3((11))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 June 21, 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 11,732 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 garage 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 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 73, June 21, 1990 (Tapes 1 and 2), Scheduled case of:

10:00 A.M. FAIRFAX COVENANT CHURCH, SPA 87-S-075, application under Sect. 3-C03 of the Zoning Ordinance to amend SP 87-S-075 for a church and related facilities to permit the deletion of land area, increase in parking, modification of previously imposed condition regarding screening and barrier, and addition of canopy to church, on property located on Ox Road, on approximately 16.10 acres of land, zoned R-C and WS, Springfield District, Tax Map 68-3((1))6. (TO BE HEARD PRIOR TO COUNTRY CLUB OF FAIRFAX, SPA 82-S-102-2)

Vice Chairman DiGiulian called the agent for the applicant to the podium and Sarah Riefsnyder, attorney with the law firm of Blankingship & Keith, 4020 University Drive, Suite 312, Fairfax, Virginia, addressed the Board and stated that a deferral had been requested for SPA 87-S-075 and also for the Country Club of Fairfax, SPA 82-S-102-1, as the issues are related.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the present BZA schedule could be adjusted so that SPA 87-S-075 could be heard on August 7, 1990.

Ms. Riefsnyder explained to the Board that because of the neighbors' concerns about the location of the septic field, the applicant would like to relocate the septic field and requested a deferral so that this matter could be resolved.

After a discussion of the BZA schedule by the Board, Mrs. Thonen made a motion to defer SPA 87-S-075 to September 6, 1990 at 11:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

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Page 73, June 21, 1990 (Tape 2), Scheduled case of:

10:15 A.M. COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-2, application under Sect. 3-C03 of the Zoning Ordinance to amend SP 82-S-102 for a country club to allow addition of land area for development of a 9 hole golf course, on property located at 5110 Ox Road, on approximately 158.3763 acres of land, zoned R-C and WS, Springfield District, Tax Map 68-1((1))(1)17,18,20; 68-3((1))(1)pt. 6. (TO BE HEARD FOLLOWING FAIRFAX COVENANT CHURCH, SPA 87-S-075)

Mr. Kelley made a motion to defer SPA 82-S-075-1 to September 6, 1990 at 11:45 a.m. Mr. Ribble and Mrs. Thonen seconded the motion with carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent form the meeting.

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Page 73, June 21, 1990 (Tape 2), Scheduled case of:

10:30 A.M. TODD L. WILSON, VC 90-A-033, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 10.46 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 7302 Inzer Street, on approximately 10,500 square feet of land, zoned R-3, Annandale District, Tax Map 71-3((4))(36)3.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Wilson confirmed 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.

The applicant, Todd L. Wilson, 7302 Inzer Street, Springfield, Virginia, addressed the Board and explained that an existing carport would be enclosed and there would be no further extension into the side yard.

There being no speakers to address this request, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 90-D-033 for the reasons noted in the Resolutions and subject to the development conditions contained in the staff report dated June 14, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-033 by TODD L. WILSON, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 10.46 feet from side lot line, on property located at 7302 Inzer Street, Tax Map Reference 71-3((4))(36)3, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 21, 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 applicant has satisfied the nine requirements for a variance.
5. The lot is exceptionally narrow.
6. A minimum variance is required to allow this enclosure.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. Thonen seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 75, June 21, 1990 (Tape 2), Scheduled case of:

10:45 A.M. KAE SHIK AND SUNG MOON AND DON AND SUNG LEE, VC 90-D-030, application under Sect. 18-401 of the Zoning Ordinance to allow a dwelling to remain 7.2 feet at closest point from street lines of a corner lot (30 ft. min. front yard required by Sect. 3-307), on property located at 1542 Chain Bridge Road, on approximately 10,077 square feet of land, zoned R-3 and SC, Dranesville District, Tax Map 30-4((2))(4)40B. (CONCURRENT WITH SE 90-D-015)

Mrs. Thonen said that a deferral had been requested so that the Planning Commission and the Board of Supervisors could hear SE 90-D-015.

Bernadette Bettard, Staff Coordinator, suggested a deferral date of September 20, 1990 at 9:30 a.m.

Mr. Thonen made a motion to defer VC 90-D-030 to September 20, 1990 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

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The Board recessed at 10:55 a.m. and reconvened at 11:15.

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After a brief discussion with Jane Kelsey, Chief, Special Permit and Variance Branch, Mrs. Thonen made a motion to move the last four cases scheduled for July 31, 1990 to August 2, 1990. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

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Page 75, June 21, 1990 (Tape 2), Scheduled case of:

11:00 A.M. GEORGE P. AND JO ANNE CRICHTON, VC 90-D-036, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one (1) lot into two (2) lots, proposed Lot 2 having a lot width of 26.36 feet (200 ft. min. lot width required by Sect. 3-E07), and to allow existing dwelling to remain 21.8 feet and existing shed to remain 32.9 feet from front lot line after dedication for lot 1 (50 ft. min. front yard required by Sect. 3-E07), on property located at 239 Springvale Road, on approximately 5.1243 acres of land, zoned R-E, Dranesville District, Tax Map 3-4((1))5.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Runyon confirmed 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 stated that the proposed subdivision would exceed the .1 to .2 density recommended by the Comprehensive Plan. She said that granting the pipestem development may set a precedent in an area which consists of other large undeveloped parcels. Ms. Bettard stated that in staff's judgment the applicant had not met the provisions of Variance Standards 2, 3, 4, 5, 6, 7, and 9 for reasons set forth in the staff report.

The agent for the applicant, Charles E. Runyon, with Runyon, Dudley, Anderson, Associates, Inc., 10650 Main Street, Suite 301, Fairfax, Virginia, addressed the Board and explained that the average lot size in the area is 2.0 acres. He stated that the financial consideration such as taxes and the cost of land have caused the need to subdivide the lot. He said that the alternate to a pipestem driveway would be to install a street with a cul-de-sac which would have a great impact on the environment. Mr. Runyon said that a simple 10 foot driveway would allow environmentally sensitive areas to be preserved and still be compatible with the neighborhood. He noted that the applicants have renovated the existing house and as members of the Nature Conservatory are interested in environmental issues.

There being no speakers in support of the request, Vice Chairman DiGiulian called for speakers in opposition.

Yvonne Willis, 247 Springvale Road, Great Falls, Virginia, addressed the Board and stated that in the three years since she purchased her home there has been substantial growth in the area. She expressed concern that the subdivision would set a precedent in the area and result in a permanent destruction of natural land.

There being no further speakers in opposition, Vice Chairman DiGiulian called for rebuttal.

Mr. Runyon stated that the environmental issues had been considered and the pipestem driveway would ensure that very little clearing would be done on the land.

There being no other speakers to address the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-D-036 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated June 14, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-036 by GEORGE F. AND JO ANNE CRICHTON, under Section 18-401 of the Zoning Ordinance to allow subdivision of one (1) lot into two (2) lots, proposed Lot 2 having a lot width of 26.36 feet, and to allow existing dwelling to remain 21.8 feet and to allow existing shed to remain 32.9 feet from front lot line after dedication for Lot 1, on property located at 239 Springvale Road, Tax Map Reference 3-4((1))5, 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 June 21, 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 5.1234 acres of land.
4. The area is environmentally sensitive and a pipestem would be better for the environment than a public road.
5. The lot is large but has severe topographic conditions.
6. The location of the house on the lot causes it not to meet the setbacks.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. These variances are approved for the subdivision of the existing lot into two (2) lots and to allow the existing dwelling to remain 21.8 feet and an existing shed to remain 32.9 feet from a front lot line after dedication for Lot 1, as shown on the plat drawn by Runyon, Dudley, Anderson Associates, Inc., and dated May 22, 1990 which was submitted with this application.

2. Under Sect. 18-407 of the Zoning Ordinance, these variances 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 tothe expiration date.

3. Pursuant to the Virginia Code Section of 10-1-1701, the applicant shall at the time of subdivision plan approval, record among the land records of Fairfax County, an Open Space Easement to the benefit of the Board of Supervisors. The applicant shall provide the surveyed metes and bounds of the Open Space Easement which shall conform with the EQC as delineated by the Environmental and Heritage Resource Branch of the Office of Comprehensive Planning prior to the issuance of a grading permit or at the time of subdivision plan approval. There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs in consultation with the County Arborist. There shall be no structures located in the EQC area. The easement shall be in a form approved by the County Attorney.

4. Prior to subdivision plat approval, a tree preservation 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 trees. At a minimum, the limits of clearing and grading shall be designed to conform with the EQC on the eastern portion of the site as defined in Condition 3 above and all vegetation within the line identified as the EQC shall be preserved. The plan, shall also include large groups of trees or individual trees outside of the EQC. Minor alterations shall be permitted to accommodate engineering or other Code required changes, as determined by the County Arborist, and as outlined in Condition 3 above.

5. A geotechnical engineering study shall be submitted to the Department of Environmental Management, if determined necessaryby the Director of DEM. The recommendations of DEM shall be implemented by the applicant.

6. Right-of-way dedication to thirty (30) feet from the existing centerline of Springvale Road necessary for future 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 subdivision approval, whichever occurs first.

7. The septic field on proposed Lot 2 shall be located outside the area containing problem soils and not within the area identified as the EQC. The EQC area shall be as identified by Environmental Heritage and Resources Branch of the Office of Comprehensive Planning. Prior to subdivision plat submission, the Applicant shall obtain the appropriate permits for the location and installation of the proposed well and septic field as determined by the County Health Department and by DEM .

8. 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 Mrs. Harris absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 77, June 21, 1990 (Tape 2), Scheduled case of:

11:15 A.M. LOUIS V. DIVONE AND JUDENE F. DIVONE, VC 90-C-032, application under Sect. 18-401 of the Zoning Ordinance to allow building addition to 47.9 feet and roofed deck to 42.2 feet from front lot line (50 ft. min. front yard required under Section 3-E07), on property located at 2530 Leeds Road, on approximately 2.001 acres of land, zoned R-E, Centreville District, Tax Map 37-1((3))9.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Divone confirmed 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 for Denise James, Staff Coordinator, who was attending a Board of Zoning Appeal Certified Program in Richmond, Virginia.

The applicant, Louis Divone, 2530 Leeds Road, Oakton, Virginia, addressed the Board and explained that he purchased the property with the knowledge that the house would have to be restored and an addition would be necessary. After moving into the house, he discovered that because of the topographic constraint, storm drainage easement, and the angle of the house on the lot he would need a variance.

There being no speakers to address this request, Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 90-C-032 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated June 12, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-032 by LOUIS V. DIVONE AND JUDENE F. DIVONE, under Section 18-401 of the Zoning Ordinance to allow building addition to 47.9 feet and roofed deck to 42.2 feet from front lot line, on property located at 2530 Leeds Road, Tax Map Reference 37-1((3))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 June 21, 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 2.001 acres of land.
4. The request is for a minimum variance.
5. The applicant has met the nine standards required for a variance.
6. The lot has exceptional topographic conditions.
7. The 25 foot drainage easement has caused the need for a variance.
8. The position of the house on the lot prohibits placing the addition in another location.

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is 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 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 79, June 21, 1990 (Tape 2), Scheduled case of:

11:30 A.M. STEVE WALLMAN, VC 90-D-050, application under 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 15.0 feet from side lot line (20 ft. min. side yard required by Sect. 3-E07), on property located at 9332 Ramey Lane, on approximately 5.02005 acres of land, zoned R-E, Dranesville District, Tax Map 19-2((2))D. (OUT-OF-TURN HEARING GRANTED)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Wallman confirmed 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.

The co-applicant, Kathleen Wallman, 9332 Ramey Lane, Great Falls, Virginia, addressed the Board and stated the two existing sheds would be torn down and that the addition would add aesthetic value to the property. She explained that the location of the addition was limited to the proposed location because of existing trees on the property.

In response to Vice Chairman DiGiulian's question, Ms. Wallman said that the reason they were requesting an addition would be to provide a bedroom.

The applicant, Steve Wallman, replied to Mr. Kelley's question, by stating that the present structure is approximately 100 years old, consists of 2 floors with 3 rooms on each floor, and was built without closets. He added that he purchased the house in 1988 and had no prior knowledge of the 1985 variance referenced in the staff report which allowed subdivision of the property.

In response to Mr. Ribble's question, Ms. Wallman confirmed that the addition would be a 41 foot, 3 storied structure.

In response to Mrs. Thonen question regarding the height of the structure, Ms. Greenlief confirmed that the Zoning Ordinance limited the height of structures in residential areas to 35 feet.

Mr. Wallman explained that he had consulted his architect regarding the height limit and was told that the 35 foot limitation would be measured from the front door to the roof line of the existing structure and that because the ground is 10 feet lower at the site of the proposed addition, the addition would meet the 35 foot requirement.

There being no speakers to address this request, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 90-D-050 for the reasons noted in the Resolution and subject to the development conditions as contained in the staff report dated June 12, 1990.

Following the vote, Jane Kelsey, Chief, Special Permit and Variance Branch, expressed concern regarding the building height limitation and suggested that the applicant consult with the appropriate County Agencies. The Board agreed with the suggestion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-050 by STEVE WALLMAN, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 15.0 feet from side lot line, on ~~property located at 9332 Ramey Lane, Tax Map Reference 19-2((2))D, Mr. Kelley moved that the~~ Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 21, 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 5.02005 acres of land.
4. The lot has an exceptional shape.
5. The location of the dwelling on the lot 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. Thonen seconded the motion. The motion carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 81, June 21, 1990 (Tape 2), Scheduled case of:

11:45 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)

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Aulestia confirmed that it was. Vice Chairman DiGiulian then asked for disclosures from the Board members and hearing no reply called for the staff report.

Vice Chairman DiGiulian stated that SPA 86-C-037-1 had been deferred for additional information and asked for staff comments.

Lori Greenlief, Staff Coordinator, stated that in response to questions from the Board, staff had submitted an addendum with additional pictures to the Board; and the applicant had also submitted an additional statement and pictures. Ms. Greenlief said that revised development conditions had been submitted as attachment 1 to the addendum.

The agent for the applicant, James A. Aulestia AIA/WSE, with the firm of Aulestia and Associates, Architects, 12620 Garman Drive, Nokesville, Virginia, addressed the Board and stated that when the applicant had asked for a Building Inspector to conduct an inspection of the parking area and shed which was under construction and 90 percent completed, they were informed that there were irregularities in the Special Permit and Site Plan and construction must be halted. Although the errors were done with good intentions by both the applicant and the County, he noted that it had taken time and had cost a great deal of money to rectify the mistakes. Mr. Aulestia expressed his belief that all the requirements were now met and asked that the request be approved.

There being no speakers to address this request and no staff comments, Vice Chairman DiGiulian closed the public hearing.

In response to Mr. Hammack's question, Ms. Greenlief stated that Development Condition 13 addresses future improvement of Centreville Road.

Mr. Hammack moved to grant SPA 86-C-037-1 subject to the development conditions as contained in the staff report dated June 12, 1990 with the addendum to the staff report dated June 12, 1990.

Vice Chairman DiGiulian called for discussion.

Mrs. Thonen expressed concern about the transitional screening and suggested that the landscaping requirements be met.

Mr. Hammack stated that Development Condition 5 requires that the County Arborist inspect the transitional screening on the site.

Mr. Aulestia explained that when the project was completed the County Arborist approved the landscaping, released the bond, and an Occupancy Permit was issued. He further stated that the applicant would be willing to add additional plantings if required.

The motion carried by a vote of 5-0 with Chairman Smith and Mrs. Harris 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 86-C-037-1 by THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, under Section 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, Tax Map Reference 25-1((1))27A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 21, 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 3.7947 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 by Aulestia and Associates, 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. Transitional Screening 1 shall be provided and maintained along all lot lines. Existing plantings along the southern, eastern and northern lot lines shall be supplemented to level of Transitional Screening 1 to the satisfaction of the County Arborist. Supplementation materials shall not consist of white pines. Any vegetation damaged with the proposed construction shall be replaced to the level of Transitional Screening 1 to the satisfaction of the County Arborist. The barrier requirement shall be waived.

6. The maximum seating capacity shall be limited to a total of 300 seats with a corresponding minimum of 75 parking spaces. The maximum number parking spaces shall be 125. Handicapped parking shall be provided in accordance with Code requirements as determined by the Department of Environmental Management. All the parking shall be on site.

7. Parking lot lighting shall be in accordance with the following:

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

   - The lights shall focus directly on the subject property.

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

8. The area in the proposed parking lot shown with "painted lines" shall be constructed as a parking lot landscaping island to be planted in accordance with the provisions of Article 13 of the Zoning Ordinance for parking lot landscaping. All materials used to construct the parking lot shall be removed prior to the planting of vegetation within the island.

9. Foundation plantings shall be provided around the sides and rear of the shed. The purpose of these plantings shall be to soften the visual impact of the shed from adjacent properties. The size, type, quantity and placement of these plantings shall bereviewed and approved by the County Arborist.

10. The dumpster shall be surrounded on two sides and the rear by a four foot high board on board wood fence.

11. ~~The propane tanks shall be surrounded on the north, east and south sides by Leyland~~ Cypress trees or an equivalent to create a continuous screen of the tanks. The number and location of the trees shall be reviewed and approved by the County Arborist.

12. Right-of-way dedication to 60 feet from the new centerline of Centreville 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 comes first. Ancillary easements as determined by DEM shall be provided to facilitate the improvements of the road.

13. A two-way entrance driveway shall be constructed to intersect with the private service drive to be constructed by others on Outlot A at such time Centreville Road is improved. A site plan or site plan waiver shall be submitted at that time showing the improvement. At that time, the need to close the existing church entrance on Centreville Road shall be determined by the Virginia Department of Transportation (VDOT). If VDOT determines that the entrance shoud be closed, the area shall be replanted with Transitional Screening 1 to the satisfaction of the County Arborist commensurate with the plantings existing along the western lot line.

14. The existing stormwater detention pond shall be appropriately sized to the satisfaction of the Department of Environmental Management to accommodate the additional runoff anticipated from the proposed parking areas.

15. The southernmost parking lot landscaping island shall be constructed as shown on the special permit plat with two areas of soil for two trees. The type, size and species to be determined by the County Arborist in accordance with Article 13 of the Zoning Ordinance.

These development conditions incorporate all those previously approved and applicable 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.

Mr. Ribble seconded the motion. The motion carried by a vote of 5 - 0 with Chairman Smith and Mrs. Harris absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 29, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 84, June 21, 1990 (Tape 2), Scheduled case of:

12:00 Noon DAVID C. BUCKIS APPEAL, A 90-C-003, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that Special Permit, SP 86-C-021, to allow the operation of a home professional dental office has expired, on property located at 3238 West Ox Road, on approximately 2.0010 acres of land, zoned R-1, Centreville District, Tax Map 35-4((1))35B. (DEFERRED FROM 5/22/90 - NOTICES NOT IN ORDER) (DEFERRED FROM 6/12/90 FOR BOARD TO REVIEW NEW INFORMATION)

Vice Chairman stated that the application was deferred so that the Board could review the information that Mr. Connor had submitted at the previous meeting.

Mrs. Thonen made a motion to uphold the Zoning Administrator in A 90-C-003. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. Hammack abstaining from the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

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Page 84, June 21, 1990 (Tape 2), After Agenda Item:

Request for Additional Time
W. C. Wills Subdivision, VC 88-M-161
4917 Brook Hill Drive
Tax Map Reference 71-3((1))3

Mrs. Thonen made a grant the request. Mr. Kelley asked the Board to extend the additional time for a period of 18 months. Mrs. Thonen concurred. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent from the meeting. The new expiration date is February 22, 1992.

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Page 84, June 21, 1990 (Tape 2), After Agenda Item:

Approval of Minutes
May 17, 1990

Mr. Hammack made a motion to approve the BZA Minutes as submitted. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mrs. Harris absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:05.

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

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

SUBMITTED: 8/30/90

APPROVED: 9/4/90

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on June 26, 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 9:15 a.m. and Mrs. Thonen led the invocation.

There were no Board matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 85, June 26, 1990, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD BURGESS, VC 90-C-035, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 14.7 feet from side lot line such that side yards total 30.8 feet (40 ft. min. total side yards required by Sect. 3-107), on property located at 9804 Bridleridge Court, on approximately 23,088 square feet of land, zoned R-1 (developed cluster), Centreville District, Tax Map 38-1((28))15.

Vice Chairman DiGuilian 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 DiGuilian then asked for disclosures fromthe Board Members and, hearing no reply, called for the staff report.

Greg Riegle, Staff Coordinator, presented the staff report. He noted that the applicant has revised the original submission by reducing the encroachment into the side yard, thus the variance is now needed only for the total side yards.

The applicant's agent, Dave C. Thomas, with BDLK, 14130-C Sullyfield Circle, Chantilly, Virginia, came forward. He explained that the addition will allow the applicant to switch the existing dining room and den. Because of the narrow width of the lot, the applicant could not construct an addition without a variance. Due to the location of the swimming pool and the neighbor's house on Lot 14, the proposed site on the property is the only feasible location. He added that the request will not have any impact on the open space which abuts the property, will not change the character of the neighborhood, nor will it be visible from the interior of the neighboring houses. The applicant has obtained the approval of the Bridleridge Homeowners Association and the Bridleridge Architectural Review Board.

There were no speakers to address this application and Vice Chairman DiGiulian closed the public hearing.

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 June 21, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-035 by RICHARD BURGESS, under Section 18-401 of the Zoning Ordinance to allow construction of addition to dwelling to 14.7 feet from side lot line such that side yards total 30.8 feet (40 ft. min. total side yards required by Sect. 3-107), on property located at 9804 Bridleridge Court, Tax Map Reference 38-1((28))15, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 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 23,088 square feet of land.
4. There is open space on the side that the addition is being constructed on.
5. The house has been constructed at an angle to the front lot line in order to position it a little better with respect to the pipestem that goes into it.
6. The zoning district will not be changed by the granting of this and it will not be a problem for the rest of the community.
7. The applicant meets the minimum side yard setback and only needs a variance to the total side 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 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 Chairman Smith absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 4, 1990. This date shall be deemed to be the final approval date of this variance.

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It was not yet time for the next scheduled case and the Board proceeded to take action on the After Agenda Items.

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Page 86, June 26, 1990, (Tape 1), After Agenda Item:

Poor Sisters of St. Joseph, Inc., SPA 80-M-078-1
4319 Sano Street
72-2((1))20

Mrs. Thonen made a motion to grant the applicant an additional six (6) months in order to commence construction. The new expiration date is November 18, 1990.

Page 87, June 26, 1990, (Tape 1), (POOR SISTERS OF ST. JOSEPH, INC., SPA 80-M-078-1, continued from Page 86)

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 87, June 26, 1990, (Tape 1), After Agenda Item:

Approval of Resolutions from June 21, 1990

Mrs. Thonen made a motion to approve the Resolutions as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 87, June 26, 1990, (Tape 1), After Agenda Item:

Approval of Minutes for March 13, March 27, April 24, and June 5, 1990

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 87, June 26, 1990, (Tape 1), Scheduled case of:

9:15 A.M. DAVID AND DAWN ADDIS, VC 90-D-038, application under Sect. 18-401 to allow subdivision of one (1) lot into two (2) lots, both lots having a lot width of 2.5 feet (200 ft. min. lot width required by Sect. 3-E06), on property located at 9714 Arnon Chapel Road, on approximately 5.0 acres of land, zoned R-E, Dranesville District, Tax Map 8-3((1))10A.

Vice Chairman DiGuilian 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 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. He stated that staff does not believe that the applicant has met all of the standards for a variance, specifically 2, 3, 5, 6, and 8.

Keith Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, represented the applicant. He stated that the applicant is proposing to subdivide the subject property consisting of five acres into two lots with both lots consisting of approximately 2.5 acres. Lots 1 and 2 would have a pipestem lot configuration with a minimum lot frontage measured by 2.5 feet off the 5 foot frontage off of Club View Drive. The existing access to the site is by means of a 400 foot long dirt entrance road off Arnon Chapel Road within an ingress/egress easement on parcel 8, which is a long narrow strip along the eastern boundary of the property. Future access to the site would occur either through the extension of Club View Drive along the property's frontage which will remove the need for a variance in the future and in the meantime will be off this private dirt road.

He stated that the applicant purchased the adjacent property in June 1984, where they now reside, and in a separate transaction purchased the subject property in July 1984. The applicant purchased the property prior to the stub extension of Club View Drive and the subdivision of parcels to the north into two acre parcels. There is an extraordinary situation as Club View Drive was dedicated and constructed up to the northeastern boundary of the subject property, thereby providing only five feet of public street frontage. It is the Virginia Department of Transportation (VDOT) and Fairfax County's intention to extend Club View Drive along the subject property's eastern boundary line to intersect with Arnon Chapel Road and it is shown on the Comprehensive Plan. This extension will ultimately provide sufficient public street frontage and lot width which would then preclude a variance but there appears to be no relief in the near future. The situation is further magnified in that normally a public street is terminated either permanently or temporarily in a cul de sac and in this instance would have provided additional public street frontage to the subject property and reduced the variance request. The applicant purchased the property for future resale but is unable to sell the parcel because of the Club View Drive extension and strict application of the Zoning Ordinance would destroy any subdivision feasibility and deprive the applicants of full potential value of their land.

In response to questions from Mrs. Thonen, Mr. Martin explained that the gas line is far removed from the lot and the power easement is overhead lines, thus would not impact the property.

The applicant, Mr. Addis, came forward and reiterated the comments made by Mr. Martin. He added that the subject property has been on the market for two years without any offers being made but he has had three written offers if the lot is subdivided into 2 acre parcels which would be in keeping with the surrounding parcels.

Following Mr. Addis' comments, Mrs. Harris stated that it was her understanding that although the Master Plan shows the extension coming straight down on Lot 8 that there had been some talk about the extension going through another lot belonging to Mrs. Cornfield, to line it up with Lake Drive, which would be much safer.

Mr. Addis stated that during all conversations he has had with County staff he was told that the extension would come straight down.

Vice Chairman DiGiulian called for speakers to the request.

Vivian Lyons, 10808 Nichols Road, Great Falls, Virginia, President-elect of the Great Falls Citizens Association, came forward and stated that the Association was adamantly opposed to the request and was in full support of staff's position. She explained that the two acre subdivisions referenced by Mr. Addis was there in 1984 and the applicant purchased his property knowing what type of development surrounded the subject property. Ms. Lyons stated that the applicant bought the parcel as a speculative investment and if Club View should be extended the parcel could be subdivided by right. She added that her research indicated agreement with Mrs. Harris' comments.

Mrs. Thonen asked Ms. Lyons who she had talked with and Ms. Lyons replied that she had talked with Nancy Richardson, President of the Egon Hills Neighborhood Association, who had discussed this with VDOT and they agreed that there is a safety issue involved.

Ms. Lyons continued by stating that she also serves as Chairman, Dranesville District Task Force, and the Task Force is working with the County to rewrite the Comprehensive Plan and this issue as well as other road alignments are coming up for re-evaluation. Approximately 30 to 40 percent of the lots in Great Falls are five acre lots on private outlot roads, thus the subject property is not unique and she believed that a precedent would be set if the request was granted.

During rebuttal, Mr. Martin stated that he believed that the subject property is unique because of the possible extension of Club View Drive and how it is noted on the Comprehensive Plan.

Mr. Addis then came up and reiterated his earlier comments.

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolution.

Mrs. Thonen stated that she could not support the motion as she believed that the lot has a unique shape and does meet the standards.

Mr. Hammack supported the motion and added that the Board could not consider financial hardship as a reason for granting a variance and the problems addressed by the applicant were off site. He added that the final outcome of the road was merely speculation.

Following further discussion, Vice Chairman DiGiulian called for the vote and the vote was 3-3, thus the vote failed and the application was denied due to the lack of four affirmative votes which are needed to grant a variance or special permit.

The applicant's agent then requested and was granted a waiver of the 12-month waiting period for the filing of a new application.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-038 by DAVID AND DAWN ADDIS, under Section 18-401 of the Zoning Ordinance to allow subdivision of one (1) lot into two (2) lots, both lots having a lot width of 2.5 feet, on property located at 9714 Arnon Chapel Road, Tax Map Reference 8-3((1))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 June 26, 1990; and

Page 89, June 26, 1990, (Tape 1), (DAVID AND DAWN ADDIS, VC 90-D-038, continued from Page 88)

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-E.
3. The area of the lot is 5.0 acres of land.
4. The property was acquired in good faith.
5. The property does not meet even one of the required characteristics for a variance.
6. It has always been on the Comprehensive Plan that Club View Drive will be extended.
7. The strict application of the Ordinance would not produce undue hardship. It is a lot into itself. It was bought by the applicant and could be bought by other people.
8. A variance is not to alleviate financial hardship but to alleviate a topographical condition that exists on the land and that has not been demonstrated.
9. Although sympathetic to the applicant's attempt to develop and speculate the property, relying on a variance to do so is not one that the Board can grant.
10. Authorization of the variance would be of substantial detriment and would change the zoning district in having that large of a variance to alleviate a financial hardship.
11. It is contrary to the Ordinance and it is not in the public interest.

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 vote was 3-3 with Mrs. Harris, Mr. Hammack, and Mr. Ribble voting aye; Vice Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley voting nay; Chairman Smith absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 4, 1990. The Board also waived the 12-month waiting period for the filing of a new application.

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Page 89, June 26, 1990, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL G. WEAVER, VC 90-S-037, application under Sect. 18-401 to allow addition to dwelling (screened porch) to 16 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-207), on property located at 4514 Hazelnut Court, on approximately 8,725 square feet of land, zoned PDH-2, Springfield District, Tax Map 45-3((3))348. (NOTICES NOT IN ORDER)

Vice Chairman DiGiulian stated that the notices were not in order in this case.

Denise James, Staff Coordinator, suggested a hearing date of August 2, 1990.

The Board reviewed the agendas for the upcoming public hearings that had been presented to them by staff. Following a discussion among the Board as to the caseload for that day, Mrs. Thonen made a motion to defer VC 90-S-037 to September 11, 1990. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Kelley and Mr. Hammack not present for the vote; Chairman Smith absent from the meeting.

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Page 90, June 26, 1990, (Tape 1), Scheduled case of:

9:45 A.M. GERALDINE PAVEY, VC 90-V-041, application under Sect. 18-401 of the Zoning Ordinance to allow construction of building addition to dwelling to 13.1 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 3181 Woodland Lane, on approximately 13,467 square feet of land, zoned R-2, Mt. Vernon District, Tax Map 102-3((4))23.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Pavey 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.

The applicant, Geraldine Pavey, 3181 Woodland Lane, Alexandria, Virginia, came forward and explained that she would like to extend an existing bedroom. She added that the addition would be no closer to the lot line 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 June 21, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-041 by GERALDINE PAVEY, under Section 18-401 of the Zoning Ordinance to allow construction of building addition to dwelling to 13.1 feet from side lot line, on property located at 3181 Woodland Lane, Tax Map Reference 102-3((4))23, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 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 13,467 square feet of land.
4. The applicant has met the nine standards required for a variance, in particular that it is an exceptional lot.
5. The addition will be no closer to the lot line because the lines converge towards the front of the lot and will not be any closer than 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.

Mrs. Harris 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 July 4, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 91, June 26, 1990, (Tapes 1 and 2), Scheduled case of:

10:00 A.M. WILSON WOODS, INC., VC 90-L-042, application under Sect. 18-401 of the Zoning Ordinance to allow resubdivision of Lot 39 into nine lots with proposed Lots 3A through 6A having a lot width of 7.51 feet and Lot 7A having a lot width of 24.03 feet (100 ft. min lot width required by Sect. 3-206), on property located at 5960 Telegraph Road, on approximately 6.5406 acres of land, zoned R-2, Lee District, Tax Map 82-4((1))39.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Jewell 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 and stated that the applicant has reasonable use of the property as there is an existing approved subdivision plan of the subject property into nine lots; thus, the applicant could subdivide by right into 2, 3, or more lots and staff questioned whether the request was a minimal variance. Ms. James submitted a letter from the Millers into the record.

In response to questions from Mrs. Harris with respect to the retaining wall, Ms. James submitted a subdivision grading plan for the Board's review and explained that it was not on a viewgraph. (The applicant presented Ms. James with an appropriate viewgraph.) She pointed out the location of the retaining wall to the Board.

Mrs. Thonen asked what the church on the adjacent property had constructed in order to protect their land. Ms. James pointed out the location of the church and rectory to the Board. She stated that a portion of the property is undeveloped and at present there is no need for a retaining wall.

Ralph Jewell, 1807 Duffield Lane, Alexandria, Virginia, came forward to represent the applicant. He stated that the subject property is heavily wooded with steep slopes and added that the applicant is very concerned about ground disturbance. Mr. Jewell added that because of the age and size of the root systems of the trees there is no movement at all of the soil but to cut down the trees would be very disruptive to the marine clay.

In response to questions from Mrs. Thonen as to why the retaining wall should be 30 feet or more down into the ground, Mr. Jewell replied that it is to prevent the soils from the surrounding parcels from sliding onto the subject property because they sit up so much higher than the subject property.

Mrs. Thonen stated that it was her understanding that any disturbance of marine clay could be detrimental to the area and cause slides.

Mr. Jewell explained that the retaining wall is needed only if the road is constructed, thus the applicant is asking that the Board alleviate the requirement for the road by granting a variance which creates pipestems.

Mrs. Thonen asked if the pipestem would cut into the marine clay. Mr. Jewell stated that he did not believe so but would ask the engineer to answer the question.

Mr. Jewell called the Board's attention to a display showing the amount of disturbance compared to the construction of the road and without the road. He noted that the site is being developed below the allowed density and that the houses would range from $650,000 to $1,000,000.

Mrs. Harris asked if a geotechnical study had been conducted for the pipestem and submitted to staff. Mr. Jewell stated that a study had been submitted to staff just prior to the public hearing. Mrs. Harris then asked if the pipestem would save more trees than the cul de sac. Mr. Jewell replied that it would and used the viewgraph to indicate the limits of clearing/grading to the Board. He explained that when the subdivision was approved two years ago the church gave the applicant a contract to purchase the property and an easement to do what needed to be done on the property. The contract was lost due to the lapse in time involved although the easement is still technically in place. It is unclear as to whether or not the church will honor the easement but the church does not want the retaining wall as it will block the entrance to their site.

Mrs. Thonen called the Board's attention to the Department of Environmental Management's comments in Appendix 8 of the staff report. Mr. Jewell explained that the request is merely for a reconfiguration of the lots, not an increase in the number of lots.

Mr. Kelley stated that he had passed by the site on his way to the public hearing and believed that it would be a "rape" of the land if a large number of the trees was not left standing. He added that he believed that the plan before the Board was far superior to the approved plan. He also stated that Mr. Jewell lived across the street from him, but did not know him personally.

Mr. Jewell noted that it would not set a precedent as there are pipestems lots already in the area.

The applicant's engineer, Emad Saadeh, came forward and stated that he had been practicing geotechnical surveying for the past 10 years, for the last 4 years in Fairfax County, and that he is also a member of the Fairfax County Geotechnical Review Board. He explained that the County requires a retaining wall when there is a disturbance to marine clay.

In response to a question from Vice Chairman DiGiulian about whether or not the geometry of the road required that the entire site be graded, Mr. Saadeh explained that in order to retain the required slope on the cul de sac the adjacent property would have to be purchased and graded out to achieve a 6 to 1 slope that was mentioned, which would not be necessary with the pipestems. He added that if the back portion of the site is left intact "Mother Nature" will provide the best support for the slope.

Mrs. Thonen again asked her earlier question with respect to the disturbance of the marine clay. Mr. Saadeh stated that the marine clay would not be disturbed in any way. He explained that when mature trees stand straight with a good root ball then the soil is well anchored.

Mrs. Harris asked if the cul de sac could be built if the church refused to grant an easement. Mr. Saadeh replied that he would let the civil engineer answer the question.

Paul Wilder, Project Manager, R. C. Fields, Jr. and Associates, 718 Jefferson Street, Alexandria, Virginia, replied in the affirmative. He explained that there would be a small

amount of grading off site that would require an easement. He added that the easement is an recorded easement.

Mrs. Thonen noted that a letter had been received from the church wherein they stated that they would prefer the pipestem as opposed to the cul de sac.

Vice Chairman DiGiulian referenced an earlier comment from Mr. Jewell that the easement was granted during the time when there was an pending contract purchase and is now concerned that there is no easement because the contract has lapsed.

Mrs. Harris again asked if the applicant could construct the cul de sac without the easement. Mr. Wilder replied they could not.

John Fulton, 3317 Sharon Chapel Road, Alexandria, Virginia, came forward to support the request. He stated that the original subdivision plan indicated a much smaller area for the retaining wall and the currently approved subdivision plan shows the retaining wall being extended into the church property. The grading/clearing line stakes are directly under his fence. He added that the trees on the church property are probably 100 years old and the houses that border the subject property were built approximately 35 to 40 years ago and were built based on seasonal cooling/heating patterns provided by the trees. If the approved plan and the retaining wall is built in that area on the subject property, it would have a significant impact on the adjoining lot.

Gale Davidson, 3405 Sharon Chapel Road, Alexandria, Virginia, stated that she was in support of the pipestem configuration and was opposed to the retaining wall.

Mrs. E. F. Weinley, 3401 Sharon Chapel Road, Alexandria, Virginia, opposed the construction of the retaining wall and the removal of any of the mature trees.

Wayne A. Keup, 5951 Wilton Road, Alexandria, Virginia, came forward and spoke against the request. He stated that he also objected to the fact that the abutting property owners were not given an opportunity for a public hearing prior to the original subdivision plan being approved. Mr. Keup stated that he did not like the original plan and was not satisfied with the alternate plan. He asked the Board to review the alternate plan very carefully.

Vice Chairman DiGiulian called for rebuttal. Mr. Jewell stated that he had no rebuttal unless the Board had questions.

In response to a question from Mr. Kelley with respect to the trail and the development conditions, Mr. Jewell replied that the applicant had already committed to the trail under the original approval and was only asking for a variation to the rear portion of the trail.

Regarding the development conditions, Mr. Jewell stated that the applicant objected to condition number 5 which addressed right-of-way dedication.

Mrs. Thonen made a motion to grant VC 90-L-042 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated June 21, 1990 with the deletion of condition number 5.

Mrs. Harris stated that she could not support the motion because of the number of pipestems and because she did not believe that there is a hardship.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-042 by WILSON WOODS, INC., under Section 18-401 of the Zoning Ordinance to allow resubdivision of Lot 39 into nine lots with proposed Lots 4A through 6A having a lot width of approximately 7.51 feet and Lot 7A having a lot width of 24.03 feet, on property located at 5960 Telegraph Road, Tax Map Reference 82-4((1))39, 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 June 26, 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 6.5406 acres of land.
4. There has been testimony stating this is the best way to go to protect the environment.

5. Development measures will have to be taken to protect the houses that go in.
6. There was testimony that the marine clay would not be disturbed if the pipestems were constructed.
7. This is the best plan for the area as it is a beautiful area with very large trees.
8. The applicant is not asking for a high density and is trying to protect the environment.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 39 into nine (9) lots as shown on the plat prepared by R.C. Fields, Jr., and Associates dated January 29, 1990 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. Limits of clearing and grading for the building envelopes and pipestem driveways shall be subject to review and approval by the County Arborist. 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. Trees which are removed for the provision of any retaining walls or other engineering techniques designed to stabilize the slopes shall be replaced as determined by the County Arborist.

4. Driveway access to Lots 4A, 5A, 6A, and 7A 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.

5. A geotechnical engineering study based on the approved variance plat shall be provided at the time of subdivision review for approval by DEM and all findings shall be implemented.

Mr. Hammack seconded the motion. The motion carried by a vote of 5-1 with Mrs. Harris voting nay; Chairman Smith absent from the meeting.

(THE BOARD HEARD A MOTION TO RECONSIDER THIS APPLICATION ON JULY 3, 1990, AND THE FINAL DECISION IS STILL PENDING.)

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The Board recessed at 10:45 a.m. and reconvened at 10:55 a.m.

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Page 95, June 26, 1990, (Tape 2), Scheduled case of:

10:15 A.M. MARY K. CROSS, SP 90-P-025, application under Sect. 8-901 of the Zoning Ordinance to allow accessory dwelling unit and reduction of minimum side yard requirement based on error in building location to allow existing deck to remain 14 feet from side lot line (20 ft. min. side yard required by Sect. 3-103), on property located at 10420 Miller Road, on approximately 31,459 square feet of land, zoned R-1, Providence District, Tax Map 47-2((2))A.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Whitcomb 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. She stated that staff had no significant land use, environmental, or transportation issues with the proposed accessory dwelling unit. Ms. Greenlief noted that the application had been amended to included Anna K. Price, daughter of Mrs. Cross who is also a property owner.

Carol Whitcomb, Community Systems and Services, Inc., 8300 Greensboro Drive, McLean, Virginia, explained that her firm has been engaged by Fairfax County to facilitate the development of accessory dwelling units. She introduced both Mrs. Cross and Mrs. Price and noted that Mrs. Price already meets the age requirement and hopefully this will prevent Mrs. Price from having to reapply upon the death of her mother. The accessory dwelling unit will be contained in the basement of the existing house with only two external changes, one being the enlargement of the basement window and the second to install an external door.

With respect to the error, Ms. Whitcomb explained that the house was moved to its present location prior to the applicants purchasing the house and the error occurred during that move.

Ms. Whitcomb submitted a letter from the adjacent neighbor who is impacted by the building error. The neighbor had no objection to the location of the deck.

There were no speakers to address the request and Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that he would make two separate motions, the first motion would address the building in error.

He then made a motion to allow the deck to remain in its present location.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-P-025 by MARY K. CROSS AND ANNA S. PRICE, under Section 8-901 of the Zoning Ordinance to allow reduction of minimum side yard requirement based on error in building location to allow existing deck to remain 14.0 feet from side lot line, on property located at 10420 Miller Road, Tax Map Reference 47-2((2))A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 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 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 by Peter R. Moran dated October 7, 1986. 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 for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 773.5 square feet.

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.

10. There shall be a minimum of four (4) parking spaces provided on the site. The existing parking shall be deemed to satisfy this requirement.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 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 which 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 July 4, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley then made a motion to grant the accessory dwelling unit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-P-025 by MARY K. CROSS AND ANNA S. PRICE, under Section 8-901 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 10420 Miller Road, Tax Map Reference 47-2((2))A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 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 31,459 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 by Peter R. Moran dated October 7, 1986. 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 for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 773.5 square feet.

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 withsucceeding 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.

10. There shall be a minimum of four (4) parking spaces provided on the site. The existing parking shall be deemed to satisfy this requirement.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 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 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 July 4, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 98, June 26, 1990, (Tapes 2 and 3), Scheduled case of:

10:30 A.M. JUNIOR EQUITATION SCHOOL, INC., SP 90-S-024, application under Sects. 3-C03 and 8-901 of the Zoning Ordinance to allow riding and boarding stable and waiver of dustless surface requirement, on property located at 6429 Clifton Road and 12935 Popes Head Road, on approximately 17.0 acres of land, zoned R-C and WS, Springfield District, Tax Map 66-3((1))36; 66-4((1))15.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Reifsnyder 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. She stated that staff did not have any significant land use or transportation concerns with the proposal but does have environmental concerns with respect to overgrazing on the property. This concern has been addressed in the development conditions by limiting the number of horses and ponies on the site. Ms. Greenlief distributed revised development conditions to the Board and stated that staff recommended approval of therequest subject to the revised development conditions.

Ms. Greenlief called the Board's attention to the numerous letters received both in support and in opposition to the request. She also noted that the February date in condition number 2 in the revised development conditions should be "June".

Mrs. Harris called staff's attention to the fact that an addition had been constructed on the existing house and it was not reflected on the plat that was before the Board. Ms. Greenlief replied that she was aware of an addition on the stable.

With respect to the five year period for the permit, Mrs. Harris noted that Sect. 8-603 of the Zoning Ordinance states that no permit shall be granted for more than three years. Ms. Greenlief stated the Section has been amended.

Sarah Reifsnyder, attorney with the law firm of Blankingship & Keith, 4020 University Drive, Fairfax, Virginia, came forward to represent the applicant. She agreed that an addition had been constructed on the existing house and explained that the house would not be a part of the school.

Mrs. Harris stated that new plats would have to be submitted showing the addition. The other Board members agreed.

Ms. Reifsnyder suggested that development condition number 2 be reworded to cover the addition. Mrs. Thonen did not believe that to be sufficient.

Vice Chairman DiGiulian explained that if the special permit was granted the approval would be subject to the submission of new plats reflecting the addition.

Ms. Reifsnyder introduced Jane Dillon, founder of Junior Equitation School. Ms. Dillon has operated a school in Vienna since mid-1950's, has taught literally thousands of Northern Virginians how to ride, has taught Olympic Gold Medalist, and is the author of three books on riding. When the applicant recently moved to Clifton, she do so with the idea of starting a scaled down version of Junior Equitation. The subject property is approximately 17 acres and will house a string of 18 horses/ponies with a maximum of 36 students per day for a five year period. Ms. Reifsnyder stated that the applicant has support of the community, the Clifton Horse Society, and the West Springfield Citizens Group and the only question the citizens have is when will the school open. The applicant would like to open in September and plans to request a site plan exception from the Department of Environmental Management (DEM) if the special permit is approved. Ms Reifsnyder then asked the Board to waive the eight day waiting period if the request was granted.

With respect to the development conditions, Ms. Reifsnyder asked the Board to waive the trail requirement although staff had informed her that the Board of Zoning Appeals had no authority to grant such a request.

Mrs. Thonen stated that she would like to see land set aside for the trail perhaps at a later date. Ms. Reifsnyder called Mrs. Thonen's attention to condition number 11 which she believed would address her concern.

In response to questions from the Board with respect to parking, Ms. Reifsnyder replied that there would be 17 spaces on site. After conferring with Ms. Dillon, Ms. Reifsnyder stated that the applicant had indicated that there would be no more than three trailers arriving at any one time as the students would be using the horses provided by the school. She added that there was a turnaround provided on site.

Vice Chairman DiGiulian called for speakers in support and the following citizens came forward: Candace Sherber, 1341 Potomac School Road, McLean, Virginia; Saundra C. Wilson, 12211 Yellow Brick Road, Fairfax, Virginia; Marion Johnson, 9629 Clarks Crossing, Vienna, Virginia; Kathryn M. Corcoran, 12096 Cardamom Drive, Woodbridge, Virginia; Susan Demuth 1201 Suffield Drive, McLean, Virginia; Patricia W. Stoops, 6501 Clifton, Clifton, Virginia; Lt. Abernathy, Nurse with the USAF, 1815 Beulah Road, Vienna, Virginia; Mary Lou Glover, 12804 Great Oak Terrace, Clifton, Virginia; Nancy Walcott, 7905 Foxhound Road, McLean, Virginia; Diane Moran, 9406 Shouse Drive, Vienna, Virginia; and, Juliet Mayor, 6109 Housatonic Court, Fairfax, Virginia, (Ms. Mayor submitted a petition with 200 signatures into the record).

The citizens all agreed that the applicant is a wonderful person who will run a professional school with a good safety record, that it would be an asset to the Clifton area, and that it would be a terrible thing if the school were not allowed to open.

Mrs. Thonen explained to the citizens who spoke that the Board did not question the creditability of Ms. Dillon but would make a decision based on land use issues.

Mrs. Harris commented that the signatures on the petition were not from Clifton. Ms. Mayor explained that the signatures had been obtained from patrons of the Clifton Saddleboard, a retail saddle shop in Clifton.

As there were no further speakers in support, Vice Chairman DiGiulian called for speakers in opposition to the request.

Barbara Goins, 6808 White Rock Road, Clifton, Virginia, stated that Ms. Dillon sounded wonderful and she wished that her children could have attended one of her schools somewhere else. She urged the Board to deny the request as Clifton Road and Popes Head Road is already so heavily traveled and there is inadequate sight distance at the proposed site. Ms. Goins added this is a residential neighborhood and the applicant is proposing to operate a business. She asked the Board to please consider her remarks.

Bill Warren, 7153 Main Street, Clifton, Virginia, a member of the Clifton Town Council came forward and stated that he knew Ms. Dillon was viewed very much like a "god" for the wonderful things that she has done for the horse community and the Town Council would like to see that continue. Mr. Warren then read a letter into the record which requested that the Board defer action until after the Council met on July 3, 1990, which would allow the Council to address certain concerns. He mentioned the external lighting and increased intensity with respect to the night riding classes, the addition of special events twice per year, the expansion in the number of students, and the unresolved transportation issues. (He submitted a written statement into the record.)

During rebuttal, Ms. Reifsnyder stated that the night classes were added to provide a riding opportunity to those people who work during the day. With regard to the lights, they were on the property when the applicant purchased the property and the applicant would forego holding horse shows if it was necessary. Ms. Reifsnyder stated that she believed there were no outstanding transportation problems and added that a ten day delay would be very detrimental to the applicant and delay any hopes of opening in September.

Mrs. Harris noted that she could not find any reference to a trail in the development conditions. Ms. Greenlief stated that the trail was only referenced in the body of the staff report as it would be addressed at time of site plan.

With respect to condition number 11, Mrs. Harris asked staff to clarify for the Board what exactly was being requested. Ms. Greenlief explained that it was not really a dedication but merely a condition to address the Office of Transporation's concern that no new structures be added to the site.

In response to questions from Mr. Kelley about the discrepancy in the number of horses and student, Ms. Reifsnyder stated that she had not been aware of the number of retainer horses and family horses that would be kept on site. She explained that there would be six students per class and at times there might be two classes being conducted at the same and some of the students would ride more than once a week.

Mrs. Harris commented that from the testimony presented it appeared that the limits imposed would be reached very quickly. Ms. Reifsnyder assured the Board that at no time would there be 36 students on the premises in a day. Mrs. Harris questioned why the applicant had requested that specific number. Ms. Reifsnyder explained that 36 had been arrived at during discussions with staff.

Ms. Reifsnyder informed the Board that the applicant's engineer had indicated that he could prepare a revised plat for submission to staff right away.

Mr. Kelley called Ms. Reifsnyder back to the podium and asked her to respond to the request for a deferral. She objected to a deferral as the applicant would like to open the school in September. Mr. Kelley asked if the Town Council had known about the night classes. Ms. Reifsnyder replied that they had not and added that almost every application changed before it got to the Board of Zoning Appeals. Mr. Kelley stated that he believed that the courtesy of a deferral should be granted to the Town Council.

Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant the request subject to the development conditions contained in the staff report dated June 21, 1990 revised as follows:

2. New plats must be submitted.
5. Monday through Friday, 10:00 a.m. to 1:00 p.m., 4:00 p.m. to 6:00 p.m. The night time session will be dropped. Saturdays from 9:00 a.m. to 1:00 p.m.
6. The maximum daily enrollment on Saturdays shall be limited to thirty-six (36) persons, fifteen (15) students will be limited on week days.
8. A maximum number of horse trailers shall be five (5).
9. Delete
11. Delete
18. All parking shall be on site, no lighting and no amplified music shall be used for the special functions.
20. At no time will amplified noise mechanisms be used on site for the outdoor riding arena.

The Board discussed the night classes and the lights that would be used during the classes.

Mrs. Thonen disagreed with the deletion of condition number 11.

Vice Chairman DiGiulian stated that the motion failed for the lack of a second.

Mrs. Thonen then made a motion to defer decision for two weeks to allow the Clifton Town Council an opportunity to review the application. Mr. Kelley seconded the motion. He stated that he found himself "between a rock and a hard place" as he was generally in favor of the school but he did believe that the Town Council should be given a chance to respond to the application.

The motion carried by a vote of 5-0 with Mr. Hammack not present for the vote; Chairman Smith absent from the meeting.

Vice Chairman DiGiulian noted for the record that the Board would accept additional information only in written form. He also requested that the applicant submit the revised plats prior to that date.

Ms. Greenlief suggested July 10, 1990 at 12:15 p.m.

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Page 101, June 26, 1990, (Tape 3), Scheduled case of:

10:45 A.M. BENJAMIN E. COLLINS, JR., SP 90-L-023, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum front yard requirement based on error in building location to allow two (2) sheds to remain 1.6 feet and 13.8 feet from front lot line of a corner lot (an accessory storage structure is not permitted in any front yard by Sect. 10-104), on property located at 6813 Lois Drive, on approximately 13,329 square feet of land, zoned R-3, Lee District, Tax Map 90-4((6))227.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Collins replied that it was. Vice Chairman DiGuilian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report.

Mrs. Thonen asked if the subject property backed up to the railroad and Mr. Jaskiewicz replied that it did not.

The applicant, Benjamin Collins, 6813 Lois Drive, Springfield, Virginia, submitted two letters from his neighbors into the record. He stated that he had not been aware of the Zoning Ordinance restrictions and that he had acted in good faith. The metal shed was constructed 22 years ago and the wooden frame shed was constructed approximately 18 months ago. He explained that the location of the sheds is the only feasible place on the lot as the house sits on a filled in creek bed and this is the only level spot. Mr. Collins stated that he had no idea that the sheds were in violation until he was contacted by Paul McAdams, Zoning Inspector with the Zoning Enforcement Branch, notifying him that his side yard is his front yard. He disagreed with staff's belief that he should obtain a building permit for the wood frame shed as it was within the allowable size. In closing, Mr. Collins stated that he did not believe the sheds would set a precedent as he could not believe that the Board has not heard similar cases since 1978.

In response to a question from Vice Chairman DiGiulian, Mr. Collins clarified for the Board that the aluminum shed has been on the property for 22 years and the wood frame shed for 18 months.

Vice Chairman DiGiulian called for speakers in support of the request.

James Warrick, 5900 Jane Way, Alexandria, Virginia, came forward and testified that he had helped the applicant build the shed and that he and the applicant's wife had gone to the County to determine where the shed could be built before construction commenced.

There were no further speakers in support of the request and Vice Chairman DiGiulian called for speakers in opposition.

Jack Speak, Vice President, Lois Dale Civic Association, came forward and submitted photographs to the Board showing the subject property. He stated that one of the sheds was constructed in a Virginia Department of Transportation (VDOT) right of way and the other one has been there for a considerable length of time. He called the Board's attention to the photographs showing the debris around the shed and added that the sheds were just recently painted.

Mr. Kelley asked if the Civic Association was the party who had filed the complaint and Mr. Speak replied in the affirmative. He stated that the Association contacted Zoning Enforcement after neighbors had filed complaints with them.

During rebuttal, Mr. Collins submitted photographs to the Board that he had taken just prior to the public hearing and noted that no one had complained to him.

Mrs. Harris asked what type of topography was on the lot and Mr. Collins replied that the front of the lot was flat but the rear sloped down from the rear of the house.

Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley noted that the oldest shed was the closest to the lot line.

Mrs. Thonen made a motion to deny the request for the reasons noted in the Resolution. Mrs. Harris seconded the motion. The vote was 2-2 with Mrs. Harris and Mrs. Thonen voting aye; Vice Chairman DiGiulian and Mr. Kelley voting nay; Mr. Hammack and Mr. Ribble were not present for the vote; Chairman Smith was absent from the meeting.

Mrs. Thonen then made a motion to grant the applicant a waiver of the 12-month time limitation for filing a new application. Mrs. Harris seconded the motion which passed by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Chairman Smith absent from the meeting.

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Page 102, June 26, 1990, (Tape 3), (BENJAMIN E. COLLINS, JR., SP 90-L-023, continued from Page 101)

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-023 by BENJAMIN E. COLLINS, JR., under Section 8-901 of the Zoning Ordinance to allow reduction to minimum front yard requirements based on error in building location to allow two (2) sheds to remain 1.6 feet and 13.8 feet from front lot line of a corner lot, on property located at 6813 Lois Drive, Tax Map Reference 90-4((6))227, 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 June 26, 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 13,329 square feet of land.
4. If this backed up to open space or the railroad or anything, would move to grant but the fact is that it cannot even be screened because it is so close to the property line.
6. The fact that it has been for 22 years would lean towards granting, but because there are two sheds in the front yard, cannot go along with it.

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 vote was 2-2 with Mrs. Harris and Mrs. Thonen voting aye; Vice Chairman DiGiulian and Mr. Kelley voting nay; Mr. Hammack and Mr. Ribble were not present for the vote; Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 4, 1990.

The Board also waived the 12-month time period for filing a new application.

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Page 102, June 26, 1990, (Tape 3), Scheduled case of:

11:00 A.M. DEIRDRE AND HILARY O'HARA/WILLIAM J. QUIGLEY, SP 90-M-027, application under Sect. 8-901 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 3101 Worthington Circle, on approximately 14,500 square feet of land, zoned R-3, Mason District, Tax Map 51-4((2))(C)3. (CONCURRENT WITH VC 90-M-040)

11:00 A.M. DEIRDRE AND HILARY O'HARA, VC 90-M-040, application under Sect. 18-401 of the Zoning Ordinance to allow construction of building addition to dwelling to 22.5 feet from front lot line (30 ft. min. front yard required under Sect. 3-307), on property located at 3101 Worthington Circle, on approximately 14,500 square feet of land, zoned R-3, Mason District, Tax Map 51-4((2))(C)3. (CONCURRENT WITH SP 90-M-027)

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Quigley replied that it was. Vice Chairman DiGuilian then asked for disclosures fromthe Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that staff believes that the standards for the accessory dwelling unit have been met but that standards for a variance have not been met, in particular number 6. Ms. Bettard noted for the record that one neighbor had called staff and expressed concern that the accessory dwelling unit may be converted to a rental unit at a later date.

William James Quigley, 2831 Cameron Road, Falls Church, Virginia, came forward to represent the applicants. He explained that the purpose for the accessory dwelling unit is for the applicants' retirement and the variance will allow them to construct a wheel chair access to the basement. Mr. Quigley asked that the five year term be changed to cover the lifetime of the applicants.

Regarding the variance, he explained that the grade is approximately 9 feet from the floor of the garage to the crown of the road and the basement needs to be "dewatered" because there is no curb or gutter to block the flow of water. The purpose of the addition is to allow for the construction of a drainage system to help alleviate the water problem.

Vice Chairman DiGiulian asked Mr. Quigley to explain how the sunroom would help with the lighting of the basement. Mr. Quigley stated that there is only 18 inches where any type of window or drain system can be constructed. Vice Chairman DiGiulian pointed out that that is the area between the building restriction line and the house and that it did not affect a window or a drainage line. Mr. Quigley stated that he was proposing to construct a 12 inch wall for reinforcement and then construct the window and drainage system which would allow him to tie into an existing system.

In response to a question from Mrs. Harris regarding the wheel chair access, Mr. Quigley replied that a ramp would be constructed from the proposed driveway to the proposed addition with a sliding glass door.

Dorothy O'Hara, mother of the applicants, stated that because of the grade of the driveway the water goes into the basement and many of the neighbors have filled in the driveways. When the house was constructed, it was situated closer to the rear lot line then necessary which prohibits construction in that area. She added that she considered the proposed location of the proposed sunroom to be the side yard.

There were no speakers to address the request and Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant the accessory dwelling unit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-M-027 by DEIRDRE AND HILARY O'HARA, under Section 8-901 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 3101 Worthington Circle, Tax Map Reference 51-4((2))(C)3, 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 June 26, 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 14,500 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 by Kenneth W. White, dated November 2, 1989, and revised for variance on February 9, 1990. 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 for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit. Prior to obtaining building permit approval, any plans that are deemed necessary by the Director, Department of Environmental Management (DEM), shall be submitted and approved by DEM Pursuant to Par. 3 of Sect. 8-903. Any plans submitted shall conform with the approved Special Permit/Variance Plat and these conditions.

4. The accessory dwelling unit shall occupy no more than 845 square feet.

5. The accessory dwelling unit shall contain no more than two bedrooms.

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.

10. An additional parking pad shall be added to accommodate one vehicle for the accessory use. The parking pad shall be designed to allow direct access to the street for that vehicle and be located in the existing driveway area off of Wooten Drive.

11. 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.

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

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 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 4-0 with Mr. Hammack and Mr. Ribble 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 July 4, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Harris then made a motion to deny the variance request as she did not believe that the topography of the land warranted the construction in the front yard.

Mrs. Thonen seconded the motion for purposes of discussion.

Following a discussion among the Board, it was the consensus to defer action. Mrs. Thonen made a motion to defer decision for one week and to allow written testimony only. Mr. Kelley seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Chairman Smith absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested July 3, 1990 at 8:30 p.m. The Chair so ordered.

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The Board recessed at 1:00 p.m. and reconvened at 1:10 p.m.

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Page 105, June 26, 1990, (Tape 3), Scheduled case of:

11:15 A.M. ST. FRANCIS EPISCOPAL CHURCH, SPA 82-D-087-2, application under Sects. 3-E03 and 8-901 of the Zoning Ordinance to amend SP 82-D-087 for church and related facilities to allow addition of parish hall and waiver of dustless surface requirement, on property located at 9222 Georgetown Pike, on approximately 6.81 acres of land, zoned R-E, Dranesville District, Tax Map 13-2((1))8.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Runyon replied that it was. Vice Chairman DiGuilian 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 believes that with the implementation of the development conditions the applicant will meet the standards for both the amendment and the waiver of the dustless surface requirement.

Charles Runyon, 10605 Main Street, Fairfax, Virginia, Chairman of the Building Committee for St. Francis Episcopal Church, came forward and stated that the request is for an addition to an existing church which the church could not afford to build when the project was first started. The church has received two prior approvals, the use is in harmony with the Comprehensive Plan, and the open space is adequate to meet the requirement.

With respect to the development conditions, he pointed out that the shed referenced in condition number 11 is really an old pump house which appears to be 19 feet rather than 20 feet from the lot line and if it is found to be in violation of the Zoning Ordinance a variance application will be filed. Mr. Runyon asked that condition number 12, regarding the left turn lanes on Georgetown Pike, and condition number 13 which requires a trail, be deleted. He showed a photograph to the Board showing the proposed addition.

Regarding the waiver of the dustless surface, Mr. Runyon stated that he believed that the gravel parking lot has been there since the church was constructed and is environmentally more sound than asphalt.

Mr. Kelley stated that it was his understanding that the applicant would like to revise condition number 11 to reflect that a variance application would be filed if necessary and delete conditions 12 and 13. Mr. Runyon said that was correct.

Vivian Lyons, 10808 Nichols Ridge Road, Great Falls, Virginia, President of the Great Falls Citizens Association, came forward and stated that it gave her great pleasure to support both the addition and the waiver of the dustless surface requirement. The Association believes that the addition will be compatible with the existing building and with the community and agreed with the deletion of condition number 12.

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

Mr. Kelley made a motion to grant the request subject to the development conditions contained in the staff report dated June 21, 1990 with the modifications as discussed.

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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-087-2 by ST. FRANCIS EPISCOPAL CHURCH, under Sections 3-E03 and 8-901 of the Zoning Ordinance to allow SP 82-D-087 for church and related facilities to allow addition of parish hall and waiver of dustless surface requirement, on property located at 9222 Georgetown Pike, Tax Map Reference 13-2((1))8, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 26, 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 6.081 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, 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 (drawn by Runyon, Dudley, Anderson, Associates, Inc.and revised March 20, 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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform to these conditions, as well as the Zoning Ordinance requirements.

5. The maximum number of seats shall be 250, with a corresponding number of parking spaces based on the requirements of Article 11 as determined by DEM. There shall be a maximum of sixty-five (65) parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements as determined by DEM.

6. The proposed septic system shall conform to state and local regulations as determined by the Fairfax County Department of Environmental Health or this special permit shall be null and void. The existing septic system serving the church office building shall be abandoned and the building sewage connected to an approved sewage disposal system on-site.

7. This approval is granted for the gravel surfaces indicated on the plat submitted with this application and shall have a term of five (5) years. The gravel surfaces shall be maintained in accordance with the Public Facilities Manual standards and the following guidelines:

   Speed limits shall be kept low, generally 10 mph or less.

   The area 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 around or under the driveway.

   The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

8. Transitional Screening 1 along all lot lines and the requirements of Barrier D, E, or F shall be modified to allow the existing vegetation to satisfy these requirements.

9. 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, shall be provided around the existing church and the proposed parish hall/Sunday school structures on the property. The type, size, amount and location of these plantings shall be approved by the County Arborist.

10. The adequacy of the existing stormwater pond to handle the water runoff generated by this addition shall be determined by the Director of the Department of Environmental Management, and if not deemed to be sufficient, additional measures shall be implemented to hold the runoff generated by this addition.

11. The existing shed that is located nineteen (19) feet from the eastern lot line shall be removed, or relocated to conform to the minimum yard requirements or the applicant will apply for a Variance within six (6) months.

12. The proposed parish hall/Sunday school shall be architecturally compatible with the existing church structure.

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 be focused directly onto the subject property.
- Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

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

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 Mr. Hammack and Mr. Ribble 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 July 4, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 107, June 26, 1990, (Tape 3), Scheduled case of:

11:30 A.M. CENTREVILLE VOLUNTEER FIRE DEPARTMENT, SP 90-S-022, application under Sect. 8-901 of the Zoning Ordinance allow waiver of dustless surface requirement, on property located at 5856 Centreville Road, on approximately 75,351 square feet of land, zoned C-8 and R-1, Springfield District, Tax Map 54-4((1))63.

Vice Chairman DiGuilian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Plaugher replied that it was. Vice Chairman DiGuilian 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, introduced Carol Dickey, Staff Coordinator with the Special Exception and Rezoning Branch, Zoning Evaluation Division, who had prepared the report in conjunction with the Special Exception. The Board welcomed Ms. Dickey.

Ms. Dickey presented the staff report and recommended approval subject to the development conditions being implemented.

Edward Plaugher, Deputy Fire Chief, Fire and Rescue Department, stated that the Fire and Rescue Department would like to build an additional fire station in order to accommodate the growth in the community. In the meantime, the fire station has added a trailer to house additional personnel and equipment in order to provide emergency services.

Mrs. Thonen asked if Mr. Plaugher had read the development conditions and if he agreed with them. He indicated that he was in agreement.

Mrs. Harris questioned if there had been any difficulty getting the fire trucks out of the station during the time Bingo games are being held. Mr. Plaugher assured the Board that staff was outside during those games to make certain that no one parked in front of the doors to the station. She commended the applicant for having all the parking on site.

There were no speakers to address 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 June 21, 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-022 by CENTREVILLE VOLUNTEER FIRE DEPARTMENT, under Section 8-901 of the Zoning Ordinance to allow waiver of dustless surface requirement, on property located at 5856 Centreville Road, Tax Map Reference 54-4((1))63, 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 June 26, 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 C-8 and R-1.
3. The area of the lot is 75,351 square feet of land.
4. The use of a gravel parking lot was approved once and there is no reason not to approve it again.

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 Alexandria Surveys, Inc., dated February 12, 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. 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. Landscaping shall be provided as indicated on the approved SP Plat.

6. Hours of operations shall remain 24 hours per day, 7 days a week.

7. The maximum number of fire station employees and volunteers scheduled per shift shall be twenty (20).

8. The waiver of the Dustless Surface shall be granted for a period of five (5) years from the final approval date of the 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.

Page 109, June 26, 1990, (Tape 3), (CENTREVILLE VOLUNTEER FIRE DEPARTMENT, SP 90-S-022, continued from Page 108)

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 and Mr. Kelley seconded the motion. The motion carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble 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 July 4, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 109, June 26, 1990, (Tape 3), After Agenda Item:

Reston Inn and Conference Center Appeal

Mrs. Thonen made a motion to accept the appeal as being timely filed and complete. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Chairman Smith absent from the meeting. The public hearing was scheduled for September 11, 1990 at 8:00 p.m.

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Page 109, June 26, 1990, (Tape 3), After Agenda Item:

Dennis Rice Appeal

Mrs. Thonen noted that the issue has been pending since December 14, 1989 and that she believed that the appellant has been awaiting a decision long enough. She made a motion to schedule the appeal for August 2, 1990 at 10:00 a.m. Mr. Kelley seconded the motion.

Mrs. Harris called the Board's attention to a document submitted at the public hearing indicating that the appellant is the contract purchaser. Mrs. Thonen clarified for the Board that Mr. Rice has purchased additional land in order to consolidate.

The motion carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Chairman Smith absent from the meeting.

Mrs. Thonen requested that staff inform Mike Congelton, with the Zoning Administrator's office, that the Board would like him to be present at the August 2nd public hearing in order to respond to questions.

Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Chairman Smith absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked that the Board request that the appellant contact the Clerk to determine when he could pick up his notice package as those notices had already been mailed. The appellant indicated that he would contact the Clerk.

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Page 109, June 26, 1990, (Tape 3), Information Item:

Legal Cases

Mrs. Harris noted that while she was attending the Virginia Certified Board of Zoning Appeals Seminar it came to her attention that this Board and one other County are the only BZA's that do not have County Attorneys present during public hearing.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that this had been discussed numerous times with the Board and the County Attorney's office and a clear consensus had not been reached, but she would be happy to do so again.

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Page 110, June 26, 1990, (Tape 3), INFORMATION ITEM:

Randall LeClair

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to a memorandum from the Clerk wherein Mr. LeClair requested a waiver of the 12-month time limitation. She explained that the applicant has indicated that he has filed a court case, therefore staff brought it to the Board.

Mr. Kelley made a motion to deny the request. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack and Mr. Ribble not present for the vote; Chairman Smith absent from the meeting.

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Page 110, June 26, 1990, (Tape 3), Information Item:

Discussion of ByLaws

Jane Kelsey, Chief, Special Permit and Variance Branch, asked when the Board would like to discuss the adoption of the revised ByLaws.

Following a discussion among the Board, it was the consensus to schedule the discussion for August 2, 1990 if time permitted.

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As there was no other business to come before the Board, the meeting was adjourned at 1:45 p.m.

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

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

SUBMITTED: 8/30/90

APPROVED: 9/4/90

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, July 3, 1990. The following Board members were present: John DiGiulian, Vice-Chairman; Paul Hammack; Martha Harris, John Ribble, Robert Kelley, and Mary Thonen. Daniel Smith was absent.

Vice-Chairman DiGiulian called the meeting to order at 8:05 p.m. Mrs. Thonen led the prayer.

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Page 111, July 3, 1990, (Tape 1), Scheduled case of:

8:00 p.m. THE MOST REVEREND JOHN R. KEATING/ST. ANDREW THE APOSTLE CATHOLIC CHURCH, SP 90-S-020, application under Sect. 3-103 of the Zoning Ordinance to allow a church and related facilities, on property located approximately 600 feet north of the intersection of Compton Road and Union Mill Road on approximately 22.68 acres of land, zoned R-1 and WS, Springfield District, Tax Map 74-2((1))7A (formerly 74-2((1))pt. 7 and pt. 10). (CONCURRENT WITH SE 90-S-012.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Strobel replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Lynn Strobel, with the firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., 2200 Clarendon Blvd., Arlington, representative of the applicant, stated that there was a change in the affidavit. One of the agents listed, Monsignor McClunn, had passed away.

Greg Riegle, Staff Coordinator, presented the staff report. He noted the materials received by the BZA members that evening which included an addendum to the staff report acknowledging a revised plat that had been submitted by the applicant, and final transportation comments from the Office of Transportation and the Virginia Department of Transportation (VDOT).

Mr. Riegle stated that the church was proposing to conduct services seven days a week. There would be two services each Monday through Friday with 300 persons expected to attend each. On Saturday there would be one service with an expected attendance of 600 and on Sunday, four services were proposed throughout the morning and early afternoon with attendance from 600 to 1,200 persons. The applicant is also seeking approval of a Special Exception which is scheduled on August 6, 1990, before the Board of Supervisors to establish a private school with a maximum daily enrollment of 660 students and a nursery school with a maximum daily enrollment of 100 students.

Mr. Riegle stated that there were several outstanding issues associated with the application, including the non-residential impacts associated with the intensity of development which might impact the surrounding properties and the established low-density character of the area. More specifically, the buildings and parking were in close proximity to the northern lot line which was the only lot line that abutted land developed with residential uses. Further, the number of vehicle trips per day might exceed what can be accommodated on Compton and Union Mill Roads due to poor geometrics and the fact that they are not planned for improvement. Mr. Riegle stated that the applicant had estimated that the church would generate in excess of 1,200 vehicle trips on weekdays and 1,800 vehicle trips on Sunday.

Mr. Riegle noted the changes in the revised plat. The screening on the northern lot line had been increased to 50 feet instead of the 25 feet initially proposed. Also, the stormwater management pond had been relocated outside of the 200 foot buffer recommended along Compton Road.

Mr. Riegle stated that staff did not find that the application met the necessary standards for approval due to the bulk and configuration of the building, and the amounts and pattern of the use. He noted that the Planning Commission held a public hearing on the use on June 27, 1990, and had voted to recommend approval of the Special Permit and Special Exception subject to the proposed development conditions.

Ms. Strobel discussed the site constraints which the church was working under. These constraints included a 100 foot undisturbed buffer along Union Mill Road as well as a 200 foot undisturbed buffer along Compton Road. The stormwater management pond had to be located at the lowest area on the site, as shown on the plat, on order to be effective. Conversations with the citizens concluded that the playground should be located as shown on the plat and not be located next to a residential area to mitigate the noise impact.

Ms. Strobel stated that the Special Permit application did not require any waivers or modifications with the exception of the waiver of certain barrier requirements. She stated that instead of the required wall or fence, the church had proposed a hedge which would be more consistent with the surrounding neighborhood.

Ms. Strobel referred to page 13 of the staff report which noted that the applicant exceeded all minimum yard and lot size requirements. Furthermore, the proposed density was a .08 Floor Area Ratio (FAR) which was approximately half of the .15 FAR that was permitted in the R-1 District for non-residential uses. She stated that the applicant had proposed a maximum building height of 45 feet which was 15 feet less than what was permitted.

Ms. Strobel noted that the applicant was providing over 70 percent open space on the site which would include ballfields and the stormwater management ponds. In addition, natural vegetation was being preserved and the applicant has made a commitment to minimize clearing and grading and preserve trees whenever possible.

Ms. Strobel stated that it was illogical to allow residential development without providing community services within close proximity to that residential development. She indicated that over 70 percent of the parishioners of the church would be coming from within a two mile radius. Regarding staff concerns about the high number of vehicle trips, Ms. Strobel indicated that a transportation coordinator has been appointed and would actively be coordinating vanpools and carpools. In addition, a turn lane would be provided as requested by the Office of Transportation and VDOT. Ms. Strobel indicated that the individuals traveling to the church would not create additional trips on the roadway but, instead, would be comprised of neighbors who would no longer be traveling large distances to go to other churches and schools.

Ms. Strobel referenced letters of support from the surrounding neighbors sent to both the Planning Commission and the Board of Zoning Appeals. Also, the West Fairfax Citizens Association had recommended approval.

In response to questions from Mrs. Thonen, Ms. Strobel stated that the highest point of the church would be 43 feet, with an average height of 28 feet. The number of students attending the school would be 350 during Phase I and 760 following Phase II. The maximum amount of children in school at any one time was 660.

Vice-Chairman DiGiulian called for speakers in support of the application.

David Ralston, 6510 Rock Land Drive, represented the parishioners of St. Andrews the Apostle Catholic Church. He stated that he was a resident of Little Rocky Run and was familiar with the area and the transportation patterns that currently exist. Mr. Ralston pointed out the need for the parish complex and the overwhelming support of the local community, specifically the current adjacent residents of the facility. With regard to the generation of vehicle trips, Mr. Ralston stated that the construction of the church would result in the replacement of existing vehicle trips to other schools and churchs.

Mrs. Harris indicated her concern with the sight distance at the corner of Union Mill and Compton Roads and the fact that the roads in that area of Centreville were not very wide and not designed for that much traffic.

Mrs. Thonen questioned whether there were sidewalks in the area. In response, Mr. Ralston stated that Little Rocky Run currently had sidewalks down to Stonefield which was the first exit north of the facility which was constructed. South of the facility, Hunter Development had proffered the installation of trails paralleling Union Mill and ultimately down to the church property.

Father Cornelius O'Brien, Pastor of St. Timothy's Church, stated that his church was now very overcrowded with a membership of about 3,600 families and a seating capacity of 800. He stated that the church was unable to expand and that he wanted to provide sufficient opportunity for everyone to attend church. Father O'Brien indicated his support for the Special Permit application.

Elaine McConnell, Springfield District Supervisor, stated that there was a need in Centreville for this type of proper community service. She indicated that the West Fairfax Citizens Association had been very supportive of the church application. Mrs. McConnell asked that when the BZA made their decision that it not only be a land use decision but be one that took into consideration the whole picture of what communities need. She expressed her full support of the application.

James McDonnell, Chairman, West Fairfax County Citizens Association Land Use Committee, stated that when the application was initially presented, his committee had several concerns regarding the intensity and adequate buffering. The applicant had responded with a revised plan which reduced the size and height of the building and the resulting FAR. The internal roadway had been reconfigured so that it no longer appeared as a straight thoroughfare that would encourage cut through traffic. In addition, the applicant had requested a development condition that would encourage carpools and vanpools. Mr. McDonnell also referenced the 200 foot buffer along Compton Road and the 100 foot buffer along Union Mill Road which had been preserved in accordance with the Comprehensive Plan.

Mr. McDonnell stated that it was logical that a church should be located in the residential area which it would serve and reduce the amount of time citizens would spend on Fairfax County Roads. On behalf of the West Fairfax County Citizens Association, Mr. McDonnell offered his support of the request.

Everisto Bernardo, 14910 Jaslow Street, stated that churches and schools were an integral part of the community and should be provided to the local community. He discussed the traffic created by people currently busing or driving their children to parishes outside the area they lived, and how the traffic would diminish with a convenient local school and church.

Dick Frank, President, West Fairfax County Citizens Association, stated that the WFCCA was a composite of about 31 civic/citizen/homeowner associations that covered the greater Centreville area and offered advice to the Planning Commission and Board of Supervisors. On the issue of intensity, Mr. Frank stated that because of where the facility was physically located, the intensity was within the bounds of the development. Regarding transportation, Mr. Frank stated that since most of the parishioners lived in the immediate area, and with the improvements projected and requested by County staff, any traffic concerns should be handled.

Mrs. Harris questioned Mr. Frank about the traffic generation of the church. In response, Mr. Frank stated that the WFCCA recognized that community churches were needed if there was to be an existing community concept. He stated that currently, people were leaving the Centreville area to attend church.

Peter Murphy, Chairman, Fairfax County Planning Commission, discussed the background of Centreville High School and stated that it originally was proposed with an FAR of .23. Mr. Murphy stated that he didn't agree with the transportation analysis that had been presented by staff due to the fact that this was a neighborhood church that would serve the people of the neighborhood. He highlighted the fact that the church was providing transportation management program to encourage vanpools and carpools.

There were no speakers in opposition.

During rebuttal, Ms. Strobel discussed page 27 of the applicant's traffic study which showed the level of service at the intersection of Union Mill Road and Compton Road as A and B for both the existing conditions and at the buildout of St. Andrew's Church. Furthermore, she emphasized that a Transportation Coordinator had been appointed to help alleviate traffic by organizing carpools and vanpools.

There being no speakers, the public hearing was closed.

Mr. Hammack prefaced his motion by indicating that the site development of the 22 acres was fairly well thought out. He stated that he had a lot of valid concerns about the transportation system that fed the church at Union Mill and Compton Roads. He noted that the trip generation was ten times that which would be generated by a residential development under the guidelines of the Comprehensive Plan. Mr. Hammack stated that he was still in debate about what was an appropriate size of church for the site. He indicated that a 1,300 seat church in a rural area with the intensity of use proposed and with todays existing road network, was too intense a use for the site. Mr. Hammack stated that he was not unmindful of the argument about Centreville and Little Rocky Run being planned and being in need of a church to accommodate those people.

Mr. Hammack commended the church for being upfront about the proposed uses. The Sunday services would have mass for 3,600 persons and he indicated that what had been planned was, perhaps, a long range church but it was too intense a use for the site because of the road network. He stated that he did not have a problem with the way it was designed on the 22 acres but thought that with the school, the number of masses, and the congestion that it was going to create would cause a traffic problem. For those reasons, Mr. Hammack moved that SP 90-S-020 be denied. The motion was seconded by Mrs. Harris.

Mr. Kelley stated that he disagreed with the motion. He indicated that he was impressed by the fact that 70 percent of the people would be coming from a two mile radius. Mr. Kelley stated that the BZA could not have a better application before them than this one.

Mrs. Thonen moved a substitute motion to defer the application, for decision only, until after the Board of Supervisors held their hearing on the Special Exception on August 6, 1990. This motion was seconded by Mr. Ribble.

Mr. Hammack stated that he had no objection to the motion to defer until the Board of Supervisors acted on the school. If the Board determined that the school should be smaller, it would have an impact on the trip generation and on the size of the facility.

The question was called on the motion to defer, which passed by a vote of 6-0 with Chairman Smith was absent from the meeting. The case was deferred to August 7, 1990, at 11:15 a.m.

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The BZA recessed at 9:35 p.m. and reconvened at 9:45 p.m.

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8:15 p.m. HAMPTON B. & MARINDA BARNES, VC 90-P-039, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling to 8.0 feet from side lot line (20 ft. min. side yard required by Sect. 3-103) and 20.27 feet from street line of corner lot (40 ft. min. front yard required by Sect. 3-107), on property located at 1775 Chain Bridge Road, on approximately 7,877 square feet of land, zoned R-1 and HC, Providence District, Tax Map 30-3((2))234.

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.
the affidavit.

Bernadette Bettard, Staff Coordinator, presented the staff report. She stated that the undeveloped lot was surrounded by similarly zoned undeveloped and developed lots with detached single family dwellings. Ms. Bettard indicated that on May 17, 1990, the BZA had granted in part, a variance application which allowed construction of a dwelling to 8.0 feet from both side lot lines on Lot 233. At that time, the applicant had requested approval to construct a dwelling 12.0 feet from the western side lot line and 8.0 feet from the eastern side lot line.

Hampton Barnes, 4760 South 6th Street, Arlington, the applicant, explained the request as outlined in the statement of justification submitted with his application. He stated that he had purchased Lots 233, 234 and 250 approximately 45 years ago, but since that time, the zoning regulations had changed which made Lots 233 and 234 unbuildable.

Vice-Chairman DiGiulian called for speakers in support of the application.

John Weidlein, Dover Farm, Middleburg, a home builder, clarified some points brought up by the BZA members. He stated that Lot 234 was the lot that was the subject of the current variance application. Mr. Weidlein stated that the variance was being requested so that a sensibly sized house could be built on the lot.

Mrs. Harris asked whether Mr. Barnes had considered consolidating the two remaining lots and building one house. In response, Mr. Barnes stated that he would not personally be building the house and that it was up to the purchaser.

Vice-Chairman DiGiulian called for speakers in opposition to the application.

Andrew H. Brown, Jr., 1604 LaSalle Avenue, McLean, owner of Lots 181, 182, 184, 185 and 210, handed out a tax map of the lot in question and the surrounding lots in the neighborhood. He stated that U.S. Development Corporation had 21 lots under contract, including Mr. Barnes' lots, and intended to try to build on each lot, which would require approximately 19 variances. Mr. Brown stated that out of the 114 lots in the South Hunting Ridge area, there were currently 42 houses. He indicated that a 26 foot house was not appropriate for that particular area. In addition, a lot of the trees and green areas would be removed and parking on the streets would be overburdened.

Mr. Brown stated that many of the neighborhood residents believed that any new development should conform with the character of the neighborhood which was approximately 2 1/4 lots per house.

In response to a question from Mrs. Harris, Mr. Brown stated that his house was located on Lots 184 and 185 and had been built in 1954. He indicated that his house was 70 feet long and 35 feet wide.

Vice-Chairman DiGiulian stated that there was a request in the file from James and Sharon Fisher to defer the application until the Tyson's Task Force acted on a request that the zoning be changed in that subdivision to a more intense zoning. Mr. Brown stated that he was a part of that group and his belief was that if there was any further development in the neighborhood that it should be done as a planned development and not done piecemeal.

Mary Holbeck, 1608 Colonial Lane, McLean, Lots 270 and 271, stated that her house, which was built in 1951, straddled two lots which was typical of the neighborhood. She indicated that the previous variance had set a precedent for the area.

Fred Daniels, 1616 Seneca Avenue, McLean, Lots 241, 242 and 243, indicated that his house was 45 years old. He highlighted the fact that many of the houses were on failing septic tanks and that this was a classical area for redevelopment of some kind. Mr. Daniels stated that enough vacant land was available for a good job of planning.

During rebuttal, Mr. Barnes indicated that the Tyson's Task Force had been going on since the early 1980's when the South Hunting Ridge Association started trying to sell the entire area for commercial property.

In response to a question from Vice-Chairman DiGiulian regarding the name of the company the lots were under contract to, Mr. Barnes replied that it was Rafeek-Amran. Mr. Barnes stated that to his knowledge, that company did not have any other lots in the subdivision under contract.

There being no further speakers, the public hearing was closed.

Mrs. Thonen made a motion to deny VC 90-P-039 as she believed that it was too large a variance and that she did not believe that the BZA should grant such a request as it would possibly constitute a rezoning of the land. She added that she did not believe that the applicant had met the standards. The motion was seconded by Mrs. Harris and failed by a vote of 2-4 with Mrs. Harris and Mrs. Thonen voting aye; Mr. Kelley, Mr. Ribble, Mr. DiGiulian and Mr. Hammack voting nay; Chairman Smith absent from the meeting.

Mr. Ribble made a motion to grant the application. The motion was seconded by Mr. Kelley and passed by a vote of 4-2 with Mr. Kelley, Mr. Ribble, Mr. DiGiulian and Mr. Hammack voting aye; Mrs. Harris and Mrs. Thonen voting nay; Chairman Smith 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-P-039 by HAMPTON B. AND MARINDA BARNES, 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 1775 Chain Bridge Road, Tax Map Reference 30-3((2))234, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 3, 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 7,877 square feet of land.
4. The lot is an old lot with exceptional narrowness.
5. The lot 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.

Page 116, July 3, 1990, (Tape 2), (HAMPTON B. & MARINDA BARNES, VC 90-P-039, continued from Page 115)

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 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. Kelley seconded the motion which carried by a vote of 4-2. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 11, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 116, July 3, 1990, (Tape 2), Scheduled case of:

8:30 p.m. DEIRDRE AND HILARY O'HARA, VC 90-M-040, application under Sect. 18-401 of the Zoning Ordinance to allow construction of building addition to dwelling to 22.5 feet from front lot line (30 ft. min. front yard required by Sect. 3-307), on property located at 3101 Worthington Circle, on approximately 14,500 square feet of land, zoned R-3, Mason District, Tax Map 51-4((2))(C)3. (formerly CONCURRENT WITH SP 90-M-027) (DEFERRED FROM 6/26/90 FOR DECISION ONLY)

Bernadette Bettard, Staff Coordinator, stated that the Special Permit application had been approved and that the Variance had been deferred for additional justification which the BZA members had received that evening.

Mr. Kelley made a motion to grant VC 90-M-040 because the BZA had approved the Special Permit, the drainage is being rectified, and testimony had been received regarding the desirability of accessory dwelling units. Mr. Hammack seconded the motion which failed by a vote of 3-2-1 with Mr. Hammack abstaining; Vice Chairman DiGiulian, Mr. Kelley, and Mr. Ribble voting aye; Mrs. Thonen and Mrs. Harris voting nay; Chairman Smith was 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-M-040 by DEIRDRE AND HILARY O'HARA, under Section 18-401 of the Zoning Ordinance to allow construction of building addition to dwelling to 22.5 feet from front lot line, on property located at 3101 Worthington Circle, Tax Map Reference 51-4((2))(C)3, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 3, 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 14,500 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;

Page 117, July 3, 1990, (Tape 2), (DEIRDRE AND HILARY O'HARA, VC 90-M-040, continued from Page 116)

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

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

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

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

6. That:

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

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

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

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 vote was 3-2 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 July 11, 1990.

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Page 117, July 3, 1990, (Tape 2), After Agenda Item #1:

Request for Reconsideration
Wilson Woods, Inc.
VC 90-L-042

Mr. Hammack made a motion that the request for reconsideration for VC 90-L-042, Wilson Woods, Inc. be denied. This motion was seconded by Mr. Ribble and passed by a vote of 5-1 with Mrs. Harris voting nay; Chairman Smith was absent from the meeting.

Mrs. Thonen moved a substitute motion that the request for reconsideration for VC 90-L-042, Wilson Woods, Inc. be granted and that approval of the Resolution be deferred until the following information is received in writing from the developer to clarify condition #3: 1) A copy of the geotechnical report (if the report shows only 4 test borings then more should be made); 2) a copy of the boring log; and 3) a plan showing clearing and grading lines. The motion was seconded by Mr. Kelley and passed by a vote of 5-1 with Mrs. Harris voting nay; Chairman Smith absent from the meeting.

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Page 117, July 3, 1990, (Tape 2), After Agenda Item #2:

Approval of Resolutions
June 26, 1990

Mrs. Thonen made a motion that the Resolutions for June 26, 1990, with the exception of the Resolution for VC 90-L-042, Wilson Woods, Inc. be approved. This motion was seconded by Mr. Kelley and passed by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 118, July 3, 1990, (Tape 2), After Agenda Item #3:

Approval of Minutes
May 29, 1990

Mrs. Thonen made a motion that the Minutes for May 29, 1990, be approved. This motion was seconded by Mr. Ribble and passed by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 118, July 3, 1990, (Tape 2), After Agenda Item #4:

Out-of-Turn Hearing Request
Centreville Preschool
SP 90-S-046

Mr. Ribble moved that the Out-of-Turn hearing request for SP 90-S-046, Centreville Preschool, be denied. This motion was seconded by Mr. Hammack and passed by a vote of 6-0; Chairman Smith absent from the meeting.

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Page 118, July 3, 1990, (Tape 2), After Agenda Item #5:

Out-of-Turn Hearing Request
Upper Occoquan Sewage Authority
VC 90-S-062

Mrs. Thonen made a motion that the Out-of-Turn hearing request for VC 90-S-062, Upper Occoquan Sewage Authority, be denied. The motion was seconded by Mr. Hammack and passed by a vote of 4-1 with Mr. Kelley nay; Mrs. Harris not present for the vote; Chairman Smith absent from the meeting.

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Page 118, July 3, 1990, (Tape 2), Information Item:

Forthway Center for Advanced Studies, Inc., SPA 78-C-307-1
Approval of Plats

Vice Chairman DiGiulian signed the revised plat submitted by staff as being in conformance with the BZA's Resolution.

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

Judy L. Moss, Substituting for the
Clerk to the Board of Zoning Appeals

John P. DiGiulian, Vice Chairman
Board of Zoning Appeals

SUBMITTED 8/30/90

APPROVED 9/6/90

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on July 10, 1990. The following Board Members were present: Acting Chairman Paul Hammack; Robert Kelley; John Ribble; Martha Harris; and Mary Thonen. Chairman Daniel Smith and Vice Chairman John DiGiulian were absent from the meeting.

Mr. Hammack called the meeting to order at 9:10 a.m. and Mrs. Thonen gave the invocation.

Mrs. Harris stated that, due to the fact that Chairman Smith and Vice Chairman DiGiulian were absent from the meeting, she would like to make a motion that Mr. Hammack serve as Acting Chairman. Mrs. Thonen seconded the motion, which carried unanimously.

Acting Chairman Hammack asked if there were any Board Matters to bring before the Board.

Mrs. Harris asked Jane Kelsey, Chief, Special Permit and Variance Branch, to explain the "Tree Cover Requirement," which had been placed in front of the Board Members. Ms. Kelsey replied that it was a complete revision of Article 13, incorporating Part 4, which is the tree cover requirement; it went into effect on June 30, 1990, and would apply to all special permit and subdivision type variance applications, which come before the Board of Zoning Appeals.

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There were no further Board Matters to bring before the Board and Acting Chairman Hammack called for the first scheduled case.

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Page 119, July 10, 1990, (Tape 1), Scheduled case of:

9:00 A.M. <u>RECONSIDERATION HEARING</u>: 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, Mt. Vernon District, Tax Map 102-3((9))(D)15. (HEARD PREVIOUSLY CONCURRENT WITH VC 90-V-008) (APPROVED FOR RECONSIDERATION ON 5/8/90)

Acting Chairman Hammack called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Via replied 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 submitted a revised affidavit which Mr. Via earlier had reaffirmed. Ms. James reminded the Board that the matter before them was a reconsideration of a case which had been heard on April 19, 1990, and denied. A motion for reconsideration was granted on May 8, 1990.

Patrick Via, of the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, came forward to represent the applicant. Mr. Via stated that, although it was previously stated that the applicant was a surveyor, Mr. McLary had not worked as a surveyor since 1969 and was now a transportation consultant.

Mr. Via stated that, during the course of construction, after the building permit had been approved, prior to the building inspectors coming out, Mr. McLary decided to turn the building around in order to avoid the removal of some trees. Mr. Via stated that inspectors did come out to the structure and had approved it and that it has been in use since 1984.

According to Mr. Via, Mr. McLary believed that he had maintained the setback requirements and did not find out that there was a problem until 1989, after the Lappings had already moved in, a week before settlement.

Mr. Via expanded on how the application met all of the standards for a variance because of an error in building location.

Mr. Via said he had a letter of support from the Homeowners Associations and that there were two neighbors present who wished to speak in favor of the applicant's request.

Mr. Via emphasized the hardship to both the McLarys and the Lappings if this request were not granted

The following people spoke in favor of the application, stating they had no objection to the request being granted: Jim Lapping, 8242 Kings Arm Drive, Alexandria, Virginia; Michelle D. Crowell, 8229 Crown Court Road, Alexandria, Virginia; and Brian S. Gunderson, 8231 Crown Court Road, Alexandria, Virginia.

There were no other speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Harris prefaced her motion by referring to the first hearing which she said concentrated on why the structure had been placed in a different location than shown on the original plat. She also stated that the applicant did apply for the correct building permit and, although it was unfortunate that the applicant turned the garage and moved it closer to the

lot line, she did not believe that testimony showed that it was not done in good faith. Mrs. Harris stated that she did not think this reduction would impair the purpose and intent of the Ordinance. Mrs. Harris stated that she did not like the idea of having to take trees down to move the structure; even though, if the applicant had come in for a variance to place the structure where it ultimately was placed, she could not have approved it. Mrs. Harris stated that she had considered testimony and letters submitted to the effect that this approval would not be detrimental to the use or enjoyment of other properties in the vicinity and would not create an unsafe condition.

Mrs. Harris made a motion to grant SP 90-V-005, subject to the development conditions contained in the staff report dated April 10, 1990.

Mrs. Thonen stated she would support this motion because of the clarification of the facts in the case during this second hearing.

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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 AND SANDRA L. MCLARY, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error, on property located at 8242 Kings Arms Drive, Tax Map Reference 102-3((9))(D)15, 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 July 10, 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 garage 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 garage in accordance with this special permit shall be submitted and attached to the original building permit.

3. The fence in the front yard shall be removed or reduced to no greater than four (4) feet in height within sixty (60) days of this special permit approval, or this special permit shall be null and void.

Mr. Kelley seconded the motion which carried by a vote of 4-0; Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 121, July 10, 1990, (Tape 1), Scheduled case of:

9:15 A.M. W. JACKSON BURKETT, JR., VC 90-D-044, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 10.0 feet from side lot line such that side yards total 18.1 feet (8 ft. min. side yard, 20 ft. total min. side yards required by Sect. 3-307), on property located at 1521 Bal Harbor Court, on approximately 9,042 square feet of land, zoned R-3 (developed cluster), Dranesville District, Tax Map 10-2((3))15.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Burkett replied 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.

The applicant, W. Jackson Burkett, Jr., 1521 Bal Harbor Court, Herndon, Virginia, presented the statement of justification.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to grant VC 90-D-044 because of the exceptional pie-shape of the lot, subject to the development conditions contained in the staff report dated July 3, 1990, as amended by adding a fourth condition, as reflected in the Resolution, requiring that the "ten foot (10') side lot line shall be exactly as depicted on the revised plat dated 4/12/90."

Mrs. Harris stated she would support the motion because there is no encroachment into the side yard requirement, only into the total yard requirement; also, because the topographical conditions on the lot are such that the yard falls away significantly to the west, and the proposed location is the only place on the property where the addition could be built.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-044 by W. JACKSON BURKETT, JR., under Section 18-401 of the Zoning Ordinance to allow construction of an addition to dwelling to 10.0 feet from side lot line such that side yards total 18.1 feet, on property located at 1521 Bal Harbor Court, Tax Map Reference 10-2((3))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 July 10, 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 9,042 square feet of land.
4. The lot is of exceptional shape, in that it is pie-shaped.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 ten-foot (10') side lot line shall be exactly as depicted on the revised plat dated 4/12/90.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 122, July 10, 1990, (Tape 1), Scheduled case of:

9:30 A.M. PAMELA A. WATSON, SP 90-A-029, application under Sect. 8-901 of the Zoning Ordinance to allow reduction of minimum rear yard and minimum side yard requirements based on error in building location to allow existing detached garage, 8.5 feet in height, to remain 0.7 feet from rear lot line and 3.4 feet from side lot line (8.5 ft. min. rear yard and 12 ft. min. side yard required by Sect. 3-307, on property located at 5603 Sedgwich Lane, on approximately 10,600 square feet of land, zoned R-3, Annandale District, Tax Map 79-2((3))(30)2.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Watson replied 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, stating that there was one letter of support contained in the staff report, and several letters of opposition contained in the Board Members' packages.

Acting Chairman Hammack asked Ms. Watson if she had received a copy of a letter dated June 26, 1990, or the letters which were attached to the top of the staff report, in opposition to the application. Ms. Watson stated she had not seen them and Acting Chairman Hammack provided them to her.

The applicant, Pamela A. Watson, 5603 Sedgwich Lane, Springfield, Virginia, stated that she believed the letters had nothing to do with her garage. She stated that, a year ago, she had a limousine service at her house and the neighbors were very upset with having the limousines there and the fact that Ms. Watson did the bookkeeping at her house.

Ms. Watson presented her statement of justification, and stated she had no way of disposing of the preconstructed garage.

Mr. Ribble pointed out that the photographs showed the structure to be on wooden slides. Ms. Watson stated that the garage was dumped on her driveway and she did not have time to provide a concrete base for the garage. Mr. Ribble asked Ms. Watson if the garage was movable and she said that it was.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to deny SP 90-A-029 for the reasons outlined in the Resolution.

Acting Chairman Hammack said his reasons for supporting the motion to deny were that the structure was too close to the side lot line and rear lot line, and especially that the structure was oversize for a one-car garage. In addition, he said, the applicant did not consult the Zoning Ordinance before buying and erecting the structure.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-A-029 by PAMELA A. WATSON, under Section 8-901 of the Zoning Ordinance to allow reduction of minimum rear yard and minimum side yard requirements based on error in building location to allow existing detached garage, 8.5 feet in height, to remain 0.7 feet from rear lot line and 3.4 feet from side lot line, on property located at 5603 Sedgwich Lane, Tax Map Reference 79-2((3))(30)2, 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 July 10, 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 10,600 square feet of land.
4. The 0.7 foot distance from the rear lot line would preclude any necessary servicing of the structure, grass cutting, etc.
5. The 3.4 foot distance from the side lot line is also totally inadequate.
6. A variance would not have been granted if application had been made in advance of construction, especially because the structure is oversized for a one-car garage.
7. The applicant admits failure to inquire about applicable zoning regulations.

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 which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990.

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Page 124, July 10, 1990, (Tape 1), Scheduled case of:

9:45 A.M. PETER D. MCRAE & JEANETTE PHILLIPS, VC 90-P-049, application under 18-401 of the Zoning Ordinance to allow building addition (deck enclosure) to 19.7 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307) and 12.1 from edge of flood plain line (15 ft. min. required from flood plain by Sect. 2-415), on property located at 3238 Holly Berry Court, on approximately 8,650 square feet of land, zoned R-3 (developed cluster), Providence District, Tax Map 59-2((21))19.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Phillips replied 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. Ms. James stated that staff had recently received a memo from the Fairfax County Park Authority, which was not included in the staff report. The memo indicated that a portion of the applicant's fence encroaches upon the Park Authority's property. Ms. James stated that, should the Board approve the application, staff recommended adding another condition stating that the subject fence is to be removed prior to the issuance of a building permit.

The applicant, Jeanette Phillips, 3238 Holly Berry Court, Falls Church, Virginia, presented the statement of justification. The applicant acknowledged having received the memo from the Fairfax County Park Authority regarding the encroachment of the fence and stated they were prepared to move the fence.

Mrs. Harris asked the applicant why the sunroom could not be constructed in the southwest corner where a variance would not be required. Ms. Phillips stated that, because the levels of the house were split, they would have to tear down the deck in order to do as Mrs. Harris suggested, and then rebuild the deck.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to deny VC 90-P-049 because it is not supported by any unusual characteristics. She said that the floodplain easement is shared by many of the other properties on Holly Berry Court and Freehollow Drive. She stated that the strict application of the Ordinance does not produce an undue hardship, because there are other locations where the sunroom could be added without requiring a variance.

Mrs. Thonen seconded the motion.

Acting Chairman Hammack stated that, while he appreciates what Mrs. Harris said about possible other locations for the sunroom, it is difficult for the Board to redesign projects for approval. He stated he could not support the motion because the variances are minimal, and there is open space behind the house. He stated he also believed the floodplain easement was not shared by the majority of property owners in the area.

Mrs. Thonen stated she intended to support the motion because the floodplain line should be protected and they would be too close to the floodplain line.

Mr. Kelley stated that he could not support the motion because he believed it would have been reflected in the staff report if the floodplain was a problem.

The motion to deny failed by a vote of 2-3; Acting Chairman Hammack, Mr. Kelley and Mr. Ribble voted nay.

Acting Chairman Hammack asked for a substitute motion.

Mr. Kelley made a motion to defer making a decision on the application until July 26, 1990 at 12:20 p.m., in order for staff to provide the Board with a detailed report on the effect of the building being located within twelve (12) feet of the floodplain line.

Mrs. Thonen seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 124, July 10, 1990, (Tape 1), Scheduled case of:

10:00 A.M. HUNTER TRACT LIMITED PARTNERSHIP, SP 90-L-030, application under Sect. 8-901 of the Zoning Ordinance to allow a waiver of the dustless surface requirement, on property located on Morning View Lane, on approximately 16,988 square feet of land, zoned PDH-4, Lee District, Tax Map 90-4((1))pt. 27.

Acting Chairman Hammack called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lawrence replied that it was. Acting Chairman Hammack 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, stating that staff recommended approval in accordance with the development conditions contained therein. Ms. Kelsey noted that the applicant had proposed relocation of the entrance to the parking lot, to be in conformance with Virginia Department of Transportation (VDOT) requirements. Ms. Kelsey stated that the application was currently in the site plan review process and staff had no objection to the relocation.

One of the Board members stated, "That was a very good staff report." Ms. Kelsey thanked them and advised that Ms. Bettard had prepared the staff report.

Robert A. Lawrence, of the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, presented the statement of justification. Mr. Lawrence pointed out that the property was part of a 261-acre tract that was rezoned last year, and that a specific condition of the rezoning was that the applicant provide a gravel surface parking lot for two soccer fields which will be in use on the site, temporarily, until such time as a school is constructed. Mr. Lawrence stated that the Board of Supervisors directed the applicant to seek a special permit from the Board of Zoning Appeals to allow a waiver of the dustless surface requirement.

Mr. Lawrence further stated that two entrances were shown on one of the plats and, since VDOT was not inclined to approve two entrances, he proposed that Development Condition 2 be amended, and suggested the following language: "Subject, however, to the possible deletion of the northernmost entrance, if required by VDOT, in general accordance with the site plan entitled, "Ialand Creek Temporary Parking Lot and Soccer Field," prepared by Dewberry and Davis and dated November 1989. (County Site Plan No. 7808-SP-02)." In Condition 6, Mr. Lawrence requested a correction from the word "light" to "lot" in the phrase, "...perimeter of the parking lot..."; and the insertion of "evergreen shrubbery," to read: "...shall be evergreen shrubbery 42-48 inches...."

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to grant SP 90-L-030, subject to the development conditions contained in the staff report dated July 3, 1990, as amended and reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-030 by HUNTER TRACT LIMITED PARTNERSHIP, under Section 8-901 of the Zoning Ordinance to allow a waiver of the dustless surface requirement, on property located on Morning View Lane, Tax Map Reference 99-2((1))pt. 27, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 10, 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-4.
3. The area of the lot is 16,988 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 only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat submitted with this application prepared by Dewberry & Davis and revised on April 10, 1990. Subject, however, to the possible deletion of the northernmost entrance if required by Virginia Department of Transportation, in general accordance with the site plan entitled, "Ialand Creek Temporary Parking Lot and Soccer Field," prepared by Dewberry and Davis and dated November 1989 (County Site Plan Number 7818-SP-02).

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. There shall be a minimum of 19 parking spaces and a maximum of 38 parking spaces. All parking shall be on-site.

6. The applicant shall conform to all screening and barrier requirements imposed on the site by the approval of RZ/FDP 86-L-073. In addition, supplemental plantings shall be provided on the western perimeter of the parking lot to screen adverse effects of headlight glare from the subject use. The vegetation shall be evergreen shrubbery 42-48 inches in height. The nature, type, and amount of such plantings shall be determined by the County Arborist.

7. 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.

   Runoff shall be channeled away from and around driveway and parking areas.

   The property owner shall perform periodic inspections to monitor dust conditions, drainage functions, compaction and migration of stone surface.

   During dry periods, application of water shall be made in order to control dust.

8. 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 focused directly onto the subject property.

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

9. This Special Permit shall expire five (5) years from its approval date by the Board of Zoning Appeals.

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

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 which carried by a vote of 4-0; Mrs. Harris was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990. This date shall be deemed to be the final approval date of this special permit.

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10:15 A.M. JOAN W. GODWIN, VC 90-A-043, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a building addition to dwelling to 15.2 feet from rear lot line (20 ft. min. rear yard required by Sect. 3-807), on property located at 5532 Paxford Court, on approximately 1,540 square feet of land, zoned R-8, Annandale District, Tax Map 77-2((6))10.

Acting Chairman Hammack called the applicant's husband to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Godwin 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.

The applicant's husband, James Godwin, 5532 Paxford Court, Fairfax, Virginia, presented the statement of justification.

~~Mrs. Harris asked Mr. Godwin what hardship he was claiming under the Standards. Mr. Godwin~~ stated that, in the afternoon, they got no sunlight because of a grove of very high trees. He said the variance would allow them to get some sunlight.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to deny VC 90-A-043 because, he said, he did not believe it met the required standards. He said he believed that granting this request would set an unfavorable precedent. In reviewing the photographs, Mr. Kelley stated that he did not see any other decks or enclosures in the area. Mr. Kelley stated that he did not believe denying this application would create a hardship for the applicant.

Mrs. Harris stated that she agreed with Mr. Kelley that no hardship was indicated. She also stated that the subject property had none of the seven possible topographical characteristics covered in the Standards.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-043 by JOAN W. GODWIN, under Section 18-401 of the Zoning Ordinance to allow construction of a building addition to dwelling to 15.2 feet from rear lot line, on property located at 5532 Paxford Court, Tax Map Reference 77-2((6))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 July 10, 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.
3. The area of the lot is 1,540 square feet of land.
4. The application does not meet all of the required standards, and granting the request would set an unfavorable precedent.
5. From the photographs, there do not seem to be any other decks or enclosures in the area.
6. There is no indication that denial would create 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 which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990.

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Page 128, July 10, 1990, (Tape 2), Scheduled case of:

10:30 A.M. JOHN J. & ROBERTA E. CRINER, SP 90-S-028, application under Sect. 8-901 of the Zoning Ordinance to allow reduction of minimum rear yard requirement based on error in building location to allow existing two story detached shed, 19.0 feet in height, to remain 6.1 feet from rear lot line (19 ft. min. rear yard required by Sect. 10-104), on property located at 9213 Antelope Place, on approximately 14,533 square feet of land, zoned R-2 (developed cluster), Springfield District, Tax Map 88-2((6))71.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Criner 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.

The applicant, John J. Criner, 9213 Antelope Place, Springfield, Virginia, presented the statement of justification. Mr. Criner stated that, in June of 1989, he consulted with the County about the necessity of a building permit. He stated he was informed that, because the footprint did not exceed 150 square feet, a building permit was not required.

The applicant submitted recent photographs to the Board for their review of the screening provided by the vegetation. Mrs. Thonen pointed out the difference winter would make in the screening shown in the photographs.

Acting Chairman Hammack asked Mr. Criner specific questions about who he spoke with when he called the County about a building permit. Mr. Criner did not know to whom he spoke. At the time, however, Mr. Criner said that he had asked only about building a shed. Acting Chairman Hammack then asked if Mr. Criner had made another inquiry when he decided to put another story on the shed and Mr. Criner stated he had not. In response to a question from Acting Chairman Hammack, Mr. Criner stated that the shed originally was ten (10) feet high. Acting Chairman Hammack stated that, if the applicant had planned to build the shed ten (10) feet high, it would have required a ten (10) foot setback. Acting Chairman Hammack asked Mr. Criner if the shed could be moved. Mr. Criner said that moving the shed would be very difficult.

Harry Hall, 9211 Antelope Place, Springfield, Virginia, who lives next door to the applicant, spoke in support of the application and said he helped the applicant construct the original shed.

Mr. Kelley asked the applicant if there was any way the applicant could screen the shed in the winter, possibly with pines. Mr. Criner said he thought there might be a way to do that. He said that he could remove some deciduous vegetation and plant evergreens.

Acting Chairman Hammack asked Mr. Criner if he had received a copy of the letter of opposition from Mr. Gene N. Fredriksen. Mr. Criner replied that he had not, and Acting Chairman Hammack provided him with a copy.

Acting Chairman Hammack called for any other speakers in support of the application or opposed to the application. There was no response.

While Mr. Criner read the letter from Mr. Fredriksen, Mrs. Harris asked staff: If there had been no second floor on this shed, and if it had been built according to the plans, how far back would it have had to be from the rear lot line. Mr. Riegle advised that a structure less than 8.5 feet tall can be located any distance from the lot line; if the height of 8.5 feet is exceeded, the setback distance from the rear lot line must be equal to the height.

Acting Chairman Hammack and Mr. Criner discussed Mr. Fredriksen's opposition and the proximity of his residence to the shed. Acting Chairman Hammack asked Mr. Criner if screening could be placed between Mr. Fredriksen's house and the shed. Mr. Criner stated he was most willing to accommodate Mr. Fredriksen in the placement of evergreens for screening.

Acting Chairman Hammack closed the public hearing.

Acting Chairman Hammack recommended amending Development Condition 2 to provide screening between the shed and Mr. Fredriksen's house.

Mrs. Harris expressed doubt that adequate screening could be provided without sufficient time to allow the growth factor to enter into any planting. Acting Chairman Hammack pointed out that, if Mr. Criner chose to, he could "by right" place the shed in another location, further from the lot line, even in the middle of the yard, or closer to Mr. Fredriksen's house, and it would be perfectly legal, even though the view might be more offensive to Mr. Fredriksen. In that case, Acting Chairman Hammack said, Mr. Fredriksen would have no recourse.

Mr. Kelley made a motion to grant SP 90-S-028, subject to the development conditions contained in the staff report dated July 3, 1990, as amended. Development Condition 2 was amended to provide screening between the shed and Lot 94, 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-S-028 by JOHN J. & ROBERTA E. CRINER, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum rear yard requirement based on error in building location to allow existing two story detached shed, 19.0 feet in height, to remain 6.7 feet from rear lot line, on property located at 9213 Antelope Place, Tax Map Reference 88-2((6))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 July 10, 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 shed shown on the plat (prepared by Cervantes and Associates, P.C. and dated March 7, 1990) submitted with this application and not transferable to other land.

2. Two large evergreen trees shall be planted on the southern side of the shed and two large evergreen trees shall be planted on the western side of the shed in a position to try to conceal the shed from view of Lot 94. These trees shall have a planted height of at least nine (8) feet.

Mrs. Thonen seconded the motion which carried by a vote of 4-1; Mrs. Harris voted nay. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 130, July 10, 1990, (Tape 2), Scheduled case of:

10:45 A.M. WILLIAM P. MADIGAN, JR., VC 90-D-046, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition to 15.0 feet from side lot line (20 ft. min. side yard required by Sect. 3-107), on property located at 7100 Benjamin Street, on approximately 42,400 square feet of land, zoned R-1, Dranesville District, Tax Map 21-3((2))15.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Madigan 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.

The applicant, William P. Madigan, Jr., 7100 Benjamin Street, McLean, Virginia, presented the statement of justification.

A discussion between the Board and the applicant ensued, during which the Board inquired into the applicant's reasons for requesting a variance and the circumstances involved. The applicant stated that he would like to have a one-car garage and a utility room.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to deny VC 90-D-046 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 90-D-046 by WILLIAM P. MADIGAN, JR., under Section 18-401 of the Zoning Ordinance to allow construction of addition to 15.0 feet from side lot line, on property located at 7100 Benjamin Street, Tax Map Reference 21-3((2))15, 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 July 10, 1990; and

Page 131, July 10, 1990, (Tape 2), (WILLIAM P. MADIGAN, JR., VC 90-D-046, continued from Page 130)

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 42,400 square feet of land.
4. The lot is identical to most of the other lots on Benjamin Street.
5. The property is relatively flat and there are other locations on the lot where the garage could be located without requiring 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. Thonen seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990.

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Page 131, July 10, 1990, (Tape 2), Scheduled case of:

11:00 A.M. CROSSROADS BAPTIST CHURCH, SP 90-M-036, application under Sect. 3-303 of the Zoning Ordinance to allow church and related facilities, on property located at 3537 Moncure Avenue, on approximately 1.1286 acres of land, zoned R-3 and HC, Mason District, Tax Map 61-4((1))112. (OTH GRANTED 5/22/90)

Acting Chairman Hammack called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Pripeton 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, which recommended that the application be denied as submitted for reasons set forth in the staff report.

Arlene L. Pripeton, attorney, 10195 Main Street, Suite B, Fairfax, Virginia, represented the applicant and presented the statement of justification. She stated that, although the staff report indicated that the building was sixty (60) feet in height, they disagreed in that she

believed the formula for the calculation should use the mean level of the highest slope of the roof, which their architect said is thirty-seven (37) feet above the finished grade. She provided copies of a letter from the architect to that effect.

In support of the application, Ms. Pripeton stated she had signatures on a petition from sixty-seven (67) neighbors, which included everyone who lived on Moncure Avenue, Hoffman Lane, and Lacy Boulevard; a letter from the only across-the-street neighbor, Joan P. Hunter; letters from Susy E. Lattimer and Evelyn Hill; and a letter from Tyrone and Shelly Pitts.

Ms. Pripeton described the traffic patterns in the neighborhood and said that she believed they did not indicate any potential impact by the church on the neighborhood.

Ms. Pripeton stated David Pitts was present to address the Board in support of the application.

Addressing the Proposed Development Conditions, Ms. Pripeton said the applicant had a problem with Condition 7, the transitional screening of twenty-five (25) feet around the entire property proposed by staff, since the apartment complex has a fairly large setback and a barbed wire fence around it, and it is a situation of one parking lot facing another parking lot.

Ms. Pripeton went on to speak about screening in the area of the sanitary sewer easement and said the applicant would like to propose planting a hedge, in addition to the trees, to deflect any headlight glare. She stated that they had discussed this with the Department of Environmental Management (DEM), as they had been allowed simultaneous site plan processing. She stated they would plant anything the Department of Public Works (DPW) and the Arborist would allow them to plant in that area to make the transitional screening wider.

Ms. Pripeton said that Condition 11, which pertained to the construction of sidewalks, seemed to be based on an erroneous assumption that all seventy percent of the people discussed as either being bussed or walking to the location would walk to the location. She stated that the report said that seventy percent would walk; whereas, probably sixty-five percent would be bussed and only five percent would walk.

Mrs. Harris asked Ms. Pripeton how many seats were in the church that the applicant presently was using. Ms. Pripeton said the number was 205. Mrs. Harris asked if the building presently being used would continue to be used as a church and Ms. Pripeton said she was sure it would be put up for sale.

Mrs. Harris asked if there was any flexibility in reducing the height of the spire, in keeping with a residential appearance. Ms. Pripeton stated she believed there was a possibility of reducing the height of the spire.

Acting Chairman Hammack asked Ms. Pripeton if she had prepared any language which incorporated the modifications to the transitional screening which she had previously discussed. She said she had not, but she would propose stating they would provide screening to the maximum that was allowed by the Arborist, DPW, and DEM. She stated that the applicant also had made an agreedment with the homeowners that, if they would like them to, the the applicant would put plants in the homeowners' back yards, since they had just moved in and did not have much in the way of plants in their back yards.

Mrs. Harris asked Ms. Pripeton about the underground stormwater detention facility. Ms. Pripeton stated that the applicant had originally requested a waiver because the land was virtually flat; however, both DEM and the staff report indicated that the facility would be necessary, and DEM had indicated that an underground facility would be acceptable to them. Mrs. Harris made mention of an off-site detention facility and Ms. Pripeton said the applicant would be amenable to either one, and indicated that the applicant would take any necessary precautions for the safety of children.

Louis C. Baldwin, 3530 Moncure Avenue, Baileys Crossroads, Virginia, Pastor of Crossroads Baptist Church for the seven years it has been at its present location, spoke in support of the application.

David Pitts, 3601 Lacy Boulevard, Baileys Crossroads, Virginia, spoke in support of the application, stating there was no house on his land at this time.

Mrs. Harris questioned Mr. Pitts about the existence of sidewalks and established that there were no sidewalks on Hoffman Lane in front of the apartment buildings.

In opposition to the application, William W. Pascoe, III, 3492 Paul Street, Baileys Crossroads, Virginia, stated he had met with the applicant and asked to read a prepared letter into the record, which is now part of the file. The letter was signed by Mr. Pascoe, Mildred J. Webber, 3492 Paul Street; Itzhak Tepper, 3494 Paul Street; Susie Zumbro, 3494 Paul Street; Fong Liou, 3493 Paul Street; Tom Nguyen, 3497 Paul Street; Michael Johnson, 3495 Paul Street; and George Schutzer, 3499 Paul Street. The opposition was directed toward perceived noncompliance with the Comprehensive Plan, stormwater drainage concerns, traffic congestion, parking congestion, and negative visual impact.

Page 133, July 10, 1990, (Tape 2), (CROSSROADS BAPTIST CHURCH, SP 90-M-036, continued from Page 132)

Pastor Baldwin spoke in rebuttal to the opposition, contrasting the sixty-seven homeowners in support of the application against the six homeowners in opposition to the application.

Mrs. Harris made a motion to defer SP 90-M-036 to allow the applicant time to meet with the homeowners and discuss the various aspects of the application.

Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

It was suggested that SP 90-M-036 be rescheduled for July 31, 1990 at 11:30 a.m. and Acting Chairman Hammack so ordered.

Stating he would support the motion for the deferral, Acting Chairman Hammack stated for the record that he did think the church is an intensive development and that staff had raised some good issues about screening. He said the height of the building is not completely compatible and that he would like to see the screening requirements met.

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Page 133, July 10, 1990, (Tapes 2 & 3), Scheduled case of:

11:15 A.M. JOHN M. LENTS, VC 90-P-045, application under Sect. 18-401 of the Zoning Ordinance to allow construction of building addition to 23.0 feet from front lot line (35 ft. min. front yard required under Sect. 3-207), on property located at 3309 Parkside Terrace, on approximately 20,000 square feet of land, zoned R-2, Providence District, Tax Map 58-2((9))168.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lents replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report.

Responding to questions from Mrs. Harris and Mrs. Thonen, Mr. Jaskiewicz stated that there is an existing one-car garage, and the two-car garage would be added in front of it. Mr. Jaskiewicz stated that the applicant said the one-car garage would be used for storage. The level of the proposed two-car garage would be three (3) feet below the floor line of the existing one-car garage, so it would not be possible to back up into the existing garage.

The applicant, John M. Lents, 3309 Parkside Terrace, Fairfax, Virginia, presented the statement of justification, stating he would like to enhance the value of his house. He also stated that his present driveway is very steep and hazardous in the winter. His wife had a heart attack in December which, he said, influenced his plans for the placement of the proposed garage.

Mr. Lents presented letters of support from two of his neighbors.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to deny VC 90-P-045. He stated that he did not believe the new arrangement would relieve the problem of the slope, that the topographical conditions did not appear to be extraordinary, and that he did not believe denial would impose an undue hardship.

Mrs. Harris stated that she would like to add that a garage already exists on the property, which indicates that the applicant does have effective and reasonable use of the property and, by granting the front yard variance, the Board would not be alleviating a demonstrable hardship approaching confiscation.

Acting Chairman Hammack stated he would support the motion because he had been out to view the property and believed the applicant had reasonable use of the property, and that there are numerous houses in the Mantua area of a similar architectural design with the one-car garage built in. He said he believed the addition would be intrusive, even with the attempt to lower it into the ground, and that it would set a bad precedent.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-045 by JOHN M. LENTS, under Section 18-401 of the Zoning Ordinance to allow construction of building addition to 23.0 feet from front lot line, on property located at 3309 Parkside Terrace, Tax Map Reference 58-2((9))168, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 10, 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 20,000 square feet of land.
4. There do not seem to be any substantial topographical problems.
5. The denial of this request would not create a substantial 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 which carried by a vote of 4-0; Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990.

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Page 134, July 10, 1990, (Tape 3), Scheduled case of:

11:45 A.M. TARAK N. BHAR, VC 90-P-048, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to 5.4 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 2430 Drexel Street, on approximately 10,500 square feet of land, zoned R-3, Providence District, Tax Map 39-3((16))192.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bhar replied that it was. Acting Chairman Hammack then asked for disclosures from the Board members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report.

The applicant, Tarak N. Bhar, 2430 Drexel Street, Vienna, Virginia, presented the statement of justification.

Mrs. Harris asked Mr. Bhar if he had built the carport on the north side of the property, or whether it had been there when he bought the property. Mr. Bhar said that section never had been a carport, but had been a family room and had been there when he bought the house in 1987. He stated that the reason he believed it was always a family room and not a carport was that it has a basement under it. Mrs. Harris stated that a carport could be over a basement.

Mr. Kelley asked Mr. Bhar if he knew when he bought the house in 1987 that, in order to construct a garage, he would need a variance. Mr. Bhar said he did not know at that time.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to deny VC 90-P-048 because, she stated, a 6.6 foot variance is larger than she ever liked to grant. Mrs. Thonen further stated that the application did not meet any of the standards for a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-048 by TARAK N. BHAR, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to 5.4 feet from side lot line, on property located at 2430 Drexel Street, Tax Map Reference 39-3((16))192, 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 July 10, 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 variance requested is excessive.
5. The property is not exceptionally narrow, doesn't have an unusual shape or problems with the topography.

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 which carried by a vote of 4-0; Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990.

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Page 136, July 10, 1990, (Tape 3), Scheduled case of:

12:00 Noon RESTON MONTESSORI SCHOOL, INC. AND UNITARIAN/UNIVERSALIST CHURCH IN RESTON, SP 90-C-026, application under Sect. 6-303 of the Zoning Ordinance to allow child care center and nursery school in an existing church, on property located at 1625 Wiehle Avenue, on approximately 6.1410 acres of land, zoned PRC, Centreville District, Tax Map 18-1((1))15.

Acting Chairman Hammack called the applicants' agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. O'Connor replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report, which recommended approval as submitted, and subject to the development conditions contained therein. Mr. Jaskiewicz noted a typing error on page two of Appendix 1, Development Condition 8: Line two should read "...7 a.m. and 6:30 p.m., not 7:30 a.m. and 6 p.m."

Mrs. Harris stated that, in her review of previous child care facilities, the traffic moved in a circular pattern or loop to allow parents to conveniently drop children off. In the description of the traffic pattern associated with this application, she said it appeared that the parents would have to park and back up in order to get back out. She stated this would seem to potentially result in a bottleneck. Mr. Jaskiewicz stated that staff did not address this situation, but the traffic pattern in this application was not out-of-the-ordinary when compared with the traffic patterns associated with other child care centers.

Mrs. Thonen stated to Mr. Jaskiewicz that the Board had letters stating that the Church did not own the land and, consequently, could not put in a left hand turn lane, even if they wanted to. Mr. Jaskiewicz said the Church does not own the land in the middle of the right-of-way of Wiehle Avenue; however, their ownership extended along a piece of property which Mr. Jaskiewicz pointed out to the Board. Mrs. Thonen asked Mr. Jaskiewicz if the Church would have to buy the land and he said yes. Mrs. Thonen questioned how the Church could proffer something on someone else's land. Acting Chairman Hammack asked Mr. Jaskiewicz if he knew who owned the land and if they were willing to sell it. Mr. Jaskiewicz stated he did not think staff had investigated that aspect.

Mr. Kelley referred to a letter from a Lois Geer which stated that, by going a bit further, one could avoid making a left hand turn, and he asked how that could happen. Mr. Jaskiewicz said he did not know, unless one left the road, because the only entrance into the subject property was through the left turn lane; if one went further, there was a median preventing access.

Brian M. O'Connor, 11718 Bowman Green Drive, Reston, Virginia, attorney, represented the applicants and presented the statement of justification. He stated that Sandra Norgard was present. He stated that Ms. Norgard was a member of the Board of the Church, the co-applicant. Mr. O'Connor advised he was the Vice Mayor of the City of Falls Church and appreciated the work the Board did. He stated that Eileen Minarik, co-owner with Kathy Lanfear of the Montessori School, was also present. Mr. O'Connor described the owners as two married ladies who had put forth their family savings and borrowed money to run this school. Mr. O'Connor stated that the income generated by the Montessori School was vital to the financial health of the Church. Mr. O'Connor stated that one reason for the change to the Montessori School was that the Church needed more income to operate and the Montessori School came along. Mr. O'Connor emphasized the need for child care in the community. He stated that all the Development Conditions were acceptable, with the exception of Condition 8. He stated the applicant was not in a position to install a left turn lane; nor is the church in a position to install a left turn lane, either in its ability to acquire the land financially or otherwise. Mr. O'Connor stated the applicants believed it was wrong to require the left turn lane and that it was unnecessary.

Mrs. Thonen asked Mr. O'Connor about the staff's recommendation that the hours of operation be changed, and he stated they could not change the hours of operation because their customers, who are working parents, need to drop the children off and pick them up before and after work.

Mrs. Thonen asked Mr. O'Connor if there ever had been any complaints associated with the facilities and he stated that there never had been any complaints. Mrs. Thonen observed that the only change seemed to be a change in name.

Mr. Kelley asked Mr. O'Conner if there had been any accidents and Mr. O'Connor said there had been none, to his knowledge, attributable to this use.

Based on existing use and projected use, Mr. O'Connor stated the applicant did not believe there was any evidence which indicated any significant left turn movement onto the site. From information provided by the applicants, Mr. O'Connor stated that the movement onto the site obviously would be spread out over a period of time.

Mr. O'Connor stated that Glenn Downing, Vice President of L. E. Peabody and Associates, who has been a traffic consultant for over twenty (20) years, made a study of the traffic on the road, and was present to speak.

In response to a question from Mrs. Thonen, Mr. O'Connor stated there are twenty (20) children who would come by car pool and ten (10) children who would travel in five cars because they are siblings.

The following people spoke in favor of the application and stated they did not believe approving the application would have an unfavorable impact upon the area: Harold Miller, 2508 Charlestown Drive, Reston, Virginia; Sandra Norgard, 2284 Gunsmith Square, Reston, Virginia, President of the Church; Robert I. Gould, 1442 Church Hill Place, Reston, Virginia; Norma Howland, 11500 Fairway Drive #108, Reston, Virginia; Glenn Downing, 12124 Stirrup Road, Reston, Virginia; and Bob Howard, 11408 Purple Beech Drive, Reston, Virginia.

There were no other speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant SP 90-C-026, subject to the development conditions contained in the staff report dated June 21, 1990, as amended, because the child care center/nursery school has been there for several years and the only modifications consist of a change in name and a change in the hours of operation. Mrs. Thonen proposed that Condition 8 be modified 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-C-026 by RESTON MONTESSORI SCHOOL, INC. AND UNITARIAN/UNIVERSALIST CHURCH IN RESTON, under Section 6-303 of the Zoning Ordinance to allow child care center and nursery school in an existing church, on property located at 1625 Wiehle Avenue, Tax Map Reference 18-1((1))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 July 10, 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 PRC.
3. The area of the lot is 6.1410 acres of land.
4. The child care center/nursery school has been there for several years and the only modifications consist of a change in name and a change in the hours of operation.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles R. Johnson and dated June 13, 1990, as 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 shall be limited to a total of 150 seats, with a corresponding minimum number of 38 parking spaces located on site.

6. The maximum total daily enrollment for the child care center/nursery school shall be limited to 50 children, 35 of preschool age and 15 of kindergarten age with a corresponding minimum number of 10 parking spaces located on site. The total number of parking spaces on-site for both uses shall be 48.

7. The number of employees for the child care center/nursery school on the property at any one time shall total 5.

8. The child care center/nursery school shall operate between the hours of 7:00 a.m. and 6:30 p.m. weekdays. A sign shall be installed prohibiting any left turn from Wiehle Avenue onto the church site, Monday through Friday.

9. Transitional Screening 1 (25') shall be provided, and shall be modified to allow the existing vegetation to be used to satisfy this requirement along all lot lines.

10. Interior parking lot landscaping shall be provided in accordance with the provisions of Section 13-106 of the Zoning Ordinance.

11. Pursuant to the Virginia Code Section of 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 Board of Supervisors. The easement shall include that land which was defined by the Environmental and Heritage Resources Branch, Office of Comprehensive Planning (OCP), on the Tax Map attached at the end of Appendix 1. The exact location of the boundary shall be determined at the time of Site Plan review by the Environmental and Heritage Resources Branch, OCP in coordination with the Department of Environmental Management (DEM). There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs and no grading with the exception of the improvements necessary for upgrading the entrance road. Proposed grading for these facilities shall be approved by DEM and the Environmental Heritage and Resources Branch, OCP at the time of Site Plan review. There shall be no structures located in the EQC area except for those allowed on Page I/C-74 of the Section titled "Open Space" in the Environmental Recommendations of the Comprehensive Plan.

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. A building permit shall be obtained prior to any construction or modification to the premises.

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

Page 139, July 10, 1990, (Tape 3), (RESTON MONTESSORI SCHOOL, INC. AND UNITARIAN/UNIVERSALIST CHURCH IN RESTON, SP 90-C-026, continued from Page 138)

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 which carried by a vote of 4-0; Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 139, July 10, 1990, (Tape 3), Scheduled case of:

12:15 P.M. JUNIOR EQUITATION SCHOOL, INC., SP 90-S-024, application under Sects. 3-C03 and 8-901 of the Zoning Ordinance to allow riding and boarding stable and waiver of dustless surface requirement, on property located at 6429 Clifton Road and 12935 Popes Head Road, on approximately 17.0 acres of land, zoned R-C and WS, Springfield District, Tax Map 66-3((1))36; 66-4((1))15. (DEFERRED FROM 6/26/90 FOR DECISION ONLY, WRITTEN TESTIMONY, AND SUBMISSION OF NEW PLATS)

Acting Chairman Hammack asked staff to refresh the Board's recollection of what had transpired when this application was heard on June 26, 1990.

Lori Greenlief, Staff Coordinator, stated that this application was deferred for decision only, for written testimony, and to allow the applicant to revise the plat. The revised plat was before the Board at that time. The deferral was also to allow the Clifton Town Council to meet and discuss the case at their hearing on July 3, 1990.

Ms. Greenlief stated that the Council's response to the application was mailed to the Board and included some proposed development conditions. In response to that hearing, the applicant also drafted development conditions, which were at that time being distributed to the Board. Ms. Greenlief stated that the conditions were a combination of staff's original conditions, Mrs. Harris' motion of June 26, 1990, and the changes suggested by the Council. Ms. Greenlief stated that staff believed the development conditions were acceptable and agreed with all of the changes, except the last condition, number 18, which discussed the number of horse shows, the number of participants and the number of spectators. Staff's original condition provided for two (2) horse shows per year with twenty (20) participants. The condition was changed to twice a year with thirty-six (36) participants and fifty (50) spectators. Ms. Greenlief stated that staff encouraged the Board to adopt the original condition, limiting the participants to only twenty (20); the assumption was that the number of spectators would be those who could legally park on the site.

Mr. Kelley asked how it could be reasonably expected that the number of people going to watch a special event could be limited.

Ms. Greenlief stated staff was trying to accommodate the applicant's desire to have horse shows, and it was staff's belief that either the horse shows would have to be eliminated or the parking would have to be increased.

Acting Chairman Hammack asked if there was enough room on site where spectators could park somewhere on the field. Ms. Greenlief stated that was something staff could not condone, especially in the Water Supply Protection Overlay District. She stated staff would encourage the applicant to park in legal parking spaces.

Mr. Kelley compared the applicant's situation to a Championship Little League Game or any number of special events. He stated that he saw a similar situation at Mt. Vernon High School. When they had a big game, he said, there was no way to contain the parking at the high school. He stated that it was an impractical situation, but that he did not have an answer.

Applicant's agent, Sarah Reifsnyder, of the law firm of Blankingship and Keith, 4020 University Drive, Fairfax, Virginia, offered justification for the new Condition 18, which she stated was put in by the Town of Clifton. Ms. Reifsnyder stated that, if staff wished to put in an additional condition stating that all parking would be on site, that would be acceptable to the applicant.

Mrs. Harris made a motion to grant SP 90-S-024, subject to the conditions proposed by the applicant, dated July 9, 1990, as modified by Mrs. Harris, and reflected in the Resolution. Condition 5 was changed to state that there will be no lights at the night lessons scheduled for 7:00 p.m. to 8:00 p.m. Mrs. Harris stated that she believed the agreement which the applicant and the Town of Clifton had come up with was a good one.

A discussion ensued regarding Condition 18, which ultimately was considered to be appropriate as proposed by the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-024 by JUNIOR EQUITATION SCHOOL, INC., under Section C-C03 and 8-901 of the Zoning Ordinance to allow riding and boarding stable and waiver of dustless surface requirement, on property located at 12935 Popes Head Road, Tax Map Reference 66-3((1))pt. 36 and 66-4((1))15, 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 July 10, 1990; and

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

1. That the applicant is the lessee.
2. The present zoning is R-C and WS.
3. The area of the lot is 17.0 acres of land.
4. The applicant and the Clifton Town Council have worked together to reach an agreement and the Council is anxious to welcome the applicant, with the observance of certain limitations.

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 8-603 and 8-609 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 Monaco and Strickhouser, P.C. dated February, 1990, revised as of July, 1990 and approved with this application, as qualified by these development conditions.

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

4. 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:

   Monday through Friday -
   10:00 a.m. to 1:00 p.m.
   4:00 p.m. to 6:00 p.m.
   7:00 p.m. to 8:00 p.m. (two nights per week; no lights on these nighttime lessons)
   Saturdays - 9:00 a.m. to 1:00 p.m.

6. The maximum daily enrollment shall be limited to thirty-six (36) persons on Saturdays and fifteen (15) persons Monday through Friday.

7. The minimum and maximum number of parking spaces on site shall be seventeen (17). All parking shall be on-site. Excluding horse trailers owned by the applicant and/or permanently on site, there shall be no more than three (3) horse trailers on site at any one time on Mondays through Fridays and no more than five (5) on site at any one time on Saturdays.

8. The maximum number of horses/ponies on site shall be eighteen (18) provided at least six (6) of the eighteen (18) are ponies.

9. The existing light poles shall be in conformance with the glare standards specified in Article 14 of the Zoning Ordinance. If it is determined that these standards have been violated, the lights shall be removed or altered through the use of shields or other methods to prevent glare from projecting onto adjacent properties or the roads. There shall be no lighting of the riding ring after 6:00 p.m.

10. The site entrance shall meet Virginia Department of Transportation (VDOT) requirements, unless waived or modified by VDOT.

11. No new structures shall be constructed within an area between the centerline of Popes Head Road to forty-five (45) feet from the centerline and between the centerline of Clifton Road to forty-five (45) feet from the centerline as shown on the special permit plat. The existing fence may be repaired if it is in disrepair.

12. The waiver of the dustless surface shall be approved for a period of five years. 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.

    If the driveway is required to be widened, the additional width may be constructed of gravel provided the areas of gravel are paved 25 feet into the site from the front lot line.

13. The adequacy of the existing septic field shall be assessed by the Fairfax County Health Department. If determined inadequate to accommodate the increased usage from the school, the measures for improvement recommended by the Health Department shall be implemented or this special permit shall be null and void..

14. This special permit shall expire on July 18, 1995.

15. A conservation plan shall be developed in coordination with the Northern Virginia Soil and Water Conservation District and the Soil Conservation Service and "good" pasture conditions shall be maintained on the property at all times as defined by the Soil Conservation Service technical manuals.

16. The Transitional Screening requirements shall be waived along all lot lines. The existing fencing shall be deemed to satisfy the barrier requirement.

17. A row of four (4) Austrian Pines, 5-6 feet in planted height, planted ten (10) feet on center, shall be planted along the east side of the proposed parking area as shown on the plat submitted with this application.

18. Special functions/horse shows shall be limited to two (2) per year with no more than thirty-six (36) riding participants in each no more than fifty (50) spectators on site at any one time and no amplified music.

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 which carried by a vote of 4-0; Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 18, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 142, July 10, 1990, (Tape 3), (INFORMATION ITEM)

Jane Kelsey, Chief, Special Permit and Variance Branch, made an announcement that the meeting would be the last meeting for Lori Greenlief, Staff Coordinator, for 3-1/2 or 4 months, while she went on leave to have her baby. Ms. Kelsey stated everyone would miss Ms. Greenlief very much and all were very excited for her. The Board extended best wishes to Ms. Greenlief with light repartee.

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Page 142, July 10, 1990, (Tape 3), After Agenda Item:

Approval of Resolutions from July 3, 1990 Meeting

Mrs. Harris made a motion to approve the minutes 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. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 142, July 10, 1990, (Tape 3), After Agenda Item:

Request for Change in Name
Fred and Rochelle Blum T/A Rochelle's Loving Care Day Center, S 80-A-017

Mr. Kelley stated he would like to defer the item as he did not have a clear picture of what the change would involve; i.e., percentage of ownership, etc.

Mrs. Harris responded to Mr. Kelley, stating that, once they change to a corporation, the corporation can sell to anyone. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that was exactly correct.

Mrs. Thonen made a motion to defer the item, stating that when the entity became a corporation, they could contain directors of the corporation.

Ms. Kelsey stated that an application had been submitted by Mr. and Mrs. Marquina, requesting permission to take over this operation from two individuals, Mr. and Mrs. Blum. Since the original application was granted to the applicant only, the Blums had to come back before the Board with a new application to change the name, in order to allow the new applicant to take over the operation. Ms. Kelsey stated the Board granted the request of Mr. and Mrs. Marquina, but with severe limitations. Mr. and Mrs. Marquina put staff on notice that they were not going to implement the Special Permit, and that they did not intend to buy the property. Mr. and Mrs. Blum have now incorporated and want to change the name of the operation to reflect the corporate standing, so that they may operate under the name of the corporation. Ms. Kelsey stated the corporation could be sold numerous times and, as long as the corporation continued to live, the Special Permit would continue to live.

Ms. Kelsey referred to the Board's Change-of-Name policy and discussed it with the Board.

Mrs. Thonen reminded the Board that she had made a motion, which was on the floor. Mr. Kelley seconded the motion. Ms. Kelsey asked how long the Board wished to defer this case. Mrs. Thonen stated she would like to defer it until the Fall. Mrs. Harris stated she did not think they could do that because it was just a request for a name change. Mrs. Thonen said the difference was that it was a corporation now instead of just an individual. Mr. Kelley expressed dissatisfaction with the seeming inequity between individuals and corporations in how they were permitted to change ownership. Acting Chairman Hammack stated he believed Ms. Kelsey's advice was based on the premise of bringing the applicant into compliance with the current Ordinance. Mrs. Harris asked Mr. Kelley if he had a problem with a name change and he replied that he did not have a problem with this particular one. Mrs. Harris stated she believed deferral would cause the applicant undue hardship.

Ms. Kelsey reminded the Board that the request was in accordance with the Board's established policy. Mrs. Thonen stated she was out of line to suggest deferring to September, but based it on the Board's schedule. Mr. Kelley withdrew his second to defer, only with the caution that individuals and corporations should be treated the same. Acting Chairman Hammack stated that the applicants had a choice of how they could apply, so this did not create an unfair advantage to some over others. Ms. Kelsey asked if Mr. Kelley was advocating removal of development condition number 1 which says: "This is granted to the applicant only." Mr. Kelley stated that he may be backing into that position. Mrs. Harris stated she believed this issue did not need to be discussed at that time.

Mrs. Thonen withdrew her motion to defer, stating that Mr. Kelley had already withdrawn his second.

Mrs. Thonen made a motion to grant the request for change in name for S 80-A-017, to LOVING CARE DAY CARE CENTER, INC. Mrs. Harris seconded the motion, which carried by a vote of 3-1; Mr. Kelley voted nay. Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 143, July 10, 1990, (Tape 3), (REQUEST FOR CHANGE IN NAME, FRED AND ROCHELLE BLUM T/A ROCHELLE'S LOVING CARE DAY CENTER, S 80-A-017, continued from Page)

COUNTY OF FAIRFAX, VIRGINIA

RESOLUTION OF THE BOARD OF ZONING APPEALS

The Board of Zoning Appeals, (BZA) does hereby on this, the 18th day of July 1990, allow a change in name of the applicant for S 80-A-017, from FRED AND ROCHELLE BLUM T/A ROCHELLE'S LOVING CARE DAY CARE CENTER to LOVING CARE DAY CARE CENTER, INC.

All conditions of this special permit shall remain in effect. The Non-Residential Use Permit shall be amended to reflect this change.

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Page 143, July 10, 1990, (Tape 4), After Agenda Item:

Request for Out-of-Turn Hearing
Nellie W. Temple, VC 90-A-078

Mrs. Thonen made a motion to deny the request, stating she did not see how another meeting could be scheduled in August when one of the August meetings was presently in a pending state because of a preempting bid for the Board Room. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that it was possible to move this application back from October 9 to sometime in September. Ms. Kelsey referred the Board to copies of the agendas which had been provided to them.

Mrs. Thonen made a motion to grant the request and VC 90-A-078 was scheduled for September 20, 1990 at 11:30 a.m. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 143, July 10, 1990, (Tape 4), After Agenda Item:

Location of the meeting of August 2, 1990

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that, because the Board of Supervisors needed the Board Room on August 2, 1990, the Board of Zoning Appeals would have to find another location to meet.

Mr. Kelley made a motion to move the meeting to Room 211C of the Fairfax County Court House. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Mr. Ribble was not present for the vote. Chairman Smith and Vice Chairman DiGiulian 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 2:15 p.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

Paul W. Hammack Jr.
Paul Hammack, Acting Chairman
Board of Zoning Appeals

SUBMITTED: October 9, 1990

APPROVED: October 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 Thursday, July 26, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley and John Ribble. Chairman Daniel Smith was absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:25 a.m. and Mrs. Thonen gave the invocation. There were no Board matters to bring before the Board and Vice Chairman DiGiulian called for the after agenda items.

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Page 145, July 26, 1990, (Tape 1), After Agenda Item:

Request for Additional Time
Richard L. Labbe, VC 88-C-003
1761 Brookside Lane
Tax Map Reference 28-3((02))18, 19

Mrs. Harris made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting. The new expiration date is December 20, 1991.

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Page 145, July 26, 1990, (Tape 1), After Agenda Item:

Request for Additional Time
John Gardner, VC 87-P-047
6715 James Lee Street
Tax Map Reference 50-4((1))56

Mrs. Harris made a motion to grant the request. Mr. Kelley and Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting. The new expiration date is July 15, 1991.

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Page 145, July 26, 1990, (Tape 1), After Agenda Item:

Request for Additional Time
Fairfax Covenant Church, SP 87-S-075
Ox Road
Tax Map Reference 68-3((1))pt. 6

Mrs. Harris made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting. The new expiration date is July 27, 1991.

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Page 145, July 26, 1990, (Tape 1), After Agenda Item:

Request for Additional Time
Yitayew and Gebreyes, VC 88-M-164
4815 Seminole Avenue
Tax Map Reference 72-3((8))(B)23, 24

Mrs. Harris made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting. The new expiration date is July 25, 1991.

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Page 145, July 26, 1990, (Tape 1), After Agenda Item:

Carter V. Boehm Appeal

Mrs. Harris stated that the appeal was complete and timely filed and made a motion to schedule the public hearing for September 20, 1990 at 11:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 145, July 26, 1990, (Tape 1), After Agenda Item:

Stacy and Susan Hamblem Appeal

Mrs. Harris stated that the appeal was complete and timely filed and made a motion to schedule the public hearing for October 2, 1990 at 8:00 p.m. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

NOTE: The Board rescheduled the public hearing to September 25, 1990 at 10:30 a.m.

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Page 146, July 26, 1990, (Tape 1), After Agenda Item:

Out of Turn Hearing
John Broughan, VC 90-V-079

Mrs. Thonen stated that Fairfax County took part of the applicant's yard for a street which resulted in the proposed screened porch to be in violation. Mrs. Thonen made a motion to schedule the public hearing for September 6, 1990. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 146, July 26, 1990, (Tape 1), After Agenda Item:

Out of Turn Hearing
Centreville Baptist Church, SPA 86-A-054-1

Mrs. Thonen made a motion to determined that this gazebo was a very minor change; thus could be deemed a "minor engineering change" under condition No. 2 of SPA 86-A-054-1, Centreville Baptist Church, therefore a public hearing was not necessary. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 146, July 26, 1990, (Tape 1), After Agenda Item:

Out of Turn Hearing
St. Philips Catholic School, SP 90-P-053

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and requested that action on this request be deferred until the following week so that both the special exception application and the special permit application could be reviewed. Mrs. Thonen made a motion to defer the request until July 31, 1990. Hearing no objection, Vice Chairman DiGiulian so moved.

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Page 146, July 26, 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, 11/14/89, 3/22/90 and 5/8/90 AT APPLICANT'S REQUEST.)

Vice Chairman DiGiulian called for staff to locate the property.

Joseph Bakos, Code Enforcement Coordinator III, stated that the property is located about 100 yards north of the intersection of Stringfellow Road and Route 50 in Chantilly, Virginia.

In response to Vice Chairman DiGiulian's question, Mr. Bakos stated that the appellant was not present in the Board Room.

Mr. Kelley asked Vice Chairman DiGiulian to request that staff contact the appellant.

Vice Chairman DiGiulian stated that he would allow 15 minutes and would then deny the appeal for lack of interest.

After a discussion, the Board asked staff to present the case.

Mr. Bakos addressed the Board and stated that the Department of Environmental Management (DEM) refused to approve the geotechnical reports and to issue Residential Use Permits (RUPS). He explained that there were nine lots involved in the appeal and the issue was that the fill material placed on the site to raise building pad elevations was not properly installed, and as a result, does not meet Fairfax County compaction requirements. This was not discovered until late in the construction phase of the portion of Section 2, of the Chantilly Farm Subdivision. Fairfax County subsequently asked the builder to hire engineers to assess the poorly compacted fill material, and to take appropriate remedial measure to safeguard the structures and to insure that they comply with the uniform statewide building codes and BOCA codes.

Mr. Bakos stated that the issue of the soils would be similar to any mechanical, electrical, plumbing, or building related construction snafu or deficiency. He explained that if a sanitary wastestack was not installed properly, the County would not approve final inspection or issue RUPS, similarly if an electrical panel was not installed correctly the County would not issue final inspection or occupancy permits. The disapproval of the soil report is a reflection that the report received from the applicant's engineers did not comply with County requirements and therefore, the County cannot legally issue final inspection and ultimately RUPS. Mr. Bakos expressed his belief that the issues pertaining to the soil reports are technical in nature, and are based on the authority that the Virginia Department of Housing

and Community Development has passed to local jurisdiction via the Virginia Uniform Statewide Building Code. Therefore, because of the technical nature of the problem and the controlling regulations of the V.U.S.B.C., the issue of the soils report should be heard by the local Board of Building Code Appeals.

In response to Mrs. Harris' question as to whether the BZA had jurisdiction over this appeal, Patrick Taves, with the County Attorney's office, stated that he believed that the Board of Zoning Appeal did not have jurisdiction and that the appeal should be heard by the local Board of Building Code Appeals.

Mrs. Thonen expressed her belief that any aggrieved person had the right to appeal to the Board of Zoning Appeals

Mr. Taves explained that the County Attorney's office had taken the position that the Board of Zoning Appeals has jurisdiction to hear decisions made under the Zoning Ordinance, which does not apply to this appeal. He noted that the three specific issues are an appeal of a letter of Mr. Hardy of DEM, an appeal of a letter of Mr. Brian Smith of DEM, and an appeal of a second letter of Mr. Hardy. Mr. Taves stated that Mr. Hardy's letter was based on the technical evaluation under the technical code of the Virginia Uniform Statewide Building Code.

Mrs. Thonen stated that the reason the RUPS were not issued was a result of the soil problem but did agree that there were two separate issues involved.

Mr. Taves expressed his belief that the issue of the soil not meeting the compaction requirements would fall into the same category as wiring that did not meet the electrical code. Therefore, because of the technical issues involved, the appeal should be heard by the local Board of Building Code Appeals.

Mrs. Thonen informed Mr. Taves that the Board of Zoning Appeals had vast experience in dealing with soil problems and was capable of considering the engineering geotechnical reports before making a decision. She expressed concern that the appeal was accepted, presented to the Board, and the County then took the position that the Board does not have jurisdiction on the matter. Mrs. Thonen noted that the Board had spent a great deal of time and energy studying the appeal, adding that the case had previously been before the Board and had been deferred for more information.

Vice Chairman DiGiulian asked if staff had any additional input.

Mr. Bakos again stated that the compaction of the soil did not meet minimum requirements and the soil, which is not compacted enough to support the structures has caused the fissuring of foundation walls, cracked slabs, and failing slopes. He explained that some of the factors involved were that the fill was not compacted correctly, contained organics, and that the fill material contained a type of rock that decays when exposed to oxygen and water. Mr. Bakos added that the size of the rock fragments is also a serious factor.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. William Donnelly, with the law firm of Hazel, Thomas, Fiske, Beckhorn and Hanes, confirmed that it was and apologized to the Board for being late.

Mr. Donnelly addressed the Board and stated that the appellant had retained a soil consultant whose preliminary report confirmed the County's position that the soil on the subject lots is not compacted to the County requirements. He stated that the appellant would like to submit a remedial plan to basically underpin the lots by constructing concrete piers around the foundations and said he would be requesting a deferral after he addressed the jurisdictional issue.

Mr. Donnelly explained that although he did not disagree with the County Attorney's position, he filed the appeal within the 30 day statute of limitation as a defensive measure because he did not know whether the Board had jurisdiction. He expressed his willingness to abide by the decision of the Board on the jurisdiction issue.

In response to Mrs. Thonen's question as to whether a denial of the appeal would be acceptable to the applicant, Mr. Donnelly stated that if the appeal was denied on the merits of the case, then he would appeal the decision to the court. He said he would be agreeable to a deferral so that DEM and the applicant could resolve the matter. Mr. Donnelly said that when an acceptable solution was found he intended to withdraw the appeal but stated that he would prefer the Board rule on the jurisdiction issue.

Mrs. Harris asked Mr. Donnelly if he would consider withdrawing the appeal and he replied that he would not withdraw the appeal unless the Board ruled on the jurisdiction because of future legal questions that might arise regarding this issue.

The Board discussed the request and decided that since the appeal had previously been heard, and also had been scheduled five different times, that they had the jurisdiction to rule on the appeal.

Mr. Donnelly explained that there is often conflict over the jurisdiction issue particularly when DEM disapproves site plans referencing the Zoning Ordinance, noting that this puts the applicant in a quandary as to whether the Board of Zoning Appeals would have jurisdiction on the matter.

Mr. Taves stated that the subject of the appeal was three letters discussing the condition of the soil and noted that the letters did not deny the RUPS and emphasized the fact that Mr. Hardy does not have the authority to issue RUPS.

He stated that he understood Mr. Donnelly's caution and agreed that there is a difference between denying any appeal on the merits of the case and refusing to hear an appeal on the grounds of lack of jurisdiction.

In response to Vice Chairman DiGiulian's question, Mr. Donnelly said that he had no additional testimony to present to the Board.

Mr. Hammack asked Mr. Donnelly if a 30 day continuance would be preferred and Mr. Donnelly stated that the applicant would need approximately 90 days for a remedial plan to be reviewed by DEM.

In response to Mrs. Thonen's question regarding the soil report, Mr. Donnelly stated that the applicant believed that in the five years since the structures in question have been built, that the soil has compacted, settled, and the chance of any additional settlement occurring is slim.

Mrs. Thonen expressed her belief that problems could arise for many years because of the soil.

Mr. Donnelly stated the that while the original soil investigation did not involve taking borings and soil sample, the applicant has retained a soil consultant to do an in depth study to determine the compaction condition.

In response to Mrs. Thonen's question as to why the applicant had not pursued this course of action before scheduling a public hearing, Mr. Donnelly stated that the applicant's soil consultant had given assurance that the compaction of the soil would cause no damage to the structure. He further explained that after a meeting and inspection of the site with DEM officials, the applicant agreed to do a soils investigation rather than rely on an intellectual analysis of the soil compaction.

Mrs. Thonen expressed her belief, that based on Mr. Donnelly's previous statement, that the applicant should withdraw the appeal.

Mr. Donnelly again requested that the Board rule on the question of jurisdiction.

Mr. Bakos stated that a previous soils report had been submitted by Della Ratta, Inc. through their engineering firm, Geotechnical and Material Testing, Inc. (GMTI), and was included as an attachment in appeal A 90-C-007.

There being no speakers to addresses the appeal, Vice Chairman DiGiulian asked Mr. Donnelly for closing comments.

Mr. Donnelly stated that Mr. Taves had suggested a course of action and asked the Board for the time to consult the applicant.

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

Mr. Donnelly addressed the Board and stated that he wished to withdraw appeals A 88-C-011 and A 88-C-012. He explained that he was withdrawing the appeals based upon the County Attorney's position that the BZA does not have jurisdiction over the appeals and on the assurance by Mr. Taves that the County Attorney's office would continue to take that position in future dealing with the appellant.

Mr. Kelley noted that the Board had made no ruling on the jurisdiction issue.

Mrs. Thonen said that she would have preferred that the issue of the Board's jurisdiction on the appeals be settled in court, adding that the Board had been required to study the material relating to the appeal and on five separate occasions it had been scheduled for public hearing.

Mr. Hammack made a motion to allow the withdrawal of appeals A 88-C-011 and A 88-C-012. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 149, July 26, 1990, (Tape 1), Scheduled case of:

9:45 A.M. D.R.W. LIMITED PARTNERSHIP APPEAL/WU, A 90-C-007, application under Sect. 18-305 of the Zoning Ordinance to appeal the Department of Environmental Management's decision refusing to approve geotechnical reports and issue Residential Use Permits for nine lots in Section 2 of the Chantilly Farms Subdivision, zoned R-3, Centreville District, Tax Map 35-3((6))51, 71, 72, 73, 79, 80 and 81; 45-1((6))49 and 50.

Mr. Donnelly requested that appeal A 90-C-007 be withdrawn for the reasons as stated in appeals A 88-C-011 and A 88-C-012.

Mrs. Thonen said that the Board had not agreed with the County Attorney's position as to whether the BZA had jurisdiction on the issue and stated that it is the appellant's decision to withdraw the appeal. Mr. Ribble seconded the motion.

The Board discussed the need for an affirmative statement of this nature with Mr. Hammack expressing his belief that a statement was not necessary.

The motion carried by a vote of 5-1 with Mr. Hammack voting nay; Chairman Smith was absent from the meeting.

Mr. Hammack made a motion to withdraw appeal A 90-C-007. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

Mrs. Thonen again said that she would have preferred that the issue of the Board's jurisdiction on the appeals be settled in court, adding that the Board had been required to study the material relating to the appeal and on the five separate occasions it had been scheduled for public hearing.

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Page 149, July 26, 1990, (Tape 1), Scheduled case of:

10:00 A.M. BARBARA A. TOZZI, VC 90-C-053, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 16.4 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 8995 Kildownet Court, on approximately 12,938 square feet of land, zoned R-3, Centreville District, Tax Map 28-4((21))9.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Tozzi replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report.

In response to Vice Chairman DiGiulian's question regarding the square footage of the addition in comparison to the square footage of the existing dwelling, Mr. Jaskiewicz said that he had not been provided with that information.

In response to Mrs. Thonen's question regarding the percentage of land that would be covered by the structure, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had not been provided with that information and although it is not a requirement, the engineer normally submits this type of data. She added that staff could request the information if the Board so desired.

The co-applicant, Jim Tozzi, 8995 Kildownet Court, Vienna, Virginia, addressed the Board and stated that he is the original owner of the house which was purchased 20 years ago. He explained that the addition would be a one story glass porch with an extension of the garage. He stated that the lot is pie shaped with a tree line along the rear of the property which would screen the addition from the neighbors.

In response to questions from the Board regarding the reconfiguration of the garage, the applicant, Barbara Tozzi, used the viewgraph to point out the existing garage and to explain where the addition would be placed. She stated that approximately half of the existing garage will be used to expand the dinning area, and a Florida room and a single car garage addition constructed.

Vice Chairman DiGiulian left the room and turn the Chair over to Mr. Hammack.

There being no speakers in support of the application, Acting Chairman Hammack called for speakers in opposition.

Ed Brady, 708 Skyline Court, N.E., Vienna, Virginia, addressed the Board and stated that he was opposed to the proposed addition because of its size and close proximity to his property. He expressed his belief that an architectural drawing should be submitted before approval of the request.

Rudy Goddard, 709 Skyline Court, N.E., Vienna, Virginia, addressed the Board and stated that the proposed addition is too large and would not be in conformity with the neighborhood.

Acting Chairman Hammack called for rebuttal.

Mr. Tozzi expressed his belief that would be no adverse affect on the neighbors. He stated that Mr. Goddard's property is zoned by the Town of Vienna which allowed Mr. Goddard to construct a 15 foot shed on the abutting property line. He noted that the structure would block any view of the proposed addition. He further noted the screening provided by the dense tree line to the rear of the property.

Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to deny VC 90-D-050 for the reasons noted in the Resolution.

Mrs. Thonen expressed her belief that the proposed addition would be detrimental to the adjoining properties and would not be in harmony with the intended spirit of the Zoning Ordinance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-053 by BARBARA A. TOZZI, under Section 18-401 of the Zoning Ordinance to allow construction of addition 16.4 feet from rear lot line, on property located at 8995 Kildownet Court, Tax Map Reference 28-4((21))9, 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 July 26, 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 12,938 square feet of land.
4. The strict application of this Ordinance does not produce an undue hardship.
5. The applicant has a one car garage that is within the setback requirements.
6. The applicant has usable use of the property.
7. The strict application of the Zoning Ordinance would not effectively prohibit or unreasonably restrict all reasonable use of this property.
8. If the applicant configured the back of the addition without the one car garage it could be done by right so there is no restriction of the use of the property.
9. The request is for convenience and 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.

Mr. Ribble seconded the motion which carried by a vote of 5-0 with Vice Chairman DiGiulian 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 August 3, 1990.

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Page 151, July 26, 1990, (Tape 1), Scheduled case of:

10:15 A.M. WILLIAM L. PAIGE, VC 90-V-052, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one (1) lot into two(2) lots, with proposed Lot 1 having a lot width of 15.02 feet (80 ft. min. lot width required by Sect. 3-306), on property located at 3115 Douglas Street, on approximately 1.047 acres of land, zoned R-3, Mount Vernon District, Tax Map 101-2((1))52.

Vice Chairman DiGiulian asked if the applicant was ready for the case. Someone from the audience stated that the site engineer was not present.

Mrs. Thonen made a motion to pass over the scheduled 10:15 a.m. application of William L. Paige, VC 90-V-052, because the applicant's engineer was not present.

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Page 151, July 26, 1990, (Tape 1 and 2), Scheduled case of:

10:30 A.M. WOODLAWN COUNTRY CLUB, INCORPORATED, SPA 74-V-107-2, application under Sect. 3-203 of the Zoning Ordinance to amend SP 74-V-107 for country club to allow demolition of existing structures and construction of new clubhouse, bathhouse, and pool facilities, on property located at 5111 Old Mill Road, on approximately 128.82 acres of land, zoned R-2, Mount Vernon District, Tax Map 110-1((1))3, 4, 13, 13A.

Bernadette Bettard, Staff Coordinator, addressed the Board and noted that the Board had been presented with a revised affidavit, revised proposed development conditions, and a letter from Jody Russell expressing concern about the location of the pool. She stated that the applicant had expressed concerns about the revisions to condition 10 and the addition of condition 20. Ms. Bettard informed the Board that Charles Denny, Transportation Planner II, representing the Office of Transportation, was present to answer questions regarding those conditions.

Mr. Kelley stated although he is no longer a member of Woodlawn County Club, he has been a stockholder for 20 years. He explained that because of this he had consulted the County Attorney's office and had been advised that there was no conflict of interest and that his connection was de minimis.

Ms. Bettard stated that with the conditions as contained in the July 19, 1990 staff report, staff recommended approval.

In response to Mrs. Harris' question concerning the number of members, Ms. Bettard explained that previously there had been no restriction limiting the number of members.

Mr. Houston explained that in 1987 the Board had approved SPA 74-V-107-1 for clubhouse renovations but that the membership of the club had voted against the proposal. Because of this experience, the club obtained the membership approval of the renovations before submitting the new application. He presented to the Board colored brochures of the proposed renovations along with sixteen letters of support from the community. Mr. Houston also presented pictures and a memorandum expressing the applicant's concerns with respect to condition 10, the right-of-way dedication.

Mrs. Thonen informed Mr. Houston that the Board had received letters of opposition to the proposed location of the swimming pool.

Mr. Houston stated that the club intended to modernize the facilities by constructing a new clubhouse, bathhouse and pool. He stressed that there would be no increase in membership or increase in use. He emphasized that the country club is primarily a golf club and there

would be no changes to the course. Mr. Houston expressed his belief that the application is in conformance with the Comprehensive Plan and said that the applicant would meet all the environmental conditions required as stated in the proposed conditions. Mr. Houston said that the applicant had met with the Mount Vernon Civic Association, who had expressed no objection to the request.

Mr. Houston expressed concern with condition 10 stating that he had not received the revised development conditions, and said that the club could not agree to right-of-way dedication along Old Mill Road. He stated that the proposed application is not an intensification of the use to an extent that would require the widening of the road. He explained that the entire tree line bordering the club along Old Mill Road would have to be removed and this along with an increase in the speed of the traffic would cause unsafe conditions. Mr. Houston expressed his belief that condition 20 requiring that a trail be constructed through the property to a connecting church with a single family neighborhood would be very dangerous to the pedestrians using the trail and noted that the Board had removed the requirement in the 1987 application. He asked that conditions 10 and 20 be deleted.

In response to Mrs. Thonen's question, Mr. Houston used the viewgraph to point out the locations of the existing pool and of the proposed pool.

In response to Mr. Hammack's question, the President of Woodlawn Country Club, Rosemarie Walz, 5111 Old Mill Road, Alexandria, Virginia, addressed the Board and stated that the application is for a 25 meter pool.

Mr. Houston replied to questions from the Board, by stating that there is no current limitation on the number of members but that SPA 74-V-107-2 has a condition limiting the membership to 700. He explained that while the golf course can accommodate approximately 450 members, the applicant would like to attract social members who have the right to use the pool and the restaurant. Mr. Houston said that the applicant has no intention of adding tennis courts to the site.

The Board discussed the hours of operation of the club and the swimming pool. Mr. Houston stated that the applicant would be willing to abide by the proposed hours in condition 7 of the 1978 application (SPA 74-V-107-1).

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

Warren B. Johnson, 8653 Gateshead Road, Alexandria, Virginia, addressed the Board and stated that he supported the application although he did not support the widening of the road. He requested that the trail requirement as stated condition 10 and 20 be included in the application.

In response to Mr. Kelley's question in regard to removing the tree line to accommodate a trail, Mr. Johnson stated that the applicant could have the golf course redesigned to include a trail.

Mrs. Thonen noted that at the previous hearing the appropriate professionals were questioned about the conceivability of a trail through the golf course and that they were all against a trail because of safety considerations. She stated that she did not believe that the two uses were compatible.

Joyce Andrews, 8619 Gateshead Road, Alexandria, Virginia, addressed the Board and stated that she supported the improvements proposed by the Country Club. She explained that Old Keene Mill Road is very narrow and dangerous and asked the Board to require the country club to construct a trail through the property.

There being no further speakers in support, Vice Chairman DiGiulian called for speakers in opposition.

Jody Russell, 5110 Old Mill Road, Alexandria, Virginia, addressed the Board and stated that she lived directly across from the proposed site of the pool. She expressed concern about the noise level and additional trash that would be generated by the pool. She explained that children using the pool drop trash along the roadside.

In response to Mr. Hammack's question, Ms. Russell stated that the pool would be approximately 140 feet from her house. She noted that the excessive speed of the car along the narrow road causes a potential danger for the children on their way to and from the pool.

Eve Smith, 8226 Cooper Road, Alexandria, Virginia, expressed concern about the noise level that would be generated by the pool.

There being no further speakers in opposition, Vice Chairman DiGiulian called for rebuttal from Mr. Houston.

Mr. Houston presented photographs of the 9th hole, 11th hole, and the driving range to illustrate the effect the construction of the trail would have on the golf course. He expressed his belief that the two uses would not be compatible.

In response to Mrs. Harris' question on the liability to the golfer and to the club if anyone using the trail were injured by a golf ball, Mr. Houston said that he thought both would be liable. He noted that all precautions would be taken to insure the safety of pedestrians along the trail but again stated the two uses are not compatible.

Mr. Hammack explained that the children are incapable of assuming a risk or appreciating a risk and if a small child were injured they are incapable of being contributory negligent.

In response to Mrs. Thonen's question in regard to the location of the swimming pool, Mr. Houston stated that additional screening and a berm would be provided to mitigate the noise affect. He explained that there is no other location to construct the pool without altering one or more of the golf holes. Mr. Houston said that the applicant would be willing to move the gazebo forward and provide more screening in order to mitigate the pool noise.

Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen stated that all the relevant information she was able to obtain concerning the issue of a trail had led her to believe that it would create a dangerous situation and the two uses are not compatible. She then made a motion to grant SPA 74-V-107-2 for the reasons noted in the Resolution subject to the revised proposed development conditions dated July 25, 1990 with the changes as reflected in the Resolution.

Mrs. Harris stated that it had not been proven that there is an intensity of use associated with the old building being replaced with a new building and noted that the Board has imposed limits on the use. She expressed her belief that the applicant was justified in saying that no direct linkage could be put between the revision of this clubhouse and road dedication and construction of a right-of-way.

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Chairman Smith 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 SPA 74-V-107-2 by WOODLAWN COUNTRY CLUB, INCORPORATED, under Section 3-203 of the Zoning Ordinance to amend SP 74-V-107 for country club to allow demolition of existing structures and construction of new clubhouse, bathhouse, and pool facilities, on property located at 5111 Old Mill Road, Tax Map Reference 110-1((1))3, 4, 13, 13A, 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 July 26, 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 128.82 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, prepared by Cad-Con, Inc. and dated revised June 27, as qualified by these development conditions. The architectural design shall be in general conformance with the sketch submitted in the application.

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

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

5. A geotechnical report shall be submitted if determined necessary by the Director, of DEM prior to site plan approval. The report shall determine the capacity of the soil to provide adequate foundation support and ensure that subsurface drainage problems are mitigated.

6. The applicant shall ensure that the "limits of the disturbed area" will be a minimum of 100 feet from all mapped floodplains on the property to ensure protection of the EQC, comply with the Virginia Chesapeake Bay regulations and to provide a wetland buffer. For the area to the west, which depicts only a 70 foot buffer, the applicant shall implement the EQC enhancement and tree supplementation plan described in condition 14.

7. There shall be a maximum of 175 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 parking lot in accordance with Sect. 13-106 of the Zoning Ordinance.

9. The total membership shall not exceed 700 members.

10. A fertilizer, herbicide, and pesticide integrated management program shall be developed for the golf course. The applicant shall develop the plan in consultation with a certified turf manager and/or the Virginia Soil and Water Conservation Department. The applicant shall document the implementation of the plan and create a monitoring report for the management plan. The County reserves the right to review the reports upon request.

11. Best Management Practices (BMP's) shall be provided on site if determined necessary by DEM. The applicant shall complete a drainage study to address surface water runoff, stormwater management and soil related subsurface drainage problems on the property if such a study is requested by DEM. If DEM requires site detention, then the applicant shall construct a pond which meets BMP standards in accordance with the Public Facilities Manual. If on-site detention is waived by DEM, the applicant shall provide an oil/grit separator with a lateral spreader to reduce hydrocarbon pollutant loads in runoff originating on the parking lot proposed for this development plan. The parking lot shall be designed such that all runoff shall flow through one or more oil/grit separator BMPs prior to discharge into Dogue Creek.

12. The applicant shall provide sediment detention basins or redundant and/or 100% oversized siltation fencing during all grading and construction activities so that nearby streams and storm sewers will be protected. Such measures shall achieve sediment trapping efficiencies in excess of 80% and be designed in accordance with the methods recommended by the Virginia Soil and Water Conservation Committee in the 1980 Virginia Sediment and Erosion Control Handbook. All such activities shall be coordinated with the Department of Environmental Management.

13. The Transitional Screening requirement shall be modified to allow existing fencing and vegetation to suffice to meet barrier and Transitional Screening 1 requirements except for the areas along the lot line of the " disturbed area," where Transitional Screening 1 shall be provided. Additional landscaping shall be provided around the proposed clubhouse in order to soften the visual impact from adjacent residential properties, Old Mill Road and to maintain the integrity of the nearby Woodlawn Historic District. The nature, type, and amount of the plantings shall be determined by the County Arborist. The barrier requirement shall be waived on all boundaries of the subject site to allow the existing fences to satisfy this requirement.

14. Prior to site plan approval, a tree save/tree replacement plan which establishes the EQC as the limits of clearing and grading and enhances the EQC with additional trees shall be submitted for review and approval by the County Arborist. This plan shall identify, locate and preserve individual mature, large and/or specimen trees and tree save areas on the site as determined necessary by the County Arborist. Emphasis shall be given toward the preservation of upland hardwood trees outside the EQC and within the "limits of disturbed area" particularly on the eastern portion of the "disturbed area" where 8 to 13 mature trees are located. The plan shall supplement all portions of the area outside the floodplain and the "limits of disturbed area" which do not maintain a 100 foot buffer from the floodplain. Replacement for the vegetation which will be lost during clearing and grading activities shall be provided; with size and number of species to be determined by the County Arborist.

15. 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 on the subject property.

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

16. During discharge of swimming pool waters the following operational procedures shall be implemented:

    Sufficient amounts of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found Fairfax County range in pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

    If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

17. Hours of operation for the swimming pool.

    Swim team hours - 8:00 a.m. to 9:00 p.m. with no more than 5 meets per season.

    Pool hours - 9:00 a.m. to 9:00 p.m.

    After hour parties for the swimming pool shall be governed by the following:

    Limited to six per season

    Shall not extend beyond 12:00 midnight

    The applicant shall provide a written request at least ten 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 such party at a time. Such requests shall be approved only after the successful conclusion of a previous after-hour party.

18. The applicant shall ensure that no hazardous or toxic substances shall be stored within the floodplain area. If any petroleum products, hazardous materials, and or hazardous wastes are stored on the site, a spill prevention and containment plan will be submitted for the review and approval of the Fairfax County Fire and Rescue Department. Where such review and approval is not otherwise mandated by federal, state, or local regulation, the plan shall be written into any lease for warehouse or maintenance space on the property.

19. Supplemental plantings shall be added at the discretion of the County Arborist between the 25 foot transitional screening provided on the plat and those residences across the street from the pool in order to mitigate the visual impact and noise from the pool. The applicant agreed to this.

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 which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

Page 156, July 26, 1990, (Tape 1 and 2), (WOODLAWN COUNTRY CLUB, INCORPORATED, SPA 74-V-107-2, continued from Page 155)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 156, July 26, 1990, (Tape 2), Scheduled case of:

10:15 A.M. WILLIAM L. PAIGE, VC 90-V-052, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one (1) lot into two (2) lots, with proposed Lot 1 having a lot width of 15.02 feet (80 ft. min. lot width required by Sect. 3-306), on property located at 3115 Douglas Street, on approximately 1.047 acres of land, zoned R-3, Mount Vernon District, Tax Map 101-2((1))52.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Paige 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 said that the applicant has not met the provisions of variance standards 2, 3, 4, 5, 6, 7, and 9 as noted on pages 3 and 4 of the staff report. Ms. Bettard stated that the applicant owns abutting Lot 51 and staff believes that the consolidation of Lots 51 and 52 would eliminate the need for a variance.

Michael Paige, 3115 Douglas Street, Alexandria, Virginia, the applicant's son and contract/purchaser, addressed the Board and stated that due to a divorce settlement, Lot 51 is not owned by the applicant. He explained that the area adjoining the lot was owned by family members who had no objection to a pipestem driveway.

In response to questions from the Board, Mr. Paige explained that the house on Lot 51 is owned by his mother. He stated that his family is currently living with his father in a house which is over 100 years old and that he would like to subdivide the lot and build a new house.

Mr. Ribble made a motion to deny VC 90-V-052 for the reason reflected in the Resolution.

Mr. Hammack stated that he supported the motion because it would create a bad precedent in the area and because it does not meet the technical requirements of the statute.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-052 by WILLIAM L. PAIGE, under Section 18-401 of the Zoning Ordinance to allow subdivision of one (1) lot into two (2) lots, with proposed Lot 1 having a lot width of 15.02 feet, on property located at 3115 Douglas Street, Tax Map Reference 101-2((1))52, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 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 1.047 of land.
4. The applicant does not meet the hardship standard.
5. The property is not unique and it would set a precedent in the immediate area to allow the pipestem driveway.

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

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

Pages 157 through 162 were duplicate. They were discarded. Next page is 163.

Pages 157 Through 162 were duplicates & were discarded

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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 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 which 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 August 3, 1990.

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Page 163, July 26, 1990, (Tape 2), Scheduled case of:

10:45 A.M. THOMAS H. MINNICH, SP 90-A-033, application under Sect. 8-901 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow detached shed to remain 7.5 feet from rear lot line and 6.0 feet from side lot line (13.7 ft. min. rear yard and 12.0 ft. min. side yard required by Sects. 10-104 and 3-307), on property located at 7115 Leesville Boulevard, on approximately 11,340 square feet of land, zoned R-3, Tax Map 80-1((2))(3)23.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Minnich replied that it was. Vice Chairman DiGiulian 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, addressed the Board and explained that she was presenting the case for Denise James who was absent due to pneumonia. She presented the staff report and stated that although the shed is not visible from the street, that additional evergreen trees should be planted to screen the rear of the property. Ms. Kelsey presented pictures of the shed along with pictures of the neighboring sheds pointing out that the applicant's shed is larger and higher than the others.

Thomas H. Minnich, 7115 Leesville Boulevard, Springfield, Virginia, addressed the Board and explained that when he purchased the house approximately 3 years ago there was a rusty aluminum shed on the property. He stated that he removed the old shed and replaced it with a cinder block shed. Mr. Minnich said that before building the shed he contacted the immediate neighbors who had no objection. He explained that he has planted shrubs and evergreen trees to screen the shed from the road and expressed his willingness to plant additional shrubs if required. He further stated that there is no other location for the shed due to the mature trees on the property and the sharp slope in the backyard. Mr. Minnich said that there is a tree buffer zone to the rear of the property to screen the Robinson Industrial Park.

Vice Chairman DiGiulian called for speakers in support of the applicant.

Ed Staton, 7110 Leesville Boulevard, Springfield, Virginia, addressed the Board and stated that his house is directly across the street from the applicant's property and stated that Mr. Minnich had removed a dilapidated old shed and replaced it with a very attractive

building which has added aesthetic value to the neighborhood. He expressed his belief that Mr. Minnich had not intended to break the County Code by replacing the shed.

There being no further speakers in support, Vice Chairman DiGiulian called for speakers in opposition.

Louis B. Wagner, 7205 Homestead Place, Springfield, Virginia, Chairman of the Planning and Zoning Committee of the Northern Springfield Civic Association, addressed the Board and stated that the Civic Association did not support the application because the shed was in violation and no building permit had been obtained. He expressed his belief that there is a gross violation of the minimum yard requirements for a shed which will be used for the owner's business and may set a precedent in the area.

Vice Chairman DiGiulian called Mr. Minnich to the podium for rebuttal.

Mr. Minnich stated that he works for the Department of the Navy and that the shed is used solely for storage purposed. He said that he does not now or ever intend to run a business on his property. He explained that the construction of the building took three years and was 98 percent complete when he was cited for violation by the County.

Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 90-A-033 for the reasons stated in the Resolution and subject to the development conditions contained in the staff report dated July 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 SP 90-A-033 by THOMAS H. MINNICH, under Section 8-901 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow detached shed to remain 7.5 feet from rear lot line and 6.0 feet from side lot line, on property located at 7115 Leesville Boulevard, Tax Map Reference 80-1((2))(3)23, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 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 11,340 square feet of land.
4. The noncompliance was done in good faith.
5. The shed will not be detrimental to the use and enjoyment of other property in the immediate vicinity.
6. Forced compliance to the minimum yard requirements would cause unreasonable hardship upon the owner.
7. Mature trees would have to be removed if the shed were relocated.

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 plat showing the approved location and dimensions of the shed in accordance with this special permit shall be submitted and attached to the building permit.

3. A building permit shall be obtained for the shed within thirty (30) days of the final date of approval of this special permit.

4. Six (6) evergreen plantings a minimum of three (3) feet in height shall be planted around the north, east, and west side of the structure.

Page 165, July 26, 1990, (Tape 2), (THOMAS H. MINNICH, SP 90-A-033, continued from Page 164)

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.

Mr. Ribble seconded the motion which 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 August 3, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 12:10 p.m. and reconvened at 12:20 p.m.

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Page 165, July 26, 1990, (Tape 3), Scheduled case of:

11:00 A.M. CHANTILLY BIBLE CHURCH, SPA 85-C-023-1, application under Sects. 3-103 and 8-901 of the Zoning Ordinance to amend SP 85-C-023 for church and related facilities, to allow addition of four portable classroom buildings, additional parking, and waiver of dustless surface requirement, on property located at 2739 West Ox Road, on approximately 5.02 acres of land, zoned R-1, Centreville District, Tax Map 25-1((1))30.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Smith replied that it was. Vice Chairman DiGiulian 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 and stated that in 1985 the Board approved a special permit for the church and related facilities and the development of the site had received an honorable mention in the 1989 Fairfax County Design Award. She stated that the applicant is now requesting approval to add temporary classroom trailers, to construct 71 gravel parking spaces, a modification to the dustless surface requirement, and a modification of the transitional screen requirements. Ms. Kelsey stated that staff believed that the application does conform with the standards for special permit uses in a residential district and recommends approval subject to the development conditions contained in the staff report.

The agent for the applicant, Dennis A. Smith, 13159 Apple Grove Lane, Herndon, Virginia, addressed the Board and stated that the church which was formed in 1979 and purchased the property in 1984. Mr. Smith stated that the applicants have preserved the original rural atmosphere of the property and presented pictures to the Board to point out the simple, well designed church. He explained that the church membership has doubled in size causing the need for expansion. Mr. Smith explained that the applicant has incorporated all the staff recommendations and has read and agreed with all the proposed development conditions. He explained that the proposed parking would be at the back of the property which abuts Frying Pan Park and would not be detrimental to the community. The classrooms would be situated away from West Ox Road, parallel to the barn, have a rough cut wood finish stained the color of the barn for aesthetic value, and planting will be added to minimize the visual impact. Mr. Smith expressed his belief that the present applicant has been enriched by staff's input and thanked Denise James for her contribution.

Mr. Smith stated that through ignorance, the applicant had installed playground equipment without consulting the Board of Zoning Appeal. He stated that the playground is located on the east side of the house and meets the front yard setback requirements.

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

Mohammad Alskari, project engineer for Marjac Investments Inc., 555 Grove Street, Herndon, Virginia, owner of 13390 Point Rider Place, stated that the he was in support of the applicant as the church was a good neighbor and added moral value to the community.

Mr. Hammack made a motion to grant SPA 85-C-023-1 subject to the development condition contained in the staff report dated July 19, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 85-C-023-1 by CHANTILLY BIBLE CHURCH, under Section 3-103 and 8-901 of the Zoning Ordinance to amend SP 85-C-023 for church and related facilities, to allow addition of four portable classroom buildings, additional parking, and waiver of dustless surface requirement, on property located at 2739 West Ox Road, Tax Map Reference

25-1((1))30, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 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 5.02 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 8-915 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 prepared by Charles P. Johnson & Associates, P.C., dated June 25, 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 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 Transitional Screening Requirement shall be modified in favor of the existing trees and vegetation on site and the additional trees and plantings as shown on the special permit amendment plat. A minimum of half of the new trees planted shall have planted height of eight (8) feet and no new trees shall have a planted height of less than six (6) feet.

6. The barrier requirement shall be waived.

7. A tree preservation plan for safeguarding and preserving the large mature trees on the property to the greatest extent possible shall be provided to the County Arborist for approval at the time of site plan submission.

8. The seating capacity in the main worship area shall be a maximum of two-hundred and fifty seats.

9. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 as determined by DEM and shall be a maximum of 150 spaces. All parking shall be on site. The new parking spaces approved under this special permit amendment shall be of a gravel or other porous surface. Interior parking lot landscaping shall be provided as required by Article 13.

10. Stormwater management shall be provided as determined by DEM at the time of site plan review and all findings and recommendations for control stormwater management shall be implemented to the satisfaction and approval of DEM.

11. A trail shall be provided along West Ox Road as determined by the Director, DEM at the time of site plan approval in accordance with the Countywide Trails Plan and Article 17.

12. Ancillary easements shall be provided to fifteen (15) feet behind the right-of-way dedication.

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 (5) 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.
- 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.

14. All required handicapped parking areas shall be paved with a dustless surface.

15. The approval of trailers on the site shall be limited to a term of (5) years beginning from the date of final approval of this special permit. All development conditions shall be implemented in conjunction with the installation of the first trailer.

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. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 167, July 26, 1990, (Tape 3), Scheduled case of:

11:15 A.M. VANCE E. & FRANCES E. HITCH, VC 90-D-054, application under Sect. 18-401 of the Zoning Ordinance to allow construction of deck 4.4 feet from rear lot line and gazebo 7.1 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-107, 20 ft. extension of deck permitted by Sect. 2-412), on property located at 1114 Old Cedar Road, on approximately 27,593 square feet of land, zoned R-1 (developed cluster), Dranesville District, Tax Map 20-4((18))23A.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hitch 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.

The applicant, Vance E. Hitch, 1114 Old Cedar Road, McLean, Virginia, addressed the Board and stated that he purchased the house 5 years ago and he would like to extend the existing deck and build a gazebo. He explained that the placement of the house on the lot has caused the need for a variance. Mr. Hitch stated that the deck and gazebo would add aesthetic value and conform with the neighborhood.

In response to Mr. Hammack's question, Mr. Hitch stated that no trees would be removed.

There being no speakers in support or in opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 90-D-054 for the reasons stated in the Resolution and subject to the conditions contained in the staff report dated July 19, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-054 by VANCE E. AND FRANCES E. HITCH, under Section 18-401 of the Zoning Ordinance to allow construction of deck 4.4 feet from rear lot line and gazebo 7.1 feet from rear lot line, on property located at 1114 Old Cedar Road, Tax Map Reference 20-4((18))23A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 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 27,593 square feet of land.
4. The applicant has meet the nine standards necessary for a variance.
5. The lot has an exceptional shape and is exceptionally shallow.
6. The placement of the house is at an odd angle on the lot.
7. The location is the only logical site for the deck and gazebo.
8. The letter from the neighbor indicates that the structure will be harmonious with the neighborhood.

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

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

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

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

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

1. This variance is approved for the location and the specific deck and gazebo 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

Page 169, July 26, 1990, (Tape 3), (VANCE E. & FRANCES E. HITCH, VC 90-D-054, continued from Page 168)

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 which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 169, July 26, 1990, (Tape 3), Scheduled case of:

11:30 A.M. E. LAKIN PHILLIPS, SP 90-C-034, application under Sect. 3-103 of the Zoning Ordinance to allow an accessory dwelling unit on property located at 2733 Centreville Road, on approximately 4.3 acres of land, zoned R-1 (proposed R-2), Centreville District, Tax Map 25-1((1))pt. 34. (CONCURRENT WITH RZ 87-C-076)

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Roberts 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 explained that the applicant has requested that the property be rezoned from R-1 to R-2 and at present, the application for rezoning has been indefinitely deferred. He stated that staff believes the application is in harmony with the general standard needed for special permit approval.

In response to Mr. Hammack's question regarding the total lot area, Mr. Riegle stated that at present the applicant does meet the present requirements of the R-1 district. He explained that based on the gross floor area and the amount of building contained in the addition, the accessory dwelling unit would consist of 34 percent of the total gross floor area of the entire structure.

In response to Mr. Hammack's concern about Lot 3 if there is a rezoning, Mr. Riegle stated that staff recommended the Board consider the application based on the current 4.3 acres.

Joseph A. Roberts, 10500 Sager Avenue, #C, Fairfax, Virginia, addressed the Board and stated that the applicant agrees with the staff report and with the proposed development conditions and said that he would be happy to answer any questions the Board may have.

In response to Mr. Hammack's question about the rezoning deferral, Mr. Roberts stated that the rezoning was deferred because of the confusion about the planned status for Centreville Road. He stated that the present policy plans to build a four lane road with right-of-way for six lanes.

There being no speakers in support or opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 90-C-034 subject to the development condition contained in the staff report dated July 19, 1990.

Mr. Ribble seconded the motion which failed for a lack of four affirmative votes with Vice Chairman DiGiulian, Mr. Kelley and Mr. Ribble voting aye; and, Mr. Hammack voting nay. Mrs. Harris and Mrs. Thonen were not present for the vote and Chairman Smith was absent from the meeting.

In response to Mr. Roberts question, Vice Chairman DiGiulian stated that a quorum was present but the motion failed for a lack of four votes necessary to grant the special permit

Mr. Roberts asked for a waiver of the 12 month limitation on reapplication.

In response to Mr. Roberts inquiry as to the justification or reason for the vote to deny, Mr. Hammack stated that the footprint extends from one side of the proposed setback line to the other. He expressed his belief that the proposed application is at present 1 percent less that the maximum area allowed on R-1 zoned property and that the applicant has the intention of intensify the use by rezoning the property to R-3.

Mr. Ribble made a motion to waive the 12 month limitation for filing a new application.

Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-C-034 by E. LAKIN PHILLIPS, under Section 3-103 of the Zoning Ordinance to allow an accessory dwelling unit, on property located at 2733 Centreville Road, Tax Map Reference 25-1((1))pt. 34, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 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 4.3 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 8-903 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 by Alexandria Surveys dated June 28, 1989 and revised through June 14, 1990.

3. This Special Permit is subject to the issuance of a building permit for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 35 percent of the principal dwelling unit; a maximum of 1,776 square feet.

5. The accessory dwelling unit shall contain no more than two bedrooms.

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.

10. There shall be a minimum of four (4) parking spaces provided on the site. The existing parking shall be deemed to satisfy this requirement.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 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 which FAILED by a vote of 3-1 with Mr. Hammack voting nay; Mrs. Harris and Mrs. Thonen not present for the vote; and Chairman Smith absent from the meeting. The motion failed for a lack of four (4) affirmative votes which are necessary to approve a special permit or variance.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 1990.

Mr. Ribble made a motion to waive the 12 month limitation for filing a new application. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

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Page 171, July 26, 1990, (Tape 3), Scheduled case of:

11:45 A.M. KARL M. AND GRETCHEN R. DUFF, VC 90-L-051, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into five (5) lots with Lots 3 and 4 each having a lot width of 12 feet (70 ft. min. lot width required by Sect. 3-406), on property located at 6101 Florence Lane, on approximately 2.0163 acres of land, zoned R-4, Lee District, Tax Map 82-4((1))25 and 82-4((35))A1.

Greg Riegle, Staff Coordinator, stated that the Planning Commission requested that the Board of Zoning Appeals defer the application until the Planning Commission could hear the case on September 12, 1990.

Douglas J. Sanderson, an attorney with Miles and Stockbridge, 11350 Random Hills Road, Fairfax, Virginia, addressed the Board and stated that the applicant concurs with the request that the case be deferred until the Planning Commission can review the application.

Mr. Riegle suggested a hearing date of September 25, 1990.

Mr. Ribble made a motion to defer VC 90-L-051 until September 25, 1990 at 9:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent form the meeting.

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Page 171, July 26, 1990, (Tape 3), Scheduled case of:

12:00 Noon LUCKSTONE ANNUAL REVIEW Pursuant to Sect. 8-104 of the Zoning Ordinance

Greg Riegle, Staff Coordinator, addressed the Board and stated that staff had completed the 1989 Annual Review of Luckstone Quarry in conjunction with the operation of the Group 1 special permit use and had found the quarry to be in compliance with all development conditions and proffers. Mr. Riegle specified that all water quality standards have been met, all plantings are proceeding on schedule, and that there have been no changes or redevelopment on the adjacent parcel that would warrant placement of additional regulations or restrictions.

The applicant's attorney, Royce A. Spence, 7297-A Lee Highway, Falls Church, Virginia, addressed the staff recommendations as stated on page 4 of the report. He stated that the guy wires had been removed from the white pines, arrangements have been made to clean out the main siltation pond, and the plantings will be installed by the end of October.

Mr. Spence referred to his letter of July 10, 1990 and stated that although the applicant has spend a great deal of time and money in an attempt to obtain a site plan, approval has not been granted. He pointed out the conditions relating to highway lighting along Route 29-211, construction of a trail, construction of a service drive along the northerly boundary of 29-122, construction of a four lane improvement along the full frontage of 29-211, and to re-align the entrance of the concrete plant across 29-211 to coincide with the entrance to the quarry, are unacceptable to Luck Stone Corporation. .

Mr. Hammack made a motion that the Board adopt the staff recommendations and conclusions concerning the 1989 Annual Report of the Luck Stone Quarry dated July 19, 1990 with the following modifications on page 4, the first bullet shall be removed since that has now been done and the fourth bullet shall be amended to read "Luck Stone Quarry should clean out the main siltation pond with ninety days. The condition of the pond will be re-inspected to ensure compliance." Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

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12:20 P.M. PETER D. MCRAE & JEANETTE PHILLIPS, VC 90-P-049, application under 18-401 of the Zoning Ordinance to allow building addition (deck enclosure) to 19.7 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307) and 12.1 from edge of flood plain line (15 ft. min. required from flood plain by Sect. 2-415), on property located at 3238 Holly Berry Court, on approximately 8,650 square feet of land, zoned R-3 (developed cluster), Providence District, Tax Map 59-2((21))19. (DEFERRED FROM 7/10/90 FOR DECISION ONLY)

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McRae replied that it was. Vice Chairman DiGiulian 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, said that Denise James, Staff Coordinator, had submitted a memorandum dated July 16, 1990 to the Board. She noted that the Board had heard the application on July 10, 1990, and deferred decision to obtain addition information regarding the impact of the addition on the floodplain. Ms. Kelsey stated that the Environmental and Heritage Resources Branch had verbally indicated to staff that as long as no additional pilings or floor area was proposed, the enclosure of the existing deck would have no impact on the floodplain. She explained that although a building permit had been obtained for a deck, the existing deck was not built to those specifications and the applicant has been informed that a building permit will be required for the existing deck as well as for the addition.

Mr. Ribble made a motion to grant VC 90-P-049 for the reasons stated in the Resolution subject to the development conditions contained in the staff report dated July 3, 1990. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was 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-P-049 by PETER D. MCRAE AND JEANETTE PHILLIPS, under Section 18-401 of the Zoning Ordinance to allow building (deck enclosure) to 19.7 feet from rear lot line, on property located at 3238 Holly Berry Court, Tax Map Reference 59-2((21))19, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 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 8,650 square feet of land.
4. The lot has a odd shape.
5. The location is the only site on the lot that the addition could be placed.

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

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

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

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

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

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

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

~~NOW, THEREFORE, BE IT RESOLVED that the subject application is 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 which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 173, (Tape 3), Scheduled case of:

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the information they had requested on the McLean Little League application had been included in their packages.

Ms. Kelsey informed the Board that a baby girl named Carly had been born to Lori Greenlief, Staff Coordinator.

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As there was no other business to come before the Board, the meeting was adjourned at 1:10 p.m.

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

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

SUBMITTED: October 9, 1990

APPROVED: October 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 July 31, 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.

Mr. Hammack called the meeting to order at 9:15 a.m. and gave the invocation.

Mrs. Harris made a motion that Mr. Hammack serve as Acting Chairman in the absence of both the Chairman and Vice Chairman. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Thonen not present for the vote; Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

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Page 175, July 31, 1990, (Tape 1), Scheduled case of:

9:00 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. (DEFERRED FROM 5/17/90 FOR MORE INFORMATION)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Martin 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 called the Board's attention to the addendum dated July 4, 1990 which contained a revised plat and sketch with both showing a radius of 575 feet along the curb of Seneca Road. She added that the sketch shows a greater right-of-way dedication than 45 feet from the centerline. The Office of Transportation (OT) has reviewed both documents and agrees that the revision would allow for adequate sight distance. However, the Department of Environmental Management (DEM) indicates that since the Ellis property to the south has been subdivided and right-of-way has been dedicated, Virginia Department of Transportation (VDOT) approval is needed to coordinate the center lines on both properties. Due to the redesign of the lots, the amount of the variance requested has changed making the lot width of proposed Lot 2, 136.33 and proposed Lot 3, 58.0 feet. In closing, Ms. Bettard stated that in staff's judgment the application still does not meet standards 2, 3, 4, 5, 6, 7, and 9. She added that the recommended development conditions had been changed to address the dedication shown on the revised plat.

Keith C. 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 applicants. He stated that at the last hearing the applicant was asked to look at several concerns, one being a tree preservation plan which is now shown on the revised plat. To address the citizens' concerns, the applicant proposes a 55 foot undisturbed buffer along the northern property line and asked that the conditions be modified to reflect this change. Mr. Martin stated that the limits of clearing/grading have also been increased and the driveway has been aligned with Saunders Haven Court.

With respect to the main issue of straightening Seneca Road, Mr. Martin stated that the staff report indicates there are no plans nor funds for the straightening of Seneca Road. The owners on the adjacent lot, the Ellis', have basically squared off the front of their lot and dedicated up to almost 200 feet to the existing centerline of Seneca Road. Staff has requested that the applicant follow that lead and do the same but the applicant believed that a better way to approach the request was to discuss the problem with OT. Mr. Martin stated that during those discussions the applicant was told that the ultimate goal was to achieve a 575 foot radius along the curve on Seneca Road. The applicant's engineer took measurements and that is reflected on the revised plat. Because the Ellis property has already been dedicated and the subdivision plat has already been approved, staff believes that there would have to be coordination between the applicant and the Ellis'. He pointed out that at the time Seneca Road is straightened the center lines will be coordinated. He added that if the request is approved, both the State and County will have the necessary right-of-way along both properties frontages to straighten Seneca Road to a 575 foot radius.

Regarding the well location on the adjacent property, the applicant has relocated the well and septic.

In closing, Mr. Martin stated that he believes all the standards have been met, the land is unusually shaped, there is sewer available to the property, and the citizens believe that this is a better design than what the applicant could do by right. He asked the Board to grant the request.

Acting Chairman Hammack called for speakers in support of the request.

Vivian Lyons, 18108 Nichols Road, Great Falls, Virginia, President of the Great Falls Citizens Association came forward. She stated that the Association agreed with staff that this application probably did not meet all the required standards required for a variance; however, it does believe that because of the environmental concerns a variance would be preferable to a public street. Ms. Lyons raised issues that the Association was uncomfortable with, such as the VDOT dedication, and it is concerned that in May the engineer testified that no additional dedication would be needed and now in July he is saying that it is needed. She pointed out that this is an important curve on a major road in Great Falls and a very unsafe condition exists now. She stated that she found it hard to believe that the developer who was involved with the Ellis property would give up extra land "out of the goodness of his heart" if it were not necessary.

With respect to the trail on the property, she asked that something be added that requires that the trail be lined up to alleviate people cutting through private property.

She also questioned the location of the proposed houses, as they appeared to be fairly close together according to Great Falls standards. Ms. Lyons stated that she understood why the applicant had proposed the locations but noted that Great Falls is a low density residential community and she did not believe that they would be in keeping with the community. She suggested that perhaps the BZA would consider granting two lots rather than three.

In response to a question from Mrs. Harris, Ms. Lyons replied that the Association met with the applicant prior to the May meeting and have waited to see what additional documentation was submitted by the applicant. She explained that the Association did not see the revised plat until July 19th at which time she also discovered that the applicant had been holding ongoing meetings with the citizens but had neglected to invite the Association.

Mr. Kelley asked if Ms. Lyons was presenting the Citizens Association's position or her own. Ms. Lyons replied that she was representing the Association.

Susan Falks, 907B Seneca Road, Great Falls, Virginia, stated that the citizens would prefer two houses be built on the subject property as opposed to three. After meeting with the applicants, their attorney, and their engineer, the citizens agreed to support the plan as it appeared from the information provided to the citizens that what the applicant could do by right would have more impact on the neighborhood than the variance.

During rebuttal, Mr. Martin stated that it had been his understanding that following the May meeting the Board wanted the applicant to solve the sight distance problem. He added that the trails would be aligned and apologized to Ms. Lyons for not inviting the Association to the meetings that had been held with the citizens.

In response to questions from Mrs. Harris, Mr. Martin introduced Alex Tavanger, Que Associates, engineer for the applicant. Mr. Tavanger replied that he would have to check his notes to see exactly who he had talked with at VDOT, DEM, and OT. He explained that the dedication proposed in conjunction with the Ellis property almost completely straightens Seneca Road and this is not acceptable to the citizens. The applicant is proposing to keep a slight curve on Seneca Road and if Seneca Road is straightened out, it will reduce the size of the proposed lots as well as distort the shape of the lots. He disagreed that testimony had been given at the earlier hearing that no additional dedication was needed and that he did not see the relevance of the location of the proposed houses to the variance.

Acting Chairman Hammack asked staff if the issue of the well locations had been resolved. Ms. Bettard explained that the wells have been moved to the west and subject to approval of the Health Department that it does appear that the new location will not impact the parcel to the east.

The public hearing was closed.

Mrs. Harris made a motion to grant VC 90-D-022 for the reasons noted in the Resolution and subject to the development conditions contained in the addendum dated July 24, 1990 being implemented.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-022 by MR. AND MRS. FARHOUMAND, under Section 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 21.22 feet, on property located at 929 Seneca Road, Tax Map Reference 6-4((1))24A, 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 July 31, 1990; and

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

1. That the applicant is owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.015 acres of land.
4. The property has an unusual shape.
5. Bearing on this property is an extraordinary situation on the subject property as Seneca Road is a contiguous property and has a dangerous curve and it is the intent of the County and of both the applicant and a previous applicant next door to straighten out the road for general public well being.
6. Strict application of the Zoning Ordinance would produce an undue hardship.
7. All are in agreement that a Variance is warranted in this application due to the road and due to the constraints of the property.

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

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

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

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

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

1. This variance is approved for the subdivision of the existing lot into three (3) lots as shown on the plat drawn by Que Associates, Inc., and dated July 3, 1990.

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. 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 trees and

maintaining a buffer of the existing vegetation along the swale on the eastern portion of the site.

4. A geotechnical engineering study shall be submitted to the Department of Environmental Management (DEM), if determined necessary by the Director of DEM. The recommendations of DEM shall be implemented by the applicant.

5. Right-of-way dedication to 45 feet from the existing centerline of Seneca Road necessary for future 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 subdivision approval, whichever occurs first. Additional right-of-way shall be dedicated to alleviate a sight distance problem and realign the curvature of the road to meet a 575 foot radius as determined by DEM and the Virginia Department of Transportation (VDOT). Ancillary access easements shall be provided to facilitate these improvements and future road widening as determined by DEM.

6. The entrance to the subject property shall be aligned with Saunders Haven Court to the west.

7. The 55 feet of undisturbed buffer shall remain to exist on the northern lot line.

8. Wells on Lots 2 and 3 shall be located as to not render the contiguous properties unbuildable.

9. Trails shall be provided in accordance with the Countywide Trails Plan and Article 17 of the Zoning Ordinance. The type and exact location shall be determined at the time of site plan review. Trails shall be constructed in such way that they match up at the time that the road is dedicated.

Mr. Ribble seconded the motion which passed by a vote of 4-0 with Mrs. Thonen 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 August 8, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 178, July 31, 1990, (Tape 1), Scheduled case of:

9:15 A.M. KEITH & PAUL HARTKE, SP 90-C-032, application under Sect. 8-901 of the Zoning Ordinance to allow reduction in minimum yard requirements based on error in building location to allow dwelling to remain 26.2 feet from front lot line (30 ft. minimum front yard required by Sect. 3-307), on property located at 2211 Halter Lane, on approximately 17,239 square feet of land, zoned R-3, Centreville District, Tax Map 16-4((9))200.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Johnson replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and explained that the error was caused by an miscalculation during staking and was not discovered until the time of the wall check.

Charles Johnson, 11480 Sunrise Hills Road, Reston, Virginia, represented the applicant and agreed that a mistake was made on the part of the builder during the staking out of the side of the house. He added that the original calculations were correct but following dedication when the offset was done it was not recalculated.

There were no speakers to address the request and Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to grant SP 90-C-032 subject to the development conditions contained in the staff report dated July 24, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-C-032 by KEITH AND PAUL HARTKE, under Section 8-901 of the Zoning Ordinance to allow reduction in minimum yard requirements based on error in building location to allow dwelling to remain 26.2 feet from front lot line, on property located at 2211 Halter Lane, Tax Map Reference 16-4((9))200, Mr. Ribble moved

that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 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;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified dwelling shown on the revised plat (prepared by Charles R. Johnson and dated April 25, 1990) submitted with this application and is not transferable to other land.

2. Additional landscaping to further screen and lessen traffic noise shall be located along the lot line paralleling Sunrise Valley Drive, and the type, size, quantity and location shall be determined by the County Arborist.

Mrs. Harris seconded the motion which passed 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 August 8, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 179, July 31, 1990, (Tape 1), Scheduled case of:

9:30 A.M. CHARLES W. TRUXALL, JR., VC 90-V-055, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 6.0 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 2004 Cool Spring Drive, on approximately 13,121 square feet of land, zoned R-3, Mount Vernon District, Tax Map 102-3((14))1.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Truxall replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report.

Mrs. Harris asked if there was any safety issues involved with locating the garage near the VEPCO easement and Mr. Jaskiewicz replied that he was not sure.

Mr. Kelley asked if there had been other variances granted in the area. Mr. Jaskiewicz explained that he had researched back 10 years and had not found any other variances.

The applicant, Charles W. Truxall, Jr., 2004 Cool Spring Drive, Alexandria, Virginia, came forward and presented his statement of justification. He stated that he had helped the owner of the property at 1810 Cool Spring Drive build a garage 10 years ago and had used basically the same statement as the neighbor had with his application. Mr. Truxall added that he believed that the garage would enhance the neighborhood and that he had discussed the addition with the manager of the VEPCO substation and there had no been no objections.

Acting Chairman Hammack called for speakers either in support or in opposition to the request and there were none.

Mrs. Harris called the applicant back to the podium and asked him to address the hardship standard. Mr. Truxall explained that the older houses were not built with garages as opposed to the newer houses.

Mr. Ribble asked about the width of the subject property. Mr. Truxall stated that without a variance he could construct only a one car garage.

Acting Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to grant VC 90-V-055 for the reason noted in the Resolution.

Mr. Ribble asked if the maker would be willing to grant the application in part. Mr. Kelley agreed.

Mrs. Thonen seconded the motion for purposes of discussion. She stated that she did not believe that the lot appeared to be any more narrow than the others in the neighborhood and in fact was wider than some.

Acting Chairman Hammack agreed with Mrs. Thonen's comments.

Mrs. Thonen then added that she believed that the lots were pretty much the same size and that the applicant could build an oversize one car garage as a matter of right without a variance. She then called for the question.

Acting Chairman Hammack called for the vote and the motion to grant failed by a vote of 1-4 with Mr. Kelley voting aye; Acting Chairman Hammack, Mrs. Harris, Mrs. Thonen, and Mr. Ribble voting nay.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-055 by CHARLES W. TRUXALL, JR., under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to dwelling to 6.0 feet from side lot line, on property located at 2004 Cool Spring Drive, Tax Map Reference 102-3((14))1, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 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 13,121 square feet of land.
4. The subject property is more narrower than the other lots in the neighborhood.

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

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

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

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

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific building 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 for purposes of discussion. The motion which FAILED by a vote of 1-4 with Mr. Kelley voting aye; Acting Chairman Hammack, Mrs. Harris, Mrs. Thonen, and Mr. Ribble voting nay. The motion failed for the lack of four (4) affirmative which are needed to approve a Special Permit and a Variance.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 8, 1990.

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Page 181, July 31, 1990, (Tape 2), Scheduled case of:

9:45 A.M. SPRINGFIELD ASSEMBLY OF GOD CHURCH, SP 90-V-037, application under Sects. 3-103 and 8-901 to allow church and related facilities and waiver of dustless surface requirement, on property located at 9014 - 9018 Hooes Road, on approximately 5.0 acres of land, zoned R-1, Mt. Vernon District, Tax Map 106-2((1))16, 17.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Houston replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the church plans to convert an existing barn into a 200 seat church sanctuary, an existing single-family detached residence into administrative and Sunday school space, and add a

parking lot. The church plans to complete these conversions in three phases as outlined in the staff report. Mr. Jaskiewicz noted that the applicant submitted a revised plat to staff on July 27, 1990 and staff prepared an addendum dated July 30, 1990 with revised development conditions based on the new plat. He noted that the conditions now allow existing vegetation in the screen yard and the option of a new septic field being developed in Phase I prior to hooking up the public sewer and water in Phase II. In closing, Mr. Jaskiewicz stated that staff recommended approval of the request subject to the implementation of the development conditions contained in the addendum.

In response to questions from Mrs. Thonen, Mr. Jaskiewicz replied that staff is recommending removal of the existing fence.

David Houston, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive #900, McLean, Virginia, came forward to represent the applicant and stated that the pastor of the church and the architect were present.

Mr. Houston outlined the background by stating that the church sanctuary had been condemned as part of the Springfield By-Pass and the church is currently holding services in a elementary school in Springfield. The church has purchased the subject property and following several meetings with staff the church has made changes to address staff's concerns and are in agreement with the development conditions. He requested some flexibility which would allow the church to change its name at a later date if they so choose as it will now be located in the Lorton area.

Mr. Ribble asked if the name change could be done administratively and Jane Kelsey, Chief, Special Permit and Variance Branch, explained that it could be as long as it was a change in name only and if it is in accordance with the Board's "change in name" policy.

Mr. Houston added that the church would not be placing additional plantings along the eastern boundary of the property along Old Hooes Road which faces the correctional facility. He noted that he believed that the development condition was clear.

In response to questions from Mrs. Harris, Mr. Houston replied that the facade of the barn would be colonial when it is converted into a sanctuary. He stated that foundation plantings had not come up during discussions with staff, but he believed that the church would not object to adding them.

Mr. Ribble asked Mr. Houston if the addition of the words "in accordance with the plat submitted" would clarify condition number 9 with respect to the eastern boundary. Mr. Houston agreed.

Mr. Houston noted that the applicant had met with the Lorton Federation of Civic Associations and they had voted to support the church application.

There were no speakers, either in support or in opposition, to the request and Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to grant SP 90-V-037 subject to the revised development conditions dated July 30, 1990 and amended as noted:

"9. . . . in accordance with the plat submitted this date.

17. Additional plantings shall be provided around the foundation of the church in accordance with the recommendation of the County Arborist."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-V-037 by SPRINGFIELD ASSEMBLY OF GOD CHURCH, under Section 3-103 and 8-901 of the Zoning Ordinance to allow church and related facilities and waiver of dustless surface requirement, on property located at 9014-9018 Hooes Road, Tax Map Reference 106-2((1))16, 17, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 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 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 8-303, 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. This approval is for the locations and structures 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 proposed site improvements/uses will be implemented according to a three-phase sequence, summarized below. Prior to issuance of a Non-Residential Use Permit for Phase I, the applicant shall implement all Proposed Development Conditions. Improvements slated for Phase II must have started construction on or before a date thirty-six (36) months after the time of approval of this Special Permit. Likewise, improvements slated for Phase III must have started construction on or before a date sixty (60) months after the time of approval of this Special Permit.

   Phase I — The existing single family dwelling may be converted to Sunday school and administrative space and the barn shall be converted to a church sanctuary with no more than 160 seats. The gravel parking area shall be constructed along with minor gravel internal road improvements. Existing out-buildings shall be removed.

   Phase II — An approximately 2870 square foot addition to the barn for sanctuary space, class rooms, and rest rooms may be constructed. The footings and/or foundation for the Phase III barn addition may also be constructed. The sanctuary shall accommodate no more than 200 seats. The existing dwelling shall only house the Pastor's office and administrative space.

   Phase III — An approximately 4000 square foot addition to the barn may be constructed. The existing dwelling shall continue to only house the Pastor's office and administrative space. The graveled parking lot and entrance drive shall be paved.

6. The entrance to the property at the realigned portion of Hooes Road shall be constructed to VDOT standards unless waived by the Department of Environmental Management or VDOT.

7. 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.

   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.

8. The maximum seating capacity for the church sanctuary shall be limited to 160 seats for Phase I and 200 seats for Phases II and III, with a corresponding minimum number of 40 and 50 parking spaces, respectively, located on site. The maximum number of parking spaces shall be 67.

9. Transitional Screening 1 shall be provided in the locations described below. Existing vegetation may be used to fulfill the requirements of Transitional Screening 1 provided that existing vegetation is supplemented as determined necessary by the County Arborist.

Southern property line.
Transitional Screening 1 shall be provided from the western-most point of the property to a point aligning with the limits of the proposed parking areas as depicted on Sheet 1 of the Special Permit plat.

Western property line.
Transitional Screening 1 shall be provided from the southern-most point of the property to that point coinciding with the Giles Run floodplain.

Northern property line.
Transitional Screening 1 shall be provided along the outer edge of the proposed parking lots. In the event that the distance between the northern edge of the parking lot and the limits of the EQC do not allow for the required vegetative plantings, such plantings may be reduced in number and the yard reduced in width as determined by the County Arborist.

Eastern property line.
Transitional Screening 1 shall be provided along a line coinciding with the eastern-most point of the proposed improvements, and not overlapping the screening/barrier for the parking lots in accordance with the plat submitted this date.

Barrier C shall be located along the outer edge of pavement for all parking spaces that do not already have screening measures previously described herein. The existing wire mesh fence along the northern, western, and southern lot lines shall be removed, and the requirement for Barrier D shall be waived in all remaining areas of the site.

10. Storm water management facilities shall be provided at Phase I that do not allow site drainage across or water storage to occur on fill soils, soils/slopes indicative of an EQC, or the existing farm pond.

11. The parking lot shall be located so as not to disturb fill soils, allow drainage into an EQC, or be located on top of a septic drainage field if such field is to be used. If the parking lot is located on top of the existing septic drainage field, public water and sewer service or a new septic drainage field that meets all Fairfax County Health Department development standards shall be installed in Phase I prior to parking lot construction.

12. Performance standards defined in Paragraph 2 of Sections 8-303 and 8-903 shall be met. In addition, any proposed lighting of the parking areas shall be in accordance with the following:

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

13. Any attached sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.

14. A building permit shall be obtained prior to any construction or modification to the premises.

15. Pursuant to the Virginia Code Section of 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 Board of Supervisors. The easement shall include that land which was defined by the Environmental and Heritage Resources Branch, Office of Comprehensive Planning (OCP), on the sketch attached at the end of Appendix 5. The exact location of the boundary shall be determined at the time of Site Plan review by the Environmental and Heritage Resources Branch, OCP in coordination with the Department of Environmental Management (DEM). There shall be no clearing of any vegetation in this area, except for dead or dying trees or shrubs and no grading with the exception of the improvements necessary for upgrading the entrance road. Proposed grading for these facilities shall be approved by DEM and the Environmental Heritage and Resources Branch, OCP at the time of Site Plan review. There shall be no structures located in the EQC area except for those allowed on Page I/C-74 of the Section titled "Open Space" in the Environmental Recommendations of the Comprehensive Plan.

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

17. Additional plantings shall be provided around the foundation of the church in accordance with the recommendation of the County Arborist.

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 in Phase I 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 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 August 8, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:25 a.m. and reconvened at 10:36 a.m.

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Page 185, July 31, 1990, (Tapes 1 and 2), Scheduled case of:

10:00 A.M. CHESTERBROOK-MCLEAN LITTLE LEAGUE, INC., SP 90-D-021, application under Sects. 3-303 and 8-901 of the Zoning Ordinance to amend Special Permit granted in 1959 to allow lighting of third field, change of hours, waiver of dustless surface requirement, existing T-ball field and batting cage, fourth baseball field, reduction in parking, and miscellaneous structures to remain, on property located at 1836 and 1840 Westmoreland Street, on approximately 7.21958 acres of land, zoned R-3, Dranesville District, Tax Map 40-2((1))42, 46. (OUT-OF-TURN HEARING GRANTED 4/3/90) (DEFERRED FROM 6/5/90 FOR RESOLUTION OF ISSUES)

Grayson Hanes, attorney with the law firm of Hazel & Thomas, 7600 Georgetown Pike, McLean, Virginia, came forward to represent the applicant.

Denise James, Staff Coordinator, called the Board's attention to additional information items that had been distributed, one being an interpretation by the Zoning Administrator regarding the required parking for the site. Ms. James stated that the Zoning Administrator has determined that Paragraph 17 of Article 11 is applicable for this use and requires 1 space per 3 persons based on occupancy load for the site, plus 1 space for employee. Based on this information, staff suggested changing the required number of parking spaces to 112 in condition number 7 with all parking on site. Ms. James also suggested that the applicant obtain written approval for the continued use of the ballfields in the Virginia Power's utility right-of-way.

In response to a question from Mrs. Thonen, Ms. James explained that if the Board grants the applicant's request for the two additional ballfields adjacent to Pimmit Run staff suggests that the applicant obtain written approval from the Power company and that this recommendation is consistent with recommendations for other special permits which are in utility easements.

Ms. James continued and noted that the last line of condition number 17 should be corrected to reflect "application" rather than applicant.

Mr. Hanes addressed the issues of parking, lighting, and the Comprehensive Plan. With respect to parking, Mr. Hanes stated that the applicant has provided 113 parking spaces with 3 handicapped thereby satisfying the parking requirement of the County. The applicant has agreed that there will be no more than four games played at any one time, to provide a parking attendant on site to monitor the parking, and to provide a van to shuttle people back and forth between Longfellow School and the ballfields. Mr. Hanes stated that the Virginia Department of Transportation (VDOT) will erect "no parking" signs along Westmoreland and restripe the crosswalks and the police have agreed to enforce the parking restrictions during the games and during the off season. He called the Board's attention to a parking layout showing the relocation, the restriping and the enlargement of the existing parking which will double the on site parking. He added that the entrance to the site will be enlarged. The applicant has also agreed that T-ball will not be played on Saturday and will not be practiced on the field. He called the Board's attention to a number of letters from citizens in support of the request and a copy of a transportation consultant's report that indicates that the traffic and safety problem has been resolved.

Regarding the Comprehensive Plan and whether or not the use is compatible, Mr. Hanes asked that a letter from Thomas Reed, a real estate appraiser, be made a part of the record.

Mr. Hanes addressed the development conditions by stating that the applicant would like condition number 4 to be revised to allow a waiver of the site plan requirement and condition number 6 revised to extend the playing hours to 10:00 p.m. with the exception of Sunday, which would be 9:00 p.m. The applicant also agrees with condition number 8 as long as there is no requirement for a service drive or a turning lane into the site. The applicant disagreed with the 50 foot buffer requirement in condition number 9. He asked that the Board delete condition number 14 which requires a trail and substitute the applicant's proposed conditions for 17, 18, 19, and 20.

He then introduced Terry Mahoney who would explain the lighting plan proposed by the applicant.

Terry Mahoney, Executive and Washington representative for the General Electric (GE) Company and principally for the National Broadcasting Company, a subsidiary of GE, came forward. Mr. Mahoney stated that he is also a member of the McLean Little League Board and in December 1989 he was asked by McLean Little League to obtain a proposal from the GE lighting division to light Field 3. GE proposed a 6 pole layout with a total of 20 lamps. He continued by addressing the technicalities of these lights.

Acting Chairman Hammack pointed out that the 10 minute time alloted for the presentation had expired and asked Mr. Mahoney to address only the lighting issue. He noted that he would allow the opposition an equal amount of time.

Mr. Mahoney explained there will be no outfield poles, there will be 4 poles instead of 6, there will be 16 lamps instead of 20, and on the right field lamp poles there will be top visors installed to prevent the glare from projecting onto the residential properties.

In response to questions from Mrs. Harris about the Park Authority fields that were available for the use of the McLean Little League, Mr. Hanes replied that he was not aware of any County fields available to the League but perhaps another member of the League had more information.

Karen S. Vaghy, 1716 Chesterbrook Vale Court, McLean, Virginia, called the Board's attention to the letter from the Park Authority and the Recreational Department which indicated that there were no fields available for the League's use.

Mrs. Harris stated that was not her understanding from discussions she had with the Park Authority.

Mr. Hanes came forward and asked that a time limitation not be placed on the use as requested by staff.

Acting Chairman Hammack called for speakers in opposition to the request and the following came forward.

Jay Epstein, 1922 Foxhall Road, McLean, Virginia, came forward to represent the homeowners who live in the neighborhoods adjacent to the playing fields. He disagreed that the applicant's proposed development conditions address all the citizens concerns

and stated that the applicant has made no "good faith" effort to meet with the citizens. He explained that on June 29th, the League held a meeting after two days notice to the surrounding citizens and distributed a set of proposed development conditions but did not request citizen input. The citizens asked that the League members meet with them on July 27th and the League members declined to attend and following a two hour notice the citizens were asked to meet with the League members on July 28th, which the citizens did. Although the citizens support the Little League they believe that "enough is enough" based on the flagrant disregard of the County regulations with respect to the lighting and the noise. (He then played a tape recording of the noise impact on one of the adjacent neighbors during their dinner hour and submitted a photograph of the traffic that was parked along Pimmit Run within the 50 foot restriction line during a Saturday game.) In closing, Mr. Epstein stated that he believed that the Board could restore a natural balance between the citizens and the Little League if the Board limits the League's activities.

Dave Capitano, 1915 Westmoreland Street, McLean, Virginia, stated that the citizens are not in opposition to the Little League and many helped to organize the League. He added that he did not believe that the applicant's proposal to expand the on site parking by 12 spaces will alleviate the problem as there are currently 100 cars parked on site with 75 more on the street. Mr. Capitano stated that even under the applicant's proposal to reduce the number of games played and relocate some of the games to County fields the parking problem will not be alleviated as there is an average of 35 cars per field and with the use of 4 fields that will equal out to approximately 140 cars. He disagreed that the cars parked on the street belong to the neighbors and stated that based on the applicant's disregard of the County regulations in the past, the citizens do not believe that the applicant will adhere to the proposal. Mr. Capitano suggested that the removal of the illegal fourth field will allow sufficient room for the additional parking that the applicant desperately needs. He added that the County Department of Recreation has told the citizens that the League has 12 to 13 fields available to them 6 days per week plus 5 fields allocated on Sunday including at least 4 that the County has deemed to be suitable for play.

Mrs. Thonen asked if the speaker had these comments in writing. Mr. Capitano replied that he had submitted a letter to the Board.

With respect to the lights, Mr. Capitano stated that the citizens had been told by the District League President that the third field was recently expanded to regulation size so it would be acceptable for All Star games that generally begin at 7:30 p.m in the evening. He suggested that the League reconfigure the already lighted field 2 so that they can play the All Star games without impacting on the neighbors. Mr. Capitano asked that the Board support staff's position to remove the fourth field and the T-ball field and to deny placement of the third field lights.

Mrs. Thonen asked staff to contact the Department of Recreation to determine if these fields are actually available for the McLean Little League use.

James R. Audet, 1944 Foxhall Road, McLean, Virginia, called the Board's attention to a technical report that he had submitted.

Mrs. Harris asked Mr. Audet to address GE's proposal with respect to the lighting. Mr. Audet stated that he has reviewed the proposed lighting plan and noted there are 4 lights that will be aimed at Foxhall, 6 aimed at Lemon Road, and 5 aimed toward Pine Creek Road.

In response to a question from Mr. Ribble about buffers that were being destroyed, Mr. Epstein replied that the fields have been expanded to the west and to the south thereby bringing them closer to the streams.

Mrs. Thonen asked the people who live close to the ballfields both in support and in opposition to stand. There was no one present in support of the request. There was a large number of citizens present in opposition to the request.

During rebuttal, Mr. Hanes reiterated his earlier comments and stated that he believed that the applicant had met the criteria and added that the five fields have been planned since 1959.

Mrs. Harris noted that the extra field was only to be used for practice not for play. Mr. Hanes agreed.

Ms. James asked Mrs. Thonen to clarify what information she would like staff to request from the Park Authority. Mrs. Thonen explained that she would like to know if fields are available to the applicant.

Mrs. Harris asked staff to point out the areas where fill was used to expand the fields. Ms. James stated that staff did not specifically know as this was done in previous years but there had been recent fill put on the site in the area adjacent to Pimmit Run.

Mrs. Thonen asked staff if there was anyway to determine who was dumping the brush into

Pimmit Run. Ms. James stated that she had discussed with the applicant's attorney as to how the debris was removed from ballfields and he had not been able to respond at that time.

There was no additional discussion and Acting Chairman Hammack closed the public hearing.

Mrs. Thonen suggested that the applicant meet with the citizens to resolve the issues and stated that she believed that it was shame that the ball players were being punished for the parents impacting on the neighbors. She asked Mr. Hammack to review the development conditions in order to come up with suitable conditions and asked staff to contact the Park Authority and the Recreation Department for information on the number of fields that are available for the Little League's use. Mrs. Thonen suggested that the applicant review the possibility of reconfiguring field 2 to minimize the impact of noise and lights on the neighbors. She noted that the Board would hear only testimony with respect to the development conditions and both sides would be given 10 minutes each. She then made a motion to defer to a date certain in September.

Mrs. Harris seconded the motion.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board had nine cases scheduled on September 25th and two on October 2nd.

Mrs. Thonen called Mr. Hanes back to the podium and apologized for having to defer the case again. Mr. Hanes agreed to the date of October 2nd. The citizens also agreed.

It was the consensus of the Board to schedule the public hearing for October 2nd.

Mrs. Harris pointed out that the Board had requested at the previous public hearing that the applicant meet with citizens and asked that it be made a part of the motion.

Mr. Kelley objected as he did not believe that the Board could require this of the applicant.

Mr. Ribble stated that he was a little disappointed in the way the citizens were asked to meet with the applicant.

Mrs. Thonen stated that she believed that there had to be compromise on both sides and hoped that both sides considered the children's welfare.

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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The Board recessed at 11:32 a.m. and reconvened at 11:40 a.m.

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Page 188, July 31, 1990, (Tape 2), Scheduled case of:

10:15 A.M. TEMPLE BAPTIST CHURCH, SP 90-S-035, application under Sects. 3-C03 and 8-901 of the Zoning Ordinance to allow church and related facilities and waiver of dustless surface requirement, on property located on Union Mill Road, on approximately 3.854 acres of land, zoned R-C and WS, Springfield District, Tax Map 66-3((1))25.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Pastor Bonds replied 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 stated that the applicant filed a similar application earlier this year which was denied and that the Board had waived the 12-month waiting period for the filing of a new application. She stated that the provision public sewer and water is in direct conflict with the land use recommendations of the Comprehensive Plan which specifically precludes sewer and water to the area. Ms. James further commented that and the subject property is substandard in size and the proposed development is not compatible with the low residential character of the area.

Mrs. James noted that the applicant has attempted to address some of the issues raised in the previous application by providing a gravel surface for overflow parking and relocating the storm water management to the rear of the property. They have also provided a minimal buffer of 25 feet of screening around the entire property. However, the storm water management and the additional parking proposed serve to increase the area of clearing and grading and the minimal buffer is not sufficient to significantly mitigate the impacts of the development. She stated staff still recommends denial of the request.

Mrs. Thonen noted that it appeared that the applicant had increased the size of the building. Mrs. James stated that was correct.

Pastor John Bonds, 3963 Rosebay Court, Fairfax, Virginia, came forward to represent the church and expressed his appreciation to the Board for having waived the 12-month waiting period.

He stated that the church has purchased the subject property and have funds available to go forward with the construction of the church. Pastor Bonds stated that due to the lack of perkable land for septic fields and the sewer service restrictions in the R-C Districts there is a severe shortage of land available to build church facilities and over the past thirty years the problem has increased.

With respect to the staff report, Pastor Bonds disagreed that a church would violate the intent of the Comprehensive Plan. He stated that Jimmie Jenkins, Director, System Engineering and Monitoring Division, Public Works, has confirmed that sewer and water is available to the site and has also confirmed that a submitted topography profile meets all technical requirements. Pastor Bonds pointed out that a single family residence would use 370 gallons per day as opposed to the church using 2 gallons per day per seat which would be 200 gallons.

Regarding the lot size, he stated that according to Sect. 2-405 of the Zoning Ordinance which allows a lot to be used for any purpose permitted in the zoning district if the lot was recorded prior to March 1, 1941, or the lot was recorded prior to the effective day of the Zoning Ordinance, and said lot met the requirements of the Zoning Ordinance in effect at the time of recordation. He stated that the property did meet the lot size requirements to be used as for a church at the time it was recorded. Pastor Bonds added that the site plan requirements have been met and that he believed that it is a well proportioned building lot.

Pastor Bonds addressed the environmental issues by stating there is solid rock 2 to 5 feet beneath the surface, therefore there would be no soil problem. He stated that the church agrees to abide by all transportation requirements and stated that he believes that a church does fit in with the neighborhood.

With respect to the development conditions, Pastor Bonds stated that the church had added a space for overflow parking to address the Board's concerns but staff does not agree. The parking has been relocated to the rear of the property and the building size has been increased to 20 x 25 feet to provide better access, but the building is still within the allowed floor area ratio (FAR).

Mrs. Thonen asked for a clarification on the building size. Pastor Bonds explained that the building had been extended by 20 feet in order that two double doors could be constructed on the front of the church.

Acting Chairman Hammack called for speakers in support of the request.

Robert C. Vickers, 6327 Fenestra Court, Burke, Virginia, came forward and stated that he loved his God and his country and that he had moved into the County 15 years ago after 23 years in the Marine Corps. He stated that it had been a big decision deciding on a community in which to settle with his family when he left the military. He stated that he is the treasurer for the church and it has been an experience trying to locate suitable property on which to build and it is becoming increasingly difficult for the church to pay the monthly rent at the school where they presently meet.

LeRoy S. Hicks, Jr., 6516 Station Road, Clifton, Virginia, stated that he has attended the church for 6 years and during that time the church has visited numerous houses in the community and has been warmly received. He added that if the church could construct its own building it would alleviate a hardship as the church cannot afford to purchase another piece of property. Mr. Hicks asked the Board to approve the request.

Ted S. Ballowe, 5212 Jarratt Court, Centreville, Virginia, stated that he lives and works in Centreville and upon leaving the Navy he and his wife settled in the Centreville area because it is a new and dynamic community. He added that there four things that influenced him when growing up and those were his parent, family, school, and church.

Frank Alvey, 6583 Rockland Drive, Clifton, Virginia, stated that he retired after 27 years from the Navy and presently lives in the Little Rocky Subdivision. He asked the Board to grant the church's request.

Deborah G. Ridgely, 13802 South Springs Drive, Clifton, Virginia, stated that she and her family reside in the Little Rocky Run Subdivision approximately one mile from the proposed church site. She added that it would be comforting to know that there would a neighborhood church nearby which would provide wholesome alternatives to some of the less appealing activities that children tend to get involved in outside the home. Mrs. Ridgely pointed out the difficulty the church had in locating this land and asked the Board to grant the request.

Rusalih Save, 16097 Radburn Street, Woodbridge, Virginia, stated that he is a member of the Temple Baptist and that he came from Romania in 1984 and the first thing that he looked for was a church. He stated that the church helped him through the hardest moments of his life as he was without his family, did not speak English, and had come from a society based on hatred and one that mocked christianity.

Sharron Vickers, 6327 Fenestra Court, Burke, Virginia, stated that she has attended Temple Baptist since she was a teenager and it has been a great influence in her life. Ms. Vickers added that she is a Sunday school teacher and stated that the church believes in raising children in a moral fashion and visits the Youth Detention Center in Fairfax to show the children that there is an alternative for the way they are presently living. She asked the Board to grant the request.

There was no speakers in opposition.

Acting Chairman Hammack asked staff for additional comments. Mrs. James introduced a letter in opposition from Peter and Joanne Arcola.

In response to a question from Acting Chairman Hammack regarding the sewer, Mrs. James stated that Public Works' position had not changed since the time of the last application. She explained that the memorandum from Mr. Jenkins, with the Department of Public Works, was subsequent to the previous public hearing. She stated that Jerry Jackson, with the Department of Public Works, Office of Waste Management, was present to respond to the Board's questions.

Mr. Jackson explained that he had been given a plan from the church's engineer and in accordance with the Board of Supervisor's policy the church does meet all the qualifications for sanitary sewer. The requirement being that sanitary sewer can be extended 400 feet beyond the surface drainage divide as long as it is not necessary to go over 12 feet deep nor use an injector pump.

Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolutions.

Mrs. Thonen stated that she agreed with the motion and that the Board was not judging the church and its members but were only considering the land use issue. She added that she believed that it was too dense 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 90-S-035 by TEMPLE BAPTIST CHURCH, under Section 3-C03 and 8-901 of the Zoning Ordinance to allow church and related facilities and waiver of dustless surface requirement, on property located on Union Mill Road, Tax Map Reference 66-3((1))25, 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 July 31, 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 3.854 acres of land.
4. The testimony was very moving and there is no doubt that the church is a fine establishment.
5. The attempt to provide overflow parking lot is a good addition.
6. The Comprehensive Plan specifically recommends not to provide for sewer and water to this sector.
7. The Board has standards that must be met and the first standards is that the use must be in conformance with the Comprehensive Plan.
8. This is too dense for this site. This is in the Occoquan Watershed and the large building would cause more runoff.

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 and 8-915 of the Zoning Ordinance.

Page 191, July 31, 1990, (Tape 2), (TEMPLE BAPTIST CHURCH, SP 90-S-035, continued from Page 190)

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

Mrs. Thonen seconded the motion which carried by a vote of 5-0 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 August 8, 1990.

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Page 191, July 31, 1990, (Tapes 2 and 3), Scheduled case of:

11:00 A.M MANA KRISNATHEVIN APPEAL, A 90-C-006, appeal of the Zoning Administrator's determination that subject property is designated for community facilities and any proposal to establish an eating establishment or other commercial use would require the approval of a development plan amendment by the Board of Supervisors, on property located at 11501 Sunrise Valley Drive, on approximately 78,155 square feet of land, zoned PRC, Centreville District, Tax Map 17-4((17))1C.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Cerick replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Jane Gwinn, Zoning Administrator, stated that this was an appeal of her determination that the appellant's property is designated for community facility uses and that any proposal to establish any type of commercial use on the property would require approval of a development plan amendment by the Board of Supervisors. She called the Board's attention to the July 25, 1990 memorandum which outlined her position in detail. She added that in 1977 there was a request to rearrange uses that had been shown on an approved development plan and the Zoning Ordinance in effect at that time provided that after a development plan had been approved by the Board of Supervisors no significant modification could be made. It appears that it was staff's judgment at that time that the change in location of the two uses was a minor change that could be approved administratively, therefore it was and recorded in the land records. She stated that she believes that staff had the authority to make that determination at that time and that it is not appropriate nor warranted for her to come in at this time to second guess that judgment. The rearrangement of the uses is reflected on the plat that is in the land records, therefore notice was given and carried forward in subsequent deeds.

In response to a question from Mrs. Harris, Ms. Gwinn replied that the provisions in effect at that time allowed for a wide range of uses ranging from residential to public and community uses. She added that the designation of community facilities was used at that time on development plans that were approved in Reston and not a defined term in the Zoning Ordinance.

Mr. Hammack asked what prompted Philip Yates, the former Zoning Administrator, to take this action. Ms. Gwinn noted that Mr. Yates was not the Zoning Administrator at that time but was the Chief, Plan Implementation Branch, which is today's equivalent to the Zoning Evaluation Division. The Ordinance provides that the director was responsible for administering and approving subdivision plats, therefore she believes the decision that was made was done by the Director, Department of Environmental Management (DEM). She noted that she believes that both she and the appellant have provided all available documents to the Board.

Ms. Gwinn, in response to a question from Mr. Ribble, stated that Gulf Reston owned the property at the time the "flip flop" occurred.

In response to a question from Mrs. Harris, Ms. Gwinn explained that staff was doing some speculation as she believed, based on the correspondence, that it had been shown one way on the development plan but there had been a plan submitted to DEM which proposed to shift the uses. Therefore, the Director, DEM, was responding to the plat which reflected the slight change and it appears, at the time the appellant also solicited views from RCA with regard to the proposal.

Mrs. Harris noted a letter that the Board had received from a Patricia Garfinkel wherein she states that she was involved with RCA at that time and agrees that they had merely wanted to switch the two locations.

Mr. Ribble called the Board's attention to a letter received from John Morris, Jr. who also talked about the request of Gulf Reston to "flip flop" the locations.

Peter Cerick, 700 Pine Street, Herndon, Virginia, attorney for the appellant came forward and introduced Richard Little, a certified planner and a former Fairfax County staff member, and Mr. Krisnathevin.

He began his presentation by stating that the appellant had acted in good faith and followed the standard procedures for researching the property prior to purchase. The

appellant lives in the community, his business is in the community, is sensitive to the community wishes, is willing to forego his request for a restaurant, and is willing to convenant the property to that effect

In response to questions from Mrs. Harris about the plat, Mr. Cerick replied that the Clerk of the Court is not the place to go for determining zoning issues but to the Zoning Administrator and the development plan. He stated that would be the reason that someone might believe that Parcel 1C was community convenience center usage and clearly the subject property is delineated on the map that was approved by the Board of Supervisors as convenience center.

Mr. Ribble stated that he believed that if you examine the title to the property and it says community facility that should serve as notice to the purchaser as the allowed usage for the site. Mr. Cerick explained that the persons assisting the appellant at that time did not pick that up and they went to the Zoning Administrator. He added that ~~even if the Board of Supervisors wanted to rezone a parcel of land they would go through~~ the public hearing process.

Mrs. Thonen noted that she could not find any documents where the Zoning Administrator had made a ruling. Mr. Cerick stated there was a letter in the package dated April 17, 1990 from the Zoning Administrator.

Mrs. Harris noted that the property was never rezoned and asked if a rezoning had been necessary to allow the "flip flop" in 1977. Mr. Cerick stated that the change was done administratively. Mrs. Harris asked Ms. Gwinn to respond. Ms. Gwinn explained that if she thought a rezoning should have taken place she would be agreeing with the appellant. The appellant's position is that the change in the use as shown on the approved development plan should have required a development plan amendment coming back through the process. She added that the development plan is an integral part of a rezoning and to change a development plan is a rezoning of the property.

Mr. Cerick called the Board's attention to the minutes of the Board of Supervisors' meeting that led up to the enactment of the Ordinance about the minor changes and stated it is apparent to him that the Board of Supervisors is talking about site plans which are in accordance with development plans. He stated that the State Code provides that if someone wants to change the regulations or classifications of property the process must be followed.

In response to a question from Acting Chairman Hammack, Ms. Gwinn explained that anyone who had been aggrieved at the time the reclassification was done they could have filed an appeal.

The Board questioned how the citizens would have been aware of the change back in 1977 without the public hearing process. Ms. Gwinn stated that is a problem that continues today and that she is not that familiar with the Subdivision Ordinance in effect in 1977.

Mr. Hammack stated that the Board of Zoning Appeals had heard an appeal dealing with antennas on the roof of an office building. In that appeal, the Zoning Administrator had determined that the Board of Zoning Appeals could not approve the antennas because the development plan was not specific to allow the antennas and the appellant would have to go through the entire public hearing process to erect another antenna. He asked how the positions differed.

Ms. Gwinn explained that it differed in two respects, number one being that the property in the previous appeal was located in a conference convention center and the current Zoning Ordinance provisions for that area designation does not provide for that special exception use and was not listed as a permitted use. Staff does not have the language that was in effect in 1973 and 1977 and the language, "there shall be no significant modifications to any previously approved development plan" as noted on page 1 of the memorandum is not in the current Zoning Ordinance. She stated that the disagreement stems from whether or not the switch in locations was a significant modification.

Richard Little, Professional Planner, 9104 Omar Court, Fairfax, Virginia, came forward and displayed photographs to the Board showing views of the shopping center where the property is located. He stated that the discussion that took place between the Zoning Administrator and the appellant is really the key as to what in fact the Board of Supervisors did intend when they approved the rezoning application in 1973, what in fact has happened on the site, and was that change significant. He submitted a copy of the development plan that was submitted in 1973 with the application and approved by the Board of Supervisors. The staff administratively approved a site plan that showed a complete reversal of the uses that had been considered and approved by the Board of Supervisors four years earlier. An abutting property owner who followed the rezoning action, went away for a year, and came back to find the uses had been switched might consider it a significant change.

Mr. Ribble commented that in this case the neighbor would have to have been gone for 17 years.

Mr. Little stated that the development was actually constructed in the late '70's. He

continued by addressing the staff report noting that staff had believed this to be a minor change in 1977 and therefore were authorized to administratively approve the switch. He stated that he believed that staff's action was incorrect although he believed that staff had acted in good faith, as the Ordinance is very specific. Mr. Little read into the record the definition of "significant" and "minor" from the Websters Dictionary and noted some of the allowed uses. The appellant's position is that what was done in 1977 was significant based on the actual uses that was constructed there and being significant they were subject to the public hearing process. The appellant believes that the development plan approved in 1973 should govern this site.

Mr. Ribble asked if the same thing would apply to parcels 1A and 1B. Mr. Little replied that he believed that it would.

Mrs. Harris stated that she had two questions, the first being that she believed that all were in agreement that the Board of Supervisors approved a section for a convenience store and a section for a community facility. She noted that to revert the subject property would be completely against the approved development plan as it would all be convenience. Mr. Little stated that he did not believe that the appellant should bear the burden. He added it is the appellant's position that the entire development plan for the property was misinterpreted and the property was misdeveloped.

Mrs. Harris' second question had to do with the community facility versus the neighborhood convenience center. Since 1977, the property was developed, given a building permit, and approved as a use under the community facilities. Mr. Little agreed with her comments. Mrs. Harris noted that the property was used as it should have been. Mr. Little noted that it was processed administratively but not approved legislatively. Mrs. Harris stated that was the issue before the Board and pointed out that all others involved looked at the property as it had been approved after that "flip flop" change. Mr. Little agreed but stated that there was little documentation to be found. Mrs. Harris stated that under the Writ of Mandamus it was noted that the property had been used as a day care center which was a use under the convenience center classification but was not a use under the community facilities classification. Mr. Little agreed that was the Zoning Ordinance at that time.

Acting Chairman Hammack called for speakers either in support or in opposition. The following came forward to speak in opposition to the appellant.

John Marshall, 2019 Approach Lane, Reston, Virginia, an original resident of the development came forward. He stated that when this issue was brought to the community he sought out a member of RCA at that time to obtain background to determine where the community might be heading. RCA explained to him that the "flip flop" came about because the Campagnas wanted to open a day care center but they did not want to have it on a main corner of an intersection due to the safety factor. He expressed concern that the word "intent" had come up several times and this is important in terms of good faith and how Gulf Reston and the Board of Supervisor dealt with the citizens who purchased their properties at that time. Many of the citizens believed at the time the day care center was constructed that they had been misled because many of the citizens paid a premium price for their property as they had been told that the property that borders their properties on Approach Lane and the shopping center would be kept as treed area, common ground. When the citizens approached RCA, they were told that the area had always been planned for community use. He stated that there has been a lot of encroachment of commercial uses in Reston which has created a traffic problem and it appears that the plan for Reston has gone by the wayside. Mr. Marshall did not believe that the citizens who have lived in the area for 14 years should bear the burden of a change in use any more so than the appellant. He stated that he could not believe that the County was willing to roll back assessments on their property and reduce the taxes if the property values drop nor did he believe that the appellant would jump in and offer the citizens a reimbursement. Mr. Marshall added that if the appellant made a bad business decision or something improper or illegal took place than it should be taken to court and not penalize the citizens.

Mr. Marshall pointed out that there is currently a parking problem in the neighborhood with people parking and walking to the convenience center that is on the other side of the day care. In conclusion, he stated that his primary concern is that the plan for Reston be maintained and that the community facility use be left intact. Mr. Marshall submitted a petition signed by the abutting property owners into the record.

Tom Vier, 1831 Post Oak Trail, Reston, Virginia, a ten year member of the Reston Planning and Zoning Committee, Reston Community Association, came forward to support the Zoning Administrator's determination in requiring a DPA in any change in use. He stated that at the time of the use designation change the owner of all this parcel were all aware and supportive of the change. He added that he believed that the County was correct in determining that the change was a minor change and noted that the statute of limitations has expired. Mr. Vier stated that he believed that there was no resolution to the appeal other than upholding the current community use designation for this property. He added that if the Zoning Administrator is overturned that will leave the center block in noncompliance with no hope for removal of the retail and office uses currently there and would open up the adjacent property to an obnoxious office retail use with no limits on height nor density. In closing, Mr. Vier reminded the Board about

the Campagna Appeal with respect to her day care center and the Board's reluctance to close such a badly needed facility even though it was clearly in violation of the special permit. He added that if the Board did not uphold the Zoning Administrator the day care center would be lost.

Lynwood Patin, 2027 Approach Lane, Reston, Virginia, stated that he had bought his property approximately four years ago knowing that the preschool was there and is very comfortable with that use but uncomfortable to any changes in the use. He expressed concern that although the appellant has decided not to put a restaurant on the property what would prevent anyone he sells the property to in the future from having a restaurant.

During rebuttal, Mr. Cerick stated that whether or not a change is significant should be determined by looking at the property itself and not along the lines of saying, "well, this was 750 acres and we only changed 2." If that would be the case, what would prevent the staff from rezoning 20 acres. He pointed out there are three large development plans in the County, Reston being one of them. Mr. Cerick added that he believed that in a State like Virginia where the Dillon Rule is law that the legislative function is the only way that a use or classification of a piece of property is rezoned. He added that the appellant is willing to covenant the property. Mr. Cerick stated that he would like Mr. Little to address the day care centers in rebuttal.

Mr. Ribble asked how the appellant would convenant the property. Mr. Cerick explained that it would be similar to a proffer and would be noted in the land records that the land would not be used a restaurant.

With regard to day care, Mr. Little stated that he had talked with several of the day care providers in Reston and most of them have capacity to accommodate the need for day cares in the foreseeable future and this would not be a irreparable loss in the day care supply for the area.

Ms. Gwinn stated that she did not believe that this change only involved 2 acres and that was not the basis for the determination. The determination was not based on the fact that this was not a significant change but based more on the fact that these two changes had been approved on properties right next door and was not changing one designation from the top of Reston to a piece of property to the bottom. She stated that she believed that staff had viewed this as a minor modification due to the fact that the properties were right next door and obviously there was some good planning sense to use the community facility and shift it to use it as a buffer to the residential development. In terms of notice, Ms. Gwinn explained that at the time the change was done Gulf Reston owned the property and certainly had notice and was prompting the request for the change. She stated that the change was viewed by the nearest cluster subdivision, who also approved of the change, therefore notice was given to all parties who were most directly affected. Ms. Gwinn added that it appeared that the concern is that the appellant who purchased the property 10 years later did not have notice but at the time the change was done notice was given. She noted that the deed that reflects the sale of the property very clearly refers back to the deed book and page where this plat had been recorded and reflected the change in uses. In addition, the deed indicates that the appellant purchased the property in August 1988 and the request for her opinion was not filed until July 1989. The Zoning Ordinance provided that the staff could approve a change that was not significant and Ms. Gwinn stated that she continued to believe that this was not a significant change and did not believe that it was appropriate for her to "second guess" what was done at the time. She noted that to say that this property should be a convenience center would in effect say that the staff decision was wrong raises a very serious question on the developed convenience center and that would result in that property becoming illegal since it has been developed as such.

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

Mr. Ribble stated he understood the appellant's point to some extent but he honestly believed that there had been plenty of notice given as the "flip flop" was considered by all the adjoining neighborhood citizen association, the Reston Governmental Association, and was noted on the land records. He stated that certainly anyone purchasing the property would have known the designation. He added that he hesitated to get into something that happened 13 years ago at that time it was considered a minor or insignificant change and would not like to second guess at this point. Mr. Ribble stated that he agreed that it was not a major change only a change on the use of two adjacent properties done at the request of the developer. The County was aware of it, the citizens associations were aware of it, and the current owner had a chance to look at that before he purchased the property and could have asked the correct questions and perhaps he would have changed his mind. Mr. Ribble then made a motion to uphold the Zoning Administrator.

Mrs. Harris and Mrs. Thonen seconded the motion.

Mr. Harris stated that it appeared that the people who purchased one block of 1C had intended the use to be a day care and the center had the classification of a community facility and she believed that is the reason that it was "flip flopped" although there

is no evidence to support this finding. She noted that Mrs. Pennino watched very closely all things done in that area and was copied in all correspondence and had indicated no problem with the change.

Mr. Ribble noted that it appears that everyone involved believed it to be a good change.

Acting Chairman Hammack agreed with the Board's comments and stated that whether it was a significant or minor change the Zoning Ordinance at that time provided for certain appeals that could have been made, none of which were made. He then called for the vote.

The motion passed by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 8, 1990.

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Page 195, July 31, 1990, (Tape 2), Scheduled case of:

11:30 A.M. CROSSROADS BAPTIST CHURCH, SP 90-M-036, application under Sect. 3-303 of the Zoning Ordinance to allow church and related facilities, on property located at 3537 Moncure Avenue, on approximately 1.1286 acres of land, zoned R-3 and HC, Mason District, Tax Map 61-4((1))112. (OTH GRANTED 5/22/90. DEFERRED FROM 7/10/90 FOR APPLICANT TO MEET WITH HOMEOWNERS)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Pripeton 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 and noted that this application had been deferred from July 10th and since that the time applicant has met several times with both staff and the citizens. He stated that the applicant submitted a new plat which shows a change in screening along one property line and a 7 foot high block wall and has verbally agreed to provide the maximum amount of screening behind the wall. The applicant has agreed to provide underground stormwater detention and therefore is no longer requesting a waiver of those requirements. Mr. Riegle agreed that some of these changes can mitigate some of the impacts but staff still believes that additional vegetation is necessary to make the site more residential in appearance. He noted that the physical developmental of the site remains unchanged and the proposed structure remains at 12,293 square feet with a height of 47 feet to the peak of the roof, and the steeple will add another 40 feet in height. The Floor Area Ratio (FAR) remains at .25 which is the maximum allowed and there are 59 lighted parking spaces. Staff still has concerns with the intensity of the development as the size and the height of the building has not been reduced, specifically with the FAR at the maximum, staff believes that the minimum of 25 feet of transitional screening is warranted. He added that the one acre site does not provide for open space and landscaping necessary to harmonize this use with the Comprehensive Plan and the applicable R-3 zoning district; therefore, staff recommended denial of the application.

Arlene Pripeton, 10195 Main Street, Suite B, Fairfax, Virginia, attorney for the applicant came forward and stated that the applicant has held meetings with the staff and the citizens and have resolved many of the problems. To address the runoff and drainage problem, the applicant has agreed to build the underground stormwater facility although the applicant's engineer had indicated there would be none. She stated that there is an existing water problem and the engineers will run a line from where the problem is back to the detention facility which hopefully will solve the existing problem.

With regard to the screening, the applicant has agreed to reduce the parking spaces from 10 to 9 and will build a brick wall to alleviate the cars' headlights from projecting onto the neighboring properties. The applicant has agreed to stop the brick wall at the edge of the pipe at the request of staff in Site Plan, Department of Environmental Management, as they did not want any construction in the easement.

Mr. Ribble asked the height of the proposed brick wall. Ms. Pripeton replied 7 feet.

She continued by stating that there is approximately 8 and 1/2 feet of the church's property behind the brick wall that will be planted as heavily as the County Arborist will allow. In addition, Ms. Pripeton stated that on the other side of the 8 and 1/2 feet there is a 20 foot storm sewer easement that is on the adjoining neighbor's property that the applicant will also plant if allowed to do so by the County Arborist and the Department of Public Works.

Ms. Pripeton noted that the applicant had submitted letters from adjoining neighbors who had no concerns with the screening nor the buffering and who did not want the brick wall around their portion of their property. The applicant hopes to buy two adjoining pieces

of property when they become available which would significantly reduce the FAR and therefore the church would rather not build the wall. The applicant would like to stay in the Baileys Crossroads vicinity but available land is very limited and this seemed to be the most appropriate site.

She addressed the height of the church by stating that the homeowners do not have a problem with the steeple but with the height of the church. The engineers and architect have indicated that the mean height of the roof is 37 feet, which is what they use to measure the FAR. The FAR for the site could be 60 feet so the proposed building is only 60 percent of what it could be as far as the height of the church. Ms. Pripeton submitted drawings of the proposed church to the Board. She pointed out that to the right of the church property is a four story apartment complex which is significantly higher than the proposed church building minus the steeple. (Ms. Pripeton submitted photographs of the apartment complex to the Board.) She noted that the houses that have been built on one of the adjoining properties back up to the church site. (She submitted another photograph to the Board.) One of the houses from the back is three stories tall in addition to the roof and the front of the building is 34 feet to the roof and if the basement is added the house is 44 feet high. The church building without the steeple is only going to be 47 feet high. The church has discussed with the architect and engineer the possibility of reducing the size or lowering the building and still keeping the same floor plan which would alleviate the church from having to start all over. She stated that the church has gone through site plan simultaneously with the public hearing process and the Department of Environmental Management (DEM) has suggested five changes. The church has agreed to all those changes and will make a second submission as soon as the Board of Zoning Appeals makes a decision and DEM has indicated that there should be no problem with the approval of the second submission.

In addition to the stormwater and the screening changes that Mr. Riegle pointed out, the church has also deleted one of the two entrances, and has dedicated an additional 7 feet in order to accommodate a 50 right-of-way requirement by the County. Some of the parking spaces were also relocated away from the residential neighborhood and the church believes that these two revisions might address some of the transportation concerns. Because of a deletion of one of the parking spaces, the church is asking that the seats in the church be reduced to 228 to coincide with the number of parking spaces. The church has agreed to construct a sidewalk in front of the building.

Ms. Pripeton submitted a petition into the record with 42 signatures. With respect to the FAR, she stated that the church is within the allowed FAR and four times over the minimum lot area, four times over the minimum lot width, 60 percent of the maximum building height, two times increased in the minimum front yard, minimum side yard, and rear yard. She disagreed that the church is too intense for the site.

She pointed out that the apartment complex next to the church is completely surrounded with a 8 foot chain link and rod iron fence that has approximately another 3 to 4 feet of wrapped barbed wire. The church will block the neighbor's view of the fence and improve the aesthetics.

Mrs. Thonen asked staff to point out Paul Street on the viewgraph so she could see where the citizens lived who had signed the petition and Mr. Riegle did so.

Acting Chairman Hammack asked if the applicant had read the development conditions. Ms. Pripeton stated that the church agreed to all with the exception of number 7. She asked that condition number 7 be revised to read, "Transitional screening as shown on the revised special use plan dated July 30, 1990 shall be provided and a modification is granted to the 25 foot screening requirement based upon a 7 foot brick wall being erected between the nine parking spaces that are closest to the Ed Peat property and that property 8 and 1/2 feet within the property line and plantings will set 8.5 feet screening area to the fullest extent allowed by the Arborist. All plantings shall be subject to review and approval by the County Arborist."

Mrs. Thonen noted a discrepancy in the building height. Mr. Riegle explained that there was some uncertainity initially as to the building height when the staff report was published. He added that the applicant has indicated that there is a 47 foot height from the grade level to the peak of the roof and perhaps another 40 feet with the steeple.

Louis Baldwin, 8464 Clover Leaf Drive, McLean, Virginia, pastor of the church, came forward and expressed his appreciation to Mr. Riegle who had made a point of meeting with the church numerous times to work on this application. He stated that the proposed church site has not been hapazardously done. The church has met for 7 years in a commercial building in the Baileys Crossroads area and finally located the subject property which had the stipulation that a church be constructed. Pastor Baldwin stated that upon finding the property the church talked with different agencies in the County and hired a good engineering and architectural firm that would make sure that the church violated no County Codes. The church submitted a site plan to DEM and agreed to all suggested changes. He explained that the church developed the site at the maximum FAR because of the limited land available as this was the largest site that they could find in the Baileys Crossroads area. The building will never be enlarged even if the church were to acquire additional land as it would be too expensive as the church has spent

thousands of dollars and many man hours on the project. The church visited almost every neighbor in the neighborhood and since no one objected to the church the church proceeded with its plans. He added that the church is concerned with the neighbors' concerns but believes that the plan proposed by the church is the best plan. The apartment complex is higher than the proposed church and some of the houses abutting the church are as high.

In response to questions from Mrs. Harris about the height of the building and the height of the spire, Pastor Baldwin replied that he had discussed this with the architect and had been told that the roof pitch could be lowered 2 feet and the steeple reduced by 25 feet which looks terrible.

Mrs. Thonen stated that she was concerned with the bulk and the height of the building and the citizens on Paul Street have stated that this will impact their properties. She commended the church for trying to resolve the issues but stated that she believed the church would impact the neighbors. Mrs. Thonen added that she had no problem with the number of seats in the church but would like to see the church redesigned.

Pastor Baldwin responded to Mrs. Thonen's concerns by stating that the church was designed based on the size of the apartment complex and the size of the existing houses. He added that every place he has seen the churches are slightly higher than the houses but he did not believe that the proposal was out of line with the existing structures. Pastor Baldwin stated that perhaps the $400,000 houses overshadowing the $12,000 to $34,000 houses should not have been built. Mrs. Thonen stated that the neighbors were limited to a 35 foot house. Pastor Baldwin stated the church is limited to 60 feet which they are not building. Mrs. Thonen stated that she could not recall the Board ever granting a 60 foot high church.

Acting Chairman Hammack asked if Skyline Towers could be seen from the subject property and Pastor Baldwin replied that they could. Acting Chairman Hammack stated that he had believed that the 20 story towers were out of proportion with the adjacent single-family dwellings.

There were no further questions of Pastor Baldwin. Acting Chairman Hammack called for additional speakers in support. There were none and he asked if the Pastor would like to have the citizens present who supported the request to stand and several citizens stood. Acting Chairman Hammack then called for speakers in opposition to the request.

William W. Pascoe III, 3492 Paul Street, Alexandria, Virginia, stated that he would not read a prepared letter as the Board had already received copies. He stated that the house on Lot 6 is a two story with a basement and is not 44 feet high. The level on the front of the house is a few feet higher then on the back and if measured from the bottom on the back it will be 38 feet but the plat shows it in the middle of the depression area and when you get back up to the other side the 4 feet is lost. He added that the house is 34 feet high and the proposed church will be 47 feet high. Mr. Pasko stated that the only neighbors who would be able to see the church are the ones that have it in their back yards, one being him. He pointed out that the headlight from cars will shine directly into his family room and the neighbor's house on Lot 6 is impacted by the lights in his kitchen, living room, and family room. Mr. Pasko agreed that Skyline Towers is too high but was far enough away that it did not dominate their skyline and asked that Board not to make it worse by granting the church.

In response to a question from Mrs. Harris, Mr. Pasko stated that the neighbors did not have a specific size in mind for the church when they requested that it made smaller and shorter. He thanked the Pastor for working with them and added that he understood the church is doing everything they can and understood that the church could not give in on the parking and buffering. He stated that he believed that there would be a significant difference between a 47 foot building and a 37 foot building.

George J. Schutcer, 3499 Paul Street, Alexandria Virginia, stated that his house did not border directly on the church property but was concerned with the height of the church. He added that he was glad to see a church being constructed on the property as the vacant land was presenting problems to the neighborhood with the activities that were being conducted there in the evenings. Mr. Schutcer stated that he believed that the church could be redesigned to bring it more in line with the surrounding community.

Iztzhak Tepper, 3494 Paul Street, Alexandria Virginia, stated that he agreed with the previous speakers comments.

Mike Johnson, 3495 Paul Street, Alexandria Virginia, came forward and stated that he would like to see a structure that would fit on the property.

During rebuttal, Pastor Baldwin stated that the church will not add traffic to Hoffman Lane. He stated that the abutting house is approximately 40 feet on the side that faces the church.

Mrs. Harris asked Pastor Baldwin to clarify his statement with respect to the height of the neighboring house. He explained that it was his understanding that it was 34 feet from the floor level of the neighbor's house.

The Board told Pastor Baldwin that it was from the ground.

Ms. Pripeton asked if she could respond to the question. Acting Chairman Hammack asked her to come forward.

Ms. Pripeton explained that it was her understanding that the height of the house is 34 feet from the ground level on the front of the house but the problem is the ground level is here the church is located. (She called the Board's attention to photographs that she had submitted earlier.) She pointed out that there would only be a 4 foot differential between the church, without the steeple, and the roof of the house.

Mrs. Thonen asked how high the church would be and Ms. Pripeton replied 47 feet to the top of the roof.

Mrs. Harris asked how tall the apartment was and Ms. Pripeton replied it was a four story structure and about 52 feet high.

Acting Chairman Hammack called Mr. Tepper to podium as he had indicated that he would like to speak. Mr. Tepper stated that he was a structural engineer and knew about building heights. He used the viewgraph to show the Board the approximate location the house in question would reach to on the church.

Acting Chairman Hammack closed the public hearing.

Mrs. Thonen stated that she believed that the church has worked with the neighbors but the height and the bulk of the building is too intense for the neighborhood and the applicant is not willing to change either of them. She noted that churches are allowed in a subdivision only with strict standards and control, one being that they do not impact on the neighbors and this church would impact upon the neighborhood. She made a motion to deny SP 90-M-036.

Mrs. Harris stated that she could not support the motion as this is an area of transition with lots of different heights, different uses, and different densities. She added that it seemed that the church offered a transitional use both in height and bulk. Mrs. Harris stated that it would not be as tall as the apartment complex adjacent to it nor would it be as short as the houses. Although the church has a high FAR, she stated that she believes that it meets the criteria.

Mr. Ribble noted that it was a close call but he believed the request would adversely affect some of the neighbors because of the lay of the land and stated that he would like to see the church redesign the request to bring it more in harmony with the neighborhood. He stated that he would support the motion but would also support a waiver of the 12-month time limitation for refiling a new application.

Acting Chairman Hammack stated that he would oppose the motion as he was impressed with the effort that the church has made to develop the site due to the constraints that are associated with the site. He added that he shared the concern of the neighbors and the Board with respect to the height of the building to some extent. He believed that the pastor had been very candid that the church would like to get the maximum amount of usable space out of it for future expansion albeit it internally. He stated that he agreed with Mrs. Harris about this being a transitional zone as there are higher uses immediately adjacent to it and there are some that are shorter. He noted that the building might be a little bulkier than what he would ideally like but this part of the County is a lot like Arlington County.

Mr. Ribble seconded the motion which passed by a vote of 2-2 with Mrs. Thonen and Mr. Ribble voting aye; Mrs. Harris and Mr. Hammack voting nay; Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

Ms. Pripeton requested a waiver of the 12-month time limitation for filing a new application. Mrs. Thonen made a motion to grant the request. Mr. Ribble seconded the motion. The motion carried by a vote of 4-0; Mr. Kelley not present for the vote; 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 90-M-036 by CROSSROADS BAPTIST CHURCH, under Section 3-303 of the Zoning Ordinance to allow church and related facilities, on property located at 3537 Moncure Avenue, Tax Map Reference 61-4((1))112, 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

Page 199, July 31, 1990, (Tape 2), (CROSSROADS BAPTIST CHURCH, SP 90-M-036, continued from Page 198)

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 31, 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 HC.
3. The area of the lot is 1.1286 acres of land.
4. The church has worked with the neighbors but the height and the bulk of the building is too intense for the neighborhood and the applicant is not willing to change either of them.
5. Churches are allowed in a subdivision only with strict standards and control, one being that they do not impact on the neighbors.
6. This church would impact upon 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 Sections 8-303 of the Zoning Ordinance.

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

Mr. Ribble seconded the motion which carried by a vote of 2-2 with Mrs. Thonen and Mr. Ribble voting aye; Mrs. Harris and Mr. Hammack voting nay; 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 August 8, 1990. The Board also waived the 12-month waiting period for filing a new application.

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Page 199, July 31, 1990, (Tape 4), After Agenda Item:

Susan Hamblen and Ardak Corporation Appeal
Change in Meeting Dates and Times

Mrs. Thonen made a motion to change the times of the two above-referenced appeals to September 25, 1990 at 11:00 a.m. and October 2, 1990 at 8:30 p.m., respectively. Mrs. Harris seconded the motion with carried by a vote of 4-0 with Mr. Kelley not present for the vote; Chairman Smith and Mr. DiGiulian absent from the meeting.

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Page 199, July 31, 1990, (Tape 4), After Agenda Item:

Approval of May 22, 1990 Minutes

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. 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.

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Page 199, July 31, 1990, (Tape 4), After Agenda Item:

John W. and Diane M. Bray, SP 90-P-049
Out-of-Turn Hearing Request

Mrs. Thonen made a motion to deny the request. 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.

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Page 199, July 31, 1990, (Tape 4), After Agenda Item:

St. Philips Catholic School, SP 90-P-053
Out-of-Turn Hearing Request

Mrs. Thonen asked staff for a clarification.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the Board had deferred action on the request from its July 26, 1990 meeting. This deferral allowed staff to determine what part of the application would be a special permit and what part would be a special exception. She suggested that the Board defer hearing the case until

Page 200, July 31, 1990, (Tape 4), (ST. PHILIPS CATHOLIC SCHOOL, SP 90-P-053, OUT-OF-TURN HEARING REQUEST, continued from Page 199)

after the Planning Commission had acted on the special exception which is scheduled for October 10, 1990.

Acting Chairman Hammack asked staff if the Board had to act on the out-of-turn hearing. Greg Riegle, Staff Coordinator, explained that the applicant had requested an out-of-turn hearing to alleviate a gap between the special permit and the special exception. Mrs. Thonen made a motion to schedule SP 90-P-053 on October 25, 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 absent from the meeting.

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Page 200, July 31, 1990, (Tape 4), Information Item:

Wilson Woods, Inc.

Mrs. Thonen stated that she had received a call from the applicant in the above-referenced case requesting that the Resolution not be approved until such time as he could submit additional information. She added that she had tried to contact Karen Harwood, with the County Attorney's office, to discuss this request with her but had been unsuccessful. She made a motion to defer action on the Resolution indefinitely so that the Board could schedule a public hearing within two weeks after receiving the additional information.

Mrs. Harris agreed and 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.

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The Board recognized the presence of Amelia Laura Harris, daughter of Board member Mrs. Harris, who had attended the meeting.

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Mrs. Thonen stated that Supervisor Hyland was holding a clam and lobster fest to support the doctor in Alexandria who had been injured by the "letter bomb." She stated that she had posted the information in the Board Room and tickets were available if anyone would like to purchase them.

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As there was no other business to come before the Board, the meeting was adjourned at 2:10 p.m.

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

Paul Hammack Jr.
Paul Hammack, Acting Chairman
Board of Zoning Appeals

SUBMITTED: October 2, 1990 APPROVED: October 9, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on August 2, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; John Ribble; Robert Kelley; and Paul Hammack. Chairman Daniel Smith was absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 201, August 2, 1990 (Tape 1), Scheduled case of:

9:00 A.M. LARRY E. & SNEZANA WOLFORD, VC 90-P-057, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 26.0 feet from front lot line and 6.0 feet from side lot line (30 ft. min. front yard required and 12 ft. min. side yard required by Sect. 3-307), on property located at 3404 Hartwell Court, on approximately 10,001 square feet of land, zoned R-3, Providence District, Tax Map 59-2((8))(9)16.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Wolford replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report.

The applicant, Larry E. Wolford, 3404 Hartwell Court, Falls Church, Virginia, presented the statement of justification. Mr. Wolford described the houses in his neighborhood as 1950's contemporary vintage. He stated that his house was located closer to one side lot line than the other. The kitchen and dining area which he wished to enlarge by constructing an addition are located on the side closest to the side lot line, precipitating the request for a variance.

Mrs. Thonen asked Mr. Wolford what type of facade he planned for the addition and he stated he planned to have it match the present dwelling.

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

Mr. Hammack made a motion to grant VC 90-P-057 for the reasons reflected in the Resolution, and subject to the development conditions contained in the staff report dated July 26, 1990. He added another development condition requiring that the materials used on the addition be harmonious and compatible with the materials on the existing structure.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-057 by LARRY E. & SNEZANA WOLFORD, under Section 18-401 of the Zoning Ordinance to allow construction of addition 26.0 feet from front lot line and 6.0 feet from side lot line, on property located at 3404 Hartwell Court, Tax Map Reference 59-2((8))(9)16, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 2, 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 10,001 square feet of land.
4. The property has convergent lot lines at the front of the lot.
5. The property has narrow frontage.
6. The dwelling is situated in a kitty-corner position on the lot.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific building/garage 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 materials used for the addition shall be harmonious and compatible with the materials on the existing building.

Mrs. Thonen seconded the motion which carried by a vote of 4-0. Mr. Kelley and Mr. Ribble were not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 202, August 2, 1990 (Tape 1), Scheduled case of:

9:15 A.M. RICHARD A. & SHIRLEY A. FONTAINE, SP 90-M-038, application under Sect. 3-303 of the Zoning Ordinance to allow an accessory dwelling unit, on property located at 7522 Dolce Drive, on approximately 13,650 square feet of land, zoned R-3, Mason District, Tax Map 60-3((36))4.

Vice Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Fontaine 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.

Richard and Shirley Fontaine, 7522 Dolce Drive, Annandale, Virginia, presented the statement of justification. Mr. Fontaine stated he and Shirley Fontaine, his second wife, had lived in the house 24 years and 11 years, respectively, and planned to live there when they retired.

Mr. Fontaine said the additional income from the accessory dwelling unit was a factor in their plans. Mrs. Fontaine addressed objections contained in a letter from a neighbor who expressed concern about parking problems and other anticipated problems, based on a present situation involving "...several people renting out rooms across the street, which has generated a lot of activity in the neighborhood." Mrs. Fontaine stated they had three parking spaces on site and, since they and not the renters would be responsible for the upkeep, there would be no problem in that regard.

Mrs. Fontaine stated that her daughter is presently living in the basement and would like to to have her own apartment down there. She is a nursing student at George Mason University and she has an eating disorder. She needs a place of her own and this is the only way they can afford to let her have a place of her own.

Mrs. Thonen asked the applicants if they realized they must provide on-site parking for the occupants of the accessory dwelling unit. Mrs. Fontaine said they did realize that, and said she could foresee no problem.

In response to a question from Mrs. Thonen, Mr. Fontaine stated that he was fifty-seven years old.

Mr. Hammack asked Mrs. Fontaine if she had read the statute on accessory dwelling units and whether she realized that non-compliance with the statute would necessitate removal of the unit. Mrs. Fontaine stated that she did understand. Mr. DiGiulian reminded Mrs. Fontaine that the special permit would have to be renewed every five years.

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

Mrs. Thonen stated that she is not sure that she is in favor of accessory dwellings and that she thought it was just another way to rent out property and make it multi-family instead of just residential; but the applicants meet the Ordinance and the Board of Zoning Appeals does not make policy, they just try to rule according to policy. For this reason, Mrs. Thonen stated, she would make a motion to grant SP 90-M-038, subject to the development conditions contained in the staff report dated July 26, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-M-038 by RICHARD A. & SHIRLEY A. FONTAINE, under Section 3-303 of the Zoning Ordinance to allow an accessory dwelling unit, on property located at 7522 Dolce Drive, Tax Map Reference 60-3((36))4, 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 August 2, 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 13,650 square feet of land.
4. The applicant meets the requirements for approval of this application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 by Kephart Company, dated May 9, 1990. 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 for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 35% of the total gross floor area of the principal dwelling unit.

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.

10. The Clerk to the Board of Zoning Appeals shall cause the BZA's action to be recorded among the appropriate land records of Fairfax County.

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

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 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 which carried by a vote of 4-0. Mr. Kelley and Mr. Ribble were not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 204, August 2, 1990 (Tape 1), Scheduled case of:

9:30 A.M. LANGLEY SCHOOL, VC 90-D-056, application under Sect. 18-401 of the Zoning Ordinance to allow existing building to remain 18.5 feet from front lot line and garage to remain 6.1 feet from side lot line (30 ft. min. front yard required and 10 ft. min. side yard required by Sect. 3-307), on property located at 1411 Balls Hill Road, on approximately 37,311 square feet of land, zoned R-3, Dranesville District, Tax Map 30-1((1))43.

Vice Chairman DiGiulian called the applicant's agent 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. Ms. Bettard noted that the applicant had received a letter from Nancy K. Card, pertaining to providing a sidewalk and improving the sight distance at the exit driveway. She referred to the Background portion of the staff report, noting that these issues should be addressed as a result of Special Exception 86-L-073, approved September 18, 1980.

Mr. Hammack referred to a letter from the Evans Pond Community Association and asked why staff had not recommended a trail or sidewalk across the front of the property, since this is a school site accommodating a number of children. Ms. Bettard replied that this issue was addressed at the time of the special exception.

The applicant's representative, Frank McDermott, Hunton & Williams, P.O. Box 1147, Fairfax, Virginia, handed the Board seven photographs and expanded on their portrayal of the site.

Mr. McDermott stated the administration building pre-exists the current right-of-way of Balls Hill Road and the advent of setback requirements. Mr. McDermott referred to the issue of the trail across the frontage of the property and stated it was not addressed as a condition in the special exception approved in September or October of 1989. A condition of that special exception, he stated, was that the school building come before the Board of Zoning Appeals and obtain a variance, before any site plan would be approved for the expansion of the nonconforming administrative building. The building has violated the Ordinance since 1978, because the widening of the road has resulted in the road moving closer to the building.

Mr. McDermott stated that the trail is shown on the site plan, which is being processed by Department of Environmental Management (DEM) at this time.

Mrs. Harris asked why the trail was not shown on the plat before the Board, if it was shown on the site plan. Mr. McDermott stated the reason was that he did not think it was appropropriate. Mrs. Thonen stated that she did not believe that everything was required to be on the plat for a variance request. Mr. McDermott went into other aspects of the property, such as playing fields, which were not shown on the plat, and Mrs. Thonen told Mr. McDermott that she would like to see everything on the plat because that would make her more amenable.

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

Mrs. Harris made a motion to grant VC 90-D-056 for the reasons reflected in the Resolution, subject to the development conditions contained in the staff report dated July 28, 1990, as amended. Condition 3 was amended to read, "...additional construction."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-056 by LANGLEY SCHOOL, under Section 18-401 of the Zoning Ordinance to allow existing building to remain 18.5 feet from front lot line and garage to remain 6.1 feet from side lot line, on property located at 1411 Balls Hill Road, Tax Map Reference 30-1((1))43, 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 August 2, 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 37,311 square feet of land.
4. The situation is unique in that the dwelling was constructed prior to the adoption of a County Zoning Ordinance.
5. An extraordinary situation exists whereby the road is being moved closer to the house, as opposed to an attempt to move the house closer to the road.
6. Imposing the Ordinance strictly as written would impose a hardship, as this is an historic house which has been preserved and used in an academic setting, and it is through no fault of the structure that it is now located in violation of the setback requirement.
7. Concerning the garage, it was placed in such a way as to be utilitarian and to save the trees on the site, which are quite old.

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

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

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

6. That:

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

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

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 206, August 2, 1990 (Tape 1), Scheduled case of:

9:45 A.M. TRUSTEES OF CHESTERBROOK PRESBYTERIAN CHURCH, SPA 68-D-955-2, application under Sects. 8-901, 3-103, and 3-203 of the Zoning Ordinance to amend S-955-68 for a child care center and private school of special education (adult day care) to increase maximum daily enrollment of private school of special education, to allow waiver of dustless surface requirement and bring church under special permit, on property located at 2036 Westmoreland Street, on approximately 9.1371 acres of land, zoned R-1 and R-2, Dranesville District, Tax Map 40-2((1))26A, 26B, 26C.

Vice Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Via 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, which recommended approval in accordance with the proposed development conditions contained therein.

Mrs. Harris asked Ms. Bettard if the applicant was requesting that both the child care center and the private school of special education hours of operation be increased to 7:00 p.m. Ms. Bettard stated that the request was only for the school of special education.

The applicant's agent, Patrick M. Via, attorney with the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, presented the statement of justification.

Mrs. Harris requested clarification from Mr. Via on the hours of opration and Mr. Via stated that the hours of operation for the child care center would be 7:00 a.m. to 6:30 p.m. and the hours of operation for the private school of special education would be from 7:00 a.m. to 7:00 p.m.

Lin E. Noyes, 2036 Westmoreland Drive, Falls Church, Virginia, Director of the Family Residence Center, came forward and spoke in favor of this request.

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

Mr. Kelley made a motion to grant SPA 68-D-055-2, subject to the development conditions contained in the staff report dated July 26, 1990, as amended. Condition 9 reflects a change in the hours of operation of the child care center.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 68-D-955-2 by TRUSTEES OF CHESTERBROOK PRESBYTERIAN CHURCH, under Sections 8-901, 3-103, and 3-203 of the Zoning Ordinance to amend S-955-68 for a child care center and private school of special education (adult day care) to increase maximum daily enrollment of private school of special education, to allow waiver of dustless surface requirement and bring church under special permit, on property located at 2036 Westmoreland Street, Tax Map Reference 40-2((1))26A, 26B, 26C, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 2, 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 9.1371 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, 8-305, 8-307, 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 applicants only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Greenhorne and O'Mara, Inc. dated May 10, 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 seating capacity of the Church sanctuary shall be limited to 220 seats.

6. The maximum daily enrollment for the child care center shall be limited to a total of 60 children.

7. The maximum enrollment for the adult day care center shall be limited to 28 persons.

8. The existing 81 parking spaces shall be maintained and no additional parking shall be required or constructed. All parking shall be on site.

9. The hours of operation for the child care center on the site shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday; and the hours of operation for the school of special education on the site shall be limited to 7:00 a.m. to 7:00 p.m., Monday through Friday.

10. The existing vegetation shall be used to satisfy the transitional screening requirement provided it is maintained and protected in accordance with the Public Facilities Manual. No additional plantings shall be required.

11. The barrier requirement shall be waived.

12. This approval is granted for the gravel surfaces indicated on the plat submitted with this application and shall have a term of five (5) years. The gravel surfaces shall be maintained in accordance with the Public Facilities Manual standards and the following guidelines:

    Speed limits shall be kept low, generally 10 mph or less.

    The area 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 around or under the driveway.

    The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

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 be focused directly onto the subject property.

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

14. The school of special education shall incorporate the use of vans and/or van pools in their program.

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 which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 208, August 2, 1990 (Tape 1), Scheduled case of:

10:00 A.M. DENNIS RICE APPEAL, A 90-C-008, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the removal of Outlots A, B, and C from Eudora Subdivision would result in the subdivision exceeding the R-2 District maximum density limitation and that to remove land area from an existing cluster subdivision requires special exception approval, on property located on Labrador Lane, on approximately 1.56384 acres of land, zoned R-2, Centreville District, Tax Map 28-3((10))A, B, and C.

Vice Chairman DiGiulian called for Dennis Rice Appeal, A 90-C-008, to be heard and asked if there was anyone present to represent the applicant. There was no response.

Page 209, August 2, 1990 (Tape 1), (DENNIS RICE APPEAL, A 90-C-008, continued from Page 208)

Mrs. Thonen asked Jane Kelsey, Chief, Special Permit and Variance Branch, if she had been able to contact anyone. Ms. Kelsey stated she had called the representative's office and also called the Clerk of the Board of Zoning Appeals to see if she had spoken with Mr. Clark. The Clerk told Ms. Kelsey that she had spoken with Mr. Clark the previous day. The Clerk indicated to Mr. Clark that, if the Board did not receive a letter, he should be present at the hearing.

Mrs. Thonen recommended that A 90-C-008 be deferred until the end of the meeting to see if Mr. Clark did appear. Vice Chairman DiGiulian so ordered.

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Page 209, August 2, 1990 (Tape 1), After Agenda Item:

Approval of Resolutions from July 26, 1990 meeting

Mr. Hammack made a motion to approve the Minutes as submitted by the Clerk. Vice Chairman DiGiulian seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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The Board took a short recess at this time.

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Page 209, August 2, 1990 (Tape 1), Scheduled case of:

10:15 A.M. MARY ANNE DUFFUS/BROOKSFIELD SCHOOL, SPR 87-D-051-2, application under Sect. 3-303 of the Zoning Ordinance to renew SPR 87-D-051-1 to allow continuation of a nursery school and child care facility, located at 1830 Kirby Road, on approximately 5.08 acres of land, zoned R-3, Dranesville District, Tax Map 31-3((1))59.

Vice Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Carroll 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. A discussion ensued regarding Condition 12, relating to the capping of a septic facility. It could not be determined whether or not the well had been capped.

F. Andrew Carroll, III, attorney with the law firm of Land, Clark, Carroll & Mendelson, P.C., 600 Cameron Street, Alexandria, Virginia, presented the statement of justification. Mr. Ribble asked Mr. Carroll if the applicant was in agreement with Developent Condition 15. Mr. Carroll replied they were not in agreement with Conditions 14 and 15. Mr. Ribble and Mr. Carroll discussed Condition 13 and Mr. Carroll stated they had no problem with it and that there was no drainage problem.

Mr. Carroll stated there were a number of people present in support of the application, but he said they were not going to speak.

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

Mr. Ribble made a motion to grant SPR 87-D-051-2, subject to the development conditions contained in the staff report dated July 26, 1990, as amended. Original Development conditions 12, 14, and 15 were omitted; and a new development condition was added, limiting the term of the special permit to ten (10) years from the approval date.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPR 87-D-051-2 by MARY ANNE DUFFUS/BROOKSFIELD SCHOOL, under Section 3-303 of the Zoning Ordinance to renew SPR 87-D-051-1 to allow continuation of a nursery school and child care facility, on property located at 1830 Kirby Road, Tax Map Reference 31-3((1))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 August 2, 1990; and

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

1. That the applicant is the lessee.
2. The present zoning is R-3.
3. The area of the lot is 5.08 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 8-305 of the Zoning Ordinance.

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

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Donald J. Olivola Associates dated January 5, 1963 and revised through May 9, 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 use shall be subject to the provisions set forth in Article 17, Site Plans.

5. The hours of operation shall be limited to 7:00 a.m. to 6:00 p.m., Monday through Friday.

6. The maximum daily enrollment shall be fifty (50) children.

7. There shall be a minimum of ten (10) parking spaces allocated for the nursery school and child care center. Existing parking may be used to satisfy these requirements if acceptable to DEM. All parking shall be on site.

8. Existing vegetation shall be retained and used to satisfy the transitional screening requirements along all lot lines

   Additional plantings provided in conjunction with SPR 87-D-051-1 shall be retained along the southern lot line so as to minimize the potential for adverse impact on the adjacent residential properties. These plantings shall include ten (10) eastern Hemlocks six (6) to eight (8) feet in height at the time of planting.

   Plantings provided in conjunction with SPR 87-D-051-1 shall be retained along the southern side of the parking area so as to improve the visual appearance of the parking lots. These plantings shall include four (4) Zelkova, six (6) to eight (8) feet in height at the time of planting.

9. The barrier requirement shall be waived.

10. The outdoor play area shall be approximately 4,100 square feet and in the location shown on the plat.

11. Any sign erected on the property shall conform to Article 12 of the Zoning Ordinance.

12. There is a history of run off/drainage problems from the subject property onto adjacent lots. If these problems recur, appropriate measures as determined by the Department of Public works shall be implemented to resolve these problems.

13. This special permit shall expire ten (10) years from the approval 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.

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

Page 211, August 2, 1990 (Tape 1), (MARY ANNE DUFFUS/BROOKSFIELD SCHOOL, SPR 87-D-051-2, continued from Page)

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 which carried by a vote of 5-0. Mrs. Harris was not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 211, August 2, 1990 (Tape 1), Scheduled case of:

Dennis Rice Appeal, A 90-C-008
Scheduled for 10:00 a.m.

Vice Chairman DiGiulian again called for the Dennis Rice Appeal, A 90-C-008, which previously had been called and deferred to the end of the meeting, when the appellant's representative might possibly be present. Mr. DiGiulian stated he had a memo from the Zoning Administrator, rescinding her opinion in this appeal. Ann Morris stepped forward to represent the appellant but, just as she was about to begin, Gorham S. Clark, of the law firm of Mackall, Mackall, Walker & Gibb, 4031 Chain Bridge Road, Fairfax, Virginia, arrived and proceeded to speak on behalf of the appellant.

Mr. Clark stated that it was his intention not to withdraw the appeal, but rather to concur with the Zoning Administrator's opinion that it is moot. He requested that their $25 fee be refunded. Mr. Clark stated he agreed with the Zoning Administrator that there was no longer an issue to be resolved. Vice Chairman DiGiulian stated this action should still be called a withdrawal.

Edgars A. Kupcis, 1925 Labrador Lane, Vienna, Virginia, came forward to state that he had petitions or letters from residents of the communities of Embassy Courts and Eudora Subdivision Civic Associations opposing the special exemptions. Vice Chairman DiGiulian explained that the Zoning Administrator had reversed her opinion and said there was nothing to appeal. Mr. Hammack said Mr. Kupcis could appeal the Zoning Administrator's letter of July 25, 1990, in which she reversed her position. Mr. Kupcis addressed the issue of a Mr. McCaffrey owning three outlots and intending to sell them. Mr. Kupcis stated the Civic Associations did not want a doubling up of the counting of these outlots for determining density. Mrs. Thonen stated that Mr. Kupcis' concerns seemed best directed to the Board of Supervisors. Mr. Hammack told Mr. Kupcis that he had a right to appeal the determination of mootness.

Mr. Hammack made a motion to allow the appellant to withdraw the appeal, based upon the Zoning Administrator's determination of July 25, 1990, wherein she reversed her opinion and said the issue was moot; and to do this without prejudice, to allow the appellant to seek a refund of his $25 fee. Mr. Clark stated that the Ordinance does not allow a refund in the event of a withdrawal, but that was a minor issue. Mr. Clark also stated there were some people there with concerns about the issue and, rather than delaying and waiting twenty-five (25) days for an appeal to be filed and trying to get on the agenda again, he suggested, since they had the engineer and the attorney there, that they go ahead and resolve the issue. Mr. Hammack stated, "Absolutely not." Mr. DiGiulian stated they could not do that because the Zoning Administrator was not present and, since the Zoning Administrator had not made a second decision, there was nothing to appeal.

Mr. Clark ultimately stated the Board had the appellant's consent to dismiss the appeal.

Mr. Hammack restated his motion that the Board of Zoning Appeals allow the applicant to withdraw the appeal, based upon the determination made July 25, 1990, by the Zoning Administrator, that the issue was moot.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Ms. Harris was not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 10, 1990.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

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

SUBMITTED: August 23, 1990

APPROVED: September 4, 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 August 7, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley and John Ribble. Chairman Daniel Smith was absent from the meeting.

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

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Page 213, August 7, 1990, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM W. HOLT, VC 90-V-061, application under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling 25 feet from each street line of a corner lot (30 ft. min. front yard required by Sect. 3-407), on property located at 6116 Woodmont Road, on approximately 8,800 square feet of land, zoned R-4, Mount Vernon District, Tax Map 83-3((14))(11)18.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. D. Thomas Basham, President of Basham and Associates, 8805 Sudley Road, Manassas, Virginia, 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.

The applicant, William W. Holt, 6118 Woodmont Road, Alexandria, Virginia, addressed the Board and stated that he has lived in the area for 43 years and had received the lot as a gift from his family. He explained that the proposed structure would be aligned with the neighboring houses which had been constructed within a 25 foot setback; therefore, the structure would conform to the community.

In response to Vice Chairman DiGiulian's question regarding the size of the house, Mr. Holt said that the proposed structure was under concept development and he did not know the actual square footage.

In response to Mr. Kelley's question about the actual specifications for the house, Mr. Holt said that if the variance is granted he will begin working on the plans.

Mr. Kelley expressed his belief that the applicant should present plans with the precise location and specifications before the Board votes on the request and suggested that the application be deferred.

Mr. Basham addressed the Board and explained that the applicant's designer prefers that the Board grant a variance before spending the time and money on the specifications.

It was the consensus of the Board that the applicant should submit a new plat with the footprints of the building before the request is heard and agreed to defer the case.

Mrs. Thonen explained to Mr. Basham that the plat the Chairman signs has to note the specific location and footprint of the proposed dwelling and as the applicant did not provide one, the application could not be approved.

In response to Vice Chairman DiGiulian's request, Jane Kelsey, Chief, Special Permits and Variance Branch, suggested a deferral date of October 2, 1990 at 9:10 p.m.

Mrs. Harris suggested that the applicant address the hardship of the land issue when the case is heard.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to defer VC 90-V-061 to October 2, 1990 at 9:10 p.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

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Page 213, August 7, 1990, (Tape 1), Scheduled case of:

9:15 A.M. THOMAS E. III & EDNA M. MILLS, VC 90-L-059, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition (deck) 3.7 feet from side lot line (15 ft. min. side yard required by Sect. 3-307), on property located at 4705 Tipton Lane, on approximately 13,129 square feet of land, zoned R-3, Lee District, Tax Map 82-3((17))(C)18.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mills 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 explained a variance was needed because the proposed deck would be over 4 feet in height.

Thomas E. Mills, III, 4705 Tipton Lane, Alexandria, Virginia, addressed the Board and explained that the proposed deck would have to be 8 feet 10 inches in height to provide access to the first floor of the house. He said that the location of the basement door directly below the deck also necessitated the height of the deck.

In response to Mrs. Thonen's question, Mr. Mills stated that the floodplain shown on the plat that had been submitted to the Board had been removed by the County in the 1970's. He submitted a plat to the Board which he stated did not show a floodplain.

In response to Mrs. Harris' question, Mr. Mills stated that because of the layout of the house, the kitchen door provides the only practical access from the deck to the first floor of the house.

There being no speakers in support or opposition, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-L-059 for the reasons stated in the Resolution and subject to the development condition contained in the staff report dated July 31, 1990. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and asked if the applicant would have to submit a new plat which shows that the floodplain had been removed. The Board members advised Ms. Kelsey that Mr. Mills had submitted a plat of his property just this morning that did not show the floodplain on it; however, it was determined that the plat did not show any structures, thus could not be used. The plat showed only a storm drainage easement along the back of the property.

After a brief discussion, the Board requested the applicant submit a new plat reflecting the removal of the floodplain. The Board asked Mr. Mills if that would be possible and Mr. Mills indicated that it would. The Chairman advised Ms. Kelsey that after Mr. Mills had submitted a new plat, he would come to the office and sign it, so that Mr. Mills could get his building permit.

Mrs. Thonen made a motion to waive the eight day waiting period requirement. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

The Chairman after a discussion with other Board members advised Ms. Kelsey that the Board wants all its decisions final today because of the recess. Ms. Kelsey asked if the Board would include that in each motion for each case.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-059 by THOMAS E. III AND EDNA M. MILLS, under Section 18-401 of the Zoning Ordinance to allow construction of addition (deck) 3.7 feet from side lot line, on property located at 4705 Tipton Lane, Tax Map Reference 82-3((17))(C)18, 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 August 7, 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 13,129 square feet of land.
4. The size of the lot creates a hardship.
5. There is no way that the deck can connect to the living area without a variance.
6. The applicant needs a deck of this height in order to enter the kitchen and living part of the house.
7. The applicant has satisfied the nine standards.
8. The subject property was acquired in good faith.
9. The lot is narrow and an extraordinary situation or condition does 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 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.

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

Mrs. Thonen made a motion to waive the eight day waiting period requirement. Mrs. Harris seconded the motion which carried by a vote of 5 - 0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 7, 1990. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 9:40 a.m. and reconvened at 9:50 a.m.

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Page 216, August 7, 1990, (Tape 1), Scheduled case of:

9:45 A.M. KAREN AND MARK OWEN, VC 90-D-058, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 7.0 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 6324 Halsey Road, on approximately 10,074 square feet of land, zoned R-2, Dranesville District, Tax Map 31-3((6))123.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Owen 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 and noted that the applicant operates a licensed County family day care center business under Child Care Permit Number 402 which was issued in June 1990. Staff confirmed that a building permit was issued for the detached garage in 1958.

The applicant, Karen K. Owen, 6324 Halsey Road, McLean, Virginia, addressed the Board and explained that the immediate backyard was used as a play area for the day care and that further into the backyard the land had a steep uphill embankment that would create an unsafe condition for the children. Ms. Owen explained that with the mature trees in the front yard and the driveway on the other side of the house, the addition had to be constructed on the proposed site. She stated that a letter of approval had been submitted to the Board by the neighbor who owns the property abutting the proposed addition and that the addition would be harmonious to the neighborhood.

In response to questions from the Board, Ms. Owen stated that the existing kitchen and the proposed addition would be combined to create an eat in kitchen, playroom, and laundry room. She stated that although she was not constructing the addition because of her business, that was the reason she could not add the addition to the rear of the house.

There being no speakers in support or opposition, Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny VC 90-D-058 on the basis that the addition could be constructed on the back of the house and the variance would be a special privilege or convenience rather than a hardship. She expressed her belief that the hardship would be related to the business and does not justify the granting of a variance. Mr. Hammack seconded the motion.

Mrs. Thonen expressed her belief that the topographic conditions, the steep slope in the front and back yards, and that an addition in the backyard could cause unsafe conditions for the children would justify the granting of a variance and added those were her reasons for voting against the motion.

The motion failed for lack of four affirmative votes with Mrs. Harris and Mr. Hammack voting aye; Vice Chairman DiGiulian, Mrs. Thonen, Mr. Kelley and Mr. Ribble voting nay. Chairman Smith was absent from the meeting.

Mrs. Thonen made a motion to grant VC 90-D-058 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 31, 1990.

Mr. Hammack expressed his belief that the location of the addition in the side yard would be for the applicants' convenience in operating a business on a residential property and was not justification for a variance.

Vice Chairman DiGiulian stated that the topographical conditions and the layout of the house would justify the granting of the variance.

Mr. Ribble seconded the motion which carried by a vote of 4-2 with Mrs. Harris and Mr. Hammack voting nay. Chairman Smith was absent from the meeting.

Mr. Kelley made a motion to waive the eight day waiting period requirement. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman Smith 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-D-058 by KAREN AND MARK OWEN, under Section 18-401 of the Zoning Ordinance to allow construction of addition 7.0 feet from side lot line, on property located at 6324 Halsey Road, Tax Map Reference 31-3((6))123, 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 August 7, 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 10,074 square feet of land.
4. The reason for the approval is for the safety of the children playing in the backyard. To ensure the safety of the children an addition should not be in the ~~backyard which is where it could be put without a variance.~~
5. The way the lot slopes on both sides presents an unusual building condition.
6. The subject property was acquired in good faith.
7. There is an exceptional topographical condition.
8. The unusual condition is the fact that the applicant runs a child care and the safety of the children is a consideration.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 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 which carried by a vote of 4-2 with Mrs. Harris and Mr. Hammack voting nay. Chairman Smith was absent from the meeting.

Mr. Kelley made a motion to waive the eight day waiting period requirement. Mrs. Thonen seconded the motion which 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 August 7, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 218, August 7, 1990, (Tape 1), Scheduled case of:

10:00 A.M. GARY T. AND DIANE M. PAYNE, SP 90-S-040, application under Sect. 3-C03 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 4413 Pleasant Valley Road, on approximately 12,175 square feet of land, zoned R-C, WSPOD, Springfield District, Tax Map 33-4((2))211.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Whitcomb replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members. Mrs. Harris stated that Ms. Whitcomb's company is doing a housing study for her employer. Vice Chairman DiGiulian called for the staff report.

Denise James, Staff Coordinator, presented the staff report and explained that Mr. Payne's parents would occupy the proposed accessory dwelling unit which would be located in the basement portion of the dwelling and will have its own entrance. Ms. James noted that the adequate parking does exist on the property and that staff believes that the application meets all of the applicable Zoning Ordinance requirement and recommends approval subject to the development conditions contain in the staff report.

The applicant's representative, Carol A. Whitcomb, Community Systems and Services, 8300 Greensboro Drive, McLean, Virginia, addressed the Board and stated that Mr. Payne's parents would occupy the unit, there is adequate parking on the site, and that the staff report covered all the relevant issues.

In response to Mr. Hammack's question regarding the building permit, Ms. Whitcomb explained that the building permit obtained by the applicant was for the entrance to the basement level and for a patio, not for the accessory dwelling unit.

There being no speakers in support or opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 90-S-040 subject to the subject to the development conditions contained in the staff report dated August 2, 1990.

Mrs. Harris made a motion to waive the eight day waiting period requirement. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Chairman Smith 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-040 by GARY T. AND DIANE M. PAYNE, under Section 3-C03 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 4413 Pleasant Valley Road, Tax Map Reference 33-4((2))211, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 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, WSPOD.
3. The area of the lot is 12,175 square feet of land.

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

Page 219, August 7, 1990, (Tape 1), (GARY T. AND DIANE M. PAYNE, SP 90-S-040, continued from Page 218)

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 by Paciulli, Simmons & Associates, dated May 28, 1980. 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 for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 35% of the total gross floor area of the principal dwelling unit.

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.

10. The Clerk to the Board of Zoning Appeals shall cause the BZA's action to be recorded among the appropriate land records of Fairfax County.

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

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 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 which carried by a vote of 6 - 0 with Chairman Smith absent from the meeting.

Mrs. Harris made a motion to waive the eight day waiting period requirement. Mr. Ribble seconded the motion which 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 August 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 219, August 7, 1990, (Tape 1), After Agenda Item:

Approval of Minutes for April 3, 1990

Mr. Kelley made a motion to approve the Minutes as submitted. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 220, August 7, 1990, (Tape 1), AFTER AGENDA ITEM:

Out-of-Turn Hearing
The Little Acorn Patch, Ltd.
SPA 82-S-075-2

Mrs. Thonen stated that SPA 82-S-075-2 was scheduled for October 5, 1990 and expressed her opinion that it would be difficult to reschedule the request for an earlier date due to the Board's case load.

In response to Mr. Kelley's question regarding the letter requesting the out-of-turn hearing, Jane Kelsey, Chief, Special Permits and Variance Branch, stated that although the letter was dated July 12, 1990, the application had not been accepted until July 25, 1990.

Mr. Kelley made a motion to deny the out-of-turn hearing request for SPA 82-S-075-2.

Mrs. Thonen suggested that an additional hearing be scheduled to accommodate the case load.

~~Ms. Kelsey addressed the Board and asked that the Board refer to the fall hearing date list~~ and stated that an additional meeting had been scheduled for November.

Mrs. Harris seconded the motion.

After brief discussion, the Board requested a date for an additional meeting in September and Ms. Kelsey suggested a date of September 27, 1990.

Mrs. Thonen made a substitute motion to schedule an out-of-turn hearing for SPA 82-S-075-2 on September 27, 1990 at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

Ms. Kelsey asked the Board to reschedule the variance cases on the October 2, 1990 night meeting to September 27, 1990.

After a brief discussion, it was the consensus of the Board that the variances and Ardak Corporation Appeal be rescheduled to the September 27, 1990 meeting.

Mr. Kelley made a motion to move VC 90-D-076, VC 90-V-080, and A 90-P-013 from the October 2, 1990 agenda to the September 27, 1990 agenda. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting

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Page 220, August 7, 1990, (Tape 1), Scheduled case of:

10:15 A.M. JAMES B. AND GLADYS M. PAGE, VC 90-M-060, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition (recreation room/garage) 16.0 feet from front lot line (35 ft. min. front yard required by Sect. 3-207), on property located at 6524 Lakeview Drive, on approximately 19,074 square feet of land, zoned R-2, Mason District, Tax Map 60-4((13))390.

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.

Mike Jaskiewicz, Staff Coordinator, presented the staff report

The applicant, James B. Page, 6524 Lakeview Drive, Falls Church, Virginia, presented to the Board a letter of approval from the Architectural Review Committee and submitted the green receipt cards to the Clerk. He explained that due to the floodplain boundary, sanitary sewer easement, and the topographical problems, the addition could not be construction without a variance. Mr. Page stated that the tax map reflected a road to the front of the property but no road exists and there is a footpath approximately 48 feet from the proposed addition. He expressed his belief that the addition would add aesthetic value to the community and in no way be detrimental to the neighborhood.

In response to Mr. Hammack's question, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that all adjacent property owners were notified of the public hearing.

Mr. Page stated that he had not notified the Board of Supervisors.

Vice Chairman DiGiulian explained that because the tax map does not reflect the right of way dedication, the applicant would not be aware of the obligation to inform the County.

Ms. Kelsey confirmed that the tax map did not reflect the dedication but stated that she did not know if the land had been vacated by the Board of Supervisors. Ms. Kelsey explained that it was a paper street and that a request would have to be made to vacate the property in order to remove it from the tax map.

In response to questions from the Board, Mr. Page stated that the footpath connected Bay Tree Court with Lakeview Drive. He said that the house on Lot 42 was approximately 40 feet, and the house on Lot 380 was approximately 50 feet from the property line. Mr. Page explained that there was no other location on the property where he could construct a deck without a variance. He said that due to the floodplain, the house did not have a basement.

There being no speaker in support or opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 90-M-060 for the reasons reflected in the Resolution subject to the staff report dated July 31, 1990. Mr. Ribble seconded the motion.

Mrs. Thonen expressed her belief that the applicant should reduce the size of the garage.

Vice Chairman DiGiulian stated that he supported the motion because of the fact that the addition would not have a detrimental impact on the neighborhood.

Mr. Hammack stated that he could not support the motion because of the street dedication, the amount of additional asphalt that will be installed, and specific renovation plans for the existing garage were not in the development conditions.

Ms. Kelsey stated that staff would contact the Office of Transportation to inquire if they had plans for future construction on the dedicated land if the Board so desired.

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

Mr. Kelley made a motion to waive the eight day waiting period requirement. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Chairman Smith 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-M-060 by JAMES B. AND GLADYS M. PAGE, under Section 18-401 of the Zoning Ordinance to allow construction of additions (recreation room/garage) 16.0 feet from front lot line, on property located at 6524 Lakeview Drive, Tax Map Reference 60-4((13))390, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 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 19,074 of land.
4. The applicant has satisfied the nine standards required for a variance.
5. The lot has exceptional topographical conditions.
6. There is an extraordinary condition on the property with the road alignment being changed.
7. The adjoining property could probably be vacated by the County and the applicant could then build by right.
8. There is a floodplain in the backyard.

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

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

Page 222, August 7, 1990, (Tape 1), (JAMES B. AND GLADYS M. PAGE, VC 90-M-060, continued from Page 221)

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 building/garage 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 which carried by a vote of 4-2 with Mrs. Thonen and Mr. Hammack voting nay. Chairman Smith was absent from the meeting

Mr. Kelley made a motion to waive the eight day waiting period requirement. Mr. Ribble seconded the motion which 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 August 7, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 222, August 7, 1990, (Tape 1 and 2), After Agenda Item:

Out of Turn Hearing
Ronald and Grace Aucutt
SP 90-P-054

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and explained that staff reviewed the request for the out-of-turn hearing and found that although the application was submitted on June 8, 1990, the applicant had requested a waiver of the submission requirements which caused a one month delay in the acceptance of the application. She stated that staff had tentatively scheduled the public hearing for September 25, 1990 subject to the approval of the Board.

After a brief discussion, the Board decided to scheduled the case for September 27, 1990 at 9:15 a.m.

Mrs. Thonen made a motion to schedule an out-of-turn hearing for SP 90-P-054 on September 27, 1990 at 9:15 a.m. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 223, August 7, 1990, (Tape 2), AFTER AGENDA ITEM:

Reconsideration for Crossroads Baptist Church
SP 90-M-036

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that although the applicants had indicated their intention to address the Board, they were not present.

Vice Chairman DiGiulian stated that the request would be passed over until the end of the scheduled agenda.

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Page 223, August 7, 1990, (Tape 2), After Agenda Item:

Request for Additional Time
Church of the Nativity, SPA 81-C-070-1
6400 Nativity Lane
Tax Map Reference 88-1((1))10

Mrs. Thonen made a motion to grant the request. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting. The new expiration date is December 7, 1991.

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Page 223, August 7, 1990, (Tape 2), After Agenda Item:

Mrs. Thonen made a motion to approve the Resolutions from July 31, and August 2, 1990 as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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The Board recessed at 10:55 a.m. and reconvened at 11:05 a.m.

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Page 223, August 7, 1990, (Tape 2), Scheduled case of:

11:00 A.M. CHRISTIAN FELLOWSHIP CHURCH, SPA 82-D-066-3, application under Sect. 3-103 of the Zoning Ordinance to amend SP 82-D-066 for church and related facilities to allow continued use of three (3) temporary trailers until December 21, 1993, on property located at 10237 Leesburg Pike, on approximately 7.5472 acres of land, zoned R-1, Dranesville District, Tax Map 18-2((7))A, B, C.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Houston 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 believed that the current level of site development exceeds the low density recommendation of the Comprehensive Plan and that the trailers are not residential in appearance. He stated that staff has recommended additional screening around the foundation of the trailers, a hedge be placed along the parking lot, and that several shrubs and trees be planted along Route 7. Mr. Riegle noted that staff had submitted revised development conditions which reflects a correction in condition 14.

In response to questions from the Board, Mr. Riegle stated that the landscaping required by the previous special permit had been achieved. He stated that condition 14 was added because the applicant had previously used buses for storage.

David S. Houston, an attorney with McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, addressed the Board and stated that the applicant has been trying to relocate the church. He said that the applicant would agree to the additional plantings except for the tree requirement in condition 8 and requested that hedges be planted in place of trees. Mr. Houston stated that the applicant had worked and is presently working closely with the community to become a better neighbor. He explained that the church uses the trailer for Sunday school only and asked for approval of the time extension.

In response to Mrs. Harris's question, Mr. Houston stated that the request is for a five year extension because of the landscaping requirement. He explained that the church had been under the impression that the two year term would begin upon receipt of the Occupancy Permit and not when the special permit was granted, therefore they lost the use of the trailer for the one year it took to obtain the permit.

Mr. Hammack referred to the minutes of the 1985 BZA meeting and stated that the applicant's

representative indicated that the church did not want the trailers to be limited to Sunday school use.

Mr. Houston noted that the trailers were not approved for use until the 1988 BZA meeting. He explained that the church has no plans to build permanent structures on the existing site and is actively searching for a new location.

There being no speakers in support or in opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 82-D-066-3 subject to the revised development conditions dated August 7, 1990 with the changes as reflected in the Resolution. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

Mrs. Harris made a motion to waive the eight day waiting period requirement. Mr. Hammack and Mr. Ribble seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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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-066-3 by CHRISTIAN FELLOWSHIP CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 82-D-066, on property located at 10237 Leesburg Pike, Tax Map Reference 18-2((7))A, B, C; Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 7, 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 7.5472 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 (prepared by Richard O. Spencer dated August 1984, revised through May 7, 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 use shall be subject to the provisions set forth in Article 17, Site Plans.

5. The use of the three (3) trailers for is approved for Sunday School classrooms only. This approval shall expire without notice on December 21, 1992.

6. All existing foundation plantings surrounding the trailers shall be retained. Existing plantings shall be supplemented with four additional shrubs to be placed along the northern and southern sides of each trailer and two (2) additional shrubs to be placed along the eastern and western sides of each trailer. These plantings shall be comprised of a mixture of evergreen and flowering varieties subject to approval by the County Arborist and all plantings shall have a planted height of at least 36 inches. The County Arborist shall review all plantings to ensure compatibility and viability with existing vegetation.

7. Transitional Screening 1 and Barrier F shall be retained as previously required under S-82-D-066 along the northwestern, southern and eastern boundaries of the parking lot on Lot C. Transitional Screening of six (6) foot trees and additional low evergreens as also required under S-82-D-066 shall be retained along these boundary lines as well as the eastern boundary line of the parking lot on Lots A and B. A barrier F as required by S-82-D-066 shall be retained along the eastern boundary of the site in the area adjacent to Lot H. The existing six (6) foot high wooden board-on-board fence shall be extended along the western lot line to a point where it meets the existing church building. The barrier requirement shall be waived in all other areas of the site.

8. Along the northern boundary of the site Barrier C (a planted hedge) shall be provided parallel to the existing parking areas. In the area between the planted hedge and the site's frontage to Route 7 ornamental trees or flowering shrubs shall be provided. The species and density of plantings shall be reviewed and approved by the County Arborist and shall be at a minimum, one tree or shrub for every 20 linear feet of frontage to Route 7.

9. The maximum daily enrollment for the child care center shall not exceed 99 students.

10. The hours of operation for the child care center shall be limited to 6:30 a.m. to 6:30 p.m., five (5) days a week, Monday through Friday.

11. The maximum number of seats in the main area of worship shall be 725 with a corresponding minimum of 182 parking spaces and a maximum of 388 as shown on the plat. All parking shall be on site.

12. Interior and peripheral parking lot landscaping as required by previous approvals shall be retained in accordance with Article 13 of the Zoning Ordinance.

13. Parking lot lights for the lot on Lot C shall be no higher than eight (8) feet and shall be directed on site.

14. No buses shall be used for storage on the site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be 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 which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

Mrs. Harris made a motion to waive the eight day waiting period requirement. Mr. Ribble seconded the motion which 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 August 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 225, August 7, 1990, (Tape 2), Scheduled case of:

11:15 A.M. THE MOST REVEREND JOHN R. KEATING/ST. ANDREW THE APOSTLE CATHOLIC CHURCH, SP 90-S-020, application under Sect. 3-103 of the Zoning Ordinance to allow a church and related facilities, on property located approximately 600 feet north of the intersection of Compton Road and Union Mill Road on approximately 22.68 acres of land, zoned R-1 and WS, Springfield District, Tax Map 74-2((1))7A (formerly 74-2((1))pt. 7 and pt. 10). (CONCURRENT WITH SE 90-S-012) (DEFERRED FROM 7/3/90 FOR DECISION ONLY)

Mr. Kelley made a motion to grant SP 90-S-020 with the development conditions contained in the staff report dated July 25, 1990 with the following change in development condition 15: "Right and left hand turn lane shall be provided into the side entrance on Compton Road and a right turn lane shall be provided on the site from the entrance on Union Mill Road. On Compton Mill Road an additional 2 feet shall be provided to create standard road way. This road and turn lane shall be constructed to standards as required by VDOT."

Mrs. Thonen seconded the motion. She asked for a discussion to defer the case for information from the Board of Supervisors on their decision in regard to this matter.

Mr. Riegle stated that the Board of Supervisors had made a motion to approve the special exception portion of the application.

In response to Mrs. Thonen's question whether the Board of Supervisors had expressed any concerns with respect to the application, Mr. Riegle stated that the Board of Supervisors had approved the applicants' request without changes.

In response to questions from the Board, Mr. Riegle confirmed that the applicant had received the letter of opposition from the Hunter Development Company. He noted that staff did not concur with the request and would prefer a barrier consisting of a hedge rather than a fence or wall. He stated that the Board of Supervisors did not address the size of the proposed church but had strictly addressed the special exception issue. Mr. Riegle stated that staff's concerns were multiple and staff had suggested appropriate mitigation measures. He stated that staff also had concerns with the size of the building, the height of the spire, the amount of paving, and staff believes that the application does not conform to the Comprehensive Plan.

Mrs. Harris expressed her belief that the application is ten times the level that the Comprehensive Plan deemed to be acceptable in the area, is not in harmony with the zoning regulations, would adversely affect the neighboring properties, would cause hazard and conflict with neighborhood traffic, and stated that she could not support the motion.

Mr. Hammack asked if the applicant, in response to staff's concerns, had indicated their willingness to reduce the use and asked to what extent the pastoral counseling center would be used. Mr. Riegle stated that the applicant had not expressed a willingness to reduce the use, and said that the applicant and staff had not had extensive discussions on the pastoral counseling center but that staff would provide additional information at the Board request.

Vice Chairman DiGiulian called for a vote, the motion failed for a lack of four affirmative votes with Mr. Hammack, Mr. Kelley, and Mr. Ribble voting aye; Vice Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen voting nay. Chairman Smith was absent from the meeting.

In response to Mr. Kelley's question, the agent for the applicant, Lynne Strobel, an attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, stated that the applicant would be willing to reduce the request to 1,200 seats with a corresponding decrease in parking.

Mrs. Thonen made a motion to reconsider the application.

Mr. Kelley stated that he still had another motion.

After a brief discussion by the Board, Vice Chairman DiGiulian stated that a motion to reconsider would be needed before a new motion on the application could be made.

Mr. Kelley seconded Mrs. Thonen's motion to reconsider the application.

Mr. Kelley made a motion to grant SP 90-S-020 with the development conditions contained in the staff report dated July 25, 1990 with the following changes in development conditions 5 and 15:

> "5. The number of seats shall be 1,200 with the corresponding number of parking spaces to be based on the requirement of article 11 and the maximum reduced by 25 spaces to 305 spaces.
>
> 15. Right and left hand turn lane shall be provided into the side entrance on Compton Road and a right turn lane shall be provided on the site from the entrance on Union Mill Road. On Compton Mill Road an additional 2 feet shall be provided to create standard road way. This road and turn lane shall be constructed to standards as required by VDOT."

Mr. Ribble seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mrs. Thonen expressed her belief that the maximum numbers of seats should not exceed 1,000 and stated that she could not support the motion for 1,200 seats.

Mr. Kelley stated that to ask the applicant to take such a reduction was unreasonable and said that he would rather waive the 12 month limitation for refiling a new application on the same property.

Mr. Hammack expressed his concerns with the road system, the additional traffic that would be generated by the church, and the intensity of the use. He stated that he believed that if

the number of seats were to be reduced then the footprint of the building should also be reduced. Mr. Hammack said that he could not support the present application and expressed his belief that the applicant should address the total intensity of the development of the property with the objective of submitting an application with a lower intensity.

Vice Chairman DiGiulian called for a vote.

The motion failed for a lack of four affirmative votes with Vice Chairman DiGiulian, Mr. Kelley and Mr. Ribble voting aye; and, Mrs. Harris, Mrs. Thonen, and Mr. Hammack voting nay. Chairman Smith was absent from the meeting.

Mr. Kelley made a motion to waive the 12 month limitation for refiling a new application on the same property. Mr. Ribble seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 221, August 7, 1990, (Tape 2), After Agenda Item:

Reconsideration for Crossroads Baptist Church, SP 90-M-036
3537 Moncure Avenue
Tax Map Reference 61-4((1))112

The applicant's attorney, Arlene L. Pripeton, with the law firm of Arlene Lyles Pripeton, P.C., Fairfax Towne, Suite B, 10195 Main Street, Fairfax, Virginia, addressed the Board and stated the application had been denied on July 31, 1990 and asked for a reconsideration. She explained that in response to the Board's concerns, she had reviewed the tapes from the July 10, 1990 meeting, conferred with staff and the neighbors, and had resolved the issues of screening and storm detention.

Ms. Pripeton stated that at the July 31, 1990 hearing an additional concern was raised regarding the height of the church and that she had not been prepared to address this issue. She stated the applicant had worked with the architect and was prepared to lower the height of the building from 47 feet to 40 feet and to lower the spire an additional 8 feet. She asked that the Board reconsider the Special Permit so that the applicant did not have to file a new application.

In response to Mrs. Harris's question, Ms. Pripeton said that the neighbors had indicated that they would be satisfied if the roof were lowered by 5 feet.

Mrs. Thonen made a motion to grant a reconsideration hearing for SP 90-M-036 and to schedule the application for a time definite.

Mr. Hammack seconded the motion which carried by a vote of 5-1 with Mr. Ribble voting nay. Chairman Smith was absent from the meeting.

In response to Vice Chairman DiGiulian's request, Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a date of October 30, 1990 at 9:15. Hearing no objection, the Chair so ordered.

Greg Riegle, Staff Coordinator, asked that the applicant provide the new submissions to staff so that they may be evaluated.

Ms. Kelsey stated that the application would have to be readvertised, renotified, and reposted.

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As there was no other business to come before the Board, the meeting was adjourned at 11:52 a.m.

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

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

SUBMITTED: October 18, 1990

APPROVED: October 23, 1990

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The special meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, August 23, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble. Chairman Daniel Smith was absent from the meeting.

Staff Members Present: James P. Zook, Director, Office of Comprehensive Planning; Jane Kelsey, Chief, Special Permit and Variance Branch; Betsy S. Hurtt, Clerk, Board of Zoning Appeals.

Vice Chairman DiGiulian called the meeting to order at 9:25 a.m. and Mrs. Thonen gave the invocation.

Mrs. Thonen made a motion that the Board of Zoning Appeals (BZA) recess to the Board Conference Room in order to conduct a Work Session with staff. Mrs. Harris seconded the motion which passed by a vote of 6-0 with Chairman Smith absent from the meeting. Mrs. Thonen noted for the record that anyone who wished to could attend the meeting.

Upon convening in the Board Conference Room, Mr. Zook asked the Board to outline the topics for discussion. The following agenda was established:

I Memorandum prepared by Jane Kelsey, Chief, Special Permit and Variance Branch, to other Branch Chiefs in the Office of Comprehensive Planning relative to variances
II Discussion of how Staff responds to questions from the BZA
III Discussion of the feasibility of the BZA having its own staff separate from the Office of Comprehensive Planning
IV Whether or not a County Attorney should be present at all BZA meetings
V BZA Staff Relationship
VI Quorum for BZA and the necessity of four (4) affirmative votes to grant either a special permit or variance

Memorandum Prepared By Jane Kelsey, Chief, Special Permit And Variance Branch, To Other Branch Chiefs In The Office Of Comprehensive Planning Relative To Variances

Discussion ensued about the memorandum prepared by Ms. Kelsey as Mr. Hammack believed that it showed bias on staff's part and was informing staff that citizens should be discouraged from applying for variances. He added that he believed that staff should advise people of the standards and make all information available to the citizens but that discouraging citizens from applying was not appropriate.

Mr. Zook defended staff's position by stating that the memorandum had been prepared as an invitation to other Branch Chiefs to a meeting to discuss variances and he did not believe that it had been Ms. Kelsey's intention to override the Board's authority. He asked Ms. Kelsey to give the Board the background on why she had believed that a meeting was necessary.

Ms. Kelsey stated that she receives many calls from citizens, particularly after their application has been denied, to express shock that it was denied. The citizens said that they had been led to believe from their discussions with County staff, other than BZA staff, that the applications before the BZA were almost always approved. The citizens do not distinguish between DEM and OCP staff, only that someone in the County has given them this information. Consequently, Ms. Kelsey believed a meeting of the Branch Chiefs to discuss variances would be beneficial.

In response to Mrs. Harris's question as to what had happened at the meeting. Ms. Kelsey stated that she handed out the standards for a variance, stressed the importance of advising citizens that these standards must be met, discussed these standards in a question and answer session, discussed the difference between special permit for errors and variances. She stated that it appeared to be a very worthwhile meeting with all parties participating. She assured the BZA that she had never discouraged citizens from applying for a variance, but when questioned as to what the BZA may do, she tells them that staff does not know.

The Board asked Mr. Zook whether or not he or Ms. Byron knew about the memo and the meeting. Mr. Zook stated that it was his understanding that Ms. Byron had reviewed the memo and was aware of the scheduled meeting, but that he had not known about it until recently. He stated that he believed that Ms. Byron and Ms. Kelsey had viewed the memo strictly as a "invitation to a meeting" memo and not a policy memo.

In response to Mr. Hammack's statement that Ms. Kelsey was biased against variances, Ms. Kelsey stated that it is true that she believes that variances should be very strictly construed. She added that belief stems from her experience in 1983 when she began this job and was directed to write a Zoning Ordinance amendment to bring it more in line with the State Code. That amendment had been reviewed and discussed with the Zoning Administrator and the County Attorney's Office. Subsequently, she attended two law classes given by UVA on land use law in which the professor, an Assistant County Attorney Rich Tremaine, had discussed Virginia land use cases and the most on point case was Hornsby vs. Packer wherein the Supreme Court had ruled that variances should be very strictly construed. In addition, she and several Board members attended the BZA Certified Conference last year where it was stressed again that variances should be very strictly construed.

Ms. Harris stated that she attended the BZA Certified Conference this year and all of the books and the speakers continued to hold that variances were not to be granted for convenience, that it should be strictly hardship with the land.

The Board then took issue with a sentence in the memo that stated that staff should never encourage citizens to seek that fees be waived by the Board of Supervisors. Mr. Zook stated that when citizens request fees be waived they are informed that only the Board of Supervisors can waive fees and that it must be for good cause shown. The staff does not want citizens to seek fee waivers but provides information when citizens ask.

The Board then discussed the amount of information that staff has been providing in the staff reports on special permits and variances. Mr. Hammack stated that he believed that if staff recommends denial of a special permit be able to react to alternative suggestions without benefit of a plan to review. Mr. Zook tried to explain that was not feasible as staff prepared a staff report based on the application that had been submitted and it would be arbitrary to say 1,000 seats is too much, but 800 seats would be acceptable without benefit of reviewing a plan.

Mr. Hammack then pointed out that he could not understand staff recommending denial when a special permit is before the Board for renewal if the request had previously been granted. Mr. Zook asked if this could be discussed at a later date and the Board agreed.

Mrs. Harris noted that she believed that the standards for a special permit under the mistake section is much more lenient than those for a variance. The other Board members agreed. Mr. Hammack stated that it would be difficult to make an applicant destroy something that had already been constructed.

Following further discussion regarding the memorandum prepared by Ms. Kelsey, Mr. Hammack made a motion to direct Ms. Kelsey to retract her memorandum and set forth objective advise on information that should be given to citizens. Mrs. Harris seconded the motion.

Mr. Zook suggested that perhaps Ms. Kelsey could prepare a memorandum setting forth the discussion that took place at the meeting scheduled by Ms. Kelsey on variances. Mr. Hammack objected to this as he had not been present at that meeting. He added that the memorandum was detrimental and damaging to the BZA.

Mr. Ribble suggested that rather than direct the Director to do this, that the Board request that another memorandum be prepared. Vice Chairman DiGiulian called for the vote and the motion passed by a vote of 6-0 with Chairman Smith absent from the meeting.

Discussion Of How Staff Responds To Questions From The BZA

Vice Chairman DiGiulian stated that he believed that staff should not be given a chance for rebuttal following all other testimony as he did not believe that it was fair to the applicant. He added that he believed that staff should have an opportunity to clarify any statements made by the applicant or citizens that were incorrect.

Mr. Zook suggested that perhaps the Board would agree to allow staff time for clarification just prior to the applicant's rebuttal time. The Board agreed to this. Mr. Zook assured the Board that he and Ms. Kelsey would caution staff about using the time to reiterate earlier comments or to bring out any new issues.

The Board then discussed that it is sometimes difficult to get adequate information from staff about a case that is before the Board that has been acted upon by the Planning Commission and the Board of Supervisors. Case in point, an application heard by the Board of Supervisors on August 6, 1990 and heard by the BZA on August 7, 1990. Mr. Zook suggested that perhaps a verbatim transcript could be obtained from the other board prior to the Board of Zoning Appeals hearing the case. Vice Chairman DiGiulian stated that he did not believe that was necessary but perhaps the time lapse between the BZA hearing and the other board hearing could be expanded.

Mr. Hammack stated that he believed that staff should give more specific guidance to church applicants as to how much intensity is too much.

Whether Or Not A County Attorney Should Be Present At All BZA Meetings

It was the consensus of the Board that the presence of a County Attorney was not necessary at the BZA meetings as it was not cost/time effective.

Quorum For BZA And The Necessity Of Four (4) Affirmative Votes To Grant Either A Special Permit Or Variance

The Board discussed the possibility of modifying the State Code to either include alternates or increase the size of the Board and the equity of requiring four affirmative

votes instead of a simply majority to grant either a special permit or a variance. The Board decided to table further discussion until a later date.

Discussion Of The Feasibility Of The BZA Having Its Own Staff Separate From The Office Of Comprehensive Planning

Mrs. Thonen stated that perhaps it would be beneficial to the Board if they had a staff separated similar to the structure of the Planning Commission. Mr. Zook stated that the Planning Commission staff consists of the Executive Director, Deputy Director, Administrative Assistant, Clerk, Deputy Clerk, and Associates Clerks. The planning staff that writes the staff reports are in the Office of Comprehensive Planning. After discussion, the members concluded that a separate staff was not necessary.

BZA Staff Relationship

Ms. Kelsey stated that speaking on behalf of staff she did not believe there was an attitude problem toward any members of the Board and asked the Board to inform her anytime they were not happy with the way her staff was conducting themselves. She stated that staff does believe its responsibility is to defend staff's position, but means no disrespect to the Board personally. Ms. Kelsey indicated that at times it does appear the Board expects the staff coordinator to know the answers to all questions whether it is transportation or environmental or very technical engineering issues and it is not possible. After the meeting, staff does discuss the type of questions being posed and whether or not the staff coordinator should have known the answer.

The Board members agreed that sometimes that there is sometimes tension in the Board room. Vice Chairman DiGiulian stated that perhaps if staff tried to respond to questions more directly this tension could be eliminated. During staff's closing comments, he added that staff should not reiterate its position,nor expand beyond the question, nor bring out new issues.

The Board then briefly discussed the development conditions that staff places on an applicant with respect to trails and transportation. Ms. Kelsey explained that staff must recommend a trail or road dedication if it is recommended on the Comprehensive Plan.

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As there was no other business to come before the Board, the meeting was adjourned at 11:52 a.m.

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

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

SUBMITTED: October 2, 1990

APPROVED: October 9, 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 September 6, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. Chairman Smith and Mrs. Harris were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:10 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian stated that the Board would start with the After Agenda Items.

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Page 233, September 6, 1990, (Tape 1), After Agenda Item:

Approval of Minutes for June 12, 21, 26; July 3; and August 2, 1990.

Mr. Hammack made a motion to approve all of the minutes as submitted by the Clerks. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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Page 233, September 6, 1990, (Tape 1), After Agenda Item:

Request for Scheduling of Appeal of
Joseph Vincent Bruno & Ronald Bruno

Mr. Hammack made a motion to schedule the appeal for October 18, 1990 at 11:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 5-0.
Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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Page 233, September 6, 1990, (Tape 1), After Agenda Item:

Request for Scheduling of Appeal of
Burroughs Agency Services, Inc.

The Board agreed to pass over this Item until later in the meeting, so they could have an opportunity to read the documentation.

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Page 233, September 6, 1990, (Tape 1), After Agenda Item:

Request for Scheduling of Appeal of
United Land Corporation

Mr. Hammack made a motion to schedule the appeal for October 30, 1990 at 11:00 a.m. Mrs. Thonen seconded the motion, which carried by a vote of 5-0.
Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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Page 233, September 6, 1990, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
Woodlawn United Methodist Church, VC 90-V-091 and SPA 78-V-291-1

Mrs. Thonen made a motion to schedule an Out-of-Turn Hearing for October 2, 1990 at 8:30 p.m. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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Page 233, September 6, 1990, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
St. Andrew the Apostle Church, SP 90-S-065

Mrs. Thonen made a motion to schedule an Out-of-Turn Hearing for October 30, 1990 at 9:05 a.m. after Jane Kelsey, Chief, Special Permit and Variance Branch advised the Board that St. Paul Chung Catholic Church, scheduled for 9:00 a.m. on October 30, had requested a withdrawal. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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Page 234, September 6, 1990, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
Abby Winland-Hillman, SP 90-V-058

Mrs. Thonen asked if this was a request for a home child care facility. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that the applicant had, in fact, requested a special permit for a home child care facility. Ms. Kelsey stated that the applicant had two structures on the property in violation of the Zoning Ordinance: One was a playhouse, which existed too close to the side lot line; the other was a shed which existed too close to the side and rear lot lines. Ms. Kelsey stated that the applicant needed two variances, as well as the special permit. She pointed out to the Board that the application was the first of its type to come before the Board, in that it was a request for a home child care facility, rather than just a child care facility, and that the Ordinance had been amended to cover this type of use. Ms. Kelsey stated that the case would require staffing. After some discussion between Ms. Kelsey and the Board, it was determined that October 23, 1990 would be an appropriate date to schedule the case.

Mrs. Thonen made a motion to schedule SP 90-V-058 for October 23, 1990. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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Page 234, September 6, 1990, (Tape 1), After Agenda Item:

Request for Withdrawal
St. Paul Chung Catholic Church, SP 90-V-009

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the Board that they had requested notice of an intended withdrawal, so that they could declare an intent to consider a request to withdraw, if they so chose, and the applicant could be notified.

Mrs. Thonen made a motion to declare an intent to withdraw SP 90-V-009. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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Page 234, September 6, 1990, (Tape 1), Scheduled case of:

9:00 A.M. UPPER OCCOQUAN SEWAGE AUTHORITY, VC 90-S-062, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a building 78 feet in height in a R-C District (60 ft. max. hgt. permitted under Sect. 3-C07), on property located at 14631 Compton Road, on approximately 475.7101 acres of land, zoned R-C and WS, Springfield District, Tax Map 64-4((1))5, 6, 15, 16, 17, 18, 19, 20, 21, 22; 65-3((1))74, 75, 77, 78; 73-2((1))2, pt. 3; 74-1((1))1.

Lorrie Kirst, Staff Coordinator, presented the staff report. Ms. Kirst stated that, on July 19, 1990, the Planning Commission had recommeded approval of SE 90-S-007 for proposed expansion of the facility; and, on July 23, 1990, the Board of Supervisors approved SE 90-S-007. Ms. Kirst stated that a copy of the approved development conditions for the special exception was contained in Appendix 6 of the staff report; therefore, Ms. Kirst stated, the only thing before the Board for consideration today was the requested height increase.

Vice Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Odin replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for Mr. Odin to present the statement of justificatiion.

Dexter Odin, 9302 Lee Highway, Fairfax, Virginia, represented the applicant and presented the statement of justification. Mr. Odin presented diagrams to the Board for their consideration. He stated that the particular building which the applicant was requesting to be allowed to build to an excessive height stored one ton of lime for each one million gallons of sewage which the applicant treats. Mr. Odin stated that the applicant will be treating fifty-four million gallons of sewage per day when the project is completed. He said that means they will need to store fifty-four tons of lime in silos. Mr. Odin further emphasized that lime is caustic and corrosive, creating an engineering need to design the facility as it has been designed, in order not to compromise the safety of the people involved. Mr. Odin explained that the alternative to excessive height would be to sink the facility into the ground, which would impede the evacuation of people, dust, gases and heat, and cast a hardship upon the people who would be working at the facility twenty-four hours a day for the next forty to fifty years. Mr. Odin continued to emphasize the danger involved in this particular industry. He stressed the distance of the facility from the property lines as a factor in minimizing the danger to neighbors.

There were no speakers in support of the application.

When Vice Chairman DiGiulian asked if anyone would like to speak in opposition to the application, Maxine Harmon, 14901 Compton Road, Centreville, Virginia, approached the podium. Ms. Harmon stated that the traffic generated by the applicant's facility was terrible and that she lacked sufficient details about the facility, such as where the building was going to be located. She stated that she assumed the facility was going to be located near her property. Vice Chairman DiGiulian asked Ms. Kirst to show Ms. Harmon on the plat where the building would be located. Ms. Kirst stated that the facility would be 2,000 feet or more from Ms. Harmon's residence, or approximately one-half mile. Ms. Harmon stated that the odor from the facility that morning was awful and asked if it would be the same in the future. Mr. Odin stated that the applicant would be treating the waste and he believed the odors would be eliminated because of the improvements which were planned. Ms. Harmon asked if the odor was hazardous to her health. Mr. Odin stated that the Environmental Protection Agency has never said that there was anything in the odors that was hazardous.

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

Mr. Hammack made a motion to grant VC 90-S-062 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 90-S-062 by UPPER OCCOQUAN SEWAGE AUTHORITY, under Section 18-401 of the Zoning Ordinance to allow construction of a building 78.0 feet in height in an R-C District, on property located at 14631 Compton Road, Tax Map Reference 64-4((1))5, 6, 15, 16, 17, 18, 19, 20, 21, 22; 65-3((1))74, 75, 77, 78; 73-2((1))2, pt. 3; 74-1((1))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 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 475.7101 acres of land.
4. The situation is unusual in that a sewage treatment plant is a public utility and a necessity.
5. The intended use of the building is extraordinary in that it will store chemicals, which requires the building to be higher than usual as a safety factor.
6. The additional height of the building will not unfavorably impact upon the surrounding community in any way.

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

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

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

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

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

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

1. ~~This variance is approved for the location and the specific solids handing building~~ (H2) shown on the plat prepared by CH2M Hill and dated May 1990 with revisions through July 26, 1990 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, thirty-six (36) 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 which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 236, September 6, 1990, (Tape 1), Scheduled case of:

9:15 A.M. CHRIST THE KING LUTHERAN CHURCH, SPA 83-D-075-2, application under Sects. 3-E03 and 8-915 of the Zoning Ordinance to amend SP 83-D-075 for a church and related facilities to add a child care center, add additional parking, and waiver of dustless surface requirement, on property located at 10550 Georgetown Pike, on approximately 5.0 acres of land, zoned R-E, Dranesville District, Tax Map 12-2((1))1B.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Ramsey replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and stated that staff recommended approval of the application, subject to the Proposed Development Conditions contained in Appendix 1, which incorporate or supercede all previously imposed conditions, as indicated on page 1 of Apendix 1 of the staff report.

The applicant's agent, Dawn Ramsey, 504 Beacon Drive, Sterling Virginia, stated that the applicant proposed to initiate a "mothers' morning out" program that would operate Monday through Friday, from 9:30 a.m. through 1:30 p.m., to provide mothers in the community with a place to bring their young children for one to two days week, so that they could attend functions for their older children or go to the doctor's office, etc.

Mr. Hammack asked Ms. Ramsey if she had read the Proposed Development Conditions and she stated that she had.

Richard Peters, Co-Chairman of the Planning and Zoning Committee of the Great Falls Citizens Association, came forward to state that the Association had considered the application and recommended approval by the Board of Zoning Appeals. Mr. Peters stated that, in Great Falls, the need for child care space exceeds the supply. Mr. Peters said the Association objected to Condition 10 in the staff report, which would require a 45 foot right-of-way dedication in lieu of the church's existing 30 foot dedication, plus an ancillary 15 foot access easement.

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

Mr. Ribble made a motion to grant SPA 83-D-075-2, subject to the Proposed Development Conditions contained in the staff report, except for the deletion of Condition 10.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 83-D-075-2 by CHRIST THE KING LUTHERAN CHURCH, under Sections 3-E03 and 8-915 of the Zoning Ordinance to amend SP 83-D-075 for a church and related facilities to add a child care center, add additional parking, and waiver of dustless surface requirement, on property located at 10550 Georgetown Pike, Tax Map Reference 12-2((1))1B, 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 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-E.
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 8-303, 8-305, 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. This approval is for the locations and structures 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 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.

   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.

6. Transitional screening shall be modified as follows:

   - The existing vegetation along the western lot line shall be used to satisfy the planting requirement within the twenty-five (25) foot strip.

   - Along the eastern lot line plantings are provided between the parking lot and the eastern lot line as shown on the Landscape Plan. The Pfitzer Juniper plantings, as opposed to the three (3) Austrian Pines shown on the Landscape

Plan as revised dated June 1, 1990 will be extended along the eastern edge of the proposed gravel-covered parking area to a point corresponding with the northernmost extent of the gravel surface. In addition, a cluster, five or six in a group, of deciduous and evergreen trees, such as willow oak and white or Austrian Pine, shall be planted along the eastern portion of the lot between the parking lot and northeastern corner of the building.

- o Screening along the front of the property shall consist of the plantings shown on the Landscape Plan. However, upright yews, mugho pine or dwarf Alberta spruce would be preferable instead of American arborvitae.

7. Landscape plantings as indicated on the Planting Plan dated October 8, 1987 shall be installed in order to achieve a natural landscaped appearance to support Georgetown Pike's designation as a Scenic By-Way and EQC.

8. The barrier requirement shall be waived.

9. The right-turn deceleration lane shall be retained.

10. The applicant shall provide a ten (10) foot trail easement along the frontage of the site to connect with trail easements developed on the properties adjacent to the site in the event that the adjoining properties and a trail along the north side of Georgetown Pike are developed in the future.

11. Interior parking lot landscaping shall be provided in the proposed parking lot in accordance with the provisions of Section 13-201 of the Zoning Ordinance.

12. Any attached sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.

13. 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.

14. The maximum seating capacity for the church sanctuary shall be limited to 300 seats, with a corresponding minimum number of 75 parking spaces located on site.

15. The maximum total daily enrollment for the child care center shall be limited to 30 children, aged 2 to 5 years, with a corresponding minimum number of 6 parking spaces located on site. The total number of parking spaces on-site for both uses shall not exceed 100.

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 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 which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1990. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. ROBERT D. & CAROLINE M. EYERMAN, VC 90-L-063, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition (sunroom on existing deck) 19.5 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 7115 Vantage Drive, on approximately 12,925 square feet of land, zoned R-3 (developed cluster), Lee District, Tax Map 92-3((2))6099.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Eyerman 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.

The applicant, Robert D. Eyerman, 7115 Vantage Drive, Alexandria, Virginia, presented the statement of justification. Mr. Eyerman stated that he purchased the dwelling approximately three years ago, and that the deck existed at that time.

Mr. DiGiulian asked Mr. Eyerman if he had a copy of the survey that he received when he purchased the dwelling. Mr. Eyerman stated that he did not have copy of a survey.

In response to Mr. Ribble, Mr. Eyerman reiterated that the deck was there when he purchased the property and that the deck was approximately seven years old.

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

Mr. Kelley made a motion to grant VC 90-L-063, subject to the Proposed Development Conditions contained in the staff report, because the exceptional shape of the lot precludes constructing the addition in any other location on the property.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-063 by ROBERT D. & CAROLINE M. EYERMAN, under Section 18-401 of the Zoning Ordinance to allow construction of addition (sunroom on existing deck) 19.5 feet from rear lot line, on property located at 7115 Vantage Drive, Tax Map Reference 92-3((2))6099, 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 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-3 (developed cluster).
3. The area of the lot is 12,925 square feet of land.
4. The exceptional shape of the lot precludes constructing the addition in any other location 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.

Page 240, September 6, 1990, (Tape 1), (ROBERT D. & CAROLINE M. EYERMAN, VC 90-L-063, continued from Page 239)

6. That:

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

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

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

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

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 240, September 6, 1990, (Tape 1), Scheduled case of:

9:45 A.M. JAMES S. & VIOLETA A. PEITH, VC 90-S-064, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition (sunroom) 19.3 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 6323 S. Springs Circle, on approximately 10,170 square feet of land, zoned R-3 (developed cluster) and WS, Springfield District, Tax Map 65-4((4))379.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Peith 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.

The applicant, James S. Peith, 6323 S. Springs Circle, Clifton, Virginia, presented the statement of justification. He stated that the sunroom was for his private use and that he had already received approval from the Homeowners Association.

Mr. Ribble asked Mr. Peith if there was anyplace else on the lot where he could put the sunroom and Mr. Peith said that there was not.

Mr. Hammack told staff that he noticed the dwelling was only 12 feet from the side lot line. Ms. Bettard stated it was developed under the cluster provisions of the Zoning Ordinance.

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

Mr. Hammack made a motion to grant VC 90-S-064, subject to the Proposed Development Conditions contained in the staff report, because the design of the dwelling is such that exit is from the second floor, thereby precluding the sunroom's construction in any other place on the lot.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-064 by JAMES S. & VIOLETA PEITH, under Section 18-401 of the Zoning Ordinance to allow construction of addition (sunroom) 19.3 feet from rear lot line, on property located at 6323 S. Springs Circle, Tax Map Reference 65-4((4))379, 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 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-3 (developed cluster) and WS.
3. The area of the lot is 10,170 square feet of land.
4. The design of the dwelling is such that exit is from the second floor, thereby precluding the sunroom's construction in any other place on the lot.

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

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

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

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

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

1. This variance is approved for the location of the specific 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.

Page 242, September 6, 1990, (Tape 1), (JAMES S. AND VIOLETA PEITH, VC 90-S-054, continued from Page 241)

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

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 242, September 6, 1990, (Tape 1), Scheduled case of:

10:00 A.M. ROBERT C. JR. & MARY LOUISE SCHAMGERGER DOWNES, VC 90-S-065, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition (sunroom) 6.0 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 6314 Greely Boulevard, on approximately 13,274 square feet of land, zoned R-3, Springfield District, Tax Map 79-4((4))583.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Downes replied that it was. Vice Chairman DiGiulian 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.

The applicant, Mary Louise Schamgerger Downes, 6314 Greely Boulevard, Springfield, Virginnia, presented the statement of justification. Mrs. Downes stated that, if they moved the sunroom over, they would not be able to use the patio door that exits the house.

Mr. Hammack asked Mrs. Downes how far away her house was from Lot 584. Mrs. Downes stated that the corner of the house on Lot 584 was 12 feet from the fence, just the same as her house was 12 feet from the fence at one point.

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

Mr. Ribble made a motion to grant VC 90-S-065, subject to the Proposed Development Conditions contained in the staff report, because the position of the dwelling on the lot is unusual, and only one corner of the addition necessitates a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-065 by ROBERT C. JR. & MARY LOUISE SCHAMGERGER DOWNES, under Section 18-401 of the Zoning Ordinance to allow construction of addition (sunroom) 6.0 feet from side lot line, on property located at 6314 Greely Boulevard, Tax Map Reference 79-4((4))583, 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 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-3.
3. The area of the lot is 13,274 square feet of land.
4. The position of the dwelling on the lot is unusual, and only one corner of the addition necessitates 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. Kelley seconded the motion which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 243, September 6, 1990, (Tape 1), After Agenda Item:

Request for Scheduling of Appeal
Burroughs Agency Services, Inc.

This item had been passed over earlier in the meeting. Mr. Ribble now made a motion to pass this item over until next week. Mr. Hammack noted that Keith C. Martin, Esquire, applicant's agent, was present. Mr. Hammack read a portion of a letter which Mr. Martin had written, stating in part that "...building application was returned...." Mr. Hammack asked if there was any documentation to show that it was returned. Mr. Martin answered Mr. Hammack by stating that the appeal would be withdrawn. Mr. Martin stated that information provided to him by the applicant stated that the basis of the appeal was not correct as described to Mr. Martin by the applicant. Mr. Hammack seconded the motion to pass this item over until September 11, 1990, which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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The Board took a ten-minute recess at this time.

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10:15 A.M. DONALD L. AND SANDRA W. HOUCK, SP 90-S-041, application under Sect. 8-901 of the Zoning Ordinance to allow reduction in minimum yard requirements based on error in building location to allow dwelling to remain 10.0 feet from side lot line (12 ft. min. side yard required by Sect. 3-C03), on property located at 12103 Fairfax Hunt Road, on approximately 26,680 square feet of land, zoned R-C and WS, Springfield District, Tax Map 67-3((12))39.

Vice Chairman DiGiulian called the applicants' agent 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.

Jane Kelsey, Chief, Special Permit and Variance Branch, took this opportunity to advise the Board that the cases she was presenting today were prepared by Denise James, who was attending the Board of Zoning Appeals Certified Conference. Martha Harris was also attending the same conference.

Ms. Kelsey presented the staff report.

Lawrence A. McDermott, of the firm of Dewberry & Davis, 8401 Arlington Boulevard, Fairfax, Virginia, stated that he and his firm represented the applicant and that he did not know where the error had occurred to cause the error in building location; possibly, somewhere between the computer work in-house and the staking in the field. He said they discovered the error when they were preparing the final building location plat. Mr. McDermott said they explored possible options, but decided that the only recourse they had was to come before the Board of Zoning Appeals.

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

Mr. Kelley made a motion to grant SP 90-S-041, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-041 by DONALD L. AND SANDRA W. HOUCK, under Section 8-901 of the Zoning Ordinance to allow reduction in minimum yard requirements based on error in building location to allow dwelling to remain 10.0 feet from side lot line, on property located at 12103 Fairfax Hunt Road, Tax Map Reference 67-3((12))39, 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 6, 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;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

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

2. A plat showing the approved location and dimensions of the dwelling in accordance with this special permit shall be submitted and attached to the building permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicants from compliance with the provisions of any applicable ordinances, regulations or adopted standards. This Special Permit shall not be valid until this has been accomplished.

Mr. Ribble seconded the motion which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 6, 1990; the Board waived the eight-day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 245, September 6, 1990, (Tape 1), Scheduled case of:

10:30 A.M. PHYLLIS M. AND DAVID C. BENNER, VC 90-L-066, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of Lot B into two lots with proposed Lot B-2 having a lot width of 80 feet (100 ft. min. lot width required by Sect. 3-206), 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.

Vice Chairman DiGiulian called the applicants' agent 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.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report. Ms. Kelsey stated that the Board of Zoning Appeals denied a similar request by the applicants in January of this year, but waived the twelve-month limitation on refiling. She stated that staff wished to incorporate, by reference, the comments in the staff report concerning whether this application met the standards, unless the Board preferred that she go into detail in her presentation. She stated that it was staff's position that this application did not meet all of the required standards for reasons set forth in the staff report.

Mr. Kelley asked Ms. Kelsey whether she knew if lots 17A, 16A, and 16B, met the 100 foot requirement. Ms. Kelsey stated that, since this was Ms. James' case, she was not sure if Ms. James measured all of the lots.

Keith C. Martin, of the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, represented the applicants and presented the statement of justification.

Ms. Kelsey gave Mr. Kelley a copy of the 1941 subdivision for his review, in response to his previous question regarding the 100 foot requirement.

Mr. Ribble noted that it would appear that most of the lots in the area had been subdivided.

Mr. Hammack stated that he could not support this application. He stated that he did not believe that, just because the applicants' house is set a little bit off from the center of the lot, so that they might carve another lot off the side, it does not make them different from the other property owners in the neighborhood. Mr. Hammack stated that he believed the previous application which the applicants had submitted would have been better than the current one, even if it had required more variances.

Mr. Hammack stated he did not believe the applicants satisfied the nine required standards for variance applications and made a motion to deny VC 90-L-066. There was no second.

Mr. Ribble made a motion to defer VC 90-L-066, for decision only, until September 11, 1990. Mr. Kelley seconded the motion, which carried by a vote of 3-1; Mr. Hammack voted nay. Mrs.

Thonen was not present for the vote. Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

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Page 246, September 6, 1990, (Tape 1), Scheduled case of:

10:45 A.M. JOHN W. BROUGHAN, VC 90-V-079, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition (screened porch) 20.2 feet from one street line of a corner lot (30 ft. min. front yard required by Sect. 3-407), on property located at 6051 Edgewood Terrace, on approximately 8,400 square feet of land, zoned R-4, Mt. Vernon District, Tax map 83-3((14))(4)15. (OTH GRANTED 7/26/90)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Broughan replied that it was. Vice Chairman DiGiulian 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.

The applicant, John W. Broughan, 6051 Edgewood Terrace, Alexandria, Virginia, presented the statement of justification. Mr. Broughan stated that a portion of his property had been taken by the State for a right-of-way, after the existing house had been built in 1952, as a result of a change in County regulations.

Robert Kelly, President of Lynmar Corporation, 6019 Tower Court, Alexandria, Virginia, came forward to expand upon the issue of the State having taken a portion of the applicant's property for Edgewood Terrace. He stated that he believed it happened in 1970. He stated that a nonconforming condition had been created for the existing house and the existing patio when that property was taken.

Mr. DiGiulian asked Mr. Kelly how much property was taken and Mr. Kelly stated that it was ten (10) feet, he believed, which would have been a normal right-of-way assignment for sidewalks, etc. Mr. Kelly stated he believed that all the houses on Edgewood Terrace are nonconforming at this time.

Ms. Kelsey advised the Board that they had been given a letter from an adjacent property owner, indicating that he did not object to the application.

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

Mr. Ribble made a motion to grant VC 90-V-079, subject to the Proposed Development Conditions contained in the staff report, because of the existence of a double front yard and the fact that there was a taking of ten (10) feet on the Edgewood Terrace side of the lot.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-079 by JOHN BROUGHAN, under Section 18-401 of the Zoning Ordinance to allow construction of addition (screened porch) 20.2 feet from one street line of a corner lot, on property located at 6051 Edgewood Terrace, Tax Map Reference 83-3((14))(4)15, 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 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-4.
3. The area of the lot is 8,400 square feet of land.
4. The property has a double front yard.
5. Ten feet (10') of applicant's land was taken as right-of-way on the Edgewood Terrace 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 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 which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 6, 1990; the Board waived the eight-day waiting period. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:50 a.m. and returned at 11:25 a.m.

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Page 247, September 6, 1990, (Tape 1), Scheduled case of:

11:00 A.M. VALEWOOD CHURCH OF THE NAZARENE/MONTESSORI SCHOOL OF OAKTON, SPA 84-C-024-2, application under Sect. 3-103 of the Zoning Ordinance to amend SP-84-C-024 for church and related facilities to allow nursery school, on property located at 12113 Vale Road, on approximately 6.01 acres of land, zoned R-1, Centreville District, Tax Map 46-1((1))22.

Vice Chairman DiGiulian called the applicants' agent to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Linke 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 called the Board's attention to a brief addendum then being distributed to them, noting the reduction in the seating capacity.

Carolyn Linke, 1735 Dressage Drive, Reston, Virginia, represented the applicants and stated that the school and the church were very willing to comply with all of the Proposed Development Conditions outlined in the staff report.

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

Mr. Kelley made a motion to grant SPA 84-C-024-2, subject to the Proposed Development Conditions dated September 6, 1990, which included the reduction in the seating capacity, previously noted by Mr. Riegle.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 84-C-024-2 by VALEWOOD CHURCH OF THE NAZARENE/MONTESSORI SCHOOL OF OAKTON, under Section 3-103 of the Zoning Ordinance to amend SP 84-C-024 for church and related facilities to allow nursery school, on property located at 12113 Vale Road, Tax Map Reference 46-1((1))22, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 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-1.
3. The area of the lot is 6.01 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-305 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 to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Design Resource Associates dated December 19, 1986 and revised through May 9, 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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform to these conditions, as well as the Zoning Ordinance requirements.

5. The hours of operation for the nursery school shall be limited to 8:30 a.m. to 3:30 p.m., Monday through Friday.

6. The maximum daily enrollment for the nursery school shall be fifty five (55) children. There shall be a minimum of 11 parking spaces allocated to the nursery school to meet the minimum requirements of Article 11. Existing parking on the site may be used to fullfill these requirements as may be acceptable to DEM.

7. The outdoor play area shall be located generally to the east of the existing parking area. The play area shall not be located closer than 25 feet to any lot line. Any vegetation removed to install the play area or the play equipment shall replaced in other areas of the site to the satisfaction of the County Arborist.

8. At times when the outdoor play area is in use, the gate located at the entrance to the rear portion of the existing parking area shall be closed.

9. The seating capacity of the main worship area shall not exceed 456. There shall be a minimum of 114 parking spaces allocated to the church use to meet the minimum requirements of Article 11. For additional security, a gate shall be erected and locked when the church is not in use to secure the parking lot from unauthorized use.

10. Transitional Screening shall be modified and provided as follows:

    - The limits of clearing and grading of existing vegetation shall be shown on the approved plat. All existing vegetation shall be preserved except that necessary utility work shall be permitted.

    - On the rear portion of the property where there is no existing vegetation or where such is removed to accommodate septic fields, a 25 foot transitional screening area shall be retained as required in conjunction with the approval of SP 84-C-024. These screening areas shall include a combination of white pine and dogwood, redbud or other ornamental deciduous trees. The amount of these plantings shall be equivalent to that which is required in Transitional Screening 1 however, they may be arranged in the form of a natural mass rather than a normal row arrangement.

    - On the northern portion of the property, existing vegetation shall be supplemented with white pines planted between the church building and the lot line as required in conjunction with the approval of SP 84-C-024. The number of plantings and the manner in which they are arranged shall be such that the building is screened from the view of adjacent lot 21A. Low dense evergreen plantings shall be provided along the northern edge of the rear parking lot as determined by the Director DEM to ensure that vehicle headlights will not project onto adjacent properties.

    - On the western side of the property, transitional screening shall be modified to allow existing landscaping materials to fulfill all screening requirements.

11. Parking lot lighting shall be the low intensity type, on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from spilling onto adjacent residential properties. The lights shall remain on all night.

12. The barrier requirement shall be waived.

13. Any sign erected on the property shall conform to Article 12 of the Zoning Ordinance.

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

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. Ribble seconded the motion which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 260, September 6, 1990, (Tape 1), (RECESS)

Mr. Kelley made a motion that the Board recess until 7:30 p.m., Tuesday, September 11, 1990, at which time the Board would take up the next scheduled items on the agenda. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman Daniel Smith and Mrs. Harris were absent from the meeting.

Vice Chairman DiGiulian asked if there were any comments from staff.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she was sorry, but she was unable to comment, except to suggest that, perhaps, the Board should ask the applicants for their concurrence or note that the applicant's have concurred if the Board knew that they had.

Mr. Kelley stated that the applicants had concurred.

As there was no further discussion, the Board recessed at 11:30 a.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

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

SUBMITTED: October 23, 1990

APPROVED: October 30, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, September 11, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; and, Robert Kelley. Chairman Daniel Smith and John Ribble were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 7:40 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first of the cases that had been recessed from the September 6, 1990 BZA meeting.

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Page 251, September 11, 1990, (Tape 1), Scheduled case of:

7:30 P.M. FAIRFAX COVENANT CHURCH, SPA 87-S-075-1, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 87-S-075 for church and related facilities to allow addition of land area, deletion of land area, increase in parking, modification of previously imposed condition regarding provision of barrier and landscaping, and addition of canopy to church on approx. 16.10 acres of land, located on Ox Rd., zoned R-C and WS, Springfield District, Tax Map 68-3((1))6. (TO BE HEARD PRIOR TO COUNTRY CLUB OF FAIRFAX, SPA 82-S-102-2) (DEFERRED FROM 6/21/90 AT APPLICANT'S REQUEST. NEW NOTICES REQUIRED)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Reifsnyder 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 at the applicant's request this case had been deferred from June 21, 1990. He noted that the applicant has submitted a revised plat and highlighted the changes by stating that the septic fields have been relocated to the northeastern corner and that all structures including the parking area are now located outside the designated Environmental Quality Corridor (EQC). He referenced the plat approved in 1987 and stated that the intensification of the use will generate a loss of some of the mitigating measures used in the last approval to soften the impacts of the development, primarily open space. In summary, Mr. Riegle stated that the removal of open space coupled with the increase in impervious surfaces is not considered by staff to be in harmony with the Comprehensive Plan; therefore, staff recommend denial.

Mr. Riegle called the Board's attention to a second addendum which contained a portion of the Policy Plan recently adopted by the Board of Supervisors. The Addendum also contained revised development conditions and noted that the parking spaces had been increased by five to include handicapped parking.

Sarah Reifsnyder, attorney with the law firm of Blankingship & Keith, 4020 University Drive, Fairfax, Virginia, came forward to represent the applicant. She stated that the church and country club applications are very closely related and recommended that the Board hear both applications before making a decision on either.

She referenced Exhibit 1 which was colored coded which she hoped would make it easier for the Board to follow her presentation. In 1988, the Board unanimously approved a special permit for the church on 16.15 acres. This approval did not include a 100 foot wide strip subject to a scenic and recreational use in the country club. It did, however, show an ingress/egress easement across the country club at the Zion Drive intersection and this is the sole access to the country club. The church submitted an amendment in late 1989 which is contained in the June 12, 1990 staff report. She stated that the proposal before the Board was to delete 5.5 acres from the church's special permit leaving 10.6 acres. Ms. Reifsnyder pointed out the first submission of the plat which located the two septic fields in the southwest corner of the property would have encroached into the 35 foot transition yard. She noted that staff has expressed concern that the EQC would not be adequately protected and the neighbors were concerned that the location of the septic fields would have an adverse impact on their property. Based on those concerns, the applicant revised the plat by reducing the land to be deleted to 3.12 acres, Parcel B on the Exhibit, which is open space and will remain as such. Under the country club's plan, a substantial amount of the trees will be left intact with the addition of more trees.

Regarding the location of the septic fields, Ms. Reifsnyder explained that the septic fields are no longer in the southwest corner of the site and no longer encroach into the transition yard. The area in the southwest corner will remain essentially as it is shown on the existing approved special permit plat and the fields have been moved to the northern boundary adjacent to the country club. She noted that part of the fields are within the 100 foot recreational easement that was not included in the original special permit and there is a .53 acre area that will be included in the special permit with a new country club easement. This easement would allow the club to use the area as part of its nine hole golf course. No structures will be built in the area and it will remain landscaped open space.

Ms. Reifsnyder stated that under the revised proposal 3.12 acres would be deleted from the church's special permit and .53 acres would be added which nets out to be 2.5 acres less than the existing special permit plat now in effect. The entire EQC will be protected as there will be no structures there, no clearing and grading, and no parking.

She addressed the request for a canopy by stating that the canopy will be 84 feet from the front property line and the driveway will be 52 feet but neither will encroach into the front yard requirement. Ms. Reifsnyder stated that the canopy is not a "life nor death matter" but would be a helpful amenity and because it complies with the minimum yard requirements of the Zoning Ordinance, the church requests that it be approved.

With respect to the parking, Ms. Reifsnyder stated that this is a "life and death matter" as the church has determined that these spaces are absolutely necessary for its congregation. Staff is concerned with the impact of the additional parking spaces on the quality of water and has raised the question as to whether the detention pond will meet the BMP criteria. She stated that the BMP criteria will be met for the entire site. The plat shows the addition of infiltration trenches on the western boundary of the parking lot which are not shown on the existing approved special permit plat. These trenches coupled with the detention pond will more than adequately protect water quality in the area, the BMP criteria will be met, and the church requests that the Board approve the parking.

Ms. Reifsnyder stated that when the church's special permit was approved in 1988 the property in the northeast corner was a single-family dwelling and for that reason the special permit plat showed considerable landscaping between that property and the driveway into the church. In 1989, a special permit was approved to use the adjacent property as a Buddhist Temple. Therefore, the applicant is requesting the deletion of the development condition requiring the landscaping between the church uses as there is a thick natural vegetative barrier and the Zoning Ordinance does not require landscaping between two churches.

Mrs. Thonen asked how many trees are there now and how many would have to be removed on the land that is to be deleted. Ms. Reifsnyder stated that she could not give the Board a tree count on the property but perhaps Mr. McLain, the country club's representative, could speak to the tree preservation plans of the country club and the addition of trees.

In response to questions from Mr. Hammack about the proposed parking and the detention pond, Ms. Reifsnyder used the viewgraph to show the location of the proposed parking spaces and the detention pond. She stated that the parking would be added towards the church and away from the neighbors.

Vice Chairman DiGiulian called for speakers in support of the application and hearing no reply called for speakers in opposition.

Sarah Janiszewski, HCRI, Box 254, Jeffersonton, Virginia, represented her mother, Virgie Lee Harris, the adjacent landowner, and stated that her mother supported the movement of the septic fields but she is opposed to the increase in parking and the planned deforestation in several areas. She added that the site is mostly mature trees and the removal of those trees would not be the same as relandscaping a cleared site.

During rebuttal, Ms. Reifsnyder stated that the applicant had talked with Ms. Harris and showed her the plat and discussed the changes with her. She used the viewgraph to show Ms. Harris' property and stated that the parking spaces next to the neighbor's lot has not changed. There is a distance of 50 feet between the parking lot and the property line and the applicant is planning to add additional vegetation.

Vice Chairman DiGiulian called Mr. McLain to the podium to respond to the Board's question regarding tree removal.

Warren McLain, representative of the Country Club of Fairfax, explained that the main goal of golf course architects is to maintain as many trees as possible on the property. He added that the club is aware that there are a great many mature trees on the site, but the club does plan to remove any dead trees. Mr. McLain stated that he could not give an exact tree count but a good estimate would be 100 to 200, perhaps more.

Mrs. Thonen noted that she just wanted to be assured that the club would save as many of the trees as possible because the property is in the EQC.

Mr. McLain stated that in his presentation regarding the country club special permit application he had planned to address the tree preservation plan that is already in existence at the club. He noted that staff was requesting that the club plant additional plantings along Route 123 in the development conditions in their special permit.

Ms. Reifsnyder explained that the golf course will not encroach into the EQC, the EQC will remain church property, and the EQC will remain untouched.

Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen stated that she had not been sure how she would vote before hearing the testimony, but she had been convinced by the applicant that the trees and the EQC would be protected. She then made a motion to grant the request subject to the development conditions contained in the addendum dated September 6, 1990.

Mr. Kelley seconded the motion.

Mr. Hammack stated that he could not support the motion as he believed that it was too large a land deletion for the church and would have a significant impact on the trees and the land surrounding the EQC, which was an important consideration when he voted to approve the church a year ago. He added that he was not sure that he would have voted to approve the church at that time if it had been in its proposed configuration. There is an intensification of the use, more parking spaces being requested, and a deletion of land area which on its face does not look too objectionable, but there is a significant change in how the land will be used. He believed that staff had raised some valid concerns.

Vice Chairman DiGiulian called for the vote. The motion to grant failed by a vote of 3-2 with Vice Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley voting aye. Mrs. Harris and Mr. Hammack voting nay. Chairman Smith and Mr. Ribble were absent from the meeting. Four affirmative votes are required to approve a special permit or a variance application.

Ms. Reifsnyder asked the Board to waive the 12-month time limitation for refiling a new application. Mrs. Thonen made a motion to do so. Mr. Kelley seconded the motion. The motion carried by a vote of 4-1 with Mr. Hammack voting nay. Chairman Smith and Mr. Ribble absent from the meeting.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-S-075-1 by FAIRFAX COVENANT CHURCH, under Section 3-C03 of the Zoning Ordinance to amend SP 87-S-075 for church and related facilities to allow addition of land area, deletion of land area, increase in parking, modification of previously imposed condition regarding provision of barrier and landscaping, and addition of canopy to church, on property located on Ox Road, Tax Map Reference 68-3((1))6, 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 September 11, 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 16.10 acres of land.
4. The applicant has shown how they can save trees on the site and protect the EQC.

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 by Bengston, DeBell, Elkin & Titus, Ltd. dated October 18, 1989, revised through July 30, 1990 and printed August 1, 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 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 following transportation improvements shall be implemented:*

   Temporary ancillary easements as necessary for public street purposes shall be provided along the site frontage of Ox Road.

   Site access shall be provided from a single entrance at the intersection of Ox Road and Zion Drive.

   Interparcel access shall be provided to adjoining Lot 6A.

   The right turn lane from Ox Road into the site shown on the plat shall be provided in accordance with VDOT specifications.

   The traffic signal at the intersection of Ox Road and Zion Drive shall be improved from a three (3) way signal to a four (4) way signal at the applicant's expense.

   An intersection analysis showing the adequacy of the intersection of Ox Road and Zion Drive to handle the Special Permit use shall be provided before the site plan is approved. The recommendations of this analysis, if any, shall be implemented at the applicant's expense as may be deemed appropriate by the Department of Environmental Management (DEM) in consultation with the County Office of Transportation and the Virginia Department of Transportation (VDOT).

6. There shall be a maximum of 1200 seats in the main place of worship and a corresponding minimum of 300 parking spaces and a maximum of 362 parking spaces including all required handicap parking spaces. All parking for this facility shall be on site.*

7. There shall be no free standing spire on site. Any sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.*

8. The maximum number of staff persons on site at any one time shall not exceed 15.*

9. The structural stormwater management pond shown on the plat shall be designed to BMP requirements as outlined in the Public Facilities Manual for the Occoquan Watershed. Additional measures may be required by the Director of DEM at the time of site plan approval.

10. The exterior of the building shall generally conform to the Architectural plans submitted with SP 87-S-075 in regard to architectural design and materials of brick and glass.*

11. No expansion of the main place of worship either temporary or permanent may occur without approval by the BZA of an amendment to the approved Special Permit.*

12. In order to minimize adverse impacts on the surrounding residential development, hours of operation of activities and meetings or services shall be limited to those associated with normal church activities.*

13. Transitional Screening 2 (35 feet) shall be provided along all lot lines with the modifications as shown on the plat submitted with this application along the eastern lot line in the area of the driveway where screening as shown on the submitted plat shall be provided. No Transitional Screening shall be required along those lot lines which abut property owned by the Bo Rim Sa Buddism Corporation or the Country Club of Fairfax. Existing vegetation may be used to fulfill transitional screening requirements provided that existing vegetation is supplemented as determined necessary by the County Arborist. Additional landscaping shall be provided as shown on the special permit plat submitted with this application.

14. The Barrier requirement shall be waived.

15. The interior of the parking lot shall be landscaped and maintained in accordance with Article 13 of the Zoning Ordinance.*

16. The poles for outdoor lighting shall not exceed twelve (12) feet in height and shall be located, oriented, and shielded so as to prevent light or glare from projecting onto adjacent properties.*

17. All outdoor uses shall comply with all applicable County Ordinances.*

18. There shall be no school nor any child care facility associated with this parcel without Board of Zoning Appeals or Board of Supervisors' approval. Any conferences on site shall not exceed the seating capacity of 1200 without prior BZA approval.*

19. Public water shall be supplied to the site at no cost to Fairfax County.*

20. Approval of a septic system must be granted in writing by the Health Department prior to the issuance of any building permit. Approval of this special permit use shall not be construed to imply approval of any septic system nor obligate the county to provide public sewer to the site.*

21. The forty (40) foot ingress-egress easement shown on the plat shall be recorded in the land records as a permanent easement in the deed of the property. Any revocation of this access easement shall immediately render SPA 87-S-075-1 null and void.*

22. The Environmental Quality Corridor (EQC) shall be denoted as that area shown on the special permit plat. No clearing or grading activities or placement of any structures shall occur in the designated EQC.

23. An easement may be granted to the Country Club of Fairfax in the approximately .90071 acre area shaded on the plat and described as the area under easement. This easement shall be for the sole purpose of permitting the Country Club of Fairfax to construct operate and maintain one (1) golf hole in the area under easement. There shall be no structures or other uses permitted in the area of the site governed by the easement.

24. In the event an easement is conveyed to the Country Club of Fairfax, Fairfax Covenant Church may apply for subsequent special permit amendments without including the Country Club of Fairfax in the application provided that the application involves no construction or additional uses or activity in the area of the site governed by the easement.

* Previously imposed Condition.

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 which FAILED by a vote of 3-2 with Vice Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley voting aye; Mrs. Harris and Mr. Hammack voting nay. Chairman Smith and Mr. Ribble were absent from the meeting. Four (4) affirmative votes are needed to grant a Special Permit or a Variance. The BZA did grant the applicant a waiver of the 12-month time limitation for refiling a new application.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 19, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 255, September 11, 1990, (Tape 1), Scheduled case of:

7:30 P.M. COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-2, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 82-S-102 for a country club to allow addition of land area for development of a 9 hole golf course on approx. 158.3763 acres of land, located at 5110 Ox Rd., zoned R-C and WS, Springfield District, Tax Map 68-1((1))(1)17,18,20; 68-3((1))(1)pt. 6. (TO BE HEARD FOLLOWING FAIRFAX COVENANT CHURCH, SPA 87-S-075. DEF. FROM 6/21/90 AT APPLICANT'S REQUEST)

Vice Chairman DiGiulian called the scheduled case.

Warren W. McLain, 4151 Chain Bridge Road, Fairfax, Virginia, representative of the Country Club, came forward and explained that he had submitted a revised affidavit listing himself as agent for the Country Club. He stated that since this application was concurrent with the church application and the two projects were hand in hand and since the church's application was denied he did know how to proceed.

Vice Chairman DiGiulian suggested that perhaps a deferral was in order so that the club could modify their request.

Mr. McLain stated that he believed that the club has addressed most of staff's concerns that were expressed in the August 28th addendum. He added that he was not sure how long it would take to obtain a revised plat from the engineer. Because an architect has not yet been chosen, he said it was difficult for him to be specific about the design.

Vice Chairman DiGiulian asked if it could be done in 90 to 120 days. Mr. McLain stated that he believed that it could possibly be done in 60 days. Vice Chairman DiGiulian asked if the new plan would be based on the club acquiring the church property. Mr. McLain said the sale of the property was contingent on both applications being granted.

A discussion took place among the Board as to how they should proceed. Mr. Hammack suggested that the applicant should request a deferral in order for them to meet with the church and reorganize. Mr. McLain agreed.

Vice Chairman DiGiulian asked staff for a deferral date. Mr. Riegle suggested November 27, 1990, and noted that staff would not object to an indefinite deferral if the Board so chose. Vice Chairman DiGiulian stated that he would like to see a date set and then the Board could grant another deferral if necessary. Mrs. Thonen suggested that the Board defer the club's application until the church application comes back in and then schedule both applications. It was the consensus of the Board that both applicants might come back with totally new plans.

Mr. Hammack made a motion to defer the application to November 27, 1990 at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. Ribble absent from the meeting.

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The Board recessed at 8:10 p.m. and reconvened at 8:20 p.m. to take up the regularly scheduled agenda for September 11, 1990.

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Page 256, September 11, 1990, (Tapes 1-2), Scheduled case of:

8:00 P.M. RESTON INN AND CONFERENCE CENTER VENTURE APPEAL, A-90-C-009, appeal of a determination of an agent of the Zoning Administrator that Parcel 1 is in a village center and that preliminary site plan and site plan approval are required to develop the site, on property located at 11810 Sunrise Valley Drive, on approximately 653,400 square feet of land, zoned PRC, Centreville District, Tax Map 17-3((3))1.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Richard G. Hobson, attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, 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 and Mr. Hobson then discussed his request for an additional 5 minutes to speak. Vice Chairman DiGiulian asked if the 15 minutes would also include the 3 witnesses and Mr. Hobson said that it would. Mrs. Thonen stated that she was opposed to that because of the number of documents that Mr. Hobson had just submitted to the Board. Mr. Hobson stated that he understood. It was the consensus of the Board to grant the extra 5 minutes since it included 3 witnesses.

Mr. Hobson stated there had been a total of 43 exhibits filed with the BZA Clerk with exhibits 33 and 34 just submitted to the Board. He added that included in those exhibits were written statements from the 3 witnesses as well as the appellant.

He stated that there are two major points in the appeal, one being that Barbara Byron, Director, Zoning Evaluation Division, reversed her earlier written determination and now says that the subject property is zoned village center. Since the conference center is not a permitted use in the village center category and a hotel is permitted only with a special exception, this has a serious detrimental impact on the owner's continued use and expansion on the site. Mr. Hobson noted there is litigation pending in the Fairfax County Circuit Court with respect to the Department of Environmental Management's (DEM) denial of the preliminary site plan for the construction of an expanded hotel and banquet center and two 19 story office buildings on the site. (He called the Board's attention to photographs of the 15 acre Reston Sheraton Conference Center with the adjacent high rise office building and used the viewgraph to point out the existing center and the surrounding uses.)

In 1989, Ms. Byron rendered a written determination that the subject property was in an area designated for convention/conference center use and that the only requirement for redevelopment of this site would be a site plan amendment. Based on that finding, the appellant prepared conceptual, architectural, and engineering plans and submitted a preliminary and final site plan with two submissions costing more than $250,000. On May 16, 1990 more than one year later, Ms. Byron revised her determination and said that the subject

property was within a village center designation and a preliminary site plan was required which she justified by stating that in 1989 she was not aware of the rezoning that had taken place in March of 1969 rather than in July of 1969. She further found that a notation in the population density tabulation column of a final subdivision plat stating the use of the subject property changed the zoning status of the property from convention/conference center to village center. He stated that the Board would realize from reading the appellant's statement that the first issue is, can Ms. Byron change her opinion more than a year later, after the 30 day period has run. In the memorandum, he stated that he had also addressed the policy reasons why Ms. Byron should not be allowed to do this. These reasons being that if Ms. Byron can claim that this 4 month time differential more than 20 years ago as a justification for exceeding the 30 day appeal limitation then other appellants, owners, or interested parties can delve into the zoning history and assert imperfections in formal opinions more than 30 days after an appeal period has expired.

Mr. Hobson called the Board's attention to Exhibit 42 which cited two recent cases heard in the Circuit Court which neither the County Attorney nor Ms. Byron refute. He added that if the Board did find that Ms. Byron was justified in changing her opinion under the circumstances of the appeal then the appellant would submit that Ms. Byron's revised opinion is clearly wrong and that the property is not a village center. He added that only the Board of Supervisors has the power to change zoning on property through the public hearing process and that approval of a subdivision plat does not change the zoning status on a property.

Paul F. O'Neill, 4084 University Drive, Suite 200, Fairfax, Virginia, referenced his prepared statement which is a part of the record. He stated that he worked for Gulf Reston from September 1968 to April 1976 and added that at no time during his tenure with Gulf Reston was the subject property ever considered or marketed as a village center nor was it ever discussed. He stated that he was never aware of the subdivision plat which contains a tabulation that indicates that the use was a village center, that this plat did not represent any intent of Gulf Reston to change the zoning status of the Inn and Conference Center Complex to a village center, and it was not developed as a village center. (A copy of his prepared statement is contained in the file.)

In response to a question from Mrs. Harris regarding the fact that theaters were an approved use in a village center but not in a convention/conference center, Mr. O'Neal explained that theaters were placed in a central location and based on the population at that point in time the Inn and Conference Center was the center of Reston, therefore it was logical to construct the theater in that location.

Mrs. Harris stated that from a marketing standpoint she could understand that but noted that theaters are listed under the village center column not under the conference/center. Mr. O'Neal stated that perhaps one of the other speakers could better address her concern.

Charles J. Kent, Jr., 3416 Country Hill Drive, Fairfax, Virginia, came forward and stated that between 1962 and 1977 he served as the Chief Engineer in the Engineering Division for Gulf Reston. He stated that the density tabulations included on Exhibit 7, 1971 Final Subdivision Plat of the property, were not intended to and could not have any impact on the zoning status of the subject property. (A copy of his written statement is contained in the file.)

Mr. Hammack asked the purpose of the computation used by the Zoning Administrator. Mr. Kent explained that the tabulation was required to keep track of the density of the residential area as the sections were constructed. The density was based on 13 persons per gross acre and that had to be accounted for on every plat that was submitted.

James Pammel, 2517 Rocky Branch Road, Vienna, Virginia, stated that his service with Fairfax County began in 1967 and through the period of 1968 to 1975 he was reviewing zoning applications and preparing staff reports as well as administering the Zoning Ordinance; therefore, he stated he was very familiar with the case and the provisions of the PRC District. He stated that he had read Ms. Byron's statement and the other documents associated with the case. (A copy of his written statement is contained in the file.)

Mr. Pammel stated that the property was rezoned to the RPC district on March 12, 1969 with a development plan that permitted a variety of uses. With the Board of Supervisors' adoption of a major amendment to the Zoning Ordinance in July 1969, a new classification of convention/conference center was established. The subject property is the only conference center that has ever been approved in Reston. The fact that the site appears on the 1971 Comprehensive Plan as a village center was a convenience that was corrected in 1976.

In response to earlier questions from Mrs. Harris, Mr. Pammel explained that the uses that were permitted on the site under the inn/conference center classification were similar to the theater and that the Zoning Administrator interpreted as such and the theater was permitted. He added that a theater is now a designation use under that particular category. Mr. Pammel added that hotels and motels are permitted by right under the inn/conference center classification; however, in the Town Center they are permitted by a Special Exception which would indicate that they are a special impact because of their intense use and need special approval.

Mrs. Harris and Mr. Pammel discussed where it was written down that the Board of Supervisors had made the classification convention/conference center on the site in 1969 and the process an applicant followed in asking for a specific use.

Mr. Pammel responded that the applicants designated uses they wanted and that Reston was unlike elsewhere in the County. As long as their proposal was consistent with the Reston Master Plan then the Board endorsed their proposal.

Mrs. Thonen called Mr. Pammel's attention to a memorandum from Denton Kent, Deputy County Executive for Planning and Development, to Supervisor Pennino stating that the site was to be an international hotel and conference center. Mr. Pammel stated that the uses were shown on the Development Plan and on the subsequent Preliminary Plat. Mrs. Thonen stated that she could remember during the process of Manchester Lakes and Kingstowne projects the reference was made to planned development and it was noted that definite plans were needed because "what you saw was what you got." She added that it was also noted that PRC Districts had areas that were designated for commercial uses and asked Mr. Pammel if this was correct. Mr. Pammel explained that PRC District did have specific areas designated on the Reston Master Plan for uses and then residential categories were broken down into low, medium, and high density. He added that the overall population limit for the entire community of Reston was 13 persons per acre. He stated that the reason Mr. Kent indicated the density tabulations was because they were required with each plan to show what the density would be and how it affected the overall density and the figures had to be adjusted with each application.

Vice Chairman DiGiulian asked if that concluded the appellant's presentation and Mr. Hobson replied in the affirmative.

Barbara A. Byron, Director, Zoning Evaluation Division, stated that the issue before the Board was complicated with a long history which recently started with her May 11, 1989 letter of interpretation to Gregory Lukmire, a consultant and employee for the appellant. In the letter she stated that the portion of the site that was rezoned pursuant to RZ B-846 was shown on its approved Development Plan for motel and conference center uses and an expansion of such uses is consistent with the approved Development Plan. She also stated that an office is a permitted use in an convention/conference center and could be included in any redevelopment of the site and in order to proceed with the redevelopment, a site plan, meeting all the requirements of the Zoning Ordinance and the Department of Environmental Management (DEM), could be submitted.

She stated that going back to the original rezoning in March 1969 and tracking it to 1990 she came to believe that her original interpretation was incorrect and that she had been mistaken and the property was in fact designated as a village center. Ms. Byron stated that she then wrote a letter on May 16, 1990 to rectify the error. In the letter, she also clarified that all of the requirements of DEM and the Zoning Ordinance including the fact that a preliminary plat must be submitted and approved prior to the submission of a Site Plan must be met.

Ms. Byron continued by stating that there were two primary issues before the Board, one being her decision that the site is governed by the village center designation, and the second that any redevelopment requires both the submission and approval of a preliminary plat as well as a site plan. The property that is the subject of the appeal was zoned in 1969 to the PRC District as part of a larger tract of land. The Development Plan shows the uses on the site as motel/conference center. Designations such as town center, village center, and convention/conference center did not exist in the Zoning Ordinance until July 1969 when Zoning Ordinance Amendment Number 128 was adopted.

Mrs. Thonen asked for a clarification. Ms. Byron explained that designations such as convention/conference center, town center, village center, neighborhood convenience center did not exist in the Zoning Ordinance at the time the property was rezoned. Mrs. Thonen asked if it was the subject property or all of Reston. Ms. Byron replied all of Reston.

She continued by stating that at the time the property was rezoned, uses were allowed that could be chosen from the various C, C-G, C-D, and CDM, etc. or that were in the Zoning Ordinance at that time. There was also a requirement that a Development Plan be submitted and on that Plan there was a requirement that "proposed general layout and general location of the various types of land uses that were proposed" be shown. She stated that the subject property was rezoned to a Development Plan which showed a motel/conference center. Subsequently, in July of that year, for the first time, the designations of Town Center, Village Center, Convention/Conference Center, etc. were added to the Zoning Ordinance. In April 1970, a Preliminary Subdivision Plat was submitted by the applicant and approved by the County for Block 40, which is the Block that encompasses the area of the subject property. The Preliminary Subdivision Plat rearranged some of the uses shown on the approved Development Plan. (Ms. Byron asked Ron Derrickson, Planning Technician, Zoning Evaluation Division, to show the enlarged plat to the Board.)

In response to a question from Mrs. Harris, both Ms. Byron and Mr. Hobson went up to the horseshoe to discuss the plat with the Board.

Ms. Byron continued by stating that the Preliminary Subdivision Plan in 1970 had a rearrangement of uses different from that shown on the Development Plan. In April 1971, a site plan was approved for a convention center complex for an area that is larger than Parcel 1. In addition to the convention/conference center, the site plan included theaters which were not a permitted use in the convention/conference center designation of the Zoning Ordinance at that time but were allowed in the village center. Record and resubdivision plats were submitted in the 1970's by the applicant and all were approved with village center designations. The applicant states, and staff agrees, that the only way in which a zoning designation can be changed on a property is by action of the Board of Supervisors through the public hearing process and no such actions have occurred on this property since 1969.

She stated that the first issue is what designations or uses were approved pursuant to that rezoning. It is staff's position that a motel and conference center were approved and are allowed to be developed and continued to be used on the site by virtue of their designation on the approved Development Plan. Staff's research of the history of the subject property has led them to believe that, once the Zoning Ordinance was amended in July 1969 and use designations were put into the PRC District, the owner and the County mutually agreed that a designation had to be put on the property so that it could be administered through the operative Zoning Ordinance. The agreed upon designation was a combination of the use approved on the Development Plan that was subject to the rezoning, as well as the village center designation; otherwise, the theater could not have been approved on the site plan. She stated that staff did not agree that there could be a perspective application of the Zoning Ordinance onto a rezoning that happened several months before as has been alleged in some of the documents before the Board. The Board of Supervisors action could only happen under an Ordinance that is in effect at the time of the action.

Ms. Byron agreed that the site is planned on the Comprehensive Plan as a convention center and noted that it has been that way for the last 12 or 13 years; however, there has been no zoning action to put that designation on the site. Although there have been statements in staff reports, she stated that staff could find nothing to document those statements; therefore, she would have to conclude that those statements were in error.

The second issue under appeal in Ms. Byron's letter is the fact that she stated that a site plan meeting all the requirements of the Zoning Ordinance and DEM must be submitted in order to redevelop the property as set forth in Sect. 16-204 and 16-205 of the Zoning Ordinance. The Zoning Ordinance clearly requires that a preliminary site plan be submitted and approved prior to the submission of a site plan and that the appellant has in fact acknowledged the Zoning Ordinance requirement by submitting such a plan. She stated that the appellant has taken the position that the 1989 decision was not appealed and therefore is final and has cited court cases to reinforce his position. It is the County Attorney's opinion that neither of the court cases cited by the appellant involves an instance that the issuer realized that an opinion was based upon a mistaken fact and took corrective action by issuing a correct opinion. She added that one of the cases cited is under appeal to the Virginia Supreme Court at this time. She stated that the County Attorney was present and could respond to questions of the Board with respect to the cited cases. Ms. Byron added that it is staff's position that the cases from the Supreme Court have in fact stated that the rule in Virginia is that the County is not barred from enforcing its Zoning Ordinance, even when development on a property has progressed substantially beyond that which is the case in this circumstance. It was her position that she did not have the authority to alter and amend the Zoning Ordinance, but it is her obligation to correct a mistake when it is brought to her attention. The appellant has submitted a listing of costs expended between the time of her first letter and a year later at the time of the second letter. She stated it appears that the appellant's attorney is making an argument regarding vested rights and it is staff's position that such a claim and its resolution properly rests with the courts. The appellant also discusses an appeal of the Zoning Administrator's decision regarding Bell Atlantic in which the Zoning Administrator erroneously stated that property was governed by the convention/conference center designation. Ms. Byron stated that the Zoning Administrator's letter in that case and her letter of 1989 were based on similar circumstances and reliance on similar research. The Zoning Administrator's letter was written in December 1989 which was prior to the time staff reviewed the zoning and development history of the properties. She stated it is staff's position that the Zoning Administrator's statement was in error and that the property is also properly designated as a village center for the same reasons as set forth in the discussion regarding the Reston-Sheraton site. She added that, at the time the BZA heard the appeal of that decision, there was a lot of discussion about the fact that the development plan was missing and noted the development plan for that site as well as the site under appeal is nowhere before the BZA. She noted for the record that staff did not believe that the record of the BZA's public hearing and decision on that issue supports the appellant's contention as to why the BZA overturned the Zoning Administrator's determination in that appeal.

In conclusion, Ms. Byron stated that staff believed that the village center is the appropriate designation of the site and that the site can be developed with convention/conference uses by virtue of its approved Development Plan and any uses allowed in the village center by virtue of its historic administration. She added that the proper remedy to put a convention/conference center designation on the site is a Development Plan

Amendment approved through the public hearing process by the Board of Supervisors. In addition, Ms. Byron stated that she believed that submission of a Preliminary Plat is a requirement of the Zoning Ordinance prior to the submission of a site plan.

In response to several questions from Mrs. Thonen, Ms. Byron explained that the Preliminary Plat before the BZA was the one filed in 1969 and there was a subsequent site plan approved and they developed the site. She added that the appellant now wants to redevelop the site so he must go back through the site plan process and the appellant has submitted a new Preliminary Site Plan which was disapproved by DEM with the Planning Commission upholding the disapproval and it is now in litigation. Ms. Byron explained that in the PRC District the requirements for a development plan that is associated with a zoning application are less restrictive than in other "P" Districts so there are no specific layouts required. She added that the Ordinance requires that a Preliminary Site Plan be submitted which starts to tie the uses down which DEM reviews. She called the BZA's attention to page 2 of the staff report.

In response to a question from Mrs. Thonen as to why the site plan was turned down by DEM, Ms. Byron replied that it was her understanding there were certain deficiencies in the site plan including the fact that it did not meet the Parking Ordinance.

Mr. Hobson started to comment from the audience and Vice Chairman DiGiulian told him that he would be given rebuttal time.

Ms. Byron added that part of the reason, but not the sole reason, was that the intensity proposed on the site is approximately 1.54 Floor Area Ratio (FAR). Based on the determination that it is a village center, DEM looked at other village centers in Reston, and the approved Development Plans for the Town Center and the Zoning Ordinance, which sets up a hierarchy within the various designated areas of Reston with the Town Center the urban core. Mrs. Thonen asked why DEM viewed it as a village center when it is designated as a conference center. Ms. Byron stated that is staff's position that it is not a conference center. She explained that the Development Plan allows a hotel/conference center on the site but that is a use designation and does not put into the type designation that the PRC District has in it for the various areas of Reston.

Mr. Hammack asked how something could be approved if it is not in the Ordinance. Ms. Byron explained that when the Development Plan was approved, under the Ordinance in effect, there was a list of various uses from different categories that could be put on development plans and the owner could ask that the land be rezoned to and the hotel/conference center use was one such use. The issue is what other uses the appellant could develop the site with today besides that particular use.

Mrs. Thonen asked if the preliminary was approved in the '70's. Ms. Byron stated that she believed so. Mrs. Thonen asked if the applicant had to go back to the Board of Supervisors for approval of each of the preliminaries. Ms. Byron explained that if the preliminaries were in conformance with the rezoning and the approved Development Plan, the applicant did not have to go back to the Board. She added that there seems to be a mutually agreed upon administrative determination that not only could the applicant put on the site what the rezoning approved them for, but they were administratively given the ability to develop the site with an array of other uses found in the village center classification of the Zoning Ordinance.

Mrs. Harris asked Mr. Taves if a citizen owned land in a PRC zoning with commercial classification, could they put anything they wanted to on a proposed plan. J. Patrick Taves, Assistant County Attorney, stated with property zoned prior to July 1969, which includes the subject property, a development plan had to be approved and that, to the extent that the development plan was approved, those uses were allowed. He stated that the appellant's argument was deficient because the designation convention/conference center did not become a part of the Zoning Ordinance until July 1969; therefore, the designation could not have applied to the subject property prior to that time. Mr. Taves added that what the appellant is saying in essence is that the deed of adopting these designations into the Zoning Ordinance had somehow been done in March 1969, which is a legal impossibility.

Mrs. Harris asked where it is written that the Board of Supervisors designated the particular block as convention/conference center or village center. Ms. Byron stated she believed both staff and the appellant agree that there has been no subsequent Board of Supervisors' action on the subject property since March 1969. Staff can also find no documentation to show that the Board of Supervisors put one of the designations on the property.

Mrs. Thonen called Ms. Byron's attention to a letter submitted by the appellant from Mr. Kent which notes that the use on the Development Plan is for a convention/conference center. Ms. Byron stated that there were two kinds of hotel/conference centers, one being the use that was approved on the Development Plan versus the class in the Zoning Ordinance within the PRC District that is a designation with a series of permitted uses. They have similar names but are actually two "separate animals." She added that Mr. Kent in his letter was saying that the appellant's Development Plan showed hotel/conference center and the appellant could construct one. Mr. Kent goes on to say that certain other things have occurred on the site and that pursuant to the approved Development Plan, the appellant could expand the

hotel/conference center and still be in conformance with the zoning. She added that Mr. Kent did not get into the zoning issue as to whether or not it falls within the convention/conference center at all. He only addressed the one use on the approved Development Plan.

Mr. Taves explained that after the Zoning Ordinance was amended in 1969, when the designations were instituted, there were permitted uses under those designations and a theater was not a permitted use in the convention/conference center. He added that a theater was a permitted use in the village center designation. The owners of the property administratively applied for and built theaters on the property and there was only one way that could have happened and that is that at that time the property was considered a village center. Mr. Taves added that if that particular issue was not addressed then there is a zoning violation that has been ongoing for 15 years on the subject property. Under the present Zoning Ordinance theaters are allowed under the convention/conference center designation but there has never been a legislative act by the Board of Supervisors since July 1969. He pointed out that Ms. Byron is saying that if the appellant wants to become a convention/conference center designation then they must go back to the Board of Supervisors and amend the Development Plan.

In response to questions from Mrs. Thonen about the theater, Ms. Byron explained that the theater is not on Parcel 1 but is on property which was part of the same zoning action and has a similar development approval and is on the same site plan. She added that perhaps Mr. Hobson could address the question with respect to the history of the subdivision.

A discussion took place among the Board members regarding the location of the theater.

Mr. Hammack asked when the theater was approved and Ms. Byron replied that the site plan was approved in 1971 after the Zoning Ordinance was amended.

There were no further questions for Ms. Byron or Mr. Taves and Vice Chairman DiGiulian called for speakers.

Joe Stowers, Co-Chairman, Planning and Zoning Committee, Reston Community Association, Inc., 2310 Colts Neck Road, Reston, Virginia, came forward and stated that he was President of the Reston Community Association during the period of 1969-1970 and read a prepared statement into the record asking the Board to reject the appeal. (A copy is contained in the file.) Mr. Stowers called the Board's attention to a brochure showing that the site was designated as a village center on the Comprehensive Plan at the time of the 1969 rezoning.

In response to questions from the Board, Mr. Stowers stated that the construction of the office tower began in the early '70's and the surrounding neighbors became aware of the plan for the office development on the adjoining site at the time the plan was approved.

Jack Gwynn, 11308 Fieldstone Lane, Reston, Virginia, President of the Reston Community Association, came forward and represented 50,000 people currently living in Reston who did not believe that the proposed plan is in the best interest of the community as the area is already terribly congested. He added that he believed that the decision dealt primarily with the creation of an incredible amount of office space rather than a conference centers.

Stewart MacDonald, 11619 Hunters Green Court, Reston, Virginia, represented the Hunters Green Cluster Association, made up of 117 houses which is directly across Sunrise Valley Drive from the subject property. He stated that the Association is strongly opposed to the change in zoning as they believe that it would adversely impact their neighborhood as well as all of Reston. Mr. MacDonald objected to the size of the proposed development and to the additional traffic that it would bring to Reston.

Rudy Van Pyymbroeck, 10901 Wilder Point Lane, Reston, Virginia, member of Reston Community Association Planning and Zoning Committee, came forward and agreed with the comments of the other speakers. He added that he would support the type of convenience stores associated with a village center and noted the traffic congestion.

During rebuttal, Mr. Hobson showed the Board viewgraphs noting that the motel and conference center were approved on the development plan in 1969 for Block 40 and the text of the Ordinance that was adopted in July 1969. He added that the Board of Supervisors did legislatively classify what uses were going to go where in Reston and if there was an approved Development Plan for a conference center than certain uses could be on the site. Mr. Hobson pointed out that there was only one conference center then and there is only one conference center now so the Board of Supervisors had to be speaking to that one.

Mrs. Harris questioned if the text was from July 1969. Mr. Hobson stated that it was and added that after the property was zoned and shown on the development plan for a conference center, a Zoning Ordinance amendment was adopted which stated that certain uses were allowed if you had an approved development plan for a conference center.

Mr. Hobson continued by stating that the category was not the issue and showed the Board a

blowup of Block 40 which showed the conference center. He stated that the argument that there had been an administratively implied agreement between the owners of the land and the County has been negated by the testimony presented. The site which was 40 acres is now 23 acres which includes the appellant's site, the office building adjacent to the site, the high-rise office building, the building that was the theater building, the plaza building of shops, and all those buildings are included in what Ms. Byron now says is a village center. Mr. Hobson then outlined the zoning history of the site. He asked the Board to reverse Ms. Byron's decision.

Mrs. Thonen commented that she would really like to see information in complex cases submitted to the Board earlier than this which was to allow the Board time to review the information. Mr. Hobson agreed and stated that he would be glad to discuss it at any time with the Board with the County Attorney present.

The Board discussed with Mr. Hobson the text that he had displayed on the viewgraph. Mr. Hobson explained that in March 1969 the land was commercial and there was no classification for conference centers and Reston requested that such a designation be added to the Ordinance.

Mrs. Harris pointed out the brochure submitted by one of the speakers that noted the designation of village center. Mr. Hobson stated that the designation noted by the speaker was on the golf course property to the south. He added that the appellant's property in 1962 was zoned for high density residential development and the original Inn and Conference Center was across the Dulles Toll Road and then moved to the subject site for reasons noted in Mr. O'Neal's statement. He went on to say that the subject property could not become a village center without action by the Board of Supervisors, which never occurred.

In closing, Mr. Hobson stated that the appellant filed a Preliminary Site Plan and has done all the County has asked although he did not believe it was required.

Vice Chairman DiGiulian pointed out to Mr. Hobson that his time for rebuttal was up and had been for quite a while.

Mr. Hobson apologized and asked the Board to reverse Ms. Byron's decision.

Following a discussion among the Board regarding a deferral, it was the consensus of the Board to defer the appeal for decision only to September 25, 1990 at 10:45 a.m.

(A VERBATIM TRANSCRIPT IS CONTAINED IN THE FILE.)

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Page 262, September 11, 1990, (Tape 2), Scheduled case of:

8:30 P.M. MICHAEL G. WEAVER, VC 90-S-037, application under Sect. 18-401 to allow addition to dwelling (screened porch) to 16 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-207), on property located at 4514 Hazelnut Court, on approximately 8,725 square feet of land, zoned PDH-2, Springfield District, Tax Map 45-3((3))348. (DEF. FROM 6/26/90 - NOTICES NOT IN ORDER)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Weaver 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.

Mrs. Thonen asked what was behind the subject property. Mr. Weaver replied that it was park land.

Michael George Weaver, 4514 Hazelnut Court, Chantilly, Virginia, stated that the Homeowners Association Architectural Review Committee has approved the request. He submitted photographs to the Board showing other porches in the neighborhood. He said that the property was purchased in good faith. With respect to the shape of the lot, he stated that it is shallow with only 34 feet between the house and the rear lot line. He stated that he did not believe that the PDH-2 zoning was applicable to his lot as it was really for subdivision housing and his property backs up to park land. He pointed out that he could construct a 9 foot wide porch without a variance but that would not be appropriate for the size of the house and he would like to construct a 18 foot wide screened porch. Mr. Weaver added that there were no objections from the neighbors.

Mr. Hammack expressed concern with the size of the porch, with the amount of the variance requested, and noted that the porch would cut off the neighbor's view. He asked if the porch could be reduced. Mr. Weaver pointed out that the porch would not really block the neighbor's view as his property is on a curve.

There were no speakers to address the request and Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant the request in part for the reasons noted in the Resolution. The Board informed Mr. Weaver that new plats would be required.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-037 by MICHAEL G. WEAVER, under Section 18-401 of the Zoning Ordinance to allow addition to dwelling (screened porch) to 16 feet from rear lot line (THE BOARD GRANTED 21 FEET), on property located at 4514 Hazelnut Court, Tax Map Reference 45-3((3))348, 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 11, 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 8,725 square feet of land.
4. The applicant's proposal is very large and the structure is bulky.
5. If the applicant's request is granted, it might generate similar requests from the neighbors.
6. The applicant's property is no different than the others in the neighborhood.
7. The property does back up to park land but there should be a larger rear yard than what the applicant proposes.

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

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

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

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

Page 264, September 11, 1990, (Tape 2), (MICHAEL G. WEAVER, VC 90-S-037, continued from Page 263)

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. New plats shall be submitted prior to the release of the Resolution.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Chairman Smith 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 September 19, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 264, September 11, 1990, (Tape 1), Scheduled case of:

8:45 P.M. BOYCE AND ELAINE WALLACE, VC 90-V-068, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition (sun room) 4.3 feet from the side lot line (8 ft. min. side yard and 25 ft. total min. side yards required by Sect. 3-207), on property located at 4304 Sheridans Point Court, on approximately 16,483 square feet of land, zoned R-2 (developed cluster), Mount Vernon District, Tax Map 110-1((26))14.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Wallace 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 called the Board's attention to a letter in opposition that staff had received from the next door neighbor.

Elaine Wallace, 4304 Sheridans Point Court, Alexandria, Virginia, came forward and stated that the proposed sunroom would be constructed of the same brick that is on the existing dwelling with a similarly shaped window. She stated that the area around the sunroom would be landscaped and would be aesthetically pleasing to the neighborhood. Mrs. Wallace stated that none of the mature trees would be removed and the neighbors have voiced no opposition to the request. She noted that the neighbor who had written to staff had viewed the site plan and expressed no objections at that time.

Vice Chairman DiGiulian asked the applicant to point out the location of the neighbor's property who was opposed to the request and Mrs. Wallace did so. (She submitted a site plan to the Board and noted the location.)

She continued by stating that the neighbor owns Lot 12 which is on the side of her property where she proposes to construct the sunroom. Mrs. Wallace addressed the neighbor's comments and stated that the fence is 7 feet high and landscaping has been added to enhance the fence. With respect to the basketball court, Mrs. Wallace stated that she had agreed to brick in one side of the sunroom and that the only way a child could hit the sunroom while on the basketball court is if they climbed a ladder and threw the ball over the fence. She pointed out that this is the same neighbor who built a 200 foot wooden structure which extends over into the air space of her property and this was done without a variance and without a building permit.

Mr. Kelley asked why the sunroom could not be constructed in the back of the house. Mrs. Wallace replied that there is a mature tree that would have to be removed and a brick patio off the family room. She added that the construction of the sunroom would balance the look of the house. Mr. Kelley stated that he did not believe that she had demonstrated any hardship and Mrs. Wallace stated that she had not yet completed her presentation.

She continued by stating that her lot is the largest in the development and the yard, where they want to construct the sunroom, is larger than the others in the neighborhood with the exception of one house.

There were no speakers to address the request and Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny 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-V-068 by BOYCE AND ELAINE WALLACE, under Section 18-401 of the Zoning Ordinance to allow construction of an addition (sun room) 4.3 feet from the side lot line, ~~on property located at 4304 Sheridans Point Court, Tax Map Reference 110-1((26))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 September 11, 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 16,483 square feet of land.
4. The applicant has not met the hardship requirement.
5. The large fence and the sunroom addition impacts on the neighbor and the land.
6. The request is not a minimum variance.

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Chairman Smith and Mr. Ribble absent from the meeting.

Page 266, September 11, 1990, (Tape 1), (BOYCE AND ELAINE WALLACE, VC 90-V-068, continued from Page 265)

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 19, 1990.

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Page 266, September 11, 1990, (Tape 1), Scheduled case of:

9:00 P.M. RANDOLPH L. DODD, VC 90-P-067, application under Sect. 18-401 of the Zoning Ordinance to allow construction of a detached garage 5.0 feet from side lot line (10 ft. min. side yard required by Sect. 3-407), on property located at 2900 Cleave Drive, on approximately 11,152 square feet of land, zoned R-4 and HC, Providence District, Tax Map 51-3((3))pt. 109 and 110. (CONCURRENT WITH SP 90-P-042)

9:00 P.M. RANDOLPH L. DODD, SP 90-P-042, application under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition (screened porch) to remain 21.5 feet from front lot line (30 ft. min. front yard required by Sect. 3-407), on property located at 2900 Cleave Drive, on approximately 11,152 square feet of land, zoned R-4 and HC, Providence District, Tax Map 51-3((3))pt. 109 and 110. (CONCURRENT WITH VC 90-P-067

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Dodd replied that it was.

The applicant began his presentation and staff did not present a staff report.

Randolph Dodd, 2900 Cleave Drive, Falls Church, Virginia, stated that he and his wife purchased the property in 1955 and the house is 38 years old as it was built in 1952. He stated that the side porch in question was there when he purchased the house and the discrepancy was detected when he requested a variance for the construction of a garage. Mr. Dodd noted that County staff, with the Office of Assessments, has made site visits to his property over the years and had never indicated that there was a problem.

He stated that his request was really two fold, one being a special permit in order to resolve the porch off set discrepancy and the second request is for a variance to construct a garage. With respect to the variance, Mr. Dodd stated that without the variance the existing driveway would have to be reconstructed to align with the garage. If a new driveway is constructed, it would be necessary to remove one or possibly two mature trees. He noted that the County is presently working on the Hillwood Improvement Program and just recently completed new curbing and driveway entrance in front of his house that would have to be reconfigured.

Mr. Riegle asked Vice Chairman DiGiulian to have the applicant reaffirm the affidavit. Vice Chairman DiGiulian stated that he thought that he had but asked the applicant to reaffirm the affidavit and Mr. Dodd did so.

Mr. Hammack asked why the applicant needed such a large garage. Mr. Dodd explained that he had several antique cars and he would like to keep them in the garage. He added that there are no objections from the neighbors.

There were no speakers to address the request and Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley stated that he would make separate motions on the request. He first made a motion to grant the variance 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 90-P-067 by RANDOLPH L. DODD, under Section 18-401 of the Zoning Ordinance to allow construction of a detached garage 5.0 feet from side lot line, on property located at 2900 Cleave Drive, Tax Map Reference 51-3((3))pt. 109 and 1110, 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 11, 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 11,152 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 specified garage shown on the plat (prepared by William E. Ramsey and dated March 13, 1990, revised through May 9, 1990) 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.

Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 19, 1990. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley then made a motion to grant the special permit request subject to the development conditions contained in the staff report.

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Page 268, September 11, 1990, (Tape 1), (RANDOLPH L. DODD, VC 90-P-067, and SP 90-P-042, continued from Page 267)

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-P-042 by RANDOLPH L. DODD, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition (screened porch) to remain 21.5 feet from front lot line, on property located at 2900 Cleave Drive, Tax Map Reference 51-3((3))pt. 109 and 110, 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 11, 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;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified screened porch shown on the plat (prepared by William E. Ramsey and dated March 13, 1990, revised through May 9, 1990) submitted with this application and is not transferable to other land.

Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 19, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 268, September 11, 1990, (Tapes 2-3), Scheduled case of:

9:15 P.M. JAMES M. SHANGLE, JR., JEFFREY A. CLEMONS, AND JAMES M. SHANGLE, SR., VC 90-C-069, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of three lots and an outlot into three lots with proposed Lot 3C having a lot width of 150.87 feet (200 ft. min. lot width required by Sect. 3-E06), on property located at 10627 Hunters Valley Road and 2523 Leeds Road, on approximately 6.46 acres of land, zoned R-E, Centreville District, Tax Map 37-1((3))3A, C3, D, and 5.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before

the Board was complete and accurate. The applicant's attorney, Michael Ravencraft, attorney with the law firm of Flinn & Beagen, 3315 Stone Heather Court, Herndon, Virginia, replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Michael Jaskiewicz, Staff Coordinator, presented the staff report. He stated that staff has concluded that the applicant has not met the nine standards required for a variance. Staff believes that the applicants have reasonable use of their property as there is an existing dwelling on Lots 3A and 5. Staff also finds that the proposed resubdivision creates a self imposed hardship on proposed Lot 3C not approaching confiscation but rather a special privilege or convenience that primarily serves to increase the number of dwelling units permitted.

Mr. Ravencraft presented the justification for the request by stating that the four lots within the variance application are within a residential subdivision located off of Vale Road. He stated that all the lots in the subdivision are approximately 2 acres or greater but Lot 3C and one other lot are the exceptions. Mr. Ravencraft added that Lot 3C is a substandard, nonconforming lot and is very unique in its size and shape. The applicants intend to make Lot 3C a usable lot by bringing it essentially up to "snuff" with the surrounding lots in the area and up to "snuff" with the R-E District requirements. He added that the applicants have created a plan wherein Lot 3C would be absorbed into Lot 3A with the additional acreage and the entire parcel will then be subdivided into 3 lots, all of which will conform with the R-E District requirements and be consistent with the surrounding lots. Mr. Ravencraft explained that essentially this was a cleanup process for a nonconforming lot and what the applicants are requesting is a 49 foot variance on proposed Lot 3C. The applicants are residents of the subdivision and have been members of the subdivision for a number of years with Mr. Shangle Sr. living on existing Lot 5 and Mr. Shangle, Jr. living on Lot 3A and have been members of the subdivision for a number of years.

He disagreed that this was a self imposed hardship as Lot 3C was not created by any doing of the applicants but was created by numerous conveyances and subdivisions prior to the applicants purchasing the property. He called the Board's attention to Appendix 7 of the staff report which is a plat of the subject property and stated that the plat indicates that there are building restrictions on both Outlot A and Outlot B. He stated that Outlot B was merged with Lot 4 and then subdivided and currently exists as Lots 4A and 4B, both of which have dwellings on them at this time. The applicants are only proposing in this application to mirror what has already been done and the precedent has already been set. Mr. Ravencraft stated that he believed that the application will further the intent of the subdivision and the R-E District and for these reasons he believed that the approval of the application was warranted.

Mr. Hammack asked if the resubdivision of Lots 4A and 4B required a variance. Mr. Ravencraft replied that he was not certain but did not believe so.

There were no speakers in support of the request and Vice Chairman DiGiulian called for speakers in opposition to the request.

Martha J. Thomas, 2505 Leeds Road, Oakton, Virginia, owner of Lot 4A, came forward and stated that she had submitted a letter in opposition to the request which contained some typographical errors. (She submitted a corrected letter to the Board.) She stated that one only needs to look at the plat to see that the lots in the area are of various shapes and sizes and all are unique. Mrs. Thomas explained that in the days when she moved to Hunter Valley and someone wanted to purchase property they walked over the property with the owner, picked out what they wanted, and then it was measured into tracts. She noted that Lot 4B was a separate purchase one year after she had purchased Lot 4A and it was never a part of Lot 4A. Mrs. Thomas stated that Outlot 3C was divided that way deliberately because the lots were divided into building lots and the outlot just fitted into there and in the earlier days it was used as a park area as well as Lot 4B. She noted that the covenants should also be considered and asked the Board to deny the request.

B. Jane Hotzenpillar, 2501 Leeds Drive, Oakton, Virginia, owner of Lot 4B, opposed the request because she believed the front footage requirement should be maintained as stipulated to ensure privacy. She stated that she does not want to see a precedent started whereby residents can sell off bits and pieces of their property and make nonconforming lots. She referenced item 2 of the covenants which states, "The land hereby conveyed may not be subdivided and sold in tracts of less than 2 acres in size." Ms. Hotzenpillar added that she believed that Mr. Shangle, Sr. must give Mr. Shangle, Jr. enough land to make up the 2 acres and stated that she does not believe that is legal under the covenants. She also objected to the excessive removal of the trees from the outlot which would cause a backup drainage problem on her lot as her lot has a 25 foot natural storm drain that covers surface water to Little Fox Creek in Difficult Run.

In rebuttal, Mr. Ravencraft noted that the applicants were trying to create a 2 acre parcel which would be in conformance with the R-E District and the convenants.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny 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-069 by JAMES M. SHANGLE, JR., JEFFREY A. CLEMONS, AND JAMES M. SHANGLE, SR., under Section 18-401 of the Zoning Ordinance to allow subdivision of three lots and an outlot into three lots with proposed Lot 3C having a lot width of 150.87 feet, on property located at 10627 Hunters Valley Road and 2523 Leeds Road, Tax Map Reference 37-1((3))3A, C3, D, and 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 September 11, 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 lots are 6.46 acres of land.
4. The applicants have reasonable use of the property involved and to try and take an outlot and bring it into conformity by taking another lot out of conformity is for convenience.
5. The applicants have not satisfied the hardship requirements of the statute.

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

Page 271, September 11, 1990, (Tapes 2-3), (JAMES M. SHANGLE, JR., JEFFREY A. CLEMONS, AND JAMES M. SHANGLE, SR., VC 90-C-069, continued from Page 270)

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 19, 1990.

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Page 271, September 11, 1990, (Tape 3), Scheduled case of:

9:30 P.M. PHYLLIS M. AND DAVID C. BENNER, VC 90-L-066, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of Lot B into two lots with proposed Lot B-2 having a lot width of 80 feet (100 ft. min. lot width required by Sect. 3-206) on approx. 45,900 s.f. of land, located at 5219 Monroe Dr., zoned R-2, Lee District, Tax Map 71-4((6))B.

Mrs. Thonen stated that she had participated in the original public hearing but had not been present for the September 6, 1990 public hearing. She stated that it was her understanding that the applicants had revised their request and asked that the Board defer the application so she could review the additional material.

Following a discussion with Jane Kelsey, Chief, Special Permit and Variance Branch, Mrs. Thonen made a motion to defer the application to September 20, 1990 at 11:00 a.m. Mr. Kelley seconded the motion which passed by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 271, September 11, 1990, (Tape 3), After Agenda Item:

James C. Mooney, Jr., et al Appeal

Mrs. Thonen made a motion to schedule the appeal as it was complete and timely filed. Vice Chairman DiGiulian seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting. The public hearing was scheduled for November 13, 1990 at 8:30 p.m.

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Page 271, September 11, 1990, (Tape 3), After Agenda Item:

Blue Ridge Arsenal, Inc.

Mrs. Thonen made a motion that the Board issue an intent to defer as requested by the applicant. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 271, September 11, 1990, (Tape 3), After Agenda Item:

Burroughs Agency Services, Inc. Appeal

Vice Chairman DiGiulian noted that the Board had deferred action on this appeal from September 6, 1990. The Board members commented that they had no information on the appeal. Jane Kelsey, Chief, Special Permit and Variance Branch, apologized to the Board as it appeared that the information had been omitted from the packet this week although it had been in their package the previous week.

Mrs. Thonen made a motion to defer action until September 20, 1990. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 271, September 11, 1990, (Tape 3), After Agenda Item:

Nicholas Tsimbidis and Debra L. Scruggs, VC 90-V-096
Out of Turn Hearing

Following a discussion among the Board, Mr. Hammack made a motion to grant the out of turn hearing.

Mr. Kelley asked the reason for the out of turn hearing. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff had just received the letter and had not yet had time to review the request.

Mrs. Thonen asked staff for a suggested date and time for the out of turn hearing. Ms. Kelsey suggested October 18, 1990 at 11:00 a.m.

Hearing no objection, Vice Chairman DiGiulian so ordered.

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Page 272, September 11, 1990, (Tape 3), After Agenda Item:

Douglas Pitkin, Alma Pitkin, and Deborah Pitkin Appeal, A 90-S-010
Carter V. Boehm, Trustee, Appeal, A 90-S-011

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to a memorandum from the Clerk explaining that the posting in the above-referenced cases was incorrect and suggested that the cases be deferred to October 9, 1990 at 10:30 a.m.

Mr. Hammack made a motion to defer both applications to the date and time suggested by staff. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 272, September 11, 1990, (Tape 3), After Agenda Item:

Approval of Resolutions

Mr. Hammack made a motion to approve the Resolutions as submitted. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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Mr. Hammack asked Jane Kelsey, Chief, Special Permit and Variance Branch, if any action had been taken to clarify or retract the Interoffice Memorandum that had been the topic of discussion of the August 23, 1990 Board of Zoning Appeals meeting.

Ms. Kelsey replied that it was the Board's package for September 20, 1990.

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

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Vice Chairman
Board of Zoning Appeals

SUBMITTED: October 18, 1990

APPROVED: October 23, 1990

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on September 20, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. Chairman Daniel Smith was absent from the meeting..

Vice Chairman DiGiulian called the meeting to order at 10:00 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 273, September 20, 1990, (Tape 1), Scheduled case of:

9:00 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. (DEF. FROM 3/13/90 AT APPELLANT'S REQUEST) (DEFERRED FROM 5/22/90 AT APPELLANT'S REQUEST)

Vice Chairman DiGiulian stated that there was a note on the agenda that a three (3) month deferral had been requested for the appeal.

Mrs. Thonen observed that this was the third deferral request.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that staff recommended scheduling the case for December 20, 1990.

Mrs. Thonen stated that she had reservations about scheduling the appeal again because the Board had to wait around whenever another deferral was requested. She stated that, if the appeal was scheduled to be heard after the last item on the agenda, the inconvenience of waiting around might be avoided in the event of a request for another deferral.

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

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Page 273 September 20, 1990, (Tape 1), Scheduled case of:

9:30 A.M. KAE SHIK AND SUNG MOON AND DON AND SUNG LEE, VC 90-D-030, application under Sect. 18-401 of the Zoning Ordinance to allow a dwelling to remain 7.2 feet at closest point from street lines of a corner lot (30 ft. min. front yard required by Sect. 3-307), on property located at 1542 Chain Bridge Road, on approximately 10,077 square feet of land, zoned R-3 and SC, Dranesville District, Tax Map 30-4((2))(4)40B. (CONCURRENT WITH SE 90-D-015) (DEFERRED FROM 6/21/90 UNTIL SE IS HEARD)

Mrs. Thonen noted that there was a deferral request for this application.

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the Special Exception which was running concurrent with the variance application was scheduled to go before the Board of Supervisors on October 24, 1990; therefore, she stated, staff recommended scheduling the variance request for October 30, 1990, at 10:30 a.m. Ms. Kelsey stated that Mr. Hansbarger, attorney for the applicant, was present and agreed with that scheduling.

Mrs. Thonen made a motion to schedule VC 90-D-030 as recommended by staff. Mr. Ribble seconded the motion. Mr. Kelley and Mr. Hammack were not present for the vote. Chairman Smith was absent from the meeting.

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Page 273, September 20, 1990, (Tape 1), Scheduled case of:

9:45 A.M. FRANK M. ALMETER AND MARY ALMETER, SP 90-P-044, application under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow deck to remain 3.4 feet from rear lot line (5.0 ft. min. rear yard required under Sect. 2-412), on property located at 12004 Settle Court, on approximately 5,130 square feet of land, zoned PDH-8, Providence District, Tax Map 46-1((24))192.

Vice Chairman DiGiulian called the applicants to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Almeter 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. Ms. Bettard brought the Board's attention to corrections in the staff report: Page one, second paragraph, line seven, the figure of 3.5 feet should have read "3.4 feet"; in the same paragraph, on line eight, the figure of 1.5 feet should have read "1.6 feet."

The applicants, Frank M. and Mary Almeter, 12004 Settle Court, Fairfax, Virginia, presented the statement of justification. Mr. Almeter stated that the error in building location was discovered by their attorney on September 29, 1988, when the applicants went to settlement. Mr. Almeter stated that there was a signed agreement with the builder, attached to their settlement documents, stating that the builder would seek a variance or correct the deck, in order for the settlement to go forward. When the applicants began to look into the situation further, they found that the builder had not done anything about resolving the error, so they took it upon themselves to seek a resolution.

Mrs. Thonen asked Mr. Almeter what was behind his property. Mr. Almeter stated that there were about a dozen homes behind his property, which surround the golf course. From the property line, Mr. Almeter stated, there is a little grassy or wooded area that serves as a buffer between the fairway and the golf course.

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

Mrs. Thonen made a motion to grant SP 90-P-044, subject to the Proposed Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-P-044 by FRANK M. AND MARY ALMETER, under Section 18-401 of the Zoning Ordinance to allow a dwelling to remain 7.2 feet at closest point from street lines of a corner lot, on property located at 1542 Chain Bridge Road, Tax Map Reference 46-1((24))192, 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 September 20, 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;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified deck 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 deck in accordance with this special permit shall be submitted and attached to the building permit.

Page 275, September 20, 1990, (Tape 1), (FRANK M. ALMETER AND MARY ALMETER, SP 90-P-044, continued from Page 274)

3. A building permit shall be obtained and inspections approved for the deck within thirty (30) days of the final date of approval of this special permit.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 28, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 275, September 20, 1990, (Tape 1), Scheduled case of:

10:00 A.M. BLUE RIDGE ARSENAL, INC., SPA 89-S-007-1, application under Sect. 5-503 of the Zoning Ordinance to amend SP 89-S-007 to allow an expansion of indoor firing range, located at 14725K Flint Lee Road, on approximately 6.08 acres of land after dedication of 5.7 acres, zoned I-5 and WSPOD, Springfield District, Tax Map 34-3((1))39B. (OUT-OF-TURN HEARING GRANTED 3/27/90) (DEFERRED FROM 6/5/90 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the applicant had requested a six (6) month deferral and that the application would require readvertising.

Vice Chairman DiGiulian asked what the reason for deferral was this time. Bernadette Bettard, Staff Coordinator, responded by stating that the applicant believed that it may be necessary to redesign the building and they are trying to work it out.

Mrs. Harris made a motion to defer SPA 89-S-007-1 for an indefinite period of time. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman Smith was absent from the meeting.

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Page 275, September 20, 1990, (Tape 1), Scheduled case of:

10:15 A.M. LARRY B. & CLAUDIA ELIZABETH RALSTON, SP 90-M-039, 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 7.1 feet from side lot line (12 ft. min. side yard required by Sect. 3-307), on property located at 3023 Aspen Lane, on approximately 20,061 square feet of land, zoned R-3, Mason District, Tax Map 51-3((6))25.

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to a memo sent to them by Planning Commissioner Strickland, requesting a deferral of this application in order to work out some problems which the applicant had, and in order for the applicant to meet with the neighbors.

Mrs. Thonen made a motion to defer SP 90-M-039 until November 8, 1990 at 9:00 a.m.

Mrs. Harris asked if there was anyone present who had an interest in this case.

Bernadette Bettard, Staff Coordinator, stated that there were two people present who were interested in SP 90-M-039, and one of them came forward.

Vice Chairman DiGiulian reiterated that the Board had a request from a Planning Commissioner and the applicant to defer this case and stated that the speaker could address the issue of the deferral, if they chose to, but they stated that they did not wish to do so.

Mr. Ribble seconded the motion on the floor, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman Smith was absent from the meeting.

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Page 275, September 20, 1990, (Tape 1), After Agenda Item:

Request for Date and Time
Robert L. Thoburn T/A Fairfax Christian School Appeal
Tentatively Scheduled for November 27, 1990, at 11:00 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the Board that the date and time presently scheduled at Mrs. Thonen's request were tentative. Ms. Kelsey called the Board's attention to Ms. Gwinn's memo, in which she stated that she believed that the appeal was not timely filed.

Mrs. Harris had a question regarding the appeal process, to the effect that, when Ms. Byron wrote the letter stating her opinion, then Mr. Thoburn wrote to Ms. Gwinn asking her to make a judgment on that appeal, was the effective date of Ms. Byron's decision suspended until a final decision was made by Ms. Gwinn?

Page 276, September 20, 1990, (Tape 1), (ROBERT L. THOBURN T/A FAIRFAX CHRISTIAN SCHOOL APPEAL, continued from Page 275)

Ms. Kelsey stated that Ms. Gwinn had stated in her memo that her determination was merely a reconfirmation of Ms. Byron's July 19th decision. Mrs. Harris did not feel that this answered her question.

The Board discussed the wisdom of getting an opinion from the County Attorney's Office.

Mrs. Harris made a motion to defer making a decision on this item until the next meeting, by which time the Board said they would like to have an opinion from the County Attorney's office.

Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman Smith was absent from the meeting.

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Page 276, September 20, 1990, (Tape 1), After Agenda Item:

Request for Date and Time
Burroughs Agency Services, Inc. Appeal
Tentatively Scheduled for October 23, 1990

Vice Chairman DiGiulian noted the request for withdrawal received from the applicant and distributed to the Board, in which the applicant expressed concurrence with the determination of the Zoning Administrator.

Mrs. Thonen made a motion to allow withdrawal of the appeal. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman Smith was absent from the meeting.

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Page 276, September 20, 1990, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
DDG, Inc., SPA 86-S-072-1

Mrs. Harris made a motion to grant an Out-of-Turn Hearing for this item on October 30, 1990, at 9:00 a.m. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Chairman Smith was absent from the meeting.

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Page 276, September 20, 1990, (Tape 1), After Agenda Item:

Approval of Resolutions from September 11, 1990 Meeting

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. Mr. Hammack was not present for the vote. Chairman Smith was absent from the meeting.

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The Board recessed at 10:25 a.m. and returned at 10:40 a.m.

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Page 276, September 20, 1990, (Tape 1), Scheduled case of:

10:30 A.M. CLARENCE B. AND RUTH B. WARREN, VC 90-V-070, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage addition to 19 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 8616 Buckboard Drive, on approximately 14,468 square feet of land, zoned R-3, Mount Vernon District, Tax Map 102-3((10))(5)1.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Warren replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report.

The applicant, Clarence B. Warren, 8616 Buckboard Drive, Alexandria, Virginia, presented the statement of justification.

Mrs. Harris raised a question about the statement of justification where the applicant talked about converting the present utility room to provide sleeping quarters on the ground floor. She asked the applicant what that had to do with the garage. Mr. Warren stated that he hoped to put the appliances from the utility room into the proposed garage. He stated that the house had a limited amount of storage space, and he hoped to use the proposed garage for storage.

Mr. Ribble asked Mr. Warren if he knew of any two-car garages on interior lots in the subdivision. Mr. Warren stated there were two that he knew of, but they were on corner lots.

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

Mr. Ribble pointed out to Mr. Warren that he stated in his statement of justification that variances had been granted to other property owners in the subdivision. Mr. Ribble observed that two landowners across the street from the applicant, who he remembered had received variances, had received them because of an unusual situation, in that they had an abandoned right-of-way behind them.

Mr. Ribble stated to Mr. Warren that he was still puzzled about why he needed a two-car garage, when he could build a one-car garage by right. Mr. Warren stated that, before too long, he would like to sell his property and a two-car garage would increase the saleability.

Mr. Ribble made a motion to deny VC 90-V-070 for the reasons outlined in the Resolution.

Mrs. Thonen stated she would support the motion because, speaking strictly of the bulk, the house is large for the lot, and to add the garage would make the bulk overwhelming.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-070 by RUTH B. AND CLARENCE B. WARREN, under Section 18-401 of the Zoning Ordinance to allow construction of garage addition to 19.0 feet from rear lot line, on property located at 8616 Buckboard Drive, Tax Map Reference 102-3((10)(5)1, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 20, 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 14,468 square feet of land.
4. This property does not present an unusual situation and a smaller garage could be built by right.
5. Other variances granted in the neighborhood involved unusual situations, such as abandoned property which was the basis for granting two variances.
7. The purpose of the request is convenience; i.e., it would make the property more attractive for resale.

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 which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 28, 1990.

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Page 278, September 20, 1990, (Tape 1), Scheduled case of:

10:45 A.M. NELLE W. TEMPLE, VC 90-D-077, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage to 18.2 feet from one street line of a corner lot (35 ft. min. front yard required by Sect. 3-207), on property located at 7114 Matthew Mills Road, on approximately 17,972 square feet of land, zoned R-2, Dranesville District, Tax Map 30-1((8))47.N (OUT-OF-TURN HEARING GRANTED 7/10/90)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Temple 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.

The applicant, Nelle W. Temple, 7114 Matthew Mills Road, McLean, Virginia, presented the statement of justification and thanked the Board for granting an Out-of-Turn Hearing. Ms. Temple stated that the reason for her request was that her daughter had an unfortunate accident in March 1990 during a physical education class at the high school. Ms. Temple stated that her daughter was hit in the head, spent four months in the hospital, has ended up with a mysterious condition, and is totally paralyzed on the right side of her body. Ms. Temple stated that she had only five (5) weeks notice that her daughter would be released from the hospital, and she had to create a wheel chair accessible environment for her before her release. Ms. Temple stated that she considered many options and contacted five builders, but anything they could suggest would have taken at least several months to construct. Ms. Temple stated that the only viable option she believed she had at the time was to convert her existing two-car garage into a bedroom/bathroom suite for her daughter, designed for wheel chair accessibility. Ms. Temple stated she needs a garage large enough to transport her daughter to and from the house, out of a wheel chair, and provide shelter for her from the car to the house in inclement weather. The garage also will need to accommodate a ramp for the wheel chair. Some reasons for the selected site were to avoid destroying some trees, and to conform to the initial architectural design of the house.

Mrs. Harris asked Ms. Temple if there was any possibility that she could provide some shrubbery where she planned to put in a new driveway. Ms. Temple stated there was a large maple tree presently on the neighbors side of the lot line in the area of the proposed driveway. She said there was also a small pine tree and a nicely landscaped garden. Ms. Temple went on to describe other plantings in the area in question.

Mr. Hammack asked Ms. Temple if the back porch was included in the garage dimension of 24 feet and she stated that it was not. Mr. Hammack asked Ms. Temple why she could not put the ramp between the proposed garage and the house, to run out to the front, instead of across the back, which would allow her to move the garage back. Ms. Temple stated that one reason she wanted an attached garage was to not expose her daughter to the elements.

Reverend Edwin L. Ehlers, Pastor of Redeemer Lutheran Church in McLean, 8542 Electric Avenue, Vienna, Virginia, spoke in support of the application. He stated that he was the family pastor and had known Ms. Temple and Bliss, the daughter, since March and was well aware of all the emotional factors involved in this situation. Reverend Ehlers stated that he was impressed with what Ms. Temple was attempting to do in providing architectural integrity in keeping with the character of the neighborhood, and in keeping the large poplar trees which add to the beauty of the neighborhood. Pastor Ehler stated that he believed Ms. Temple was not requesting a variance through desire, but through need.

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

Mr. Kelley made a motion to grant VC 90-P-077, subject to the Proposed Development Conditions contained in the staff report, because the lot is of exceptional shape, the circumstances justify granting the request, and there is no other practical way to build the garage on the property.

In seconding the motion, Mr. Ribble stated that one of the reasons he was supporting the motion was that part of the road had not been built and had been maintained by the applicant. Mr. Ribble stated that, although it was a close call, the request met the hardship section of the Ordinance.

Mrs. Harris stated that she also was going to support the motion because she did not believe the applicant was making this application for convenience, but rather that the medical reasons stated justified that denial would unreasonably restrict the use of the property. Mrs. Harris stated that Zoning Ordinances were implemented to protect the safety, health, and welfare of the citizens, and this falls into that category. Mrs. Harris stated denial would cause a demonstrable hardship, as opposed to an inconvenience. She stated that she believed there were medical reasons to justify the size of the proposed structure and, because of safety reasons, it has to be attached to the daughter's living quarters.

Mr. Hammack stated that he would support the motion but he believed Ms. Temple should push the garage back. He stated that Ms. Temple made inconsistent statements when she stated that she was concerned about her daughter crossing from the house into the garage because of temperature differences, but at times she will have to wait in the back and have to take the wheel chair out to the school bus. Mr. Hammack stated that if the temperature difference was that great, she should be able to make it across a five (5) foot passageway to the garage, which would allow her the outside safety entrance and would allow the ramp to be placed towards the street and push the garage back, rather than have a covered porch. He stated that it would take Ms. Temple's daughter a longer time to get from the school bus into Thomas Jefferson High School than it would to cross a five (5) foot arcade, which would require a lesser variance. Mr. Hammack stated that, since the plans are not yet completed, he suggested that Ms. Temple really take a look at somehow changing the configuration. In any event, he stated that he would support the motion.

Vice Chairman DiGiulian stated that he would support the motion because of the configuration of the roads, the location of the dwelling on the lot, and because he could not see anywhere else to put the garage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-077 by NELLE W. TEMPLE, under Section 18-401 of the Zoning Ordinance to allow construction of garage to 18.2 feet from one street line of a corner lot, on property located at 7114 Matthews Mills Road, Tax Map Reference 30-1((8))47, 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 20, 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 17,972 square feet of land.
4. The lot is of exceptional shape.
5. The circumstances justify granting the request and there is no other practical way to build the garage 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.

Page 280, September 20, 1990, (Tape 1), (NELLE W. TEMPLE, VC 90-D-077, continued from Page 279)

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 28, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 280, September 20, 1990, (Tape 1), Scheduled case of:

11:00 A.M. DOUGLAS PITKIN, ALMA PITKIN, AND DEBORAH PITKIN Appeal, A 90-S-010, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed subdivision of Cliffs of Clifton will result in two lots within Fairfax County which are not buildable lots, on approximately 4.3613 acres of land, zoned R-C and WS, Springfield District, Tax Map 75-4((1))40A. (CONCURRENT WITH A 90-S-011)

11:00 A.M. CARTER V. BOEHM, TRUSTEE, APPEAL, A 90-S-011, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed subdivision of Cliffs of Clifton will result in two lots within Fairfax County which are not buildable lots, on property located at 7028 Cold Point Road, on approximately 1.9619 acres of land, zoned R-C and WS, Springfield District, Tax Map 75-4((1))40B. (CONCURRENT WITH A 90-S-010)

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the Board that, at a previous meeting, they had passed a motion of Intent to Defer the two applications until October 9, 1990 at 10:30 a.m.

Mrs. Harris made a motion to defer the two applications until October 9, 1990 at 10:30 a.m. Mr. Kelley seconded the motion, which passed unanimously. Chairman Smith was absent from the meeting.

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11:00 A.M. PHYLLIS M. AND DAVID C. BENNER, VC 90-L-066, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of Lot B into two lots with proposed Lot B-2 having a lot width of 80 feet (100 ft. min. lot width required by Sect. 3-206), 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. (DEFERRED FROM 9/11/90 FOR DECISION ONLY)

Mrs. Thonen stated that this was a case in which she was very interested, but she was unable to be at the last scheduled hearing. She stated that she was particularly interested in the way that the applicants had changed their request from three variances to one variance, per recommendations from Mr. Hammack and Mrs. Harris that the applicants request a lesser variance. Mrs. Thonen stated that the subdivision had been platted in 1941 and, at that time, she believed they may not have laid out lots the way the Board now considers to be appropriate. She stated that she thought that only a couple of lots had been subdivided; but she believed that mitigating circumstances in this case were that this is an elderly couple, that they have held the property for many years, and that they would like to have it subdivided so that they can afford to continue to live in the County.

Mrs. Thonen made a motion to grant VC 90-L-066, subject to the Proposed Development Conditions contained in the staff report, for the reasons outlined in the Resolution. She stated that she believed the applicants met the nine standards and the only thing she could see wrong was that they do not have the frontage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-066 by PHYLLIS M. AND DAVID C. BENNER, under Section 18-401 of the Zoning Ordinance to allow subdivision of Lot B into two lots with proposed Lot B-2 having a lot width of 80 feet, on property located at 5219 Monroe Drive, Tax Map Reference 71-4((6))B, 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 September 20, 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 subdivision was platted in 1941 and, at that time, the lots were laid out in a manner which would now be considered to be inappropriate.
5. The applicants have laid their property out very well and need only one variance, instead of three variances as in the first application.

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

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

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

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

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

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

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

1. This variance is approved for the subdivision of one lot into two lots, each with less than the minimum required lot width, and for the existing dwelling as 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 tree preservation plan shall be submitted to the Department of Environmental Management for review and approval by the County Arborist prior to the issuance of any preliminary grading and clearing permits which preserves to the greatest extent possible any existing healthy individual trees or stands of trees on the subject property.

Mr. Ribble seconded the motion which carried by a vote of 4-2. Mrs. Harris and Mr. Hammack voted nay. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 28, 1990. This date shall be deemed to be the final approval date of this variance.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

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

SUBMITTED: 10/30/90

APPROVED: 11/8/90

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on September 25, 1990. The following Board Members were present: Vice Chairman DiGiulian; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. Chairman Smith and Martha Harris were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:30 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 283, September 25, 1990, (Tape 1), Scheduled case of:

9:00 A.M. KARL M. AND GRETCHEN R. DUFF, VC 90-L-051, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into five (5) lots with Lots 3 and 4 each having a lot width of 12 feet (70 ft. min. lot width required by Sect. 3-406), on property located at 6101 Florence Lane, on approximately 2.0163 acres of land, zoned R-4, Lee District, Tax Map 82-4((1))25 and 82-4((35))A1. (DEFERRED FROM 7/26/90 AT THE REQUEST OF THE PLANNING COMMISSION)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sutliff 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 said that staff believed that the application did not meet all the nine standards as outlined in Section 18-404 of the Zoning Ordinance. He stated that topographic restraints which precludes the reasonable use of land had not been demonstrated , the shape of the lot did not diminish the potential to subdivide the property within the requirements of the R-4 District, and no physical hardship of the land had been demonstrated. Mr. Riegle said staff believed that the granting of the variance could alter the character of the area. He noted that on September 12, 1990 the Planning Commission had voted to recommended to the Board of Zoning Appeals the the application be denied.

Randolph A. Sutliff, an attorney with the law firm of Miles and Stockbridge, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, addressed the Board and stated that the triangular lot narrowed abruptly at the northern end of the site and satisfied the issue of shallowness. Mr. Sutliff explained the location of the existing dwelling limited the options the applicant had in subdividing the property. He said that the four lots would be served by one driveway feeding into Florence Lane, therefore minimizing traffic. He expressed his belief that the character of the area would not be changed because of the limited number of potential infill lots available for development. Mr. Sutliff stated that the lot's shallowness on the north end, the preservation of the existing dwelling, and the protection of the trees on the property justified the granting of the variance. He expressed his belief that the development of the property, five homes on a 2 acre lot in a R-4 zoning District, would represent fairness to the applicant and improve the neighborhood by adding architectural variety.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny VC 90-L-051 for the reason reflected in the Resolution and subject to the development conditions contained in the staff report dated July 19, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-051 by KARL M. AND GRETCHEN R. DUFF, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into five (5) lots with Lots 3 and 4 each having a lot width of 12 feet, on property located at 6101 Florence Lane, Tax Map Reference 82-4((1))25 and 82-4((35))A1, 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 September 25, 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 2.0163 acres of land.
4. The request does not meet the standards of the Zoning Ordinance.
5. The proposed subdivision would have a detrimental impact on the neighborhood.
6. It would be too congested.
7. There are too many pipestems for what is allowed in the Zoning Ordinance.

8. If we would grant the variance, we could possibly be making a decision that amounts to a rezoning and not sticking to BZA mandate.
9. If we start granting pipestems, we will be making a mistake.
10. There is no restriction on the reasonable use of the land because they can do a conventional plan for the land.
11. The variance is for convenience rather than 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.

Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1990.

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Page 284, September 25, 1990, (Tape 1), Scheduled case of:

9:15 A.M. DAVID M. AND ROBERTA A. CORDINGLEY, VC 90-C-073, application under Sect. 18-401 of the Zoning Ordinance to allow construction of an addition (screened porch) 16.5 feet from the rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 2638 Paddock Gate Court, on approximately 13,790 square feet of land, zoned R-3 (developed cluster), Centreville District, Tax Map 25-1((14))35.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Cordingley replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report.

In response to Vice Chairman DiGiulian's question, Mr. Jaskiewicz stated that the dimensions of the proposed porch were 16 by 20 feet.

The applicant, David M. Cordingley, 2638 Paddock Gate Court, Herndon, Virginia, addressed the Board and stated that he had purchased the house in August, 1989. He said that the unusual

pie shaped lot has caused the need for a variance and that strict application of the Zoning Ordinance would cause undue hardship because he would not be able to construct a reasonably sized porch. Mr. Cordingley said that the porch would add aesthetic value to the community, that the area would be landscaped, and that the neighbors have expressed their support of the request.

In response to Mr. Ribble's question about the similarity of the applicant's lot and other lots in the area, Mr. Cordingley stated that only one lot in each cul-de-sac is pie shaped.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant-in-part VC 90-C-073 to allow the addition to be built no closer than 20.5 feet from the rear lot line, for the reasons noted in the Resolution, and subject to the development conditions contained in the staff report dated September 20, 1990.

Vice Chairman DiGiulian called for discussion.

Mrs. Thonen stated that she would support the motion because of the reduction to 20.5 feet. She explained that for safety reasons the applicant should have a porch and that this need is not taken into consideration when cluster developments are built.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-073 by DAVID M. AND ROBERTA A. CORDINGLEY, under Section 18-401 of the Zoning Ordinance to allow construction of an addition (screened porch) 16.5 feet from the rear lot line, (THE BOARD GRANTED AN ADDITION NOT MORE THAT 12 FEET IN DEPTH, 20.5 FEET FROM REAR LOT LINE) on property located at 2638 Paddock Gate Court, Tax Map Reference 25-1((14))35, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 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 13,790 square feet of land.
4. The applicant has satisfied the nine standards for a variance.
5. The lot has an unusual shape with converging lot lines toward the front.
6. The applicant is limited as to where he can put a deck.
7. The placement of the house on the lot leaves a very shallow rear yard which caused 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-IN-PART with the following limitations:

1. This variance is approved for the location and the specific shed 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 which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 286, September 25, 1990, (Tape 1), Scheduled case of:

9:30 A.M. CHARLES E. AND ELIZABETH A. MARCH, VC 90-A-074, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 18.4 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on property located at 4805 Wakefield Chapel Road, on approximately 10,519 square feet of land, zoned R-3, Annandale District, Tax Map 70-1((16))281.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. March 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.

The applicant, Charles E. March, 4805 Wakefield Chapel Road, Annandale, Virginia, addressed the Board and stated that because of the location of the house on the lot, an addition could not be added without a variance. He explained that the trees on the property would screen the addition so that it would have no impact on the neighborhood.

In response to Vice Chairman DiGiulian, Mr. March stated that the proposed addition's dimensions would be 14 by 16 feet.

In response to Mr. Ribble's question about topographic problems on the lot, Mr. March said that the house is located on a high point to the rear of the lot, causing the need for the variance. He explained that because of the aesthetics, he did not desire to build to the front of the property.

Mrs. Thonen asked why the addition could not be put behind the carport. Mr. March stated that if he constructed the addition there he would have to completely enclose the open carport.

There being no speakers to thes request, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 90-A-074 for the reasons noted in the Resolutions and subject to the development conditions contained in the staff report dated September 18, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-074 by CHARLES E. AND ELIZABETH A. MARCH, under Section 18-401 of the Zoning Ordinance to allow construction of addition 18.4 feet from rear lot line, on property located at 4805 Wakefield Chapel Road, Tax Map Reference 78-1((16))281, 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 25, 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 10,519 square feet of land.
4. The applicants have satisfied the nine standards for a variance.
5. The lot has exceptional topographical conditions.
6. The house is built back on the lot, had it been located up closer the applicant could have built the addition by-right.

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

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

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

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

Page 288, September 25, 1990, (Tape 1), (CHARLES S. AND ELIZABETH A. MARCH, VC 90-A-074, continued from Page)

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

Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 288, September 25, 1990, (Tape 1), Scheduled case of:

9:45 A.M. HAROLD PARRY, VC 90-A-071, application under Sect. 18-401 of the Zoning Ordinance to allow construction of garage 3.12 feet from side lot line such that side yards total 13.3 feet (8 ft. min. side yard and 24 ft. min. total side yards required by Sect. 3-207) on property located at 8304 Beaverdam Court, on approximately 11,413 square feet of land, zoned R-2 (developed cluster), Annandale District, Tax Map 70-3((7))70.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Cable 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.

The architect for the applicant, John H. Cable, with the firm of John Cable Associates, Inc., 311 S. Washington Street, Alexandria, Virginia, addressed the Board and said that he believed that the applicant had complied with the requirements needed for a variance. He explained that several houses in the neighborhood have two car garages, the triangular shape of the lot has caused the need for the variance, and the open space walkway ensures that the garage will have no impact on the neighborhood.

In response to Vice Chairman DiGiulian's question, Ms. James stated that the open space walkway on the left side of the property led to the park, but that she did not know the exact dimensions of the walkway.

In response to questions from the Board, Mr. Cable said he did not know the exact dimension of the walkway. He stated that there were other additions in the neighborhood that encroached on the side lot line but he did not know if they had been granted variances.

In response to Mr. Ribble's question, Ms. James said that she did not know how close the neighboring house is to the easement.

Mr. Cable stated that a two car garage would be replacing an existing one car carport and that the existing slab would be used. He said that the garage would be architecturally harmonious and would not have a negative impact on the neighborhood.

Mr. Kelley said that he could not support a motion to grant the request until he knew the distance of the abutting houses and if there have been similar variances granted in the area. Ms. James stated that she could obtain the information by the end of the public hearing.

In response to the Board's question regarding the letter of opposition, the applicant, Harold Parry, 8304 Beaverdam Court, Annandale, Virginia stated that Mr. Bainbridge, the neighbor who had sent the letter of complaint, had received a similar variance on his property.

After a brief discussion, it was the consensus of the Board to defer the decision on the variance application until the end of the public hearing so that staff could obtain additional information.

Mrs. Thonen made a motion to defer VC 90-A-071 to the end of the agenda so that staff could obtain the information requested by the Board. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting

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Page 288, September 25, 1990, (Tape 1), Scheduled case of:

10:00 A.M. JOHN ELMER CROSON, VC 90-C-072, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with Lot 61 having a minimum lot width of 25 feet (150 ft. min. lot width required by Sect. 3-106), on property located at 3317 West Ox Road, on approximately 5.0 acres of land, zoned R-1, Centreville District, Tax Map 35-4((1))61.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Gibb replied that it was. Vice Chairman DiGiulian

then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and stated that staff did not believe that the application meets the standards required for a variance and that staff believed the hardship was self-created and self-imposed.

Nancy E. Gibb, an attorney with Mackall, Mackall, Walker and Gibb, 4031 Chain Bridge Road, Fairfax, Virginia, addressed the Board and stated that the applicants had built the existing structure on Lot 61 in 1965 and that Mr. Croson's parents live on Lot 64. She said the area is currently being developed and Lot 65 is now West Ridge Subdivision which consists of 22-one acre lots and that Lots 45 and 60 are in Bennet Oak Subdivision which consists of 9-one acre lots, which are consistent with the R-1 Zoning District.

Ms. Gibb noted that there is an existing pipestem on the property and that the applicant plans to consolidate Lots 61 and 64 and to construct a street in order to provide access to the property. She explained that when the property is subdivided, a cul-de-sac to the rear of Lot 61 and the proposed street will be connected to provide access to Bennet Road. She stated that there would be no access to West Ox Road. Ms. Gibb expressed her belief that the application is consistent with the Comprehensive Plan, which is to consolidate properties in order to have better road alignment, and to have creative subdivisions. Ms. Gibb noted that the applicant's property would be developed at a 3.3 acre per dwelling unit density and that the surrounding area is being developed with one acre per dwelling unit density. Again, Ms. Gibb expressed her belief that this is a long range plan that is consistent with the goals of the Comprehensive Plan, and asked that the Board grant the variance.

There being no speakers in support or in opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 90-C-072 for the reasons reflected in the Resolution andsubject to the development conditions contained in the staff report dated September 18, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-072 by JOHN ELMER CROSON, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into two (2) lots with Lot 61 having a minimum lot width of 25 feet, on property located at 3317 West Ox Road, Tax Map Reference 35-4((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 September 25, 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 5.0 acres of land.
4. The applicant has satisfied the nine standards for a variance.
5. The applicant is trying to satisfy the intent of the Comprehensive Plan.
6. If the request was to allow subdivision into a lot and outlot or to create a pipestem where none existed before the inclination would be not to grant the request.
7. The subject property is an old parcel with a very irregular shape and which lends itself to partial consolidation into a new subdivision and accomplishes some of the objectives of the Comprehensive Plan.

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

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

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

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

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

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

1. This variance is approved for the subdivision of Lot 61 into two (2) parcels as shown on the plat prepared by Dalton Engineering sealed February 21, 1990 and submitted with this application, and is not transferrable 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 the subdivision is 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. 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 to maintain existing quality vegetation and provide a buffer along the intermittent stream present on the site, approved by the Fairfax County Arborist, shall be submitted to the Department of Environmental Management (DEM) for review and approval prior to grading on proposed Lot 61 and Outlot A, and the implementation thereof shall be made a part of the contract of sale for Outlot A in the event that Outlot A is sold.

4. Right-of-way to forty-five (45) feet from the designed centerline of West Ox Road (Rt. 608) necessary for future road improvement in accordance with VDOT Project 0608-029-301, C502 shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of subdivision plan approval, whichever occurs first. Ancillary access easements shall be provided to facilitate these improvements.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman Smith and Mrs. Harris were absent from the meeting

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1990. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 11:00 a.m. and reconvened at 11:15 a.m.

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Page 290, September 25, 1990, (Tapes 1 and 2), Scheduled case of:

10:15 A.M. CENTREVILLE PRESCHOOL, INC., SP 90-S-046, application under Sect. 3-C03 and 8-901 of the Zoning Ordinance to allow a nursery school and waiver of the dustless surface requirement on property located at 12542 White Drive, on approximately 47,505 square feet of land, zoned R-C and WS, Springfield District, Tax Map 66-2((4))16.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Ward 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 Board with a revised affidavit, letters of support, and one letter of concern from the Lincoln-Lewis-Vannoy Community. In presenting the staff report, Ms. Bettard stated that the property is within the Lincoln-Lewis-Vannoy Conservation Area. She said that the surrounding area is comprised of single family detached homes and the area has inadequate water and sewerage facilities. Ms. Bettard stated that the nursery school would have a maximum daily enrollment of 86 children with no more than 43 present at any one session, no more than 6 employees at any one time, and the hours of operation will be 9:00 a.m. to 12:00 p.m. and from 12:30 to 3:30 p.m., Monday through Friday.

Ms. Bettard stated that staff is concerned with the intensity of the development in a residential area, the environmental impact on the area, and the lack of screening. Staff recommended denial because it believed that the application would have a detrimental impact on the area.

Ms. Bettard informed the Board that Jan Boothby, with the Department of Housing and Community Development, was present to answer any questions the Board may have regarding the Conservation District.

In response to Mr. Hammack's questions about churches in the area, Ms. Bettard said that there are no churches or other institutional uses in the immediate area.

The agent for the applicant, Curtis B. Ward, 6197 Secret Hollow Lane, Centreville, Virginia, addressed the Board and stated the preschool is an organization of dedicated parents, the teachers are highly qualified, and the preschool is a member of the Virginia Cooperative Preschool Counsel and provides a much needed service to the community. He said that the school has a current enrollment of 180 students, with three classes in the morning and three in the afternoon, Monday through Friday, and follows the Fairfax County school year calendar. He added that the school also offers a small mid-day summer school program. Mr. Ward noted that the preschool is a non-profit organization that has been in operation for 20 years and he asked the Board to grant the request.

Mr. Ward expressed his belief that the preschool would be in harmony with the area, the application meets all the zoning requirements, and the intensity of the use would not have a detrimental impact on the area. He explained that the vehicle trips per day would be approximately 236 and not the County's projected number of 400 trips per day. Mr. Ward said that the parents would drop-off and pick-up the children without leaving the car, the proposed site is on an outside corner lot, and the hours of operation are not in peak traffic periods, therefore, alleviating the need for the development condition requiring the upgrading of White Drive. He expressed his belief that the water and sewerage use that would be generated by the preschool would be 90% less than for a residential dwelling in the neighborhood and would conform to the conservation character of the area. He asked the Board to reduce the parking requirement to 10 spaces so that the application could meet the transitional screening and barrier requirements. Mr. Ward stated that noise would not be a factor because the children have one 15 minute play period per session with no more than 14 students outside at any one time, and said he did not believe that a 4 foot wooden fence around the play area is necessary. In summary, Mr. Ward stated that the preschool would be an ideal use on a R-C zoned substandard lot.

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

David Ecker, Staff Assistant for Supervisor Elaine McConnell, 6140 Rolling Road, Springfield, Virginia, presented the Board with a letter of support from Supervisor McConnell. Upon reading the letter, Mr. Ecker voiced his belief that the application would have a beneficial impact on the community.

Mrs. Thonen requested that the speakers address the standards relating to land use.

Mr. Ecker stated that, on the issue of the Conservation District, the application would not inhibit the ability of the community to attract grants.

In response to Mr. Hammack's question regarding the letter received from the Lincoln-Lewis-Vannoy Community for Assistance and Improvement, Inc., Mr. Ecker stated he did not believe that if the application was granted, the Board of Supervisors would have to pay interest on the funds furnished by the Federal Government; although, he did not know whether or not this issue had been investigated.

Betsy Maginnis, 5746 Walcott Avenue, Fairfax, Virginia, addressed the Board and said that she had lived in the area for three years, that the preschool would be beneficial to the community, and presented a petition of support to the Board.

Harold Hughloff, 15221 Elk Run Road, Chantilly, Virginia, addressed the Board and said that the preschool has provided a wonderful opportunity for parents to participate in their children's educational growth. He expressed his belief that the twenty year old school would provide a much needed service to the community.

Julie Chiles, representing the Virginia Cooperative Preschool Counsel, presented a letter to the Board and expressed her belief that the preschool would provide a beneficial contribution to the children and the community.

Pattie Lesser, 13707 Eastcliff Circle, Centreville, Virginia, addressed the Board and stated that she has been involved with the preschool for the last four years, has been president of the school for the last two years, and is a member of the teaching staff. She said that the proposed site is a perfect location for a preschool and expressed her belief that Centreville Preschool would be beneficial to the community.

There being no further speakers in support, Vice Chairman DiGiulian called for speakers in opposition.

Henry Colivita, 12541 White Drive, Fairfax, Virginia, stated that he was opposed to the preschool because of the traffic impact. He added that he sometimes works at night, and the noise that would be generated by the children attending the school would interrupt his sleep.

Rosita Barbour, 12538 White Drive, Fairfax, Virginia, addressed the Board and explained that she had her home custom built about seven years ago and did not support a school in the residential area. She said as a second grade teacher, it is her experience that children are noisy, and also stated that she had been informed at the meeting held by the Centreville Preschool that they would not have a summer program. Ms. Barbour expressed her belief that the school would lower the property value of her home, that the sewers are substandard, a commercial facility should not be in a residential area, the traffic impact would be detrimental to the neighborhood, and that the granting of the special permit would set a precedent in the area.

Speaking in rebuttal, Kurt C. Rommel, an agent for the applicant, 6197 Belle Plains Drive, Centreville, Virginia, addressed the Board and stated that the preschool would have a minimal impact on the area. He stated that the application would be in harmony with the Comprehensive Plan, with the character of the neighborhood, with the traffic patterns in the area, and would meet the standards in the Zoning Ordinance. He noted that the preschool is not a commercial operation, that the parents participate in the children's education, and that the granting of the special permit would have no effect on the interest the Board of Supervisors would have to pay on the funds furnished by the Federal Government. He expressed his belief that the preschool would be the best possible use for the substandard lot and asked the Board to grant the request.

In response to Mr. Hammack's question with regard to the amount of water the preschool uses, Mr. Rommel said that the 163 gallons per month figure for water used by the preschool was erroneous and that the figure should be 1,630 gallons per month.

Staff having no comment, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to deny SP 90-S-046 for the reasons reflected in the Resolution. Mr. Hammack seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mrs. Thonen said that she believed the parents and staff of the school were hard working, dedicated people; but that she did not believe that the application met the standards necessary for the granting of a special permit.

Mr. Hammack stated that he believed that the use, on a substandard lot in a Conservation District, would be too intense. He noted that 86 students per day plus teachers, the amount of traffic generated, the pressure that would be put on the residential community, the pressure on the sewer system, and the problems that may arise with the well would have a detrimental impact on the community.

The motion carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

Mr. Rommel requested the Board waive the 12 month limitation for refiling a new application on the same property.

Mrs. Thonen made a motion to waive the 12 month limitation for refiling a new application on the same property. The motion died for the lack of a second.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-046 by CENTREVILLE PRESCHOOL, INC., under Sections 3-C03 and 8-901 of the Zoning Ordinance to allow a nursery school and waiver of the dustless surface requirement, on property located at 12542 White Drive, Tax Map Reference 66-2((4))16, 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 25, 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 47,505 square feet of land.
4. The use would not be compatible with the Conservation area.
5. It would have a severe negative impact on the sewer system.
6. Traffic would be a problem, even with 200 as opposed to 400 trips per day.
7. The special permit would have a negative impact on the neighborhood.
8. There is no difference, as far as land use is concerned, between the co-operative and a commercial operation.

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, 8-303, 8-305, 8-903, and 8-915 of the Zoning Ordinance.

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

Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mrs. Harris absent from the meeting.

Mrs. Thonen made a motion to waive the 12 month limitation for refiling a new application on the same property. The motion died for lack of a second.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1990.

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Page 293, September 25, 1990, (Tapes 2), Scheduled case of:

10:45 A.M. RESTON INN AND CONFERENCE CENTER VENTURE APPEAL, A 90-C-009, appeal of a determination of an agent of the Zoning Administrator that Parcel 1 is in a village center and that preliminary site plan and site plan approval are required to develop the site, on property located at 11810 Sunrise Valley Drive, on approximately 653,400 square feet of land, zoned PRC, Centreville District, Tax Map 17-3((3))1. (DEFERRED FROM 9/11/90 FOR DECISION ONLY)

In response to Vice Chairman DiGiulian's question about a request for a deferral, Barbara Byron, Director, Zoning Evaluation Division, said that the agent for the applicant has requested that he be allowed to verbally ask the Board to defer the appeal.

Richard R. G. Hobson, a lawyer with the firm of McGuire, Woods, Battle, and Boothe, 8280 Greensboro Drive #900, McLean, Virginia, asked the Board to defer the decision on the appeal.

Mr. Hammack made a motion to defer A 90-C-009 to October 9, 1990 at 11:00 a.m. Mrs. Thonen seconded the motion and expressed her displeasure with receiving the information regarding the appeal a few days before the hearing making it very hard to give the new material the consideration it deserved.

The motion carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

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Page 293, September 25, 1990, (Tape 2), Scheduled case of:

10:30 A.M. STACY AND SUSAN HAMBLEN APPEAL, A 90-C-012, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the subdivision of Parcel A in the Tamarack Subdivision will require Board of Supervisors' approval of a special exception for a cluster subdivision and that the consent of all property owners in the Tamarack Subdivision will be required for the cluster subdivision special exception application, on property located at 1891 Hunter Mill Road, on approximately 5.30 acres of land, zoned R-1, Centreville District, Tax Map 27-2((4))A.

Vice Chairman DiGiulian asked if the appellant was ready to present his case. The attorney for the applicant, Carlos Montenegro, with the law firm of Shaw, Pittman, Potts, and Trowbridge, 1501 Farm Credit Drive, McLean, Virginia, said that he was ready.

Vice Chairman DiGiulian called for staff to identify the location of the property and to present the Zoning Administrator's position.

William Shoup, Deputy Zoning Administrator, addressed the Board and stated that he would be representing the Zoning Administrator's position and that Michael Congleton, Deputy Zoning Administrator for the Ordinance Administration Branch, would be assisting.

Mr. Shoup stated that the property is located at 1891 Hunter Mill Road and had been developed as a single family dwelling with accessory structures in the Tamarack Subdivision and zoned R-1. He explained that on March 2, 1972, the County approved a subdivision plat for Tamarack Section 2 which included Parcel A in the deed of dedication. He said that the tabulation on the plat indicated 47 buildable lots and also included Parcel A as one of the buildable lots. Mr. Shoup stated that at the time of subdivision such a cluster subdivision was permitted by-right, subject to County approval. On October 17, 1983, the Zoning Ordinance was amended to require Special Exception approval for cluster subdivisions in the R-E and R-1 Zoning Districts. In May of 1988, the appellants submitted a subdivision plat proposing to subdivide Parcel A into three lots. Mr. Shoup stated that the Department of Environmental Management (DEM) informed the appellant that special exception approval was required for subdivision in a cluster development. Upon receiving this information, the appellant requested an interpretation from the Zoning Administrator, who responded on June 5, 1990 with the determination that a special exception would be required and that all property owners in the Tamarack Subdivision must consent to the Special Exception application. The decision that special exception approval is required is based on the provision of Paragraph 2, Section 15-101, of the Zoning Ordinance, where it is provided that any use that is existing and is now designated as a special exception use in a zoning district is subject to the special exception approval if there is any enlargement. It has been previously ruled that a creation of a new lot, or a reduction of land area in a cluster subdivision, constitutes an enlargement which requires special exception approval. Mr. Shoup referred to appeal, A-88-D-007, that involved a similar determination and said that the Board upheld the Zoning Administrator on that issue. He expressed his belief that because Parcel A is a part of the cluster subdivision a special exception approval would be required to accommodate the proposed resubdivision. Mr. Shoup said that on the issue of all property owners being required to consent to the special exception application, that was based on Paragraph 8, Section 9-011 of the submission requirements for a special exception, which states if an applicant is not the owner of the property involved in the applicantion, they must show evidence that they have the right to use the property for the special exception use. Since the special exception for a cluster subdivision, by its nature is applicable to all of the lots in the subdivision, the entire subdivision is considered in the special exception use, and consequently, all property owners must give their consent.

The appellants' agent, Carlos Montenegro, addressed the Board and stated that the issues were difficult and complicated. He expressed his belief that staff's report was factual and complete. He appealed to the Board's sense of fairness and the sense of balance for the equities involved.

Mr. Montenegro stated to the Board that two basic issues were whether Parcel A was part of the Tamarack subdivision, and whether or not, under the provision of the Ordinances, staff can require the applicant to obtain the consent of 47 property owners in order to subdivide Parcel A.

In arguing this analogy, Mr. Montenegro compared an applicant in the McLean Regency Condominium, a high rise residential condominium where the bottom two floors are used as office space, where the County does not require the consent of all the property owners in the condominium when issuing a special exception.

In response to Mr. Hammack's question as to whether the whole condominium was approved under the special exception Ordinance, Mr. Montenegro said the whole condominium was the subject of a R-30 rezoning application but did not require a special exception.

Mr. Hammack stated that if Mr. Montenegro used the comparison, he must be able to convince the Board of the merits of the similarities. Mr. Montenegro stated he was arguing the analogy in terms of what the concept should include.

Mr. Montenegro went on to explain that in the same situation a special exception was filed for a recreation sporting club which was required to notify the homeowners association and all adjacent unit owners but was not required to obtain the consent of the parties. He stressed the difference between requiring notification and requiring the consent of the property owners. He stated that in a rezoning application for an industrial park in the Newington area, if one property owner would seek an application for a fast food restaurant inside the park, by analogy the County should require that all the owners within the zoned property should have to consent to the special exception.

Mr. Montenegro stated that the appellant had spent large sums of money in pursuing the avenue of subdivision. He explained that the subdivision would not be for commercial development, but that one lot would be used to build a house for a family member and the other lot would remain vacant. He noted that the property was zoned R-1 and that the appellant wanted to subdivide a 5.3 acre parcel into three lots.

Mr. Montenegro stated that when the preliminary subdivision plan was filed with the County, the plat was returned with comments stating that the appellant would have to file a special exception. The special exception application was filed but was retained awaiting the consent of the 47 property owners. He explained that the appellants disagreed with the County and said that in 1971 when the Woodbury's purchased the property from Wills and Van Metre, the developer retained in the deed the right to submit the property as part of the Tamarack subdivision, in case they needed the acreage for the density, or the like. There was no intention to include the property as part of open space or lot density at that point and time. Mr. Montenegro said that the language in the deed itself makes it clear that the Woodbury's were no longer going to be part of Tamarack at the instant of the recordation of the Tamarack Subdivision. Simultaneously, with the recordation of said section to Tamarack, this covenant became null and void and had no further effect. This covenant was, in fact, to participate in the formation of Tamarack.

In response to Mr. Hammack's question, Mr. Montenegro said that the appellants admitted that they had participated in the formation of Tamarack.

Mr. Hammack expressed his belief that if the County signed off and agreed to the covenant, the covenant was of record before the subdivision attempt, then the appellants cannot unilaterally withdraw and breach an agreement with the County. Mr. Montenegro stated that they had a piece of property that the developer might need as a part of the subdivision. He explained that the covenant restricted the property owners in the subdivision into one additional lot, so the Woodbury's had to accept a subdivision restriction to one lot because the developer wanted to retain the density credit to use in the Tamarack subdivision cluster. In 1972, when Tamarack was subdivided the property was included in the tabulation but it was not needed for purposes of density or open space requirements. He stated that the Woodbury's had relied on the covenant, the agreement with the developer, and the County to exclude themselves from the subdivision. In 1972, the Tamarack subdivision County approved deed excluded the property from the restrictions and covenants of the subdivision. He noted that the surveyor's certificate on the deed of dedication does not include the subject property. Mr. Montenegro asked the Board to look to the intent of the parties and to overturn the Zoning Administrator.

Vice Chairman DiGiulian called for speakers to the Appeal.

Albert Smith, 10318 Mountingham Court, Vienna, Virginia, said his property was adjacent to the subject property. He stated that he was in support of the Zoning Administrator's decision and referred to the letters and petition of opposition. He expressed his belief that in the original 1971 property deed that the property was conveyed to join in the proposed Tamarack subdivision and noted the 1972 deed of dedication. He said that he was in opposition to further density in the subdivision.

There being no further speakers, Vice Chairman DiGiulian called for rebuttal.

Mr. Montenegro stated he was not denying that the 1971 deed said that the parties agreed to participate, but the parties had to agree to the 1972 deed requiring participation in the subdivision of Tamarack but did reserve their right to succeed from it by the same document.

Mrs. Thonen asked Mr. Shoup for closing comments.

Mr. Shoup said that it was the Zoning Administrator's position that a cluster subdivision encompasses all the lots in the subdivision; therefore, the analogies by Mr. Montenegro are not relevant. He noted that in the subsequent Section 3 of the subdivision, the tabulation included Parcel A, clearly representing that it was part of the Tamarack Subdivision. In addition, on the 1988 resubdivision plat submitted by the appellants, the tabulation included Parcel A, therefore, it is the Zoning Administrator's position that Parcel A was never removed from the Tamarack Subdivision and a special exception which would require the signature of all property owners in the subdivision would be a requisite.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to uphold the Zoning Administrator's determination on A 90-C-012. He said that it was his belief that the Zoning Administrator was correct in the determination of both the issues. He stated that he had reviewed the appeal with a great deal of interest and noted that it was consistent that Parcel A had been included in the tabulation on plats submitted and on computations of density. Mr. Hammack concluded that the Zoning Administrator was correct in determining that any further subdivision would require special exception approval from the Board of Supervisors and would need the consent of all property owners in the Tamarack Subdivision.

Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

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The Board recessed at 11:55 a.m. and reconvened at 12:02 a.m.

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Page 296, September 25, 1990, (Tape 2), AFTER AGENDA ITEM:

Request for Additional Time
Lord of Life Lutheran Church SPA 79-A-124 and SPA 80-A-099-1
5114 Twinbrook Road
Tax Map Reference 69-3((1))17 part of H

Mrs. Thonen made a motion to grant the request. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting. The new expiration date is October 5, 1991.

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Page 296, September 25, 1990, (Tape 2), After Agenda Item:

Request for Additional Time
Barcroft Bible Church, SP 88-A-107
9401 Little River Turnpike
Tax Map Reference 58-3((1))2

Mrs. Thonen made a motion to grant the request. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting. The new expiration date is October 5, 1991.

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Page 296, September 25, 1990, (Tape 2), After Agenda Item:

Request for Scheduling of Appeal of
Robert L. Thoburn T/A Fairfax Christian School Appeal

Vice Chairman DiGiulian stated that the request had been deferred from the previous week for a written opinion from the County Attorney as to whether the appeal was timely filed. He said that the Board, in order to be fair, should also have a written opinion from the appellant's attorney.

Jane Kelsey, Chief, Special Permit and Variance Branch, said that she had contacted Mr. Thoburn to advise him that the request would probably be deferred for another week in order to give him the opportunity to respond to the timeliness question. Ms. Kelsey stated that Mr. Thoburn had expressed his appreciation to the Board and said that he would submit a written statement outlining the reasons for believing the appeal was timely filed. Ms. Kelsey suggested that the request be included as an after agenda item on October 9, 1990.

Vice Chairman DiGiulian set the scheduling of the appeal on the after agenda for October 9, 1990.

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Page 296, September 25, 1990, (Tape 2), Scheduled case of:

Harold Parry, VC 90-A-071

This case was recessed from earlier in the public hearing for additional information from staff.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the Zoning Administration Division (ZAD) had indicated that the house on adjoining Lot 71 is approximately 13 feet from the lot line. She note that although the applicant had estimated the access easement as 8 feet, ZAD estimated it to be 15 feet. Ms. Kelsey stated that she had been informed that one variance for a swimming pool had been granted on Lot 71. She noted that although the applicant had expressed his belief that there were garages in the area that were too close to the lot line, no other variances have been recorded.

In response to Mr. Kelley's question, the architect for the applicant, John H. Cable, with the firm John Cable Associates, Inc., 311 S. Washington Street, Alexandria, Virginia, said that he could not get the width for a double car garage with a 5 foot variance. He stated that with the house on the abutting property being 13 feet from the property line, the 8 foot access easement, and the additional 3 feet within the applicant's property line, the addition would have a 24 foot separation from the adjacent house.

Mr. Kelley stated that the Board was extremely reluctant to encroach into the 5 foot area.

Mr. Cable said that the granting of the variance would be justified on the basis of the specific conditions of the lot.

Again Mr. Kelley noted that 3.12 feet is too close to the property line.

Mr. Cable noted that the applicant has maintained the easement for many years.

Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant-in-part VC 90-A-071 with the changes as reflected in the Resolution and subject to the development conditions contained in the staff report dated September 20, 1990.

Mrs. Thonen stressed to the applicant that the reason she could support the motion was that Mr. Kelley had changed the variance from 3.12 feet to 5.0 feet.

Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

Vice Chairman DiGiulian noted that new plats would be required.

Mr. Hammack said that he had supported the motion because of the sharply converging lot lines.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-071 by HAROLD PARRY, under Section 18-401 of the Zoning Ordinance to allow construction of garage 3.12 feet from side lot line such that side yards total 13.3 feet, (THE BOARD GRANTED CONSTRUCTION OF A GARAGE 5.0 FEET FROM SIDE LOT LINE SUCH THAT SIDE YARDS TOTAL 15.2 FEET) on property located at 8304 Beaverdam Court, Tax Map Reference 70-3((7))70, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 25, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2 (developed cluster).
3. The area of the lot is 11,413 square feet of land.
4. The applicant has satisfied the nine standards for a Variance.
5. The lot has an exceptional shape.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is 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 which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Chairman Smith and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 3, 1990. This date shall be deemed to be the final approval date of this variance.

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

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Vice Chairman
Board of Zoning Appeals

SUBMITTED: 12/11/90

APPROVED: 12/20/90

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Thursday, September 27, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble. Chairman Daniel Smith was absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:28 a.m. and Mrs. Thonen gave the invocation. Vice Chairman DiGiulian asked if there were any Board matters.

Mr. Kelley stated that he would be unavoidably absent from the October 2nd meeting and noted that there were cases scheduled for that date that he was particularly interested in as he had participated in the earlier public hearing. He asked the Board to defer decision on the cases until October 9th so that he could be present to vote.

Mrs. Thonen asked what cases in particular and Mr. Kelley replied all of them. Mrs. Thonen seconded the motion which passed by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that it was her understanding that the Board planned to hear all the cases scheduled on October 2nd but defer decision until October 9th. Vice Chairman DiGiulian stated that was correct.

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Page 299, September 27, 1990, (Tape 1), Scheduled case of:

9:00 A.M. THE LITTLE ACORN PATCH, LTD., SPA 82-S-075-2, application under Sect. 4-603 of the Zoning Ordinance to amend SPA 82-S-075-1 for a child care center, to increase the number of children, on property located at 6224-26 Rolling Road, on approximately 6.9447 acres of land, zoned C-6, Springfield District, Tax Map 79-3((4))42, 43, 44.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Keller 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. She stated that the application meets all the required standards, there are no outstanding issues, and staff recommended approval of the request subject to the development conditions contained in the staff report being implemented. Ms. James noted a change to Development Condition Number 7 with respect to the number of employees, which the applicant would address.

Mrs. Harris asked where the additional play area would be located. Ms. James explained that it would be behind the adjacent store front that the applicant proposes to lease.

Leeta Keller, 1446 Emerson Lane, McLean, Virginia, represented the applicant and asked for a change in the wording of Condition Number 7 to read, "The maximum number of employees associated with the use shall be twelve (12) at any one time." She explained that Ms. Kaplan, director of the school, participates in a joint program with the Fairfax County Public School System at West Springfield High School training students to be future day care workers. As a result of the program, the students come to the school and there are occasions that Ms. Kaplan has more than 20 people on her staff with no more than 12 at one time. Ms. Keller also asked for a waiver of the eight day waiting period so the school could proceed with the proper permits.

In response to questions from Mrs. Thonen, Ms. Keller stated that two parking spaces are provided for the parents to drop off and pick up their children. She added that the shopping center is half vacant; therefore there is plenty of parking available. Ms. Keller added that a complete parking study had been prepared and submitted to the Department of Environmental Management which showed that the school has approximately 20 parking spaces.

Mrs. Thonen asked if the school was presently using buses or carpools and Ms. Keller replied that it was not. She noted that the children arrived at the school well before the stores in the shopping center opened. Mrs. Thonen noted that the trips were still during rush hour.

Barbara Kaplan, 5806 Woodlaurel Court, Burke, Virginia, stated that the school has a history with conforming to all County and State requirements but has always had a goal of providing a quality, early childhood program for neighborhood families. She added that the school's pursuit of excellence was recognized in May 1989 when the school achieved National Accreditation by the National Academy of Early Childhood Programs. Ms. Kaplan stated that this past summer, the school instituted a program which allows the parents to choose program hours and because of this program the school was at capacity for the summer and presently has a waiting list. She added that the school is 1 of 25 merchants in a neighborhood shopping center with a mix of merchants. Regarding the expansion, Ms. Kaplan explained that the expansion would contribute to and meet the needs of the neighborhood and be in harmony with the merchants within the shopping center. In summary, Ms. Kaplan added that the school's 10 years of quality service to the community is well documented and provides a community service with pride and excellence. By approving the request, she stated that the Board can be assured that the school will continue to meet the parents' needs for a quality early childhood program.

Vice Chairman DiGiulian called for speakers in support of the request.

Dr. Dwight Fuller Spear, 8345 Moline Place, Springfield, Virginia, Institute of Advance Studies, Ben Franklin Press, which operates in the shopping center came forward to support the request. He stated that Ms. Kaplan is very active in the association and serves as secretary, has helped to sponsor several activities, and has assisted in providing backup support to the association. With respect to the parking, Dr. Spear explained that the parking is such that spaces are available to the school although he would like to see more stores in the center. The parents bring the children to the school early in the morning and pick them up in the evening during times when the shopping center is not using the parking spaces. He asked the Board to grant the request.

There was no 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 revised development conditions contained in the Addendum with the following changes:

"7. The maximum number of employees associated with the use shall be twelve (12) at any one time.

9. The Special Permit shall expire at the end of five (5) years.

10. The applicant shall encourage carpooling."

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

Mrs. Thonen then made a motion to waive the eight day waiting period. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

(THE BOARD RECONSIDERED THIS MATTER LATER IN THE PUBLIC HEARING TO REVISE DEVELOPMENT CONDITION NUMBER 9. THIS REVISION IS REFLECTED IN THE RESOLUTION WHICH FOLLOWS.)

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-S-075-2 by THE LITTLE ACORN, LTD., under Section 4-603 of the Zoning Ordinance to amend SPA 87-S-075-1 for a child care center, to increase the number of children, on property located at 6224-26 Rolling Road, Tax Map Reference 79-3((4))42, 43, 44, 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 September 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 C-6.
3. The area of the lot is 6.9447 acres of land.
4. The applicant has met the standards for a special permit.
5. There have been no problems with the school nor any complaints.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Huntley, Nyce and Associates, P.C., dated September 5, 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 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 existing evergreen plantings and solid wood fencing to the rear and side of the facility shall be maintained to satisfy screening and barrier requirements. Fencing for the added play area shall be provided as shown on the plat. No additional screening and/or barriers shall be required.

6. The hours of operation shall be limited to 6:30 am to 6:30 p.m., Monday through Saturday.

7. The maximum number of employees associated with the use shall be twelve (12) at any one time.

8. The child care center shall be limited to a total daily enrollment of ninety (90) children.The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 as determined by DEM. A minimum of two (2) parking spaces shall be reserved for pick up and drop off of children nearest the entrance to the facility and shall be marked as reserved for the child care use. Appropriate signage shall be posted to indicate the reserved spaces. All parking shall be on site.

9. The Special Permit shall expire at the end of five (5) years. The Zoning Administrator has the authority to grant two five (5) year extensions.

10. The applicant shall encourage carpooling.

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 which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 27, 1990. This date shall be deemed to be the final approval date of this special permit. The Board waived the eight day time limitation.

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Page 301, September 27, 1990, (Tape 1), Scheduled case of:

9:15 A.M. GRACE D. & RONALD D. AUCUTT, SP 90-P-054, application under Sect. 6-104 of the Zoning Ordinance to allow accessory dwelling unit on property located at 3417 Silver Maple Place, on approximately 7,644 square feet of land, zoned PDH-3, Providence District, Tax Map 60-1((36))50. (OTH GRANTED)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Whitcomb 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 explained that the applicants will occupy the principal dwelling unit and the parents of one of the applicants will occupy the accessory dwelling unit. The accessory dwelling unit will be located in the basement of the existing single family dwelling. Ms. Bettard stated that staff found the proposed use to be in conformance with the applicable standards and recommended approval of the request.

Ms. Bettard noted a correction on page 2 of the staff report by stating that the basement entrance has already been constructed. The applicant now has another building permit which is for the interior drywalling which is allowed as long as the kitchen has not been

constructed. She added that the statement in the staff report refers to improvements that were made prior to the applicants purchasing the property.

Carol Whitcomb, Community Systems Services, 8300 Greensboro Drive, McLean, Virginia, came forward to represent the applicants. She stated that this was the fifth accessory dwelling unit application that Community Systems Services has brought before the Board and thanked the staff for their assistance. She explained that the accessory dwelling unit will be located in the lower level of a house that is built on a deeply sloping lot, making it a very attractive site with full windows and an attractive porch and deck. Ms. Whitcomb stated that the landscaping contained in the Board's packet has, in effect, been completed. She added that the property is located in a new subdivision and she has answered more than the usual number of questions from citizens and assured the Board that everyone she has talked to has been comfortable with the responses. Ms. Whitcomb agreed with the staff report as amended by Ms. Bettard with respect to page 2. She asked that the Board waive the eight day time limitation as the two families are currently living together and are anxious to complete the project.

Mrs. Thonen asked if staff was requesting any additional parking spaces. Ms. Whitcomb replied that there is presently a two car garage with two additional parking spaces outside the garage.

Mrs. Harris noted that the entrance to the accessory dwelling unit is on the back of the house. She asked how the people living in the accessory dwelling unit would get from their parked cars to the rear of the house. Ms. Whitcomb stated the applicants have constructed an attractive bricked walkway down the right side of the property. Mrs. Harris stated that the walkway was not reflected in the photographs submitted with the application. Ms. Whitcomb explained that the walkway was completed after the filing of the application.

There were no speakers to address the application and Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant the request subject to the development conditions contained in the staff report dated September 20, 1990.

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

Mrs. Harris then made a motion to waive the eight day time limitation as requested by the applicant's agent.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Chairman Smith was 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-P-054 by GRACE D. AND RONALD D. AUCUTT, under Section 6-104 of the Zoning Ordinance to allow accessory dwelling unit, on property located at 3417 Silver Maple Place, Tax Map Reference 60-1((36))50, 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 27, 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 PDH-3.
3. The area of the lot is 7,644 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 9-903 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 by Runyon, Dudley, Anderson, Associates, Inc. dated February 8, 1990. 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 for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy 1,242 square feet or no more than 35% of the total gross floor area of the principal dwelling unit.

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.

10. The Clerk to the Board of Zoning Appeals shall cause the BZA's action to be recorded among the appropriate land records of Fairfax County.

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

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 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 which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 27, 1990. This date shall be deemed to be the final approval date of this special permit. The Board waived the eight day time limitation.

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Page 303, September 27, 1990, (Tape 1), Scheduled case of:

9:30 A.M. DAVID C. ARESON, VC 90-D-076, application under Sect. 18-401 of the Zoning Ordinance to allow enclosure of an existing carport to 10.3 feet from side lot line (15 ft. min. side yard required by Sect. 3-207), on property located at 6808 Mesbitt Place, on approximately 12,335 square feet of land, zoned R-2, Dranesville District, Tax Map 21-4((12))5.

Vice Chairman DiGiulian noted that a letter had been received from the applicant but it was unclear what he was requesting. Mr. Ribble stated that it appeared that the applicant is saying that he has a garage but from the photographs it looks like a carport.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the applicant was incorrect in part as he does not have a carport and noted that a carport can extend 5 feet into the required side yard. She added that the structure may have been a carport originally but then someone added the wall so now the structure is in violation. Ms. Kelsey stated that she had discussed this with the applicant but he disagreed.

Vice Chairman DiGiulian asked if the applicant was present and Ms. Kelsey replied that he was not. Vice Chairman DiGiulian suggested that the Board defer the case and asked staff to

convey to the applicant that if he is not present at the next public hearing, it would be in his best interest to withdraw the application.

Mrs. Thonen made a motion to defer the application to a date and time certain and asked staff to inform the applicant that if he is not present at the next public hearing the case will be dismissed for lack of interest.

Mr. Ribble stated that the applicant's surveyor should also be present.

Ms. Kelsey suggested November 8, 1990 at 10:45 a.m. Mrs. Thonen so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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Page 304, September 27, 1990, (Tape 1), Scheduled case of:

9:45 A.M. RENATE ZAGBY, VC 90-V-080, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 23.2 feet from one street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), on property located at 1514 Shenandoah Road, on approximately 9,726 square feet of land, zoned R-3, Mt. Vernon District, Tax Map 102-2((2))(5)4.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Zagby 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.

Mrs. Harris asked if staff had computed the square footage of the addition and Ms. Bettard replied that she had not.

The applicant, Renate Zagby, 1514 Shenandoah Road, Alexandria, Virginia, came forward and explained that she was requesting a 7 foot variance because the rear yard is approximately the same size as a townhouse rear yard. She stated that she is proposing to construct an addition to the side and a little to the rear of the existing dwelling in order to provide another bedroom, bathroom, and a small family room.

Mr. Hammack asked how far back the house on Lot 5 set back from the street. Ms. Zagby replied that she was not sure. She pointed out that she had been contacted by all the property owners and all had indicated that they had no problem with the addition.

Mrs. Harris noted there is a screened porch shown in the photographs. Ms. Zagby explained that the porch would be removed. Mrs. Harris asked her to elaborate on the hardship standard as it appears that the lot is very flat.

Ms. Zagby explained that nothing can be built on the right side of the property as the existing dwelling is located 10 feet from the property line. To construct the addition on the front of the house, she stated would require reorganization of the rooms within the house and would not be economically feasible. She added that to construct the addition in the rear of the house would "eat up" an already small back yard and leave room for only a walkway in the rear of the house.

Mrs. Thonen stated that it appears that the house sets way back on the lot.

There were no speakers to address the request 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 September 18, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-080 by RENATE ZAGBY, under Section 18-401 of the Zoning Ordinance to allow construction of addition 23.2 feet from one street line of a corner lot, on property located at 1514 Shenandoah Road, Tax Map Reference 102-2((2))(5)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 September 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-3.
3. The area of the lot is 9,726 square feet of land.
4. The applicant has met the nine required standards for a variance.
5. The subject property is a corner lot with double yard setback on the front lot lines.
6. The placement of the house is slightly askew and the addition could not be constructed without a variance.
7. The addition could not be constructed elsewhere on the lot.

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

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

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

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

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

1. This variance is approved 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.

Mr. Kelley seconded the motion which carried by a vote of 5-1 with Mrs. Harris voting nay. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 5, 1990. This date shall be deemed to be the final approval date of this variance.

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THE LITTLE ACORN PATCH, LTD., SPA 82-S-075-2

Mr. Kelley brought up the above-referenced application which had been heard and approved earlier in the public hearing. He stated that the applicant had expressed some concern with the five year limitation placed on the school. He noted that it was his understanding that the permit could be extended administratively by the Zoning Administrator and asked the maker of the motion if that had been her intent.

Mrs. Thonen made a motion that the case be reopened for reconsideration. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

Mrs. Thonen explained that she had made the motion to put a five year limit on the school and that she definitely wanted them to come in but that they do not have to reapply unless there is a problem. She then amended her motion to read:

"9. The Special Permit shall expire at the end of five (5) years. The Zoning Administrator has the authority to grant two five (5) year extensions."

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

(THIS REVISION WAS INCORPORATED INTO THE RESOLUTION.)

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The Board recessed at 10:08 a.m. and reconvened at 10:20 a.m.

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Before calling for the next scheduled case, the Board of Zoning Appeals wished Jane Gwinn, Zoning Administrator, a "happy birthday".

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Page 306, September 27, 1990, (Tapes 1-2), Scheduled case of:

10:00 A.M. ARDAK CORPORATION APPEAL, A 90-P-013, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that tandem parking spaces cannot be used to meet the minimum parking requirements for any use other than single family detached or attached dwellings and that the addition of an office use constitutes an expansion or enlargement of the existing use which requires all existing uses to comply with the current Zoning Ordinance minimum parking requirements, on property located at 1800 Old Meadow Road, on approximately 11.19 acres of land, zoned R-30, Providence District, Tax Map 29-4((8))C.

Philip Leber, attorney with Arent, Fox, Kintner, Plotkin & Kahn, 8000 Towers Crescent Drive, Suite 700, Vienna, Virginia, represented the appellant and stated that this appeal is based on the Zoning Administrator's determination of June 19th that so called tandem spaces are not allowed under the Zoning Ordinance for the type of use on the subject property, which is the McLean Regency high rise condominium complex. The Zoning Administrator determined that the spaces do not meet the parking requirements of the Zoning Ordinance and the Public Facilities Manual (PFM) and even if they did when the project was first approved, now the applicant is requesting a special exception and the whole site must be brought up to Code. Mr. Leber read a written statement into the record. (A copy is contained in the file.) He referenced page 2 of the staff report wherein the Zoning Administrator states that Paragraph 11, Sect. 11-102, requires that all off-street parking spaces shall be provided with safe and convenient access to a street which means that there must be unobstructed access to parking spaces. If the Zoning Administrator's determination was correct, he stated that tandem spaces would not be permitted at all nor would they be permitted for single family or townhouse developments because Sect. 11-102 does not contain any exceptions. Mr. Leber noted that the requirement was in effect at the time the original site plan for the Regency Condominium was approved; therefore, the County must have deemed them legal at that time. The Zoning Administrator notes that the minimum parking requirement for single family detached and attached units provide that only one of the required spaces must have convenient access to the street as noted on page 7. He agreed that Paragraphs 2 and 3, Sect. 11-103, do state that but noted that the Zoning Administrator cannot rely on paragraph 4, which relates to multi-family uses, and does not contain that exception because Paragraph 7, dealing with mobile homes, also omits the requirement of convenient access and there are clearly tandem spaces that have been approved throughout the County for mobile parks.

Mr. Leber stated that he would like to emphasize that the Zoning Ordinance can be read two different ways; it can be read to fit this circumstance or be read against this circumstance. He asked that the Board of Zoning Appeals rule that the appellant's view was a reasonable reading of the Zoning Ordinance and the Zoning Administrator's reading was not reasonable and is unduly burdensome to the appellant.

He stated that the Zoning Administrator's interpretation does not recognize that the use of tandem parking spaces in this particular circumstance is identical to the use of tandem

spaces within single family detached and attached developments as the spaces are under permanent common ownership. He described the circumstances of the appeal by stating that the tandem parking spaces are located in a parking garage with 47 spaces located in such a way that one car goes into the space and the second car parks behind the first. Mr. Leber pointed out that there is no justifiable reason for the Zoning Administrator to treat the subject property any differently than a townhouse or single family dwelling. He referred to Paragraph 13, Sect. 11-102, which the Zoning Administrator states recognizes that tandem spaces are allowed for attached and detached dwellings. Mr. Leber read a part of the Section to the Board and noted there is no exception for single family attached or detached units. He called the Board's attention to the next paragraph which notes that all parking spaces except those for single family attached or detached units shall be clearly marked in accordance with the PFM. The 1987 staff report that supported the change in the Zoning Ordinance said that this addition to the paragraph was solely for the purpose of adding the requirement for marking and he then read from the staff report. Mr. Leber noted that tandem spaces are allowed in Fairfax County and they must comply with the PFM because the Zoning Ordinance says that all off-street parking must comply. The Zoning Administrator does not concur with the appellant that the lack of standards for tandem spaces in the PFM does not mean that they are excluded. He stated there are standards for the size of stalls, length of stalls, and those can be interpreted to mean the size and length of stalls for individual cars and to argue otherwise means there should be no tandem spaces anywhere in the County. Mr. Leber stated that it is a reasonable reading of the Zoning Ordinance and the PFM to permit tandem parking and the appellant is not contending that they should not be allowed. There are many circumstances when tandem spaces should be allowed such as single family detached and attached dwellings and in an instance like the appellant's circumstance.

The Zoning Administrator states in the staff report that Paragraph 2, Sect. 11-102 must be read not to allow a lesser parking requirement but rather to clearly state the authority of the BZA or the Board of Supervisors in approving a special permit or special exception to require parking in accordance with the current parking regulations. He stated that the Zoning Administrator uses an example in her analysis that basically says that it would be illogical to assume that the paragraph would allow a lessening because a permitted use would be required to meet the Zoning Ordinance requirements for parking if they expanded, but a special permit or special exception use may not be. Mr. Leber stated that assuming the Zoning Administrator is correct, and the approving authority can require additional parking under a specific factual circumstance presented in a special permit or special exception; therefore both the BZA and the Board of Supervisors should have the authority to reduce or to allow the existing parking layout to continue under certain circumstances. He contended that the appellant's circumstance is that the BZA or the Board of Supervisors may want to allow the continued use of an existing parking structure. This interpretation would not place the expansion of a permitted use under any disadvantage because all a permitted user would have to do is file for a special permit or special exception. Mr. Leber stated that he believed that the Zoning Ordinance was flexible enough to allow for this kind of circumstance.

Vice Chairman DiGiulian asked Mr. Leber to sum up as his allotted time had expired.

Mr. Leber stated that the appellant acknowledged that the Zoning Administrator's determination does not preclude them from going to the Board of Supervisors and applying for a shared parking agreement. Unfortunately, that would not help the appellant because the deficit is too great as there are 72 spaces in deficit if the tandem spaces do not count with only 45 spaces available for a shared parking arrangement. If the tandem spaces are allowed to count, Mr. Leber stated that the site can meet the parking requirements under both the old and new Zoning Ordinance. He asked the BZA to make the determination that under either a special permit or special exception the approving authority need not necessarily require the entire structure to meet the current Zoning Ordinance requirements. Secondly, he asked the BZA to determine that the Zoning Ordinance and the PFM do in fact permit inclusion of so-called tandem spaces to meet the requirements for parking in a multi-family district where such tandem spaces are under common ownership. Thirdly, Mr. Leber asked the BZA to determine in this case that even if the current parking requirements of the Zoning Ordinance are applied that the subject property may be brought into conformance with those requirements upon approval of an appropriate parking reduction based upon a shared parking agreement. (He submitted a copy of his prepared statement into the record.)

Mrs. Harris stated that Mr. Leber had referred several times to this being an expansion of a continued use. She stated that in her opinion the use had been at its present location since 1988 in violation; therefore, it is not a continued use but would be an expansion and would fall under the current parking regulations.

Mr. Leber stated that he would assume for the sake of argument that this is not a continuing and was deemed illegal because the special exception was violated.

Mrs. Harris pointed out that in Mr. Leber's closing arguments he had noted that this is not an expansion of a permitted use but is just a continuation with existing parking. Since the use is in violation, she stated that it is not therefore a permitted use and when looking at the special permit it would be a new use or an expansion and would have to meet the current parking requirements.

Mr. Leber disagreed and stated that he believes that the Zoning Ordinance gives the BZA and the Board of Supervisors the flexibility to apply or not to apply the existing zoning regulations. He added that even if the current standards are applied the issue is whether in applying those standards, tandem parking spaces are allowed as permitted spaces. Mr. Leber pointed out that if tandem spaces are allowed the appellant can meet the current standards and had no problem with complying with the existing parking spaces under the Zoning Ordinance. He stated that the whole appeal came down to an interpretation of the Zoning Ordinance and the PFM as to whether tandem spaces are allowed.

In response to Mrs. Harris' question about whether or not he agreed with Sect. 11-102(B) of the Zoning Ordinance, Mr. Leber noted that there is another statement that states "not withstanding the above" and that his argument was that those words gives the BZA the authority not to require that the use be brought up to Code. He stated that the primary concern is whether or not tandem spaces are allowed because the appellant can meet the current parking spaces if tandem spaces are allowed. Mr. Leber added that the question is whether or not tandem spaces are permitted under the PFM for a multi-family dwelling unit.

Mrs. Harris asked if the use is for a multi-family dwelling unit. Mr. Leber explained that the appellant is not using tandem spaces at all but the County is requiring that the appellant be responsible for bringing the entire condominium complex up to Code although the appellant's property is a space approximately half the size of the Board Room. He explained that the appellant would not have to deal with the issue if the Zoning Ordinance were restricted to the appellant's use alone but because it is expansive and it uses the words "you have to meet the parking Code for the structure as enlarged or increased". He stated that granted the Zoning Ordinance does state that but that he believed it to be an unfair situation for the appellant. Mr. Leber stated that the question is, are tandem spaces allowed and the appellant says they are and the Zoning Administrator says they are not.

Mr. Hammack stated that he believed that Mr. Leber was arguing issues that go beyond the narrow interpretation as set forth in the Zoning Administrator's memorandum. He added that he was inclined to agree with the Zoning Administrator's opinion although he might also be inclined to agree with the appellant's arguments in so far as they apply. Mr. Hammack stated that he believed that the BZA was only dealing with units 214 and 216 and the appellant has been operating in violation since 1985.

Mr. Leber pointed out that the history contained in the staff report is pretty accurate but noted that the owner and tenant of the unit have been constantly working trying to obtain the approval. He noted that if the special exception had not been allowed to expire but had been renewed administratively, the appellant would not even be before the BZA.

Mr. Hammack asked why Zoning Enforcement had not followed through on this violation. Mr. Leber stated that as long as there is a pending application Zoning Enforcement defers action until a decision has been made.

Mrs. Thonen stated that she would like to hear from the Zoning Administrator.

Mr. Leber pointed out that the appellant believes that the Zoning Administrator is wrong in her determination wherein she stated that there is an exception for tandem spaces for single family and townhouse uses. He agreed that there is an exception against striping the spaces but there is no exception in the Zoning Ordinance which specifically states that they do not have to meet the PFM. If that is the case, Mr. Leber stated that everyone has to meet the PFM.

Jane Gwinn, Zoning Administrator, responded to the appellant's statement by conceding that the reliance on the PFM for her position on tandem spaces is perhaps not as strong or clear as it should be. She stated that her basis for saying that tandem spaces are not allowed for multi-family dwelling units is in recognition of the parking requirements set forth in Sect. 11-103 of the Zoning Ordinance as presented on page 3 of her September 21, 1990 memorandum to the BZA. Ms. Gwinn added that paragraphs 2 and 3 set forth the parking requirement for single family detached and attached dwellings with both requiring two or more spaces and both specifically provide that only one such space has to have convenient access to a street. She noted that the parking requirement for multi-family dwelling does not contain that same provision and that she believed very strongly that is the basis for allowing tandem spaces for detached and attached dwellings. With respect to mobile home parks, Ms. Gwinn stated that she did not believe that any parks have been approved under the current Zoning Ordinance; therefore, she did not agree that tandem spaces have been permitted by the County in numerous mobile home parks under the current Zoning Ordinance. She stated that she acknowledged that there are tandem spaces on the subject property and that she is not addressing whether or not there are any nonconforming rights to those spaces. The point is that under the current Zoning Ordinance to add an office use or to legalize an existing office use, the Zoning Ordinance in Sect. 11-101 stipulates that constitutes an enlargement or an expansion; therefore, the entire project is subject to the current Zoning Ordinance regulations. Based on that provision, Ms. Gwinn stated it is her position that tandem spaces are not allowed for multi-family dwellings.

Ms. Gwinn addressed the second issue by referencing Paragraph 2, Sect. 11-101, which addresses the authority of the BZA or the Board of Supervisors in reviewing and approving special permit and special exception uses. She stated that she was taking the position that there is the authority to require more parking, not less. There are very limited provisions for exceptions under this Zoning Ordinance which has been an issue of discussion over the years. There is a provision that the BZA is not allowed to vary unauthorized variances to reduce parking requirements and there are limited provisions by which the parking requirements may be reduced. She stated that she believed that it is the intent, and has been the intent, that parking is something that is very limited with regard to making exceptions or reductions. Ms. Gwinn added that she believed that the appellant has the right to make application for a shared parking agreement for a reduction in parking and the applicant has done so. She noted that is the only provision that is applicable or is perhaps a means for this issue to be properly considered.

Mr. Hammack stated that it was his understanding that there were options available to the appellant; one being, that the appellant could appeal to the Planning Commission for the two units to be used as office space. Secondly, that the appellant could apply for a modification or relaxation in parking under the Code. Thirdly, that the BZA could allow the original parking to remain. He asked Ms. Gwinn if that was correct.

Ms. Gwinn stated that apparently she was not clear enough and apologized to the Board. She explained that there is a separate provision in the Zoning Ordinance, Paragraph 4, Sect. 11-102, that allows a shared parking agreement whereby an applicant can get a reduction in the number of parking spaces by the Board of Supervisors. Ms. Gwinn added that it was her understanding that the appellant had filed such an application.

Mr. Hammack asked if the appellant could file an application under that Code section with the BZA for a waiver. Ms. Gwinn replied that she did not believe so.

Mr. Hammack stated that the appellant had 9 parking spaces and none are tandem and the BZA's decision does not put the appellant out of business in effect. He noted that it impacts Ardak but does not affect the use of units 214 and 216 because they had non-tandem spaces so they are all right. Mr. Gwinn explained that the issue is whether or not the filing of a special exception by Ardak for units 114 and 116 is viewed as an expansion and if so the Ordinance provides that the entire development must meet the current requirements. The other issue is that the Ordinance provides for special permit or special exception uses under which the respective hearing body may require the provision of off-street parking for the entire use as expanded or enlarged. She added that it is the appellant's position that under that paragraph, the Planning Commission and the Board of Supervisors in their review and approval of the special exception, could allow a lesser parking requirement to be applied to the entire development and it is her position that it is not allowed.

Mr. Hammack stated that the BZA did not have to decide that issue. Ms. Gwinn noted that the BZA had to determine how to interpret the paragraph. She agreed that the merits of whether it should be approved or the number of spaces was not before the BZA.

In response to a question from Mrs. Thonen about the use being grandfathered, Ms. Gwinn explained that she believed that the appellant had two problems, one being that the special exception expired in 1985 and the other being with the adoption in 1988 of the Parking Amendment which revised to the provisions of Sect. 11-101 where expansions were very clearly addressed. She noted that the appellant did file an application in 1987 which was denied by the Board of Supervisors. Ms. Gwinn stated that she believed that there had been a parking problem at the entire complex for a lot of years and conceivably, if the special exception had not expired, the appellant would not be before the BZA but she could not say for sure.

Mrs. Thonen stated that she was very concerned with grandfathered cases as she was working on some that were grandfathered. Ms. Gwinn pointed out that there could be no grandfathered rights when a use is illegal and one of the issues is that the use has been operating illegally for at least 5 years.

Mr. Kelley asked how many businesses were operating in the Regency under special exception. Mr. Leber replied 9 or 11 with all operating in the basement of the condominium complex and no other use can be made of the units. Mr. Kelley asked if he could assume that any business that went into any kind of violation would be before the BZA. He added that he was getting the feeling that the appellant was a "pawn" in order to straighten out the parking at the Regency.

Mrs. Harris stated that if it is assumed that the shared parking agreement is granted then the whole complex would come under the current parking regulations with a deficit of 71 parking spaces and then the appellant would have the opportunity to use the spaces as they are today. She asked that if then the tandem parking would still be an issue and would the Regency as a whole come under the PFM requirements for parking.

Ms. Gwinn replied that the shared parking request is going to be reviewed under the current Zoning Ordinance provisions and that she did not believe that tandems could be used to meet the minimum parking spaces.

In response to a hypothetical question from Mrs. Harris about why the appellant did not request an additional 47 spaces when they requested the shared parking agreement, Ms. Gwinn explained that it would make it more difficult to justify the reduction and if the tandem spaces are included it would calculate into a greater reduction being requested and would mean that the appellant would need a greater parking reduction. Ms. Gwinn agreed that was an option but stated the greater the reduction, the less favorably the request might be viewed.

Mrs. Harris stated that it is possible to bring an entire site into compliance that has had parking problems since 1980. She added that she agreed with Mr. Kelley that if any of the ongoing businesses let their special exceptions expire they would come before the BZA because of the long standing parking problem.

Ms. Gwinn addressed Mr. Kelley's earlier comments about the appellant being a "pawn." She stated that when the Board of Supervisors adopted the provisions of Sect. 11-101 under the Parking Ordinance in 1988 the section was extremely controversial and the impact was discussed. Ms. Gwinn explained that it was made very clear that all uses requesting an expansion or an enlargement would have to meet the current provisions and is not isolated to this particular instance. She stated that it is unfortunate that the appellant is caught up in the circumstance but that she could not be very sympathetic as the appellant has been operating for 5 years illegally.

Mr. Kelley stated that he believed that the expiration of the special exception was irrelevant. He noted that if any of the other uses let their special exceptions expire than the BZA would still be hearing an appeal perhaps under a different name of a property owner who possibly had complied. Ms. Gwinn stated that she did not understand the comment. Mr. Kelley stated that he was saying that any applicant could be denied based on the same circumstances and that he was not sure that the appellant would not be here even if the special exception had not expired. Ms. Gwinn stated that conceivably perhaps if there had been a continuing time limit placed on the special exception the appellant would not be here but that she could not address what would have happened on a renewal.

Mr. Hammack stated that he recalled a similar case involving medical office buildings that the BZA had been asked to apply the same Ordinance as it was an expansion of the use and therefore would have to meet the current standards. Ms. Gwinn replied that was correct. She explained in that instance the BZA upheld her determination but in that case the appellant was making an argument based on the grandfathering provision. Ms. Gwinn stated that when the Board of Supervisors adopted the provision, merchants in shopping centers expressed concern that if new uses are added with a higher parking standard in a shopping center that would require the whole center conform. The County Attorney's Office believed very strongly that was the only way that the Ordinance could be defensible and the Board of Supervisors adopted it accordingly.

Mrs. Thonen noted that the Planning Commission deferred action on the special exception until October 4, 1990 but she could find no further reference other than the appellant had filed an appeal. Ms. Gwinn noted that would be next week. Mrs. Thonen apologized. Ms. Gwinn stated that it was her understanding that the Planning Commission may defer the application until later in October. Mrs. Thonen asked if most of the businesses in the Regency were there by right and not special exception. Ms. Gwinn replied that there was a combination of accessory service uses which are there by right in addition to approximately 7 special exception uses.

Mr. Kelley asked if there were terms on the special exceptions. Ms. Gwinn stated that she did not believe so. She stated that perhaps they did originally. Mr. Kelley asked if he could assume that if the appellant had come in and asked for an extension of the special exception it would have been granted without a term. Ms. Gwinn stated that she did not believe so. She again noted that the appellant had been before the Board of Supervisors in 1987 and the request was denied.

Mr. Hammack asked if the whole issue would be moot if the request was again denied. Ms. Gwinn stated that she believed the appellant was appealing the issue trying to help get the special exception approved. Mr. Hammack noted that the appellant was going to have to provide 71 parking spaces or obtain a shared parking agreement.

Mr. Ribble noted that when the Board of Supervisors denied the special exception in 1987, it was denied due to insufficient parking. Ms. Gwinn pointed out that she had tried to be very careful by stating that staff had recommended denial based on insufficient parking, although she did not know for a fact that was why the application had been denied.

Mr. Kelley stated that it was insufficient parking for the complex not on the part of the appellant. Ms. Gwinn noted that the appellant is part of the complex and although the appellant may have enough parking spaces to support his office use, there is insufficient parking now at the complex, so why do something to further aggravate the situation.

Mrs. Harris asked Vice Chairman DiGiulian to call Mr. Leber to the podium.

Mrs. Harris asked if it had occurred to the appellant to apply for 47 parking spaces in addition to the 71 he had requested. Mr. Leber stated that he believed there had been a misunderstanding as the appellant had not applied for 71 spaces because there are none

available. He explained that all the issues are interrelated and the reason that the Planning Commission deferred the case until October 4th was to have input from the BZA and the input of the Department of Environmental Management (DEM) on a shared parking agreement. He added that the appellant needed both the BZA's and DEM's approval.

In response to a question from Mrs. Harris, Mr. Leber replied that the appellant was applying for 6 parking spaces because under the old Ordinance, if the tandem spaces count, the appellant is 6 spaces short. He conceded, for the purposes of the hearing, that the appellant had to bring the site up to Code but added that was not an issue. Under the current Code, Mr. Leber explained that if the tandem spaces count the appellant would be 6 spaces short thus the shared parking agreement would be for 36 spaces.

Mrs. Harris noted that the appellant had only applied for 6 spaces. Mr. Leber stated that it would be for 6 or 36 spaces depending on which Code DEM and the Zoning Administrator say should be applied. He again noted that the appellant needed 6 spaces under the old Ordinance and 36 under the current Ordinance and the appellant can comply with that because there are 45 undesignated spaces that could be used in a shared parking arrangement.

Mrs. Harris pointed out that those spaces are for visitors. Mr. Leber agreed and added that the shared parking arrangement would be for the use of visitors. He stated that a parking study had shown that during the day when the office uses are conducting business there is approximately 10 percent usage in the remainder of the building, so there is no need for any of the inside spaces during the day. Mr. Leber stated that he believed this is a classic situation where a shared parking agreement really should be at the top of the possibilities. He added that it is not an issue right now and that those are visitors spaces because during the day the bulk of the visitors are visiting the office uses. If the appellant needs 36 spaces, Mr. Leber stated that this could be provided through the shared parking agreement.

In response to an earlier comment from Mr. Hammack, Mr. Leber stated that if the BZA ruled that tandem spaces do not count, the appellant is out of business. The appellant cannot get 71 spaces but can get 36 spaces for a shared parking agreement.

Mrs. Harris noted that Sect. 11-102, Paragraph 11, first sentence, states "all off-street parking shall be provided with safe and convenient access to a street." Mr. Leber agreed and noted that he did not believe this was any less safe or convenient than a tandem space in a single family dwelling. Mrs. Harris noted that visitors would be coming and going at all different times during the day and to be parking in a tandem situation did not seem appropriate. Mr. Leber explained that visitors do not have access to the tandem spaces in the garage because they are locked and noted that there are 89 surface parking spaces with 45 of them being designated for the Regency, 44 spaces are designated for the Racquet Club which is on the far side of the development.

Mr. Leber stated that basically this is a "domino" effect because the BZA's ruling that tandem spaces can apply will enable DEM to agree with a shared parking arrangement for 36 spaces under the new Ordinance which will bring the entire complex up to Code, which will mean that if the appellant files for a special exception, the application could be granted. Mrs. Harris noted that the appellant did not know if the Planning Commission and the Board of Supervisors would approve the shared parking agreement. Mr. Leber stated that he was fairly confident that if the BZA ruled in the appellant's favor then everything else will fall into place; but if the BZA ruled against the appellant then the appellant is out of business.

Mr. Hammack asked why the units could not be used for residential. Mr. Leber stated that the units had not been designed for residential use; therefore, they cannot be used as residential.

Mr. Kelley asked what would happen if the BZA deferred decision on the application. Mr. Leber stated that Planning Commissioner Hanlon would not be very receptive to another deferral as he had deferred it the last time, specifically, in order for the BZA and DEM to make a decision. He pointed out that the Board of Supervisors was scheduled to take action on the shared parking agreement on October 1, 1990 and the Planning Commission was scheduled to hear the special exception on October 4, 1990.

There was no further discussion and Vice Chairman DiGiulian called for additional speakers.

Richard Bracken, owner of the units, came forward and stated that he had lived in the Regency for most of the period that the business had been located there but unfortunately had moved away the year the special exception had expired. He explained that when he purchased the spaces from the developer they were advertised for special exception and he had been told that prior to purchase. He was directed to a local law firm that provided him with the necessary information. Mr. Bracken stated that he had purchased and now owns all the spaces inside the garage and they are dedicated to the office so there would be no question on parking. In those days, he was not told that maybe the entire complex would have to comply with the Code at some time in the future. Mr. Bracken stated that the shared parking agreement had nothing to do with parking for the four employees in the office and noted that he has always owned more spaces than the tenant had employees. He added that he has never been able to rent the excess parking spaces to anybody in the Regency, although he had placed a notice on the bulletin board every month. He stated that he found the many claims of

parking problems are hard to define on a microscopic level. Mr. Bracken added that he believed that the use met the Code and the issue was whether or not the entire complex meets the Code.

With respect to the expansion or enlargement of the use, Mr. Bracken stated that he supposed, legally, it was an expansion although it is the same use with the same tenant that began in 1979. There are four employees who do classified policy work for the Federal Government and have no visitors because of the type of work that they do.

In response to the question of the use being illegal, Mr. Bracken stated that if the use is illegal it certainly was not by intent and that as soon as he learned that the Office Manager had failed to reapply he made application and has spent the past 5 years answering questions. He hired an engineering firm to do a parking study and all of this had nothing to do with an intent to be illegal but to respond to the County's questions. The two units have no door to the outside and one has a window well and when the special exception was granted the units were visited by the Tax Assessment Office and are now assessed as a commercial use and have been so for the past 10 years. He pointed out that the units are not usable as residential units as they were not designed as such. In closing, Mr. Bracken stated that the Regency Owners Association has always been supportive of the use.

Mrs. Harris asked how the visitors and employees got into the garage if it is locked. Mr. Bracken explained that owners are allowed to use the spaces in the garage which they own. Mrs. Harris noted that the statement of justification states that the office has visitors during the week and she asked where they park. He stated that they park in the visitor spaces in front of the building but again stated that the employees in this unit have no visitors because of the nature of their work. Mrs. Harris stated that she understood that but the statement of justification says that there are approximately two visitors per week. Mr. Bracken added that visitors could park in the garage if they made arrangements prior to their visit with the Office Manager. He stated that the pressure on the visitor spaces are in the evenings when everyone is home and the office is closed and added that he did not believe there is a problem with the use meeting the parking requirements.

Vice Chairman DiGiulian polled the audience to determine if there was anyone else present to speak to the appeal.

Jerry O'Dell, 3920 Bradwater Street, Fairfax, Virginia, came forward and stated that he had no knowledge of the case but after listening to it questioned what happens on days when some people are home on holidays but businesses are open.

Mrs. Harris asked if the Regency came in under the current Zoning Ordinance with proposed tandem spaces would it be approved. Ms. Gwinn replied no based on Paragraph 11, Sect. 11-102 as well as the specific parking requirements for multiple family dwellings.

In his closing comments, Mr. Leber addressed Mrs. Harris' question by stating that was the question that the appellant was asking the BZA to answer. He disagreed with Ms. Gwinn and stated that he believed that the Zoning Ordinance would allow tandem spaces to be used in the facility and that is the only question that is before the BZA. Mr. Leber stated that the appellant has conceded that the entire complex needs to be brought up to Code and this will be done through the shared parking arrangement.

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

Mr. Hammack made a motion to defer action until October 9, 1990 so that the BZA could review the staff report and the letter submitted by the appellant.

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

Mr. Leber asked if that would be for decision only and Mr. Hammack replied in the affirmative.

Mrs. Harris asked that the appellant furnish the BZA with a legible copy of the traffic study. Mr. Leber stated that he would submit a copy to the Zoning Administrator.

Vice Chairman DiGiulian told Mr. Leber to submit the information to the BZA Clerk rather than the Zoning Administrator as soon as possible.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a deferral time of 11:15 a.m.

Hearing no objection, Vice Chairman DiGiulian so ordered.

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Page 313, September 27, 1990, (Tape 1), (APPROVAL OF SEPTEMBER 20, 1990 RESOLUTIONS)

Approval of September 20, 1990 Resolutions

Mr. Ribble stated that Supervisor Hyland had contacted him about VC 90-V-070, one of the cases denied by the BZA on September 20th. He then made a motion to grant the applicant a waiver of the 12-month time limitation.

Mr. Kelley seconded the motion.

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to the BZA's policy with respect to waivers of the 12-month time limitation on refiling an application.

Following a discussion among the Board, Mr. Ribble made a motion to defer approval of the Warren resolution until the applicant could make a formal request. He stated that from his discussion with Supervisor Hyland, the applicants had misunderstood what they were to do.

Mr. Kelley stated that it was his understanding that the Board found nothing to justify a hardship in the case and perhaps the new information would address that standard. Mr. Ribble agreed.

Mrs. Thonen noted a correction to the Benner resolution by stating that Mr. Hammack had voted nay rather than Mr. Kelley.

The motion to approve the resolutions as amended, with the exception of the Warren resolution, carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 313, September 27, 1990, (Tape 1), Scheduled case of:

Airston Corporation Appeal

Mrs. Thonen made a motion to schedule the above-referenced appeal for December 11, 1990 at 10:45 a.m. as it was complete and timely filed.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 313, September 27, 1990, (Tape 1), Scheduled case of:

Dorothy B. Beach Appeal

Mrs. Thonen made a motion to schedule the above-referenced appeal for December 11, 1990 at 11:00 a.m. as it was complete and timely filed.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 313, September 27, 1990, (Tape 1), Scheduled case of:

Nellie Temple Reconsideration

Vice Chairman DiGiulian called the Board's attention to letters dated September 20th and September 21st received from Steven A. Auerback and Mrs. James G. Barnum requesting that the Board reconsider its decision.

Mr. Kelley made a motion to deny the request for reconsideration.

Mrs. Thonen stated that she had problems with the case and made a motion to reconsider. Mrs. Harris seconded the motion which failed by a vote of 3-3 with Mrs. Harris, Mrs. Thonen, and Mr. Hammack voting aye; Vice Chairman DiGiulian, Mr. Kelley, and Mr. Ribble voting nay. Chairman Smith was absent from the meeting.

Mrs. Harris stated that she also had been troubled by the case.

Vice Chairman DiGiulian stated that he had voted for the request based upon the shape of the lot, the conditions of the road, and the location of the building on the existing lot.

Mr. Ribble stated that he had also voted to support it for the same reasons as Vice Chairman DiGiulian in addition to the strip of land that apparently can never be developed because it is part of the 50 foot road right-of-way.

Mrs. Harris stated that the more she had thought about it, the more she believed that the addition could be moved back, thereby reducing the size of the variance. She noted that she did not believe that the applicant's plan had been clear enough to show the Board exactly what she was proposing to construct.

Mrs. Thonen stated that she would like to see exactly what the applicant was going to construct and how it was going to look. She stated that the Board owed it to the neighbors who had written letters in opposition to the request following the public hearing with respect to the request for reconsideration.

Mr. Kelley pointed out that the Board had received letters in opposition to the request from the same neighbors prior to the public hearing and that he did not believe that any new information had been brought out.

Mrs. Thonen expressed concern that the Board had approved something that was so unclear.

Mrs. Harris stated that she believed that the applicant, with all that she had been through, had not dealt with the specifics of the footprint and how far back the addition should be constructed.

Mr. Kelley stated that he believed that all the Board had felt compassion for the applicant but that there was no new information.

Mrs. Thonen stated that she had been remiss in her vote and should have stated at the public hearing that she did not agree with approving a request without a definite plan. She stated that she was wrong and had got carried away with the emotion of the case.

Mrs. Harris stated that a reconsideration did not have to be based solely on new testimony.

Mr. Ribble stated that he did not believe that the Board had made an error.

Mrs. Harris stated that she did not believe that the Board had made an error perhaps in approving a variance but had erred in the size of the variance approved.

Mr. Kelley stated that he believed that the Board had made a good decision on land use.

Mr. Hammack stated that the location of the ramp pushed the garage forward and that is one reason that the applicant stated that she could not put the garage further back because she had to meet fire requirements. He added that he supported the motion because he believed in part that the motion was going to carry overwhelmingly although he believed that the applicant could have gotten a lesser variance. Mr. Hammack stated that he would support a reconsideration.

There was no further discussion.

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Jane Kelsey, Chief, Special Permit and Variance Branch, advised the BZA that a Zoning Ordinance amendment relating to the fees for a Variance for the height of a fence was including in their package for next week.

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As there was no other business to come before the Board, the meeting was adjourned at 11:43 a.m.

Betsy S. Hurt

Betsy S. Hurt, Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Vice Chairman
Board of Zoning Appeals

SUBMITTED: 11/13/90

APPROVED: 11/27/90

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 2, 1990. The following Board Members were present: Martha Harris; Mary Thonen; Vice Chairman John DiGiulian; Paul Hammack; and John Ribble. Chairman Daniel Smith and Robert Kelley were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 8:05 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 315, October 2, 1990, (Tape 1), Scheduled case of:

8:00 P.M. CHESTERBROOK-MCLEAN LITTLE LEAGUE, INC., SP 90-D-021, appl. under Sects. 3-303 and 8-901 of the Zoning Ordinance to amend Special Permit granted in 1959 to allow lighting of third field, change of hours, waiver of dustless surface requirement, existing T-ball field and batting cage, fourth baseball field, reduction in parking, and miscellaneous structures to remain, located at 1836 and 1840 Westmoreland Street, on approx. 7.21958 acres of land, zoned R-3, Dranesville District, Tax Map 40-2((1))42, 46. (OUT-OF-TURN HEARING GRANTED 4/3/90) (DEFERRED FROM 6/5/90 FOR RESOLUTION OF ISSUES) (DEFERRED FROM 7/31/90 FOR ADDITIONAL INFORMATION AND TO FURTHER RESOLVE ISSUES)

Vice Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McBride 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 a second addendum to the original staff report. She stated that the application had been deferred from July 31, 1990, to allow time for the applicant and citizens from the area to attempt to resolve the outstanding issues associated with this case. Ms. James went over a list of pertinent material which had been distributed to the Board prior to the meeting. Ms. James stated that the applicant proposed to remove one field and replace it with additional parking spaces, which may be gravel or paved; reorient and light field number 3; and modify the requested hours of operation. Ms. James stated that, in general, staff concurred with the applicant's apparent decision to provide parking spaces which are more in line with the Parking Authority's standard of thirty-five (35) spaces per field; however, staff's original recommendation was for approximately 100 spaces, based upon the approval of the three original fields. The provision of paved spaces is not desirable from a water quality standpoint, she stated, and gravel would be preferable as a BMP, if the Board does approve a total of 140 spaces on this site. In order to make the provision of gravel spaces feasible, Ms. James stated, the site may have to be graded and filled to provide the compacted base for the construction of gravel spaces. Ms. James stated that it is not clear whether or not the additional spaces will exceed 5,000 square feet and, thus, require approval of a special exception by the Board of Supervisors for fill in the flood plain; this also may apply to the reorientation of field number 3. Such a large amount of gravel parking, Ms. James stated, can also create substantial noise and dust, if it is not properly and constantly maintained. If the Board approved these gravel spaces, Ms. James stated, staff recommended they consider the imposition of a Development Condition which required some on-site design element which would contain the gravel on-site, in the parking area. Ms. James stated that the applicant had not demonstrated why the new parking area could not be shifted over to provide the minimum fifty (50) foot buffer recommended in the Comprehensive Plan. She stated that staff strongly recommended that the applicant specifically commit to lowering the runoff into Pimmit Run through a pipe in a drop inlet, to the satisfaction and approval of Department of Environmental Management (DEM). She stated that the applicant alluded to this commitment in Exhibit A of their Proposed Development Conditions, but staff believed that it should be specifically incorporated into the Proposed Development Conditions. Ms. James stated that she had informed the applicant and the citizens that a decision on this case would be deferred until October 9, 1990; however, she asked that the Board clarify for the Clerk, as well as for the applicant and citizens present, whether any additional written testimony would be accepted into the record for the Board's consideration. Ms. James stated that, notwithstanding the applicant's efforts to address the outstanding issues, staff's position remained unchanged. She stated that the Comprehensive Plan clearly stated that this area is planned for recreation and open space uses and clearly states the environmental policy for the site, which seeks to protect and preserve Pimmit Run, the floodplain, the tributaries of Pimmit Run, and the water quality issues.

John L. McBride, of the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, represented the applicant. He distributed photographs to the Board, stating that they were for the purpose of refreshing their recollection.

Mr. McBride stated that he had hoped to have some community agreement on the applicant's compromises, which they believed were equitable solutions to the complex land use issues involved in this case. He referred to the Proposed Development Conditions dated September 26, 1990, which he stated were before the Board, and which he stated were the result of suggestions by the community in a series of meetings which were held over the past six weeks. The result of these suggestions and the Conditions before the Board, he stated, is a $150,000 cost to the League to improve the ball fields to meet the concerns of citizens and staff, and the loss of the T-ball field. Mr. McBride stated that the community wanted small negotiation meetings without attorneys, to which the Little League agreed. Frank Murphy and

Karen Bagly, who are the President and Secretary of the League, met with a small group of citizens to work on equitable solutions and compromises. Mr. McBride referred to Condition 16 in the package, which he stated was an attempt by the League to keep open the lines of communications, so that local citizen concerns will be addressed by the League in the future.

Mr. McBride went on to enumerate what he believed to be concessions by the League and outlined in the package which had been presented to the Board. He stated that the hours had been cut back further, the T-ball field had been eliminated, parking had been expanded to 140 spaces as a direct result of staff's 35-space-per-field recommendation, as well as the number of spaces contained in the citizens' September letter to the Board. The vegetative buffer, he said, had been agreed to, and most of the areas where the parking is located are more than fifty (50) feet from the stream; he stated the applicant had provided a condition insuring a minimum of forty (40) feet. Mr. McBride stated that the proceeding two items alone amounted to $75,000 of the $150,000 previously mentioned.

Mr. McBride stated that the field maintenance program and the adopt-a-stream program are to be adopted by the League, according to the applicant's proposed conditions.

Mr. McBride stated that the activity associated with field 3 had been moved away from the Foxhall Road residences. He said that state-of-the-art lighting fixtures are to be used and buffering is to be planted near field 3, all of which amounts to a total of approximately $80,000. Mr. McBride stated that field 3 had been totally reoriented to divert the noise-generating activity, the crowds, and the highest level of lighting away from the Foxhall Road residences, very close to where field 2 is now. Original plans for field 2 to be the primary field were abandoned to protect a substantial number of large, mature trees in the middle of the site, which buffer Lemon Road from field 2 lights; it would also have precluded the ability to place 140 parking spaces on the site.

Mr. McBride stated that any growth in the program would occur off-site at other fields. He stated that the four fields in this area represent the maximum growth planned at this location.

Mr. McBride stated that Mr. Audet's technical report about the lights stated that the League cannot meet its own condition. Mr. McBride stated that the applicant believed that they could meet the condition restricting the off-site glare and illumination to one foot candle. He stated that the League had two providers, General Electric and Musco, who have told them that they could meet that condition. He stated that, if they failed to meet the condition, the lights would not be installed. Mr. McBride stated that the most striking feature of the two lighting systems, especially the Musco system, was the elimination of glow and glare from lights. He stated that two systems were proposed and one was in the Board's package, which was six (6) poles, with no outfield poles. He said that no poles would be higher than fifty (50) feet; there would be aiming restrictions and an off-site illumination standard which would have to be met. As a reference, he stated, the existing poles on the site are forty-three (43) feet, so he believed they were not asking for a large increase in height. Mr. McBride stated that the Park Authority was making a decision within two weeks concerning which of the two subject vendors would get the lighting contract for Fairfax County parks, of which he stated he believed there were fifteen (15). Mr. McBride stated that the Park Authority utilized sixty-five (65) foot poles. He stated that, due to neighbors' complaints, Fairfax City installed the Musco system on the Jermantown Road facility. After the installation, Mr. McBride stated, the Director of Recreation of Fairfax City told him there were no complaints. Mr. McBride stated he had a booklet and two tapes describing the Musco system, which he entered into the record.

Mrs. Harris asked Mr. McBride how determinations are made regarding what games are to be played at these fields, as opposed to being played at one of the ten other elementary school fields which the League utilizes. Mr. McBride asked if she was referring to which games would be removed due to the loss of the T-ball field. Mrs. Harris said yes and Mr. McBride said that primarily T-ball games would be removed due to the loss of the T-ball field. Depending upon the scheduling, he said, there also may be some Single A games removed, involving the younger kids; and there may be some Double A games removed, involving the next level up. Mr. McBride stated that he believed the League was of the opinion that no one particular program, either girls softball or boys T-ball, should bear the brunt of the compromise solutions; so a mixture would share the loss, he believed. Mr. McBride stated that was determined each season, partly by the mix of the teams. He said there was a very large number of T-ball teams; twenty (20) of the eighty (80) teams had been T-ball teams this past year.

Mrs. Harris asked if the teams would be scheduled at other fields or if they would be eliminated. Mr. McBride stated that the games would be scheduled at Lynnway Terrace or, he believed, Springhill Park.

Mrs. Harris referred to a Fairfax County Athletic Field Survey which stated that, on their needs assessment, there were one hundred (100) unused, surplus fields. Granted, she said, it also stated that they were all not totally up to field quality. She asked Mr. McBride if he knew how many of those were in the Greater McLean area and he stated that he did not. In discussions with the Recreation Department, Mr. McBride said he requested to know about any fields that would be available, no matter what the condition, and he was given a listing.

Mrs. Harris noted that the survey just dealt in numbers and was not broken down into jurisdictions and suggested that a list might be secured with information as to where the unused fields are located. Mrs. Thonen said to Mrs. Harris that she believed the survey also stated that most of the fields were being used to the maximum, at least the ones which were in condition to play on. Mrs. Harris stated that the fields were broken down by total fields, demand, supply, and surplus fields.

The following persons spoke in opposition to the application: Jay S. Epstein, 1922 Foxhall Road, McLean, Virginia, who stated he was speaking on behalf of Foxhall Road, Somerville Subdivision, Kent Gardens and Kirkley; Joe Mack, 1926 Foxhall Road, McLean, Virginia; James Audet, 1944 Foxhall Road, McLean, Virginia, who spoke as a lighting expert; Terry Russell, 4515 Willard Avenue, Chevy Chase, Maryland, representing Diane Ames, 1728 Foxhall Road, McLean, Virginia; Michael Matheson, Member of the Executive Board of the Crosswood Homeowners Association, 6726 Pine Creek Court, McLean, Virginia; Cary Greenberg, 6715 Pine Creek Court, McLean, Virginia.

The concerns of the speakers were the threat to pedestrian and vehicular safety, destruction of peace and quiet, lack of adequate on-site parking, traffic congestion and pollution, improper and illegal use of fields, improper management of floodplain and flood hazard, drop in property values, invasion of privacy, noise and light intrusion, late hours, and extension of the season in August for tournaments.

Mrs. Harris stated that, according to the applicant, if a performance standard were to measure more than one foot candle, the lights would cease to exist. She asked Mr. Audet, who had spoken as a lighting expert, if this did not alleviate some of the citizen concerns, given the fact that the lights would not continue to be there if they did not meet the standards. Mr. Audet stated that, based upon his experience and the objectives of the applicant, he believed they could not meet the standard.

Mrs. Thonen asked Mr. Russell if the ball fields had been there when he moved in and when Mrs. Ames had moved in. He stated that they had been there but had expanded extensively since that time in the number of games, the hours, the lighting, the noise, and the congestion.

Mr. McBride spoke in rebuttal to the foregoing opposition. He stated that he wished to clarify that field 5, the T-ball field, was gone, since some of the previous speakers still referred to it. He stated that there would not be any regular season games in August; any and all All Star games would be played only up to July 31st. He stated that the League had restricted the Sunday hours, as one speaker requested, to 9:00 p.m., instead of 9:30 p.m., which is the normal cutoff time for all Little League playing fields. Field 3 was restricted even more, back to 6:15 p.m., at the request of one of the citizens at one of the negotiation sessions. Mr. McBride stated that the League had moved the field further away from the residences on Foxhall, which moved the lights, the noise, and everything further away, closer to field 2. He stated that there was a report in the record by a professional appraiser, which talks about the threat of declining property values and stated that it is just not true. Mr. McBride referred to the fact that Mr. Audet stated there would be fifteen (15) to twenty (20) foot candles in the back yards of the properties. He stated that the fields are lit to twenty (20) and thirty (30) foot candles actually on the playing fields, but the spillover to the adjoining properties would not be greater than one (1) foot candle. He stated that, if the lighting providers cannot guarantee that with their preliminary studies, prior to the League purchasing the lights, the lights would not be purchased.

Mrs. Harris stated she was glad that Mr. McBride clarified the fact that, if the suppliers could not provide a preliminary sketch, the lights would not be purchased. She asked what would happen if, after the lights were purchased and installed, someone did a light test or study and measured more than one (1) foot candle off-site. Mr. McBride stated that the condition would have to be corrected because it would be in violation of the condition.

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

Mrs. Thonen stated that, at the previous meeting, the Board had stated their intention to defer the decisions on cases heard at this meeting until October 9, 1990, because one of the Board Members, who was very interested in the outcome of all the cases being heard at this meeting, could not be present because of an emergency.

Mrs. Thonen made a motion to defer SP 90-D-021 until October 9, 1990, at 10:45 a.m., for decision only. She stated that, if anyone had written material which they wished to turn in, they could do so, but no additional oral testimony would be heard.

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

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Mrs. Thonen made a motion for a five (5) minute recess and Vice Chairman DiGiulian so ordered. The Board recessed at 9:00 p.m. and returned at 9:15 p.m.

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Page 318, October 2, 1990, (Tape 1), Scheduled case of:

8:30 P.M. WOODLAWN UNITED METHODIST CHURCH, SPA 78-V-291-1, appl. under Sect. 3-203 of the Zoning Ordinance to amend SP 78-V-291 for church and related facilities to allow addition of 18,110 s.f. of land, deletion of 42,236 s.f. of land, and relocation of parking for existing church, located 7730 Fordson Road, on approx. 2.3 acres of land, zoned R-2, Mount Vernon District, Tax Map 102-1((1))78, 79, and 77. (CONCURRENT WITH VC 90-V-091) (OTH GRANTED)

8:30 P.M. WOODLAWN UNITED METHODIST CHURCH, VC 90-V-091, appl. under Sect. 18-401 of the Zoning Ordinance to allow church and related facilities 3.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), located at 7730 Fordson Road, on approx. 2.3 acres of land, zoned R-2, Mount Vernon District, Tax Map 102-1((1))78, 79, 77. (CONCURRENT WITH SPA 78-V-291-1) (OTH GRANTED)

Vice Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Lawrence 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, stating that staff recommended denial of SPA 78-V-201-1, and that staff did not take a position on the applicant's request for a variance.

Robert A. Lawrence, of the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, represented the applicant and presented the statement of justification. Mr. Lawrence referred to staff's indication of two outstanding issues at the time the staff report was written; namely, the landscaping and the location of realigned Fordson Road, and how that might impact the subject property. He further stated, as staff had also indicated, that the applicant had addressed the landscaping concerns with a revised plan. Regarding the transportation issue, Mr. Lawrence stated that the applicant had met with Mr. Harrison of VDOT (Virginia Department of Transportation) and Mr. Moore of the Fairfax County Office of Transportation, and resolved the issue of the turning radius that was necessary to accommodate the realignment of Fordson Road. Mr. Lawrence went into detail in explaining the landscaping plan, stating that a substantial amount of landscaping would be placed on the site. He stated that, at this point in time, the parking lot is not there and there is no landscaping in that area. He said there will also be landscaping on the side that is closest to the property line, which will help with interfacing the building with the adjoining property. He stated that the applicant will also provide a four (4) foot brick wall along Fordson Road and a brick wall along the rear of the property line, together with the landscaping schedule. Mr. Lawrence stated that the purpose of these proposed steps was to block the view of the vehicles which are parked in the lot from traffic along Fordson Road.

A conversation ensued regarding the redevelopment plan for the area, which is the subject of a concurrent rezoning application.

Mr. Lawrence stated that he believed the applicant had addressed all of the issues which staff had stated were of concern.

In support of the applicant, Judith Saunders Burton, 7738 Fordson Road, Alexandria, Virginia, came forward and stated that she was heir to the property at 7738 Fordson Road. She stated that she represented the Civic Association of Gum Springs and that they were in agreement with the project. Tom Rhodes, 8101 Fordson Road, Alexandria, Virginia, also came forward, stating he was Chairman and Trustee of the Woodlawn United Methodist Church and supported the application.

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

Mr. Hammack made a motion to defer SPA 78-V-291-1 and VC 90-V-091, for decision only, until October 9, 1990, at 11:30 a.m.

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

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Page 318, October 2, 1990, (Tape 1), Scheduled case of:

9:10 P.M. WILLIAM W. HOLT, VC 90-V-061, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling 25 ft. from each street line of a corner lot (30 ft. min. front yard required by Sect. 3-407) on approx. 8,800 s.f. of land, located at 6116 Woodmont Rd., Tax Map 83-3((14))(11)18. (DEFERRED FROM 8/7/90 - NEEDS NEW PLAT INCLUDING STRUCTURE)

D. Thomas Basham, 8805 Sudley Road, Manassas, Virginia, came forward to represent the applicant. Mr. Basham stated that he was afraid he would have to request a deferral because the stoop shown on the footprint extended further than the five (5) foot extension that had been requested.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that this case would have to be readvertised, so the earliest possible time that it could be heard was November 8, 1990, at 11:00 a.m.

Page 319, October 2, 1990, (Tape 1), (WILLIAM W. HOLT, VC 90-V-061, continued from Page 318)

Mrs. Thonen made a motion to defer VC 90-V-061 until November 8, 1990, at 11:00 a.m.

Mrs. Harris seconded the motion, which carried by a vote of 5-0. Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 319, October 2, 1990, (Tape 1), After Agenda Item:

Approval of Resolutions for September 25 and September 27, 1990

Mr. Hammack made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 319, October 2, 1990, (Tape 1), After Agenda Item:

Request for Intent to Defer VC 90-A-078, Patricia A. Stevens
Scheduled for October 9, 1990
at the Request of the Planning Commission

Mrs. Thonen made a motion of Intent to Defer VC 90-A-078. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman Smith and Mr. Kelley were absent from the meeting.

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Page 319, October 2, 1990, (Tape 1), Information Item:

Mrs. Harris inquired if the Board had ever voted on Mr. Thoburn's Appeal. Vice Chairman DiGiulian stated that it had not, because they had Mr. Thoburn's opinion but they did not yet have the County Attorney's opinion. Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the decision to schedule the appeal was deferred to October 9, 1990, as an After Agenda Item. Ms. Kelsey stated that she would advise Mr. Thoburn of the approximate time. Ms. Kelsey asked the Board if they would let her know if any of them planned to be absent.

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As there was no other business to come before the Board, the meeting was adjourned at 9:30 p.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

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

SUBMITTED: 11/6/90

APPROVED: 11/13/90

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 9, 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 9:35 a.m. and gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 321, October 9, 1990, (Tape 1), Scheduled case of:

9:00 A.M. JAMES SHEPARD, VC 90-A-075, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 13.4 feet from one street line of a corner lot (20 ft. min. front yard required by Sect. 3-307), on property located at 8424 Queen Elizabeth Boulevard, on approximately 11,839 square feet of land, zoned R-3 (developed cluster), Annandale District, Tax Map 70-3((5))187.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the revised affidavit before the Board was complete and accurate. Mr. Mason 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.

In response to Mr. Hammack's questions, Mr. Riegle stated that he did not know if there had originally been a garage on the property. He said that judging from an aerial photograph there are no structures in the area as close as 13 feet to the property line and that a 30 foot front yard setback is required.

The applicant's agent, Jay Mason, with the firm of John Cable Associates, Inc., 311 South Washington Street, Alexandria, Virginia, presented a drawing to the Board and used the tax map on the viewgraph to point out that the corner property had been divided into three lots, whereas, the other property on the street had been divided into two lots. He expressed his belief that the extreme shallowness of the property, the corner lot requiring two front yard setbacks, and the positioning of the house at an angle on the lot created an unreasonable hardship. Mr. Mason stated that the house on the property abutting the applicant's was less than 14 feet from the lot line, the proposed location is the only prudent site for the addition, the addition would add aesthetic value to the applicant's property, and the addition would conform to the neighborhood. He noted that the entrance to the driveway would be from the side street which would be safer than the present entrance off the main road.

In response to Mr. Hammack's question, Mr. Mason stated the existing driveway pad would be torn up and the area sodded.

There being no speakers in support or in opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 90-A-075 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated October 2, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-075 by JAMES SHEPARD, under Section 18-401 of the Zoning Ordinance to allow construction of garage 13.4 feet from one street line of a corner lot, on property located at 8424 Queen Elizabeth Boulevard, Tax Map Reference 70-3((5))187, 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 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-3.
3. The area of the lot is 11,839 square feet of land.
4. The applicant has satisfied the nine standards for a variance.
5. The property must meet the double front yards requirement.
6. The location of the house on the lot has caused the need for a variance.
7. The variance is minimal and only a small triangular portion of the proposed garaged requires a variance.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 existing driveway pad, shown on the plat accompanying the application, shall be removed and that area sodded with grass.

Mrs. Thonen seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 322, October 9, 1990, (Tape 1), Scheduled case of:

9:15 A.M. PATRICIA A. STEVENS, VC 90-A-078, application under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into two lots with proposed Lot 1 having a lot width of 57.38 feet and proposed Lot 2 having a lot width of 52.76 feet (100 ft. min. lot width required by Sect. 3-207), on property located at 4313 Holly Lane, on approximately 1.1094 acres of land, zoned R-2, Annandale District, Tax Map 70-2((2))33A.

Mrs. Thonen stated that the Planning Commission had requested that the Board defer the application and noted that a letter of concurrence had been received from the applicant. She asked staff for a deferral date. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested October 23, 1990 at 10:30 a.m.

Page 323, October 9, 1990, (Tape 1), (PATRICIA A. STEVENS, VC 90-A-078, continued from Page 322)

Mrs. Thonen moved to defer VC 90-A-078 to October 23, 1990 at 10:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 323, October 9, 1990, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT D. & JUDITH M. LARSON, VC 90-A-081, application under Sect. 18-401 of the Zoning Ordinance to allow construction of addition (deck) 2.7 feet from side lot line (5.35 ft. min. side yard required by Sects. 6-106 and 2-412), on property located at 5520 Beaconsfield Court, on approximately 2,475 square feet of land, zoned PDH-3, Annandale District, Tax Map 78-1((5))190.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Larson replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and stated that one variance had been granted in the neighborhood for a deck extension.

In response to Mrs. Harris' question, Mr. Jaskiewicz stated that the proposed deck would not connect with the existing deck.

The applicant, Robert D. Larson, 5520 Beaconsfield Court, Burke, Virginia, addressed the Board and stated that there is a lake to the rear of the property and that the townhouses in the area have decks. He explained that the neighbors' view of the lake would be obstructed if he built a deck to the rear of the property. Mr. Larson said that because of the many decks in the area, the proposed deck would conform to the neighborhood. Mr. Larson said that the deck would add aesthetic value to the property and enhance the outdoor living area. He stated that the lot slopes at a forty-five degree angle; therefore, the common property abutting his lot is seldom used. He noted the exceptional topographic condition of the lot, and said that the width of the deck would be limited to 5 feet if built in conformance with the Zoning Ordinance.

In response to Mrs. Harris' question as to the hardship that required the deck be placed at the proposed location, Mr. Larson stated the slope to the rear of the property created a hardship. He explained that he was also trying to accommodate the neighbors so that their view of the lake would not be blocked.

Mrs. Thonen asked if other decks in the community were built by-right, or if variances were required. Mr. Larson stated that only one deck in the area had required a variance.

In response to Mrs. Thonen's inquiry, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the area was in a PDH district; therefore, if the deck had been shown on the development plan it could have been approved by-right.

There being no speaker in support or in opposition, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-A-081 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated October 2, 1990.

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THE COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-081 by ROBERT D. AND JUDITH M. LARSON, under Section 18-401 of the Zoning Ordinance to allow construction of addition (deck) 2.7 feet from side lot line, on property located at 5520 Beaconsfield Court, Tax Map Reference 78-1-((5))190, 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 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 PDH-3.
3. The area of the lot is 2,475 square feet of land.
4. It is hard to have a deck or any outside places to sit in a PDH zoned area.

5. The construction of a deck on the side would be preferable to the back of the house because of the topographic conditions and because it would interfere with the neighbor's view of the lake.
6. The lot is narrow and has exceptional topographical conditions.

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

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

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

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

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

1. This variance is approved for the location and the specific building 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 which carried by a vote of 5-1 with Mrs. Harris voting nay. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 325, October 9, 1990, (Tape 1), Scheduled case of:

9:45 A.M. JOSEPH P. BAILEY AND NHUNG BAILEY, SP 90-S-047, application under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow addition (sunroom) to remain 19.6 feet from one street line of a corner lot (25 ft. min. front yard required by Sect. 3-203), on property located at 12701 Heatherford Place, on approximately 13,009 square feet of land, zoned R-2 (developed cluster), Springfield District, Tax Map 66-2((5))364.

Vice Chairman DiGiulian referred to a notation on the agenda that the notices were not in order.

Mike Jaskiewicz, Staff Coordinator, explained that the agent for the applicant had not followed the correct procedure on the notices and that the case would have to be deferred. He stated that the agent for the applicant had requested a date of November 8, 1990, but staff suggested a date of November 27, 1990.

Mrs. Thonen moved that SP 90-S-047 be rescheduled for November 27, 1990. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Chairman Smith absent from the meeting.

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Page 325, October 9, 1990, (Tape 1), Scheduled case of:

10:00 A.M. JOHN W. & DIANE M. BRAY, SP 90-P-049, application under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow addition to remain 11.7 feet from rear lot line (25 ft. min. rear yard required by Sect. 3-407), on property located at 10507 Miller Road, on approximately 36,750 square feet of land, zoned PDH-4, Providence District, Tax Map 47-2((28))(1A)4.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Bray replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and stated that the nearest dwelling to the south would be sited beyond the berm, and that the asphalt inner neighborhood trail lies approximately 40 feet from the subject dwelling addition.

The applicant, Diane M. Bray, 10607 Miller Road, Oakton, Virginia, addressed the Board and stated that there had been discrepancies regarding the property line. She explained that the original property marker showed a setback area of 19 feet and that the contractor, Southern Associates, and the Zoning Inspector had also used this marker. At no time, Mrs. Bray stated did she realize that the property marker had been placed at the wrong location. She stated that the original plat showed an 11.7 foot setback and that the contractor, who had been responsible for obtaining the required County permits, used a plat showing the 11.7 foot setback. She noted that although the plat and the drawings indicated that the addition would be in violation; the County's approval was received. Ms. Bray said that when the discrepancies were discovered she had contacted the Virginia State Contracting Board, and had made other inquiries, but has been unable to locate the contractor. She said the compliance was done in good faith and noted that the during the construction of the addition, the appropriate County officials inspected the structure leading the applicants to believe that all required procedures were correct because a final building inspection was issued on February 18, 1988.

Ms. Bray stated that about two years later, on April 10, 1990 she received a letter stating that the addition did not meet the 25 foot setback requirement. She explained that on May 4, 1990, she had a series of meetings with County officials. She stated that Mr. Ahmad, with the Office of Building and Development, had informed her that Fairfax County had completed all the required inspections and had given approval for the addition and he did not believe there would be any problems. She then contacted the Office of Field Inspection and again received assurance that all building requirements had been met and they could give no explanation as to why a Notice of Violation had been issued. Ms. Bray said that she then met with Mary Virginia Conner, of the Zoning Administration Office, who stated that the file was very confusing and that the application for the building permit should not have been approved. Ms. Bray stated that Ms. Conner explained that it was her belief that the clerk who had issued the permit had mistakenly read the sanitation sewage line as the property line, therefore approval was granted. She then spoke with Melinda Artman, Assistant to the Zoning Administrator, who confirmed that the permit should not have been granted because the setback requirement had not been met.

Ms. Bray expressed her belief that the purpose or intent of the Zoning Ordinance would not be violated. She said that the addition and the landscaping adds aesthetic value to the community, that she has the support of the neighbors, the intended use of the property does not cause unsafe conditions, that the property buffers a common area, and that denial would cause a financial hardship on the her and her husband.

In response to Mrs. Harris' question as to who supervised RJL when they installed the berm to the back of the property, Ms. Bray said that she and the neighbors had worked closely with RJL and that they too had used the property marker when they built the berm. Ms. Bray stated

that when they were accepting bids for the addition, none of the builders or County officials expressed any concern with the setback requirements.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that when a contractor is building under PDH, there are no exact setbacks as there is under conventional zoning.

In response to Vice Chairman DiGiulian's statement that the builder would have to be guided by the setbacks shown on the development plan, Ms. Kelsey said that was correct but according to the development plan, the builder could place the building in any location he desired provided that it is approved by the Director, Department of Environmental Management and it meets the purpose and intent of the District. She explained that it is only after the development is complete, that the conventional zoning district requirements that most closely characterizes the PDH District are used.

In response to Mrs. Harris' question, Ms. Kelsey stated that the County official and the builders should have been aware of the situation.

There being no speakers in support or in opposition, Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 90-P-049 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated October 2, 1990.

In response to Mrs. Harris' request, Ms. Kelsey said she would discuss the problems that had been revealed in this application with the Deputy Zoning Administrator in charge of the Permit Review Branch

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-P-049 by JOHN W. AND DIANE M. BRAY, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow addition to remain 11.7 feet from rear lot line, on property located at 10507 Miller Road, Tax Map Reference 47-2((28))(1A)4, 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 7, 1990; and

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

1. That the applicants are the owner of the land.
2. The present zoning is PDH-4.
3. The area of the lot is 36,750 square feet of land.
4. The error does exceed 10 percent of the measurement.
5. The noncompliance was done in good faith.
6. The PDH caused confusion as to the setbacks.
7. The berm and the open space will ensure that the application does not impair the purpose or intent of the zoning Ordinance or will be detrimental to the use of adjoining properties or create an unsafe condition.
8. Strict compliance to the Zoning Ordinance would force unusual hardship on the applicants.
9. There is no neighbor to the back of the property, and both neighbors on the abutting properties are in support of the application.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 dwelling addition shown on the plat (prepared by Urban Engineering & Associates, Inc. and dated June 22, 1990) submitted with this application and is not transferable to other land.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:20 a.m. and reconvened at 10:35 a.m.

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Page 327, October 9, 1990, (Tape 1), Scheduled case of:

10:15 A.M. MCLEAN CHILDREN'S ACADEMY, INC., SPA 82-D-083-3, application under Sect. 3-303 of the Zoning Ordinance to amend S 82-D-083 for nursery school and child care center to allow continuation of use without term and to permit additional parking and driveway, on property located at 6900 Elm Street, on approximately 10,390 square feet of land, zoned R-3, Dranesville District, Tax Map 30-2((5))3.

Vice Chairman DiGiulian called the agent for the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Touchton replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report and stated that the 5 year term granted to the applicant would expire October 13, 1992. He explained that the school was founded in 1981 and has a maximum enrollment of sixty children. He stated that staff did not support the applicants request to amend the application for a continued use without term and to permit the additional parking and the driveway. He stated that the applicant had requested that if a term was to be imposed it be granted to October 1996. He expressed staff's belief that the application did not meet the current special permit standards for such use in the R-3 District and said that staff recommended denial. He noted that the school would still be allowed to function under the terms of Special Permit, SPA 82-D-083-1, until October 1992.

The agent for the applicant, Barbara B. Touchton, 6900 Elm Street, McLean, Virginia, gave a copy of her presentation to the Board and stated that the Board had unanimously approved the existing special permit. She stated that at the time of the approval the Board had noted that there had been no problems with the school or with the community, but found that the staff did present problems. She stated that the same problems faced the Board and the applicant today, and staff's concerns as stated in the staff report were addressed at the previous hearing. She expressed her belief that staff's concerns were no longer relevant and noted that the community benefits from the child care center. Ms. Touchton said that the parents are able to walk the children to the school which complies with the Board of Supervisors' guidelines regarding child care facilities. She stressed the fact that the existing school would not change in size, nor in physical plant, and noted that the only changes requested are the parking spaces as required by the Zoning Ordinance.

Ms. Touchton expressed her belief that the applicant is subjected to a hardship by continually being required to appear before the Board to renew the application and by having to address staff's concerns. She expressed her belief that the school is well supervised by the appropriate County agencies, that the school is an asset to the community, that being required to appear before the Board is costly, and asked the Board to approve a special permit without term or at the very minimum until 1996. She asked the Board to add a condition stating that future renewal not be judged as a new application, but rather as an extension of the special permit already approved.

Ms. Touchton stated that the school is in a secure location and has an excellent academic program which stresses the social, emotional and intellectual growth of the students and asked that the Board grant the use without term. She expressed her belief that the staff is trying to dictate to the school, the neighborhood, and to the McLean residents on how to live

in the community. Ms. Touchton stated that the children are outside for fifteen minutes in the morning and afternoon; therefore, the noise concerns expressed by staff are not relevant.

In summary, Ms. Touchton asked that proposed condition number 15 be deleted.

Vice Chairman DiGiulian called for speakers in support of the applicant and the following citizens address the Board.

Dorinda Malone, 1210 Suffield Drive, McLean, Virginia; Barbara Stevenson, 1239 Kensington Road, McLean, Virginia; and George DeVaux, 1307 Clayborne House Court, McLean, Virginia; expressed their support of the McLean Children's Academy. They stated that the school has supplied a much needed service to the community by providing high quality, loving, homelike child care for the residents of the area.

In response to Mr. Ribble's question regarding changes in the area, Jane Kelsey, Chief, Special Project and Variance Branch, stated that there had been changes in the Zoning Ordinance but that there has been no change in the operation of the school. Ms. Kelsey noted that the applicant was requesting additional parking spaces which cannot legally be approved because they are tandem spaces.

There being no further speakers in support and no speakers in opposition, Vice Chairman DiGiulian called for rebuttal.

In rebuttal, Ms. Touchton stated that she had been informed in December, that the changes in the Zoning Ordinance had been to remove the Board's right to waive the parking requirement. She said that after consulting with Supervisor Lilla Richards, it was decided that six parking spaces could be approved. She expressed her belief that the Director, Department of Environmental Management and the applicant could reach an agreement on the parking issue.

Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble noted that the Board has always advocated a term be imposed on a use because of the changes that take place over a period of time. He expressed his belief that with zoning changes and other changes in the area, a school might not be harmonious and said that he would not support a use without term. He then made a motion to deny SPA 82-D-083 for the reasons reflected in the Resolution. Mrs. Harris seconded the motion.

Mrs. Thonen stated that it has been the Board's policy to place terms on special permits and said that no Board member would approve a use without term.

Mr. Hammack stated that he could support extending the use for a two year period beyond 1992, but would not support the use without term. He noted that the transitional character of the area and stated that although he supported the school at the present location, he might not be willing to do so in the future and that a term was necessary.

The motion carried by a vote 6-0 with Chairman Smith absent from the meeting.

Ms. Touchton requested that the Board waive the 12 month time limitation for the refiling a new application on the same property.

Mrs. Harris stated that since the applicant's special permit does not expire until 1992, she could not support a waiver of the 12 month limitation.

Mrs. Thonen made a motion to deny the applicant's request. Mrs. Harris seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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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-083-3 by MCLEAN CHILDREN'S ACADEMY, under Section 3-303 of the Zoning Ordinance to amend S 82-D-083 for nursery school and child care center to allow continuation of use without term and to permit additional parking and driveway, on property located at 6900 Elm Street, Tax Map Reference 30-2((5))3, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 9, 1990; and

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

1. That the applicant is the lessee of the land.

Page 329, October 9, 1990, (Tape 1), (MCLEAN CHILDREN'S ACADEMY, INC., SPA 82-D-083-3, continued from Page 328)

2. The present zoning is R-3.
3. The area of the lot is 10,390 square feet of land.
4. The applicant has not presented testimony indicating compliance of the standards and additional standards as set forth in Sections 8-006, 8-305 and 8-303 of the Zoning Ordinance.
5. Things change over a period of time: uses in the area being one of those, zoning changes, and other uses in the area may not be harmonious in this situation, thus the Board cannot support a use without term.

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, 8-303 and 8-305 of the Zoning Ordinance.

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

Mrs. Harris seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

Mrs. Thonen made a motion to deny a waiver of the 12 month limitation for refiling a new application on the same property. Mrs. Harris seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1990.

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Page 329, October 9, 1990, (Tape 1), Scheduled case of:

10:30 A.M. DOUGLAS PITKIN, ALMA PITKIN, AND DEBORAH PITKIN Appeal, A 90-S-010, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed subdivision of Cliffs of Clifton will result in two lots within Fairfax County which are not buildable lots, on approximately 4.3613 acres of land, zoned R-C and WS, Springfield District, Tax Map 75-4((1))40A. (CONCURRENT WITH A 90-S-011) (DEFERRED FROM 9/20/90 FOR INCORRECT POSTING)

10:30 A.M. CARTER V. BOEHM, TRUSTEE, APPEAL, A 90-S-011, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed subdivision of Cliffs of Clifton will result in two lots within Fairfax County which are not buildable lots, on property located at 7028 Cold Point Road, on approximately 1.9619 acres of land, zoned R-C and WS, Springfield District, Tax Map 75-4((1))40B. (CONCURRENT WITH A 90-S-010) (DEFERRED FROM 9/20/90 FOR INCORRECT POSTING)

The attorney for the appellant, Ira Saul, with the law firm of Saul and Barclay, P.C., 4114 Leonard Drive, Fairfax, Virginia, stated that the appellant's engineer, Michael Mahaffie, was experiencing car trouble and asked that the case be held over until the end of the agenda.

Mrs. Thonen made a motion to defer appeals A 90-S-010 and A 90-S-011 until the end of the agenda. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman Smith absent form the meeting.

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Page 329, October 9, 1990, (Tapes 1 and 2), Scheduled case of:

10:45 A.M. CHESTERBROOK-MCLEAN LITTLE LEAGUE, INC., SP 90-D-021, appl. under Sects. 3-303 and 8-901 of the Zoning Ordinance to amend Special Permit granted in 1959 to allow lighting of third field, change of hours, waiver of dustless surface requirement, existing T-ball field and batting cage, fourth baseball field, reduction in parking, and miscellaneous structures to remain, located at 1836 and 1840 Westmoreland Street, on approx. 7.21958 acres of land, zoned R-3, Dranesville District, Tax Map 40-2((1))42, 46. (OUT-OF-TURN HEARING GRANTED 4/3/90) (DEFERRED FROM 6/5/90 FOR RESOLUTION OF ISSUES) (DEFERRED FROM 7/31/90 FOR ADDITIONAL INFORMATION AND TO FURTHER RESOLVE ISSUES) (DEFERRED FROM 10/2/90 FOR DECISION ONLY)

Mr. Hammack referred to the revised proposed development conditions contained in the addendum to the staff report dated September 27, 1990. He noted that the motion would be lengthy and said he would explain the changes in the conditions.

Mr. Hammack expressed his belief that the complex nature of the case made the Board's decision difficult and said that the community and the applicant have both demonstrated support for their various positions, but have not been able to resolve all of the issued involved. He stated that the Board must decide on a number of issues and must impose a

number of development conditions on the use at the site. He noted the issues of parking, environmental considerations, the lighting of the third field, and further stated that since the special permit was granted in 1959, the use of the field has intensified. He stated that the Board's responsibility is to balance the use of the property in such a manner that would not be detrimental to the surrounding neighborhood. Mr. Hammack referred to the testimony as to the need and quality of the Little League and to the testimony regarding the impact of the use on the community. He noted that some issues had been resolved in the course of the proceedings, stating that the applicant has agreed to remove the T-Ball field in its entirety.

Mr. Hammack said that in the course of the year, the Board hears numerous cases involving sport facilities; swimming and tennis clubs, lighted tennis courts, riding stables, country clubs, and other facilities that impact on the communities. He stated that the Board does try to apply some uniformity in evaluating the use of the property.

Mr. Hammack stated that the issue of parking has been resolved, noting that the applicant had agreed to provide 140 parking spaces on site. On the issue of noise, the applicant has tried to mitigate the problem and has directed the loudspeakers away from the community and has re-oriented one ballfield. He added that the issue of the lighting is the most perplexing problem.

Mr. Hammack made a motion to grant-in-part SP 90-D-021 for the reasons noted in the Resolution and subject to the revised development conditions contained in Appendix 1 of the addendum to the staff report dated September 27 1990, with the changes as reflected in the Resolution.

Mrs. Harris seconded the motion.

Vice Chairman DiGiulian called for discussion.

In response to Mrs. Thonen's question regarding the height of the lights on the fields, Mr. Hammack stated that the highest pole would be 43 feet.

The applicant's agent, Grayson P. Hanes, with the law firm of Hazel, Thomas, Fiske, Weiner, Beckhorn and Hanes, P.O. Box 12001, Falls Church, Virginia, came forward. He replied to Mrs. Thonen's inquiry by stating that the height of the light poles on Field 1 and Field 2 would be 43 feet, but that the poles on Field 3 would have to be 50 feet high in order to meet the one foot candle requirement.

Mr. Hammack explained that he had tried to keep the light poles low so that they would not have a detrimental impact on the neighborhood. He stated that if the applicant could not meet the standards without a 50 foot pole of Field 3, he would have no objection.

In response to Mrs. Harris' question, Mr. Hanes stated that the original plans called for the poles to be 60 feet high and after consulting with the neighbors and with the lighting engineers, a compromise of 50 feet had been reached.

After a brief discussion by the Board, Mr. Hammack amended his motion to state that the poles on Field 3 could be no higher than 50 feet.

Mrs. Thonen seconded the motion.

Mr. Hammack stated that spaces must be provided for the children to play, that the facility was nice, and that some intensification should be allowed. He said that overall, the applicant had attempted to satisfy the valid concerns of the community in providing off-street parking, providing for the environmental impacts, agreed to mitigate any off-site illumination, and addressed the noise impact on the neighbors. He noted, in making the motion to allow the fourth field, that the T-ball field had been removed and the applicant has attempted to resolve the concerns of the community. Mr. Hammack stated that in two years, the application would be reviewed to insure that the fields comply with the standards and that the play should be allowed if it does not have a detrimental impact on the community. He stated that he had tried to strike a balance between the need for ball fields and the neighborhood concerns.

The motion carried by a vote of 6-0 with Chairman Smith absent from the meeting.

Mrs. Thonen expressed her appreciation to Mr. Hammack for his work on the decision, to the applicant, and to the community for working together to resolve the issues. She stated that she thought the motion was a good, negotiated compromise.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-021 by CHESTERBROOK-MCLEAN LITTLE LEAGUE, INC., under Sections 3-303 and 8-901 of the Zoning Ordinance to amend Special Permit granted in 1959 to allow lighting of third field, change of hours, waiver of dustless surface requirement,

existing T-ball field and batting cage, fourth baseball field, reduction in parking, and miscellaneous structures to remain (THE BOARD GRANTED TO ALLOW LIGHTING OF THIRD FIELD, CHANGE OF HOURS, WAIVER OF DUSTLESS SURFACE REQUIREMENT, FOURTH BASEBALL FIELD, AND MISCELLANEOUS STRUCTURES TO REMAIN), on property located at 1836 and 1840 Westmoreland Street, Tax Map Reference 40-2((1))42, 46, 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 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-3.
3. The area of the lot is 7.21958 acres of land.
4. The case is difficult with interconnecting issues.
5. The community and the applicant have been unable to resolve the issues, therefore the Board must make serious decisions on the use.
6. There are serious traffic, offsite parking, environmental, lighting, and noise problems that must be addressed.
7. The use has intensified substantially since 1959.
8. The use must be balanced so that the quality of the program is good but does not have a detrimental impact on the neighborhood.
9. The use is appropriate for the property.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-403, 8-903, and 8-915 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. This approval is for the locations and structures 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. This condition shall not preclude the application for or approval of any modification or waivers of site plan requirements.

5. The maximum number of ball fields shall be four (4). The concession stand, batting cage and structures related to the four (4) fields may remain. The T-Ball field and related structures (dugouts, bleachers, etc.) shall be removed.

6. The hours of operation shall be limited to the following:

   5:00 pm to 9:30 pm on Monday through Friday

   8:30 am to 9:30 pm on Saturday.

   12:30 pm to 9:00 pm on Sunday; provided further that play shall be terminated on field number 3 at 6:00 p.m. on Saturdays and Sundays between August 1 and April 1 of the next calendar year.

   The time limitations on the use means that the lights are to be out and play terminated at these times.

7. A minimum of 140 parking spaces shall be provided on site. All additional parking shall be gravel and shall not be located within fifty (50) feet of the Pimmit Run Stream.

8. The entrances to the site shall be altered to conform to current standards unless waived by the Department of Environmental Management or VDOT.

9. In order to provide the highest level of stream bank and water quality protection in Pimmit Run and maintain adequate allowance for bank-full as well as overflow capacity for the watershed that drains to this point of the receiving channel, a minimum EQC buffer of 50 feet from the Pimmit Run stream bank shall be re-established, except where precluded by the VEPCO easement, and except in the immediate area of field number 4. The minimum buffer area shall be re-established with a vegetative restoration plan utilizing native hardwood species tolerant of floodplain soils. The restoration plan shall be coordinated with and approved by the County Arborist and shall be in conformance with the Public Facility Manual. Where the VEPCO easement and field number 4 preclude the entire restoration of the buffer area, the plan shall at minimum include restoration of the shrub zone along the stream bank where necessary and expansion of the shrub zone within the VEPCO easement for that portion bordering the paved and graveled parking lot rather than using man made barriers. Slow growth tree or shrub species shall be planted along the edge of the buffer area and along the northern edge of the parking lot. This minimum EQC buffer shall constitute the limits of clearing and grading and shall be depicted as such on all site plans.

10. The applicant shall develop a field maintenance plan which incorporates erosion and sediment control as well as nutrient and chemical control measures intended to reduce the pollutant loads entering Pimmit Run for approval by the Department of Environmental Management. The applicant shall make a copy of this management plan available to the Director of Zoning Administration and/or the Department of Environmental Management upon request.

11. In order to prevent increased erosion and sedimentation of soils within the floodplain area and along the stream bank, all outfall areas for surface and subsurface drains or ditches which currently exist and all future subsurface drains associated with any facility on this property shall be provided with an adequate outfall area and devices such as rip rap and or lowering of the outfall pipe with the provision of a drop inlet. The outfall areas shall be regularly maintained. An outfall drainage design and maintenance plan shall be provided to DEM prior to the approval of this plan.

12. Transitional Screening 1 shall be provided along the eastern lot line and along that portion of the western lot line which abuts residentially developed properties. Existing vegetation may serve to meet this requirement if supplemented to meet the effectiveness of Transitional Screening 1 as determined by the County Arborist.

    The barrier requirement shall be waived.

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.

    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.

14. The existing two lighted fields located closest to Westmoreland Street and designated as fields number 1 and 2 may be the lighted fields for this use. The field designated as number 3 may also be lighted provided further, that the lighting of any of the fields and especially field number 3, shall not cause off site illumination to adjacent residences in excess of one foot candle as defined in the Zoning Ordinance. All lighting on the fields shall be shielded and directed downward and shall not be directed to any adjoining residences. On field number 3, no more than four (4) poles shall be erected with a total of 16 lights. The poles on fields number 1 and 2 shall be no higher than 43 feet and the poles on field number 3 shall be no higher than 50 feet.

15. A new plat which meets the Zoning Ordinance submission requirements shall be submitted in accordance with these Development Conditions showing the buffer area for Pimmit Run, the location of the additional parking spaces, the location and height of existing and proposed light poles.

16. Artificial amplification of sound shall be contained on site and shall meet all Fairfax County noise ordinances and performance standards applicable to noise off-site.

17. This special permit shall be subject to a term of two (2) years so that the land use, transportation, and environmental impacts of this use can be reviewed and so that conformance with all development conditions approved by the BZA in this application may be assessed.

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 which 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 October 17, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 333, October 9, 1990, (Tape), Scheduled case of:

11:00 A.M. RESTON INN AND CONFERENCE CENTER VENTURE APPEAL, A 90-C-009, appeal of a determination of an agent of the Zoning Administrator that Parcel 1 is in a village center and that preliminary site plan and site plan approval are required to develop the site, on property located at 11810 Sunrise Valley Drive, on approximately 653,400 square feet of land, zoned PRC, Centreville District, Tax Map 17-3((3))1. (DEFERRED FROM 9/11/90 FOR DECISION ONLY) (DEFERRED FROM 9/25/90 AT APPLICANT'S REQUEST)

Mrs. Thonen stated that she had done a thorough review of the application and had had several discussions regarding Reston and the Conference Center with citizens of that area. Referring to the September 11, 1990 hearing, she said that Mr. Pammell's presentation had been excellent and that the letter from Charles Kent was very informative. Mrs. Thonen stated that the last action taken on this issue had been the public hearing of 1969 and the conceptional plan of 1970 and 1971. The Zoning Ordinance was amended in 1978 and she stated that there had been no legislative action regarding the zoning destination of the property. She expressed her belief that due to the thorough investigation she had made, if legislative action had been taken it would have been established. She noted that Barbara Byron, Director, Zoning Evaluation Division, had ruled in 1989 that the conference center was in compliance and then in May of 1990, Ms. Byron had changed her interpretation.

Mrs. Thonen made a motion to reverse the Zoning Administrator's agent's determination that Parcel 1 is a village center and to uphold the Zoning Administrator's agent's determination that the preliminary site plan and site plan approval are required to develop the site.

Mr. Ribble seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mrs. Harris stated that she could not support the motion. She said that she had agreed with some of the issue Mrs. Thonen had raised, but she could not agree with Mr. Pammel and Mr. O'Neal's rationale. She stated that she could not agree with either the Zoning Administrator or the applicant and that the site at one times had both designations and expressed her belief that only a legislative act by the Board of Supervisors can designate a property; therefore, she could not support either side.

The motion carried by a vote of 5-1 with Mrs. Harris voting nay. Chairman Smith was absent from the meeting.

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Page 334, October 9, 1990, (Tape 2), Scheduled case of:

11:15 A.M. ARDAK CORPORATION APPEAL, A 90-P-013, application under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that tandem parking spaces cannot be used to meet the minimum parking requirements for any use other than single family detached or attached dwellings and that the addition of an office use constitutes an expansion or enlargement of the existing use which requires all existing uses to comply with the current Zoning Ordinance minimum parking requirements, on property located at 1800 Old Meadow Road, on approximately 11.19 acres of land, zoned R-30, Providence District, Tax Map 29-4((8))C. (DEFERRED FROM 9/27/90 FOR DECISION ONLY)

Mr. Hammack made a motion to reverse the Zoning Administrator's determination that tandem parking spaces cannot be used to meet the minimum parking requirements for any use other than single family detached or attached dwellings, and that the addition of an office use constitutes an expansion or enlargement of the existing use, which requires all existing uses to comply with the current Zoning Ordinance minimum parking requirements.

Mr. Hammack stated that he had taken into account not only the Zoning Ordinance, but the fact that the condominium building had been originally approved under a CRMH designation, which allowed office uses on the property as well as residential uses. He explained that the applicant had purchased two units for commercial use and if the Board upheld the Zoning Administrator's determination, the effect would be a confiscation of the applicant's property. Mr. Hammack expressed his belief that the applicant was not seeking an expansion or an enlargement, that the applicant is in compliance with all parking requirements for the commercial use of two units, that the applicant does not own the structure and does not have the capability of providing 70 or more parking spaces, and that the only reason the applicant is before the Board is that the special permit had been allowed to expire. He stated that he did not believe that the Board had to address the tandem parking issue since this has to be met because of the office use; but for purposes of making a clean issue, he would move to overrule the Zoning Administrator on both points. He noted that he did not intend to prejudice the Zoning Administrator in any future interpretations with respect to tandem parking that might be applicable to other situations.

Mr. Kelley seconded the motion.

Mrs. Harris stated that she could not support the motion because the special permit had been allowed to expire; therefore, the application was an expansion of use. She stated that the issue of the appeal was whether tandem spaces could be used in parking calculation and under the present Zoning Ordinance, they cannot.

In response to Mrs. Thonen's question on whether the units were built for office space, Mr. Hammack stated that the Board of Supervisors' staff report stated that the upper levels had been sold to separate parties and that the lower units had been approved as commercial office space.

Mr. Hammack stated that the units had been approved for, and used for commercial purposes, and that the applicant could not provide 70 parking spaces because he does not own the property. He stated that the Board had supported the Zoning Administrator on a commercial medical office building where there had been common ownership of the entire building and also where there was an expansion of use. He said that the appeal had been deferred for the Board of Supervisors to enact new Ordinances and for the Planning Commission to review the application. Mr. Hammack expressed his belief that the rules were changed as the game was played and that they were all used against the appellant.

The motion carried by a vote of 5-1 with Mrs. Harris voting nay. Chairman Smith was absent from the meeting.

(A copy of a verbatim of the proceedings has been placed in the appeal file and in the special exception file SE 89-P-020.)

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Page 334, October 9, 1990, (Tape 2), Scheduled case of:

11:30 A.M. WOODLAWN UNITED METHODIST CHURCH, SPA 78-V-291-1, appl. under Sect. 3-203 of the Zoning Ordinance to amend SP 78-V-291 for church and related facilities to allow addition of 18,110 s.f. of land, deletion of 42,236 s.f. of land, and relocation of parking for existing church, located 7730 Fordson Road, on approx. 2.3 acres of land, zoned R-2, Mount Vernon District, Tax Map 102-1((1))78, 79, and 77. (CONCURRENT WITH VC 90-V-091) (OTH GRANTED) (DEFERRED FROM 10/2/90 FOR DECISION ONLY)

11:30 A.M. WOODLAWN UNITED METHODIST CHURCH, VC 90-V-091, appl. under Sect. 18-401 of the Zoning Ordinance to allow church and related facilities 3.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), located at 7730 Fordson Road, on approx. 2.3 acres of land, zoned R-2, Mount Vernon District, Tax Map 102-1((1))78, 79, 77. (CONCURRENT WITH SPA 78-V-291-1) (OTH GRANTED) (DEFERRED FROM 10/2/90 FOR DECISION ONLY)

The applicant's agent, Robert A. Lawrence, with the law firm Hazel and Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, addressed the Board and stated that he had received a new set of development conditions and asked permission to speak to these conditions.

In response to the Board's inquiry as to why new condition were presented to them, Greg Riegle, Staff Coordinator, explained that concurrence from the Office of Transportation regarding the proposed right-of-way dedication to accommodate the realignment of Fordson Road, had been received since the public hearing of October 2, 1990. He noted that the input from the Office of Transportation necessitated a minor change to one Proposed Development Condition.

In response to Mrs. Harris's question as to whether this issue had been discussed at the previous hearing on October 2, 1990, Mr. Riegle stated that although the issue had been discussed at the previous hearing, the applicant's new submission had to be reviewed by the Office of Transportation. Mr. Riegle also noted that a new plat had been submitted by the applicant since the public hearing of October 2, 1990.

In response to Vice Chairman DiGiulian's question, Mr. Lawrence stated that he had received the revised conditions on the previous evening. Vice Chairman DiGiulian asked Mr. Lawrence to address the conditions.

Mr. Lawrence said that revision of Condition 11 pertains to the reservation of right-of-way dedication for the realignment of Fordson Road and that the applicants concurs with the condition. In regard to Conditions 8 and 9, pro-rata payments, he said that if there is a pro-rata established for these two items the developer of the property would be required to make the payment. He stated that he could not understand why there would be a Condition requiring compliance when there is a law establishing pro-rata. He expressed his belief that the applicant should not be singled out to pay a pro-rata that may not be applied to anyone else. Mr. Lawrence stated that Condition 9 required the church to share in the maintenance cost of the storm water detention facility which was proposed to be constructed on the residential property next door and expressed his belief that the church should not be burdened with that expense. He stated that the facility would be maintained by the County with a de minimis amount of runoff from the church. He asked the Board to delete Conditions 8 and 9.

In response to Mrs. Thonen's question as to the agreement that the church not be required to pay for the detention pond, Mr. Lawrence said that the conditions would require that the church pay for the detention pond.

In response to Mr. Hammack's question, Mr. Lawrence said that he had no problem with any of the other conditions.

Mrs. Thonen made a motion to grant SPA 78-V-291-1 subject to the revised development conditions dated October 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 Amendment Application SPA 78-V-291-1 by WOODLAWN UNITED METHODIST CHURCH, under Section 3-203 of the Zoning Ordinance to amend SP 78-V-291 for church and related facilities to allow addition of approximately 18,110 square feet of land, deletion of approximately 42,236 square feet of land and relocation of parking for existing church, on property located at 7730 Fordson Road, Tax Map Reference 102-1((1))78, 79, and 77, 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 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-2.
3. The area of the lot is 1.32 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 (prepared by Greenhorne & O'Mara, Inc. dated October 10, 1989 and revised through October 3, 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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform to these conditions, as well as the Zoning Ordinance requirements.

5. The maximum seating capacity shall not exceed 354; the number of parking spaces shall correspond to the seating capacity based on the requirements of Article 11 as determined by DEM. There shall be a maximum of 89 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements. All the parking spaces shall be of a size and the aisles of a width which will meet the Zoning Ordinance requirements and the Public Facilities Manual standards as determined by DEM and all parking shall be on site.

6. Transitional Screening and barrier requirements shall be modified and provided as depicted on the submitted landscape plan with the following exceptions

   Vegetation shown along the westernmost property line in the area of the four foot high wall shall be extended along the length of the westernmost property line.

   The landscape plan shall be submitted to the County Arborist for review and approval. This plan shall generally conform to the landscape plan prepared by Greenhorne & O'Mara Inc. dated September 14, 1990 and revised through October 3, 1990. All plantings depicted as shade trees or large evergreen trees shall have a caliper of 2 1/2 inches. All plantings depicted as medium evergreen trees shall have a planted height of four (4) feet, all hedges shall have a planted height of 3 feet.

7. There shall be no lighting in the parking areas, except for necessary security lighting as required by Fairfax County.

8. Right-of-way to 26 feet from the existing centerline of Fordson Road shall be dedicated for future road improvements and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval which ever comes first. Ancillary construction easements shall be provided to facilitate these improvements.

9. Right-of-way shall be dedicated in accordance with final design plans associated with the reconstruction and realignment of Fordson Road should this improvement be approved in conjunction with rezoning application RZ 90-V-029. This right-of-way shall convey to the Board of Supervisors in fee simple on demand. Ancillary construction easements shall be provided to facilitate this improvement.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Thonen stated that the Woodlawn United Methodist Church was a positive influence in the Gum Spring area and was the hub of the community. She said that when the structure was built, the setbacks had not been taken into consideration and stated that the variance would be the best way to resolve the setback requirement problem.

Mrs. Thonen made a motion to grant VC 90-V-091 subject to the development conditions contained in the staff report dated September 25, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-091 by WOODLAWN UNITED METHODIST CHURCH, under Section 18-401 of the Zoning Ordinance to allow church and related facilities 3.0 feet from side lot line, on property located at 7730 Fordson Road, Tax Map Reference 102-1((1))78, 79, and 77, 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 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-2.
3. The area of the lot is 42,236 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 limitation:

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.

Page 338, October 9, 1990, (Tape 2), (WOODLAWN UNITED METHODIST CHURCH, SPA 78-V-291-1 and VC 90-V-091, continued from Page 337)

Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1990. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 12:02 p.m. and reconvened at 12:15 p.m.

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Page 338, October 9, 1990, (Tapes 2 and 3), Scheduled case of:

10:30 A.M. DOUGLAS PITKIN, ALMA PITKIN, AND DEBORAH PITKIN APPEAL, A 90-S-010, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed subdivision of Cliffs of Clifton will result in two lots within Fairfax County which are not buildable lots, on approximately 4.3613 acres of land, zoned R-C and WS, Springfield District, Tax Map 75-4((1))40A. (CONCURRENT WITH A 90-S-011) (DEFERRED FROM 9/20/90 FOR INCORRECT POSTING)

10:30 A.M. CARTER V. BOEHM, TRUSTEE, APPEAL, A 90-S-011, application under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed subdivision of Cliffs of Clifton will result in two lots within Fairfax County which are not buildable lots, on property located at 7028 Cold Point Road, on approximately 1.9619 acres of land, zoned R-C and WS, Springfield District, Tax Map 75-4((1))40B. (CONCURRENT WITH A 90-S-010) (DEFERRED FROM 9/20/90 FOR INCORRECT POSTING)

Ira Saul, an attorney with the law firm of Saul and Barclay, P.C., 4114 Leonard Drive, Fairfax, Virginia, stated that he would be representing the appellants.

William E. Shoup, the Deputy Zoning Administrator, addressed the Board and stated that Michael Congleton, Deputy Zoning Administrator for the Ordinance Administration Branch, Zoning Enforcement Division, was present to answer any questions the Board may have.

Mr. Shoup said that the appeal is of the Zoning Administrator's determination that two residual lots which are located in Fairfax County, which would be created by a proposed subdivision within the Town of Clifton, are not buildable lots. He noted that the background and the sequence of the events involved in the Zoning Administrator's position are presented in the staff report dated October 2, 1990.

Mr. Shoup explained that the key issues involved are Lots 40A and 40B which are located in Fairfax County and were created by deed in August 1988. He stated that the appellant, Carter V. Boehm, is proposing a subdivision of Lot 40B within the Town of Clifton which will result in a residual lot in Fairfax County. Based on the belief that the jurisdictional line of the Town of Clifton has the effect of being a lot line, both appellants desire that the residual lots in Fairfax County be considered buildable lots. It is the Zoning Administrator's position that since neither of the portion in Fairfax County meet the five acre minimum lot requirement nor the one dwelling unit per five acre density limitations in the R-C Zoning District, these lots are not buildable lot.

Mrs. Harris asked Mr. Shoup to address the meeting that took place between the appellants' representatives, Manning A. Mahaffee and Max Farentinos, of Greenhorne and O'Mara, Inc., and the County's representatives, Mr. Shoup and Melinda Artman, Zoning Administrator for Permit, Plan Review Branch and the subsequent telephone call. Mr. Shoup said that although Ms. Artman was not present at the hearing, she had stated that the telephone call had been between her and Mr. Farentinos. Mr. Shoup stated that although Ms. Artman had requested further information from the appellant, none was received. He explained that only after a determination has been reached and the appellant has submitted a formal request does the County send a letter of determination. Mr. Shoup stated that because the appellant did not submit either a written request or the required information, no determination was made; therefore, no formal letter was sent.

The appellant's representative, Manning A. Mahaffee, III, Senior Director of Planning and Landscape Architecture, Greenhorne and O'Mara, Inc., addressed the Board and referred to the meeting on March 16, 1988. Mr. Mahaffee stated that in the subsequent telephone call, he was the person Ms. Artman had spoken with in regard to this issue.

Mr. Saul stated that the issue of concern are the grandfathering clause and also a matter of the boundaries between the Town of Clifton and Fairfax County. He stated that the appellant had been led to believe, based on the meetings between representatives of Greenhorne and O'Mara, and representatives of Fairfax County, that the subject properties could be subdivided and used as buildable lots. He stated that the appellants' had incurred substantial expense due to their reliance on the representation made by the County staff. They had preceeded with the engineering plan and it was only recently that they were advised that the lots were designated as outlots.

Mr. Saul explained that the Town of Clifton was incorporated in 1901 and since Fairfax County Ordinance 2-101 only applies to the unincorporated property which constitutes Fairfax County, the Zoning Ordinance does not apply to the Town of Clifton; although by law, they are involved with the Master Plan to the extent that they deem appropriate. He stated that the property is perceived as a subdivision in the Town of Clifton. Mr. Saul stated that the Zoning Administrator suggests that the definition of lots means that a lot could in effect, cross a jurisdictional line from a foreign jurisdiction. The reading of the word lot, "a parcel of land shall be deemed to be a lot in accordance with this definition regardless of whether or not the boundaries thereof coincide with the boundaries of lots or parcels as shown on any map of record." It does not say in the Zoning Ordinance that a parcel is a lot if it doesn't coincide with the actual physical boundary of the County. Mr. Saul stated that by operation of law, Lots 40A and 40B, since the Town of Clifton was established in 1902 and since the Pitkin family have owned the property for many years, the lots would be grandfathered. He said that staff has advised Greenhorn and O'Mara that Lots 40A and 40B were grandfathered R-1 lots, therefore, thousands of dollars were spent and a subdivision plat was generated. Mr. Saul stated that a neighbor, Mr. Barrett, had also been advised that the lots were grandfathered; therefore buildable lots. He noted that the subject lots were significantly larger that the average 1.76 acre parcel development in the neighborhood. He explained that the last conveyance of the property was in the early 1950's, pursuant to the grandfathering of the Code, R-1 was in effect and Lots 40A and 40B were the only properties in the County of Fairfax that were owned by the Pitkins. They were separate parcels of property in Fairfax County and were consistent with R-1 zoning. Mr. Saul asked, under the law relating to grandfathering and in reliance upon the representation of staff, that the Board of Zoning Appeals overturn the finding of the Zoning Administrator.

In response to Mr. Hammack's question regarding the meeting with Ms. Artman, Mr. Saul stated that a tax map of the corporate boundaries of the Town of Clifton which included the parcel in question had been shown to Ms. Artman. He explained that Ms. Artman informed him by telephone, that since the property had been in existence since 1941 in its present configuration, there were two buildable lots. He added that the way the contract of purchase was made between Mr. Boehm and the Pitkins, the reliance was that Lot 40A would be retained by a member of the Pitkin family. He stated that he did not know if Mr. Barrett's lot met frontage and lot size requirements. Mr. Saul that he did not have any case law that states that a jurisdiction line is, in effect, a lot line. He explained that they had relied on the Zoning Ordinance and on the interpretation made by staff. In response to Mr. Hammack's request, Mr. Saul sated that it was a complicated title with six deeds and seven instruments. He explained, that in response to a report received from the Zoning Administrator, a detailed history of the property was compiled.

In response to Mrs. Harris' question regarding the jurisdiction that had taxed the property, Mr. Saul stated that before 1988 all taxes were paid as Lot 40 to Fairfax County. He explained that he did know how tax revenue was shared between the Town of Clifton and Fairfax County.

Mrs. Harris stated that Mr. Saul had argued that because the boundaries line determine the lot line, it was one lot until 1988. He noted that the boundary lines had been established in 1902, but the taxes had been paid to Fairfax County. Mr. Saul said that it had been a matter of practicality and the family had no desire to build on the property.

In response to Mrs. Harris' question as to why Greenhorne and O'Mara had relied on a verbal response, Mr. Mahaffee said that when staff expressed their opinion on the subdivision issue, They had reassured Greenhorne and O'Mara that their own position on the issue was correct; therefore, the need for a formal determination was not needed. He noted that if the Zoning Administrator had not agreed with the staff's decision, the appeal would still have been necessary.

Mr. Mahaffee explained that there were three elements involved: The first being that a contract of sale in which one of the residue parcels was to revert back to the Pitkin family and become a buildable lot was to be made. The second, a value was to be set for the property when purchased. The third issue was that the plat was to be recorded. Mr. Mahaffee stated it was at this point that the Department of Environment Management determined that Lots 40A and 40B were outlots, i.e. non-buildable lots. He said that due to this determination all the negotiations with the Pitkin's were null and void. He expressed his belief that Greenhorn and O'Mara had preceded on good faith with the transaction based on staff's verbal instruction.

In response to Mr. Hammack's question as to which deeds connected with the property had been shown to Ms. Artman and if there is any place on record where the consolidated property is shown as Lot 40, Mr. Mahaffee said that the only document shown to Ms. Artman were the Fairfax County tax maps. He explained that it has been his experience that if there is a discrepancy between a tax map and a deed, the tax map was usually correct.

Vice Chairman DiGiulian called for speakers in support of the appeal.

Emmett M. Barrett, 12721 Chestnut Street, Clifton, Virginia, addressed the Board and used the viewgraph to point out his property and explained that he had purchased the property from the Pitkin family in 1960. He stated that before he bought the property he had been advised by

the representatives of Fairfax County that as long as the lot size was over one area, he could build on the property.

In response to Mr. Hammack's question, Mr. Barrett said that it was in the early 1960's that he had been advised that the lot was buildable as long as it passed the percolation requirements.

In response to Vice Chairman DiGiulian's question, Mr. Shoup stated that Mr. Barrett's lots was a buildable lot; but if he were to subdivide the lot, then he would be faced with the same situation as Mr. Boehm.

There being no further speakers, Vice Chairman DiGiulian asked for rebuttal from Mr. Saul.

Mr. Saul stated that in the 1920's the surveyor used the word "lots" to describe the property when the word "parcel" should have been used. He explained that some of the parcels are postage stamp pieces and certainly would not be buildable lots.

In response to Mr. Ribble's question on whether it was an assemblage of acreage, Mr. Saul said it would appear to have been just that.

Mr. Saul asked the Board to reverse the decision of the Zoning Administrator based on the reliance that these lots are buildable R-1 lots, as a matter of fairness.

Mr. Shoup noted that the statement by Mr. Mahaffee that staff had stated, "that we may have said one thing and we were wrong and we are reversing our decision", was not accurate. He said that there may have been a misunderstanding relating to the conversation between Ms. Artman and Mr. Mahaffee, but staff did not make or reverse a determination regarding this property. He stated he agreed with Mr. Mahaffee that the Zoning Ordinance applies to the unincorporated portion and with the definition of "lot". He said that staff was asked if the two portions of Lot 40 could become buildable lots in Fairfax County. He explained that to do so would require that lot line status be given to jurisdiction lines, and said that staff believes this would not be proper. Again, Mr. Shoup stated that it is the Zoning Administrator's position that because the two residual parcels do not meet the lot size and density limitation's in the Zoning Ordinance, they are not buildable lots.

Mrs. Harris questioned if Lots 40A and 40B had been divided into 5 acre lots with part of the lot in Clifton and part of the lot in Fairfax County would they be buildable lots. Mr. Shoup said that the split jurisdiction lot always creates questions. He explained that Fairfax County does not have an agreement with all the adjoining jurisdictions, but if a lot has the majority of land in Fairfax County the requirements of the Zoning Ordinance must be met in order to be considered a buildable lot.

Vice Chairman DiGiulian asked why Fairfax County determined that Lots 40A and 40B were not buildable lots but that Lot 39 is a buildable lot, Mr. Shoup explained that it would not be appropriate for Fairfax County to use land area from another jurisdiction to satisfy the Zoning Ordinance requirements. He stated that because Lot 39 was a pre-recorded lot it was a buildable lot under Section 2-405. He noted that Lot 40 was also a pre-recorded buildable lot.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he was comfortable with the Zoning Administrator's decision on these issues. He stated that he understood the difficulties involved in split jurisdiction issues and felt that the Zoning Administrator was correct in treating the consolidation of all of the individual parcels as one lot. He noted that Mr. Saul admitted that there is no case law that holds that a jurisdictional boundary line creates a lot in and of itself. Mr. Hammack said that the staff had only been asked to look at a tax map reference and noted the expense incurred was not solely for the subdivision of Lot 40. Mr. Hammack made a motion to uphold the decision of the Zoning Administrator in A 90-S-010 and also in A 90-S-011.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

Vice Chairman DiGiulian said that he supported the motion for the reasons stated in Mr. Hammack's motion, although he still had a problem with the logic on the issue.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 17, 1990. This date shall be deemed to be the final approval date of this appeal.

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Page 340, October 9, 1990, (Tape 3), After Agenda Item:

Request for Out-of-Turn Hearing
Westfields Corporate Center Associates Limited Partnership
VC 90-S-109

The attorney for the applicant, Carson Lee Fifer, Jr., with the law firm of McGuire, Woods, Battle, and Boothe, 8280 Greensboro Drive #900 McLean, Virginia, addressed the Board and

Page 341, October 9, 1990, (Tape 3), (WESTFIELDS CORPORATE CENTER ASSOCIATES LIMITED PARTNERSHIP, VC 90-S-109, continued from Page 340)

requested an out-of-turn hearing for VC 90-S-109. He explained that a defense contractor was negotiating the purchase of a 68.03 acre lot and noted that there was a stipulation that an 8 foot high fence be permitted around the entire perimeter of the lot. Mr. Fifer stated that settlement had been scheduled for December 15, 1990 but the purchaser had now requested a settlement date of November 15, 1990.

Mr. Hammack made a motion to schedule an out-of-turn hearing for November 8, 1990 at 11:15 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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Page 341, October 9, 1990, (Tape 3), After Agenda Item:

Approval of Minutes for July 31, 1990 and August 23, 1990 Hearings.

Mr. Hammack 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 Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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Page 341, October 9, 1990, (Tape 3), After Agenda Item:

Request for Scheduling of Appeal of
Robert L. Thoburn T/A Fairfax Christian School

Mrs. Thonen made a motion to schedule the appeal for November 27, 1990 at 10:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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Page 341, October 9, 1990, (Tape 3), After Agenda Item:

Request for Intent to Defer
Hie C. Kim and Won Kil Paik,
Trustees of the Virginia Presbyterian Church, SP 90-L-050,

Mrs. Thonen made a motion that the Board issue an Intent to Defer SP 90-L-050. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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Page 341, October 9, 1990, (Tape 3), After Agenda Item:

Request for Out-of-Turn Hearing
Fairfax Covenant Church, SPA 87-S-075-2

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and said that staff believed that a date of November 29, 1990, would be acceptable. She explained that although the application had been denied, the applicant had modified the application to the satisfaction of staff and the neighbors.

Mrs. Thonen made a motion to schedule an out-of-turn hearing for November 29, 1990. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 1:10 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian, Vice Chairman
Board of Zoning Appeals

SUBMITTED: 11/27/90

APPROVED: 12/4/90

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 18, 1990. The following Board Members were present: Acting Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; and Robert Kelley. Chairman Daniel Smith and Vice Chairman John DiGiulian were absent from the meeting.

Mr. Ribble called the meeting to order at 9:23 a.m. and Mrs. Thonen gave the invocation. Mr. Ribble asked if there any Board Matters to bring before the Board.

Mrs. Harris made a motion that Mr. Ribble 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. Hammack not present for the vote.

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Page 343, October 18, 1990, (Tape 1), Scheduled case of:

9:00 A.M. ABDUL NUSRATY, SAYED S. HASSAINI, SAYED W. HASSAINI, SP 90-L-052, appl. under Sect. 8-917 of the Zoning Ordinance to allow 20 homing pigeons on approx. 6,411 s.f. located at 6817 Eighteenth Century Ct., zoned R-5, Lee District, Tax Map 90-1((13))63.

Acting Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Nusraty replied that it was. Acting Chairman Ribble then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Bernadette Bettard, Staff Coordinator, called the Board's attention to a revised affidavit.

Acting Chairman Ribble then asked the applicant if he would reaffirm the revised affidavit and the applicant did so.

Ms. Bettard then proceeded with the staff report. She explained that Paragraph 2, Sect. 2-512 of the Zoning Ordinance stipulates that a minimum lot size of 10,000 square feet is required for the keeping of homing pigeons. She stated that staff visited the subject property accompanied by an Inspector with the Department of Animal Control, and observed 16 adult and 2 baby pigeons inside an accessory shed that is located within the required rear and side yards in the northeastern corner of the lot. Ms. Bettard stated that the small cage located beneath the deck, which was referenced in the applicant's statement of justification and in the staff report, was empty. She added that the back yard and the shed where the pigeons are kept were very neatly maintained and the pigeons were silent except for a low cooing sound which was only audible a few feet away from the shed. At staff's request, the applicant released the pigeons which scattered and landed either on the roof or deck of the single family dwelling located on the subject property. She stated that at no time during staff's one hour site visit did the pigeons leave the subject property. Ms. Bettard called the Board's attention to page 3 of the staff report which notes some characteristics of homing pigeons.

Staff also noted that the larger shed that houses the pigeons does not meet location requirements of the Ordinance. She suggested that if the Board were to approve the request that the shed be relocated and that the approval be subject to the development conditions contained in Appendix 1 of the staff report.

Ms. Bettard noted for the record that letters both in support and in opposition to the request had been received by staff and forwarded to the Board.

Mrs. Thonen stated that she had only seen the letters in opposition to the request. Ms. Bettard replied that Ron Derrickson, Planning Technician, Zoning Evaluation Division, was in the process of distributing additional letters to the Board.

In response to questions from Mrs. Harris, Ms. Bettard replied that on page 1 of the staff report it is noted that there are 16 adult and 2 baby pigeons on the site. She stated that she also had a report from the Animal Control Inspector who had visited the site with her if the Board wished to see a copy.

Mrs. Harris stated that would not be necessary that she was only trying to get a clarification as to the discrepancy in the number of pigeons noted by one of the neighbors and that indicated by staff.

William Findler, 2111 Wilson Boulevard, Suite 550, Arlington, Virginia, attorney for the applicant, came forward. He stated that the applicant was in full agreement with the staff report and with all the development conditions. Mr. Findler noted that the applicant had submitted approximately 25 letters in support of the request which apparently had not been received by the Board.

Mrs. Thonen stated that the Board had now received copies of the letters in support. She noted that it appeared that some of the citizens had signed both in support and in opposition. Mr. Findler stated that he had just seen the petition and noted that there are 110 houses in the subdivision and that there were 25 signatures in support and 70 in

opposition which accounts for almost every homeowner. He stated that the applicant went to the houses which he believed would be the most affected by the pigeons and dropped off copies of the petition trying to obtain signatures.

Mr. Findler continued by stating that he had also visited the site and observed the same behavior that staff had during their site visit. He noted that at the time he visited the site the pigeons were kept in the cage under the deck. He added that according to the applicant the pigeons are once again in the cage; but the applicant would agree to house them in the shed, if the Board wished him to do so.

With respect to the health hazards, Mr. Findler stated that he had contacted a vetenarian, Dr. Scott Melvin, who indicated that there are no health hazards associated with homing pigeons because they are not the same as wild pigeons that are seen in public parks. He stated that Dr. Melvin also visited the site and inspected the pigeons and submitted a letter which states that there are no health hazards.

Mrs. Thonen asked if the pigeons fly around the neighborhood. Mr. Findler explained that when the pigeons are first released they might violate the air space over a neighbor's property; but according to the applicant and staff's observations, the pigeons land only on the applicant's property.

Acting Chairman Ribble called for speakers in support of the request and the following came forward: Fazila Jami, 8107 Northumberland Road, Springfield, Virginia; Sayed Magsoud, 6804 Clowser Court, West Springfield, Virginia; and, Sami Hussaini, 7212 Bona Vista Court, Springfield, Virginia.

The speakers stated that they did not believe that there is a health hazard from the pigeons and asked the Board to grant the applicant's request.

Sam L. Pixley, 15258 Lodge Terrace, Woodbridge, Virginia, stated that he is the President, Northern Virginia Homing Pigeon Association, and the Washington Combined Homing Pigeon Association with a membership of approximately 225 people in the Northern Virginia, Maryland, and the Woodbridge area. Mr. Pixley stated that he has been involved with homing pigeons for 30 years and in all of those years he has never had any health problems develop from his association with the pigeons. Mr. Pixley explained that it is a very demanding hobby and he has had numerous conversations with veterinarians and specialists who have indicated that pigeons are safer than canaries, cats, and dogs. He stated that anyone who chooses to keep homing pigeons must become very versed in the pigeons' health. Mr. Pixley stated that he had 150 homing pigeons on 10,000 square feet of land in Prince William County, that he cleans the cages twice a day, and that when one becomes sick it is immediately disposed of or taken to the veterinary. To keep a healthy colony of pigeons for showing or racing, Mr. Pixley stated that the pigeons must be in good health with a glossy coat and clear eyes. Mr. Pixley stated that he would like to see the hobby continue when the applicable codes are followed.

Acting Chairman Ribble asked the speaker to sum up as his time for speaking had expired.

Mr. Pixley again stated that he had experienced no health problems during the 30 years he had been keeping homing pigeons.

Mrs. Harris asked what the Ordinance was in Prince William County. Mr. Pixley stated that there were no restrictions prior to 12 years ago but there are ongoing discussions with respect to adopting the same restrictions as Fairfax County. He added that the associations he represents believes that Fairfax County has the best Ordinance throughout the United States.

In response to another question from Mrs. Harris about the land size restriction, Mr. Pixley explained that approximately 10 years ago there was a hearing in Fairfax County with respect to the appropriate land size for the keeping of homing pigeons. Following that hearing, he stated that all involved parties agreed that 10,000 square feet was reasonable for the keeping of racing homing pigeons. He added that at least 100 pigeons are required to perform and compete at a racing level.

Mr. Kelley asked if he had understood Mr. Pixley to say that he believed Fairfax County restrictions to be the best in the country and Mr. Pixley replied in the affirmative. Mr. Pixley added that the association has come to the conclusion that 6,500 square feet of land with a minimum number of pigeons would be acceptable as a hobby or a show condition, but not for racing. Mr. Pixley explained that racing is a very competitive sport where the pigeons may fly as far as 600 miles and sometimes as much as 1,000 miles.

Acting Chairman Ribble called for speakers in opposition to the request.

Dennis E. Brown, 7222 Bona Vista Court, Springfield, Virginia, displayed a colored plat which differentiated between the houses in support and in opposition to the request. He addressed an earlier comment by Mrs. Harris with respect to the number of pigeons on the site by stating that he had observed a larger number of pigeons than staff and that staff must have visited the site in the spring. Mr. Brown showed photographs to the Board of pigeons flying all around the neighborhood and a photograph of a dead pigeon laying in the street on October 26th. He stated that there is a bus stop that 113 children use every day and who have to

walk right by the applicant's house where the pigeons are kept. He called the Board's attention to the veterinarian's letter which states "the weekly removal of litter to be sufficient in reducing the practical insignificant risk of exposure to pigeon borne infections." Mr. Brown stated that he believed that the applicant should comply with the Ordinance and that the children should not be subjected to the risk, no matter how minor it may be. He added that a neighbor's daughter, who lives two doors down from the applicant, was struck in the head by a pigeon and then the pigeon walked back to the applicant's house.

Acting Chairman Ribble asked the applicant to sum up as his allotted time for speaking had expired.

Mr. Brown summarized by stating that the applicant has shown a tendency to violate the Zoning Ordinance by having the pigeons in the first place and it has taken seven months to bring the applicant before the Board. He expressed concern that if the applicant is granted a special permit there would be no way to enforce the development conditions.

Phillip T. Bahall, 6818 Ben Franklin Road, Springfield, Virginia, came forward and stated that his great grandfather had died from a pigeon borne disease. Mr. Bahall stated that when birds take off they "lighten their load" and 10,000 square feet may keep it where they take off, but less then that it is on the neighbors. The pigeons do fly around the neighborhood although he believed that the applicant has kept them close to home during this process. Mr. Bahall stated that the subdivision has a covenant which was proffered by the builder and it specifically states no fowl and includes a clause that notes what the powers, duties, and authorities of the association are which include health, safety, and welfare of the subdivision. He stated that this means that no application can go forward to a governing body in the County unless the association submits the application. Each homeowner signs off and agrees to submit any request for a change in zoning to the association first and the applicant did not follow this procedure.

Acting Chairman Ribble explained that covenant disputes are a civil matter which come under the jurisdiction of the Circuit Court.

Mr. Bahall stated that he agreed but the applicant had not followed the homeowners association procedures; therefore, he had no right to be before the Board.

Mrs. Thonen disagreed with the speaker and stated that any citizen in Fairfax County has the right to file for whatever they want to, although it may not be granted. She added that the Board does not enforce covenants or proffers.

Mr. Bahall stated that he was not disputing the applicant's right to be before the Board and noted that the applicant had not had the courtesy to contact the homeowners association. He pointed out that his property rights would be violated if the applicant's request is approved.

Ronald L. Willis, 6807 Ben Franklin Road, Springfield, Virginia, President of the Homeowners Association, came forward. He stated that the Zoning Ordinance prohibits the keeping of pigeons and the applicant has been in violation of the Ordinance since he moved into the neighborhood a year ago. Mr. Willis stated that he believed that the applicant should have been made to remove the pigeons until the Board had made a decision. He added that approximately 68 percent of the homeowners signed a petition in opposition to the request but some were afraid to sign the petition. Mr. Willis stated that because of the parkway, construction rats have been seen in the neighborhood and the pigeons will attract a larger number and this concern has been discussed with the Health Department. If the Board grants the request, Mr. Willis stated that he believes that would be the decline of the neighborhood and asked the Board to uphold the Zoning Ordinance.

Ms. Bettard clarified for the record that staff visited the site in late August or early September rather than in the spring as noted by one of the speakers. Acting Chairman Ribble thanked Ms. Bettard for the clarification.

Mrs. Harris asked how many pigeons the applicant could legally have on site. Ms. Bettard replied that she would check the Zoning Ordinance. Mrs. Thonen stated that it was her understanding that the applicant could not have any because the lot is not 10,000 square feet. Mrs. Harris agreed and noted that she just wanted to make sure for the record.

Ms. Bettard stated that Sect. 2-512, Paragraph 5, notes that the "keeping of racing, homing, or exhibition pigeons shall be allowed as an accessory use on any lot of 10,000 square feet or more in size." She explained that there is a fowl section that equates a certain number of animals to another animal unit but pigeons are not specifically listed. Ms. Bettard read some examples.

Mrs. Harris asked if there is any classification for under 10,000 square feet. Ms. Bettard replied there was not.

During rebuttal, Mr. Findler stated that Dr. Melvin does state in the third paragraph of his letter that there is no health risk from the pigeons and the Health Department has agreed. He noted one speaker's comments that the applicant's lot size was adequate to keep a small number of birds and the applicant only has 18. Mr. Findler stated that the applicant is not

a native born American and although he can speak English, he cannot read or write English. When the applicant was contacted by the Zoning Enforcement Branch, Mr. Findler stated that he began the special permit process.

Mr. Kelley stated that the applicant should have been aware of the covenants. Mr. Findler replied that the applicant was not and that he himself had not been aware of the covenants until the public hearing. Mr. Kelley asked if he had been the applicant's settlement attorney. Mr. Findler replied that he was not but again pointed out that the applicant does not read English.

Mr. Findler stated that he took offense at Mr. Willis' comments about the citizens being afraid to sign the petition and that the applicant has done everything that he can to comply with the requirements. He urged the Board to approve the staff recommendation.

Mrs. Thonen pointed out that staff had not recommended approval but were merely noting that if the Board chose to grant the request that the approval be subject to the development conditions. She asked staff if that was correct and Ms. Bettard replied in the affirmative.

Mr. Findler apologized and asked the Board to grant the request subject to the development conditions.

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

Mrs. Thonen made a motion to deny the request for the reasons noted in the Resolution.

Mr. Kelley stated that he believed that perhaps the Zoning Ordinance should address the question of pigeons. He added that he knew that the Board was not supposed to interpret covenants but the applicant has violated both the Zoning Ordinance and the subdivision covenants and that he was not swayed by the fact that the applicant could not read English.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-L-052 by ABDUL NUSRATY, SAYED S. HASSAINI, SAYED W. HASSAINI, under Section 8-917 of the Zoning Ordinance to allow 20 homing pigeons, on property located at 6817 Eighteenth Century Court, Tax Map Reference 90-1((13))63, 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, 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 6,411 square feet of land.
4. There is no leeway on this. The Zoning Ordinance states 10,000 square feet or over and the applicant is way under that. The homeowners brought up proffers and covenants but they do not come under the BZA.

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 8-917 of the Zoning Ordinance.

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

Mrs. Harris and Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 26, 1990.

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Page 347, October 18, 1990, (Tape 1), Scheduled case of:

9:15 A.M. LYNN E. KELLER, VC 90-P-084, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.2 feet from side lot line (20 ft. min. side yard required by Sect. 3-107) on approx. 22,440 s.f. located at 9929 Fairoaks Rd., zoned R-1, Providence District, Tax Map 38-3((7))24.

Acting Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Keller replied that it was. Acting Chairman Ribble 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, Lynn E. Keller, 9929 Fairoaks Road, Vienna, Virginia, came forward. He stated that he had recently purchased the property and that the house was constructed 30 years ago. Mr. Keller stated that he believed that the garage would enhance the looks of the property and the neighborhood as there is currently a tin shed on the property. Because the house is situated at an angle on the lot, he contacted an architect and asked what could be done to make the garage fit the environment. The architect suggested a breezeway that is slightly pie shaped and because the house sits on the arc of a cul-de-sac, the pie shape is wider in the back and helps push the garage around to give it a look like it fits into the environment as opposed to just sticking a garage on the side of the house. He stated that because of the way the house is laid out anything he would propose to construct would violate the 20 foot setback. Mr. Keller stated that the lot that abuts his property on the side he proposes the construction is approximately an acre and a half and the owner seems to be in favor of the request. The garage would be buffered from the abutting neighbor by a wooded area and the neighbor's garage is located on that side of his property.

In response to questions from Mr. Kelley, Mr. Keller stated that he purchased the property in June and that he was aware that he would need a variance for the construction of a garage.

Mrs. Harris asked the applicant to address the hardship standard. Mr. Keller stated that because of the investment that he has in automobiles he would like to protect them from the debris that falls from the trees. He added that some of the houses have garages and some do not and he would like to eliminate the parking lot appearance as much as possible by constructing a garage.

Mrs. Thonen asked the size of the breezeway. Mr. Keller stated that he believed that it was 9 feet in the front and 14 feet in the back.

Acting Chairman Ribble stated that the size was noted on the survey.

Mr. Keller stated that the dimensions were noted on a larger drawing that he had at home but he not brought it with him. He added that the purpose of the breezeway was to help swing the garage around to fit in the environment as well as to line the driveway up with the garage.

There were no speakers either in support or in opposition. Acting Chairman Ribble asked if staff had any closing comments.

Mr. Riegle stated that in order for the breezeway to be used to connect the proposed garage to the dwelling one of the walls on the breezeway would have to be solid. He stated that staff believed that was the applicant's intent but did want to point that out, if it was the Board's intent to approve the request.

Acting Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolution.

Mr. Kelley seconded the motion. He added that the applicant had purchased the house knowing that a variance was needed in order to construct a garage. If the applicant had needed a garage when he purchased the house, he should have bought one with a garage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-084 by LYNN E. KELLER, under Section 18-401 of the Zoning Ordinance to allow addition 5.2 feet from side lot line, on property located at 9929 Fairoaks Road, Tax Map Reference 38-3((7))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 October 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-1.
3. The area of the lot is 22,440 square feet of land.
4. The property was acquired in good faith.
5. The subject property is pretty much standard to all the other properties on Fairbrooks Road, Clearfield Road, and Oak Valley Road in size and dimension.
6. There is no extraordinary circumstance as the applicant could construct the garage without the breezeway with a lesser variance than requested.
7. The applicant did not demonstrate a hardship.
8. The variance would not be in harmony with the intended spirit or intent of the Ordinance.

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 26, 1990.

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9:30 A.M. PAUL J. DAVIES, VC 90-D-082, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 4.0 feet from side lot line and to allow addition 8.9 feet from side lot line and 23.1 feet from front lot line (10 ft. min. side yards and 30 ft. min. front yard required by Sect. 3-407) on approx. 24,256 s.f. located at 2301 Meridian St., zoned R-4, Dranesville District, Tax Map 40-4((5))29.

Acting Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Davies replied that it was. Acting Chairman Ribble 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, Paul J. Davies, 2301 Meridian Street, Falls Church, Virginia, stated that although he could construct a garage 19.1 feet without a variance, he would prefer to construct one 21 feet wide so that he could have a wash basin to wash his hands after doing yard work. With respect to the addition to the side lot line, Mr. Davies explained that the addition on the side of the house will be a recreation room and will back up to a cinder block structure on the neighbor's property which predates the current Zoning Ordinance. Mr. Davies stated that there is a 10 foot drop in the rear of the lot which prohibits construction and several mature trees would have to be removed.

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

Mrs. Harris noted for the record that one letter in opposition had been received.

Acting Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to deny the request for the reasons noted in the Resolution.

Mrs. Harris seconded the motion. She agreed with Mr. Kelley's comments and added that the applicant had not shown a hardship.

Mr. Kelley noted that he could support the variance for the addition but not for the garage as he did sympathize with the applicant because of the shape of the lot.

Following the vote, Mrs. Harris asked if the applicant would like to request a waiver of the 12-month time limitation. Mr. Davies made a formal request.

Mr. Kelley made a motion to grant the request. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Vice Chairman DiGiulian 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-D-082 by PAUL J. DAVIES, under Section 18-401 of the Zoning Ordinance to allow addition 4.0 feet from side lot line and to allow addition 8.9 feet from side lot line and 23.1 feet from front lot line, on property located at 2301 Meridian Street, Tax Map Reference 40-4((5))29, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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-4.
3. The area of the lot is 24,256 square feet of land.
4. The subject property does have one of the required characteristics which would permit a variance as it is a narrow lot but that is all.
5. The request is too intense.
6. The addition could be constructed in the rear of the lot.

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

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

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

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 26, 1990.

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The Board recessed for five minutes. Mr. Hammack arrived.

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Page 350, October 18, 1990, (Tape 1), Scheduled case of:

9:45 A.M. CRAIG S. MCLEAN, SP 90-V-051, appl. under Sect. 8-917 of the Zoning Ordinance to allow 4 dogs on approx. 2,475 s.f. located at 8114 Parkdale Ct., zoned PDH-3, Mt. Vernon District, Tax Map 98-1((4))947.

Acting Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McLean replied that it was. Acting Chairman Ribble 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 to keep four dogs in a townhouse with a lot size of 2,475 square feet. Mr. Riegle noted that the Zoning Ordinance stipulates that the minimum lot size for keeping four dogs is 12,500 square feet and that the applicant could have two dogs by right. The applicant proposes to exercise the dogs in the rear yard of the townhouse which is 1,000 square feet and is enclosed on both sides with a 6 foot high fence and a 4 foot high fence to the rear.

Mr. Riegle stated that staff had visited the subject property with the Animal Control Division and that specific recommendations are included on page 3 of the staff report. He stated the Animal Control Division's primary concern was that the dogs be confined to the applicant's property and not be released accidentally. They recommended that a one year term be placed on the use with six month random inspections. Mr. Riegle called the Board's attention to several letters that had been received by staff.

Craig McLean, 8114 Parkdale Court, Springfield, Virginia, came forward. He stated that his dogs are basically kept in the house all day since he and his wife work and are let out at 5:30 a.m., 3:30 p.m., and 6:00 p.m. The dogs are not outside unsupervised unless he or his wife are home and if the dogs are outside it is only for a period of 20 to 30 minutes.

With respect to the letters received by the neighbors, he stated that many of the neighbors did not know that the dogs were there until the sign was posted noting the date and time of the public hearing. He added that the noise addressed by his neighbor is caused by the neighbor's two dogs charging the fence whenever his dogs are in the rear yard. Mr. McLean stated that he was planning to raise the 4 foot fence to 6 feet.

Mrs. Harris asked Mr. McLean about a previous Notice of Violation that he had received about the dogs and asked if the violation had noted the amount of square footage required for the keeping of four dogs. Mr. McLean replied that he was living in Chantilly when he received the prior violation and that it had stated the amount of land that was required.

Acting Chairman Ribble called for speakers in support to the request and hearing no reply called for speakers in opposition to the request.

Stephanie Jackson, 8060 Winding Way Court, Springfield, Virginia, Community Manager for Newington Forest, came forward and read a prepared statement into the record which strongly opposed the applicant's request. She stated that a citizen had been attacked by a dog which had required surgery and an extensive stay in the hospital.

Acting Chairman Ribble asked if the attack she had mentioned was from the applicant's dogs and Ms. Jackson replied that it had not been.

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

In rebuttal, Mr. McLean stated that he had received a letter from the association which stated the four dogs were allowed.

Acting Chairman Ribble asked Mr. Jackson if she had any knowledge of such a letter. Ms. Jackson came back to the podium and stated that the association had sent a letter to the applicant notifying him that he could not erect a chain link fence. The letter also included a copy of the by-laws which does state that four pets are allowed but that the association does follow the County guidelines which does state that four dogs are not allowed.

Mrs. Thonen made a motion to deny 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 90-V-051 by CRAIG S. MCLEAN, under Section 8-917 of the Zoning Ordinance to allow 4 dogs, on property located at 8114 Parkdale Court, Tax Map Reference 98-1((4))947, 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, 1990; and

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

1. That the applicant is the co-owner.
2. The present zoning is PDH-3.
3. The area of the lot is 2,475 square feet of land.
4. When the Zoning Ordinance was amended the Zoning Administrator tried to be fair to both sides of the issue in allowing animals but also limiting them. The Zoning Administrator's determination limits the number of dogs to 2 on small lots, especially when the property is located in R-3 or R-5 zoning districts where the space is limited.
5. The applicant has 4 large dogs on only 2,475 square feet of land and it is definitely a violation of the Zoning Ordinance.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses and the additional standards for this use as contained in Sections 8-903 and 8-917 of the Zoning Ordinance.

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

Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 26, 1990.

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The Board recessed at 10:40 a.m. and reconvened at 10:52 a.m.

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Page 351, October 18, 1990, (Tape 1), Scheduled case of:

10:00 A.M. FRED T. BISHOPP, JR., VC 90-P-083, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 0.0 feet from rear property line (5 ft. min. rear yard required by Sect. 2-412) on approx. 2,328 s.f. located at 3910 Clare's Ct., zoned PDH-8, Providence District, Tax Map 46-3((13))865.

Acting Chairman Ribble called the applicant to the podium and asked if the affidavit before

the Board was complete and accurate. Mr. Bishopp replied that it was. Acting Chairman Ribble 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.

Mr. Kelley asked if it were true that if the developer had constructed the decks at the time the townhouses were constructed the applicant would not need a variance. Ms. James replied that was correct.

Fred T. Bishopp, Jr., 3910 Clare's Court, Fairfax, Virginia, came forward. He stated that the lot is exceptionally shallow and there is only one other unit that has the same characteristic. When he and his wife purchased the townhouse, Mr. Bishopp stated they were living in Georgia. In the paperwork they filed, they had applied for a 11 x 20 standard deck which was accepted but when the contract was actually signed they were told that the deck could not be built because of a 5 foot restriction. Mr. Bishopp stated that when he received a copy of the staff report he learned that the builder could have constructed the deck under the PDH-8 rules but once the project was completed they could not. Upon learning that the deck could not be constructed, Mr. Bishopp stated that he and his wife requested another lot but none were available. Mr. Bishopp pointed out that the neighbor on either side of his property has a deck and there is a 33 foot grass buffer which abuts the 17th fairway of the golf course to the rear of the property. He asked the Board to grant the request.

Mr. Hammack asked how many other houses would have the deck extend to the property line. Mr. Bishopp stated that his property would be the only one. He came forward and explained the photographs to the Board.

There were no speakers to address the request and Acting Chairman Ribble closed the public hearing.

Mr. Kelley 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.

Mrs. Thonen seconded the motion. She then stated that it is her understanding that in PDH zoning there are no setbacks until the project is constructed.

Mr. Kelley stated that he believed that it had to do with when the site plan is approved.

Ms. James explained that decks are normally optional and minimum yards are usually set at the time of site plan with the development of the property and minimum yards are set to provide adequate light, air, and open space around the dwellings. She added that she could not address why the subject property had not been left enough room for a deck; but obviously the builder did have that intent in mind, because other lots did have adequate space.

There was no further discussion and Acting Chairman Ribble called for the vote which passed by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Vice Chairman DiGiulian 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-P-083 by FRED T. BISHOPP, JR., under Section 18-401 of the Zoning Ordinance to allow deck addition 0.0 feet from rear property line, on property located at 3910 Clare's Court, Tax Map Reference 46-3((13))865, 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 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 PDH-8.
3. The area of the lot is 2,328 square feet of land.
4. The applicant has satisfied the required standards for a variance.
5. If the applicant had been able to work out the deck with the builder, a variance would not be necessary.
6. The request will not impact the neighbors and will not change the character of the neighborhood.

Page 353, October 18, 1990, (Tape 1), (FRED T. BISHOPP, JR., VC 90-P-083, continued from Page 352)

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Vice Chairman DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 26, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 353, October 18, 1990, (Tape 1), Scheduled case of:

10:15 A.M. HIE C. KIM & WON KIL PAIK, TRUSTEES OF THE VIRGINIA PRESBYTERIAN CHURCH, SP 90-L-050, appl. under Sects. 3-103 and 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 2.452 acres located at 6021 Franconia Rd., zoned R-1, R-2, and H-C, Lee District, Tax map 81-4((2))5, 5A, 6A, 7.

Acting Chairman Ribble informed the Board that the applicant had requested a deferral.

Denise James, Staff Coordinator, stated that the applicant's agent was present.

Stacy Schwartz, with the law firm of William B. Lawson, came forward and acknowledged the deferral request.

Ms. James explained that the church's application was scheduled to be heard by the Planning Commission on November 7, 1990 and the applicant was requesting that the BZA defer hearing the case until November 29, 1990.

Mr. Hammack so moved. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that the case be heard at 11:00 a.m.

Mrs. Thonen so moved. Hearing no objection, the Chair so ordered.

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Page 354, October 18, 1990, (Tape 1), Scheduled case of:

10:30 A.M. NICHOLAS TSIMBIDIS AND DEBRA L. SCRUGGS, VC 90-V-096, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 25.0 ft. from front lot line (50 ft. min. front yard required by Sect. 3-E07) on approx. 17,500 s.f. located on Nicotine Trail, zoned R-E, Mt. Vernon District, Tax Map 119-4((2))(21)34-40. (OTH GRANTED 9/11/90)

Acting Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hammer replied that it was. Acting Chairman Ribble 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 the applicants are requesting a 25 foot variance to the front yard in order to construct a dwelling in a R-E District where a 50 foot front yard is required. Staff's research indicated that other variances have been approved on other substandard lots in the area. Ms. Bettard called the Board's attention to a letter staff had received from Mr. and Mrs. Charles R. Rose, wherein they state there was an easement granted for a temporary turnaround which may affect the lots involved in the subject application.

Norman Hammer, 447 Carlisle Drive, Herndon, Virginia, attorney for the applicants, came forward. He stated that he had believed that the case would be relatively simple until new information surfaced yesterday; but he would try to talk quickly to provide the information to the Board before his allotted time had expired. He thanked the Board on behalf of the applicants for granting an out-of-turn hearing.

Mr. Hammer stated that the applicants purchased the lots in May 1990 based on the real estate agent's advertisement that the lots were ready to build. Accordingly, the applicants accepted a contract on the house they were living in, settled, and had to move out at the end of June and have been living with relatives ever since. He stated that in the interim the applicants discovered that the lot was not immediately buildable as a variance was needed. Back in the 1900's when the subdivision was established, Mr. Hammer explained that the original subdividers, who were sometimes the builders, sold combined lots based on the customer's needs. To get a clear understanding of what the circumstances are like in the subdivision, he stated that the Board needed to look at both the tax map and the aerial photograph because the platted streets are not yet built. Mr. Hammer stated that there is one rule of law that is applicable to this type of situation, that is not found in either the State Code or the County Code, which addresses pre-existing nonconforming lots. He stated that the case law on municipal law and treatise will say that the municipality is compelled to "grant necessary, reasonably necessary variances to enable building on these pre-existing nonconforming lots."

With respect to prior variances granted in the neighborhood, Mr. Hammer stated that because of the nature of the nonconforming lots other variances have been granted. He stated that he believed that the most important thing for the Board to consider is not the amount of the variance but the size of the lot produced by the combination of the lots. In this application, he pointed out that Lots 34 through 40 have been combined yielding a total of 17,500 square feet and the last four variances granted in the neighborhood were for lots 13,750, 22,500 23,968, and 14,418 square feet in size. He stated that some of the variances allowed front yards as shallow as 16 feet. In this particular case, Mr. Hammer stated that the applicants are requesting a 25 foot front yard variance because of the required location of the septic pits leaving 47 feet in the rear yard. He noted that the neighbor to the rear of the applicant's property was granted a variance to the front yard but because the lots are so shallow the neighbor's house is constructed right up against the 25 foot rear yard. He added there will be an adequate distance between the neighbor's house and the applicants' house.

Regarding the front yard, Mr. Hammer stated there is a 50 foot dedicated street, but it is highly unlikely that a typical street section would ever be built, as it is 36 feet from curb to curb in a 50 right-of-way. He added that the applicants are requesting a 25 foot front yard variance. In the R-2 and R-3 zoning districts, which are the the most similar to the district where the subject property is located, the Zoning Ordinance requires a 30 foot front yard; therefore, the applicants are only requesting a 5 foot variance.

Mr. Hammer addressed the two letters in opposition that had been received by staff. He stated that the one received from Mrs. McClanahan on Potomac Road stated she believed that the lot size is not as advertised. Mr. Hammer disagreed and explained that the request was for Lots 34 through 40 which contains 17,500 square feet. With respect to the letter received from Mrs. Rose, he explained that there was a temporary turnaround easement obtained by the County.

Acting Chairman Ribble asked Mr. Hammer to sum up as his allotted time for speaking had expired.

Mr. Hammer stated that he had been afraid that he would run out of time for explanation. Acting Chairman Ribble assured him that if the Board had questions they would give him a chance to respond.

Mr. Hammer summarized by stating that he believed that the temporary turnaround easement was not an issue and that the applicants have satisfied the standards for a variance because of the narrowness of the lot and because there are pre-existing substandard lots.

Acting Chairman Ribble stated that it appeared on the survey that the gravel road was within the 50 foot right-of-way. Mr. Hammer replied that was correct. Acting Chairman Ribble then noted that Nicotine Trail had never been abandoned nor constructed and Mr. Hammer replied that was correct.

Acting Chairman Ribble called for speakers in support of the request.

Gene Hendricks, 11374 River Road, Lorton, Virginia, came forward and stated that he had lived in Gunston Manor for 10 plus years and has owned property there for 15 years. He stated that compared to many of the lots in the neighborhood the subject property is a large lot and there have been variances granted for much smaller lots. With the addition of Lots 34 and 40, Mr. Hendricks stated that he had no objection to the request and noted that the two lots could be eliminated and the lot would still be buildable.

Acting Chairman Ribble called for speakers in opposition to the request.

Peggy McClanahan, 11504 Potomac Road, Lorton, Virginia, spoke on behalf of her husband and the Board of Governors of the Gunston Manor Property Owners Association. She stated that she had submitted a letter to the Board but would like to reiterate some points noted in her letter. With respect to the turnaround, Ms. McClanahan explained that the driveway is used by snow removal equipment which was the basis for stating that the lot size was smaller than noted in the application. She added that the turnaround encompasses part of Lots 34 and 35 and also part of two lots owned by the Roses, who had also written a letter. With respect to the septic pits, Ms. McClanahan stated that it appeared that they would be very close to the septic pits on the abutting property. She stated that the Association is concerned with the sewer system being overloaded as two other systems in the abutting areas have failed and the Association is looking at any development they believe might be an over development. Regarding the development of the property, Ms. McClanahan expressed concern about the damage to the road caused by the heavy equipment that will be brought in to develop the property and about the removal of the existing trees. She stated that many of the citizens in Gunston Manor are still on well water because they could not be hooked on to the County water system and only three fire hydrants could be hooked up due to the insufficient water pressure.

Randy Streufert, 5801 Nicotine Trail, Lorton, Virginia, objected to the request based on the road damage that would be generated by the heavy equipment, the insufficient water pressure, and the removal of the trees. He stated that the houses were constructed in the early 1920's and 1930's to be used as summer homes and variances have been granted so the houses could be converted into single family residential dwellings. Mr. Streufert stated that the applicants were aware of the lot size when they purchased the property and that he believed that it would be outside of the spirit and purpose of the Ordinance to grant the request.

Mr. Kelley asked what Mr. Streufert would suggest that the applicants do with the subject property. Mr. Streufert again stated that he believed that the applicants purchased the property knowing the size of the lot and probably knowing that a variance would be needed. Mr. Kelley pointed out that all the way down the Potomac to Alexandria there are similar areas that used to be vacation homes that have routinely been granted variances because of the past conditions. Mr. Streufert stated those variances had been granted for existing houses. Mr. Kelley stated the variances had been for both existing and proposed houses. Mr. Streufert stated that he believed that it was one of principle. Mr. Kelley stated that denial of the request would deny the applicants reasonable use of their property. Mr. Streufert stated that the applicants could use the property for camping.

John Taylor, 9000 Patton Boulevard, Alexandria, Virginia, stated that he did not live in the subdivision but does own property and his daughter lives in the subdivision. He stated that he has been a builder/contractor in Fairfax County for over 40 years and he is concerned about the setbacks. Mr. Taylor expressed concern that the granting of variances will allow the houses to take on the appearance of jutting in and out and will affect the looks of the neighborhood. If the setback is 50 feet in the front yard, Mr. Taylor stated that the septic pits could be located there and if there is a 25 foot setback in the rear yard the septic pits could be located there.

Acting Chairman Ribble asked the speaker to sum up as his time for speaking had expired.

Mr. Taylor stated that he did not want to place a hardship on the applicants but that he did not believe that the proposed plan was the best plan for the property. He added that the septic pits could possibly be turned crossways which would allow more room on the property and allow for a smaller variance.

Acting Chairman Ribble noted that the applicants would still need a variance.

Mr. Taylor agreed but added that it would be a smaller variance. Acting Chairman Ribble agreed and again asked the speaker to summarize.

Mr. Taylor stated that he believed that the applicants' engineer had done a poor job of laying out the property.

Acting Chairman Ribble asked Mr. Hammer to address the turnaround easement.

Mr. Hammer stated that it is a conveyance but it is a temporary turnaround easement which states, "This temporary turnaround right-of-way easement shall become null and void at such time as the street is extended in accordance with Fairfax County standards and accepted by the Virginia Department of Highways."

Mrs. Thonen asked if the streets had been accepted. Mr. Hammer stated that they had not.

Acting Chairman Ribble suggested that the Board allow Mr. Hammer rebuttal time and then ask any questions.

Mrs. Thonen stated that she needed to know the answer on status of the street. Mr. Hammer stated that it was only a gravel driveway.

Mr. Hammer continued by stating that the neighbor's septic pits to the rear of the applicants are located in the front yard; therefore, they would not be adjacent to the applicants. He added that the two existing houses on the block scale off at about 25 feet or less from the right-of-way line. Although the pits have been approved by the County Health Department, Mr. Hammer stated that the applicant's engineer could review the plan to see if the pits could be relocated.

In response to questions from Mrs. Thonen with regard to the turnaround, Mr. Hammer explained that where the turnaround was dedicated in 1979 there is not one bit of it on the Roses' property where their house is located. The turnaround is all across the street to the north and partially on two vacant lots owned by the Roses and partially on the subject property. Mr. Hammer stated that it appears that the turnaround was to be constructed sometime in 1980 but the paper work was apparently lost and now it is unclear whether there are funds available to construct the project. He stated that he believed the important point is that this temporary turnaround location was decided upon when this was the end of the street. Now, that there will be another house on the street, Mr. Hammer stated neither the Highway Department nor the County would build a temporary turnaround in that location, but continue it on past the last property.

Mr. Hammer stated that he believed that Mrs. McClanahan was referring to an existing turnaround that is a graveled area in the public right-of-way. He added that there is no physical evidence of the temporary turnaround on the subject property, where the easement is located.

Acting Chairman Ribble asked if the Roses still owned the property across the street from the subject property. Mr. Hammer replied in the affirmative. Acting Chairman Ribble then asked if the Roses had owned the subject property at the time the turnaround was granted. Mr. Hammer explained that the Roses own Lots 32 and 33, but do not own the subject property.

Mrs. Thonen asked if the turnaround was also on the subject property. Mr. Hammer replied that it is and added that if the applicant's request is granted the turnaround would not be constructed and he believed that was not the intent when the easement was conveyed.

Mr. Hammack asked Mr. Hammer if he had testified that the applicants had tried to put the pits in front of the house and it would not perk. Mr. Hammer replied that he had not. Mr. Hammack asked if the applicants had considered this option. Mr. Hammer stated that he had discussed that possibility with the engineer and believed that the proposed plan would create a better development due to the septic pits on the neighbor's property being located so close to the 25 foot rear setback.

Mr. Kelley asked how far the proposed dwelling would be from the rear of the neighbor's dwelling. Mr. Hammer stated approximately 62 feet.

Kathy Ghia, engineer with the firm of Donald C. Mori, 5618-C Ox Road, Fairfax Station, Virginia, came forward to respond to questions from Mr. Hammack about changing the position of the septic pits.

Ms. Ghia explained that the pits were laid out based on the recommendation of the sanitarian and the pits need to be a certain distance apart as well as a certain distance from the property lines. She added that there would not be enough room in the approved area to lay the pits end to end.

In response to a question from Mr. Hammack as to why the pits could not be stretched out and turned differently, Ms. Ghia replied that she believed that the pits had to be 20 feet apart and if they were laid end to end there would not be enough room.

Acting Chairman Ribble stated that he was not an engineer but that he would like to see it redesigned. Ms. Ghia stated that she would be willing to look at the plan again.

Mr. Hammack asked if there had been any perk tests in the front and Ms. Ghia replied that her company does not do perk testing. She added that it was approved prior to the applicants purchasing the lots.

Ms. Bettard replied to a question from Mrs. Thonen by stating that the Board had granted other variances in the area of 38.0 feet, 41.81 feet, and 47.25 feet from the front lot line with one of 16.2 feet on River Road. Mrs. Thonen expressed surprised that the Board would grant a variance allowing construction 16.2 feet from the front lot line and asked staff when that had occurred. Mr. Hammer replied from the audience that the Board had granted the variance on October 11, 1988. Ms. Bettard agreed.

Mrs. Thonen stated that she did not recall the case. Acting Chairman Ribble noted that the Board did not know the circumstances involved in that case.

Several of the members commented that they were sure that many variances had been granted in that vicinity because of the substandard lots.

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

Mr. Kelley noted that it appeared that Mr. Taylor wanted to address the Board. Acting Chairman Ribble asked Mr. Taylor to return to the podium.

Mr. Taylor stated that he had a clarification. Acting Chairman Ribble stated that his comments had to be in form of a question since the public hearing had been closed.

Mr. Taylor asked why the engineer had not done a better job of figuring because there is sufficient room to turn the pits.

Mr. Kelley agreed.

Mr. Hammer assured the Board that the engineer would work with the Health Department to try to relocate the septic pits. Acting Chairman Ribble stated that the Board would take that into consideration.

Mr. Hammack made a motion to defer decision on VC 90-V-096 until October 23, 1990 so that the engineer could look at the possibility of relocating the septic pits. He stated that he believed that the applicants had made a case for a variance but that he would not make a motion for a 25 foot variance when he believed that the septic pits could be relocated and reduce the variance by at least 5 feet. Mr. Hammack added that he would also like to see the house moved back on the lot and the footprint redesigned.

Acting Chairman Ribble noted that perhaps the septic pits could be located in the front yard as opposed to the rear yard. Mr. Hammack agreed.

Mr. Kelley seconded the motion. He stated that he had no problem with the septic pits being in the rear yard and granting a front yard variance, but he also did not object to receiving the additional information.

Jane Kelsey, Chief, Special Permit and Variance, questioned whether or not the applicant had sufficient time to compile the information since there would only be two working days before the next public hearing.

Mr. Hammack stated that the applicants were the ones in a hurry and had requested an out of turn hearing. He added that staff should not concern themselves with whether or not the applicant could gather the information in the time allowed by the Board.

Mr. Kelley asked Mr. Hammer if there would be a problem. Mr. Hammer stated that they would do their best and, if not, they may have to request another deferral.

Acting Chairman Ribble called for the vote. The motion carried by a vote of 3-1 with Mrs. Thonen voting nay. Mrs. Harris was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance, suggested a time for the deferral of 10:30 a.m.

Hearing no objection, the Chair so ordered.

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Page 358, October 18, 1990, (Tape 2), Scheduled case of:

11:00 A.M. JOSEPH VINCENT AND RONALD BRUNO APPEAL, A 90-M-015, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that a 1941 GMC truck and a 1967 Kaiser Pick-Up truck are commercial vehicles and subject to the limitation of one commercial vehicle per dwelling unit in an R district on approx. 10,089 s.f. of land located at 7428 Marc Drive, zoned R-4, Mason District, Tax Map 50-3((2))76.

Acting Chairman Ribble noted that a letter had been received from the Zoning Administrator wherein she had withdrawn the Notice of Violation; therefore, the appeal was moot.

Mrs. Thonen made a motion to allow the appellant to withdraw the appeal. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 358, October 18, 1990, (Tape 2), After Agenda Item:

Approval of Minutes from July 10 and July 26, 1990 Public Hearings

Mrs. Thonen made a motion to approve the Minutes as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 358, October 18, 1990, (Tape 2), After Agenda Item:

Acceptance of Tentative 1991 BZA Schedule

Mrs. Thonen made a motion to accept the schedule as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Mrs. Harris not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 358, October 18, 1990, (Tape 2), After Agenda Item:

Hardee's Food Systems, Inc., VC 90-P-108
Out-of-Turn Hearing Request

Mrs. Thonen stated that the Board of Supervisors rezoned the subject property on September 25, 1989, but during site plan review it was determined that a variance was needed for the front yard. She then made a motion to grant the request.

Acting Chairman Ribble asked staff for a date. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested November 29, 1990.

Hearing no objection, the Chair so ordered.

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Page 358, October 18, 1990, (Tape 2), After Agenda Item:

Luck Stone Corporation, SPA 81-S-064-3
Out-of-Turn Hearing Request

Acting Chairman Ribble noted that Roy Spence, agent for the applicant, was present to speak to the request.

Mr. Spence stated that he had no additional comments but would respond to any questions that the Board may have.

Mr. Kelley asked staff how much staffing would be involved in this case. Greg Riegle, Staff Coordinator, explained the applicant was requesting a deletion of a previously imposed development condition. He added that he did not know what staff's reaction would be to the request and noted that there would not be substantial change in the operation nor did it involve any construction. With this type of operation, Mr. Riegle stated that such a request did require input from various other departments.

Mr. Kelley asked if that were necessary to have the input from the various departments. Jane Kelsey, Chief, Special Permit and Variance, replied that staff had to determine if anything had changed. Mr. Kelley stated that the request was only for deletion of the submission of a partial site plan. Ms. Kelsey explained that in her conversations with Mr. Spence he had indicated that it might possibly have some bearing on how much right-of-way dedication he would be providing.

In response to a request from Mr. Kelley, Mr. Spence explained that the applicant was *requesting the deletion of development condition number 4 which presently requires that the* applicant submit a site plan. He stated that the Board of Zoning Appeals had adopted what

the applicant had agreed upon with the Virginia Department of Transportation (VDOT) and was merely asking that it be approved again by deleting condition 4.

Mrs. Thonen stated that she recalled a discussion about the site plan at the last public hearing and it had been her understanding that the Board had determined that a site plan was not necessary. Mr. Spence replied that was correct. Mr. Riegle explained that the Board had imposed a site plan strictly for having VDOT look at the roads and the rest of the site plan components were not included in that condition.

Mrs. Thonen asked why the site plan was being requested now. Mr. Spence stated that originally in 1989 the applicant went to VDOT before coming to the Board and an agreement was reached regarding the improvements to the road and the entrance. At that time, VDOT approved the improvements and they were submitted to the Board and were approved along with a development condition that stipulated that the applicant go through site plan for that particular area of the subject property. After going through the site plan process, the applicant was told by VDOT and the Office of Transportation (OT) that because the subject property was now under site plan it was a "whole different ballgame" and they requested that the applicant construct a four lane road in front of the property. During meetings with VDOT and OT, the applicant was told that if the subject property was not under site plan it could revert back to the original plan, which is what was approved by the Board.

Mr. Kelley stated that he did not believe that had the Board's intent when they stipulated a partial site plan. Acting Chairman Ribble agreed. Mr. Kelley stated that he would like to schedule the case as soon as possible. Mr. Spence suggested November 29th as staff had indicated that the Board had a tight schedule for December.

Mr. Hammack asked for a time and Ms. Kelsey suggested 11:15 a.m. Mr. Kelley so moved. Mr. Hammack seconded the motion. Mrs. Harris was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

Ms. Kelsey asked the Board to change the time to 11:30 a.m. Mr. Kelley agreed. Mr. Hammack seconded the motion.

Hearing no objection, the Chair so ordered.

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Page 359 October 18, 1990, (Tape 2), After Agenda Item:

Ruth and Clarence Warren Resolution from September 20, 1990 Public Hearing

Acting Chairman Ribble explained that Supervisor Hyland had contacted him explaining that the applicants had not understood that they had needed to address the hardship standard. He added the applicant had submitted a letter to the Clerk requesting a waiver of the 12-month time limitation for the filing of a new application; therefore, the Resolution for denial needed to be approved so the Clerk could proceed.

Mrs. Thonen made a motion to approve the Resolution. Mr. Hammack seconded the motion. Mrs. Harris was not present for the vote. Chairman Smith and Vice Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

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

John Ribble III
John Ribble, Acting Chairman
Board of Zoning Appeals

SUBMITTED: 12/4/90

APPROVED: 12/11/90

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 23, 1990. The following 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.

Paul Hammack called the meeting to order at 9:30 a.m. and Mrs. Thonen gave the invocation.

Mrs. Thonen made a motion to have Paul Hammack serve as Acting Chairman in the absence of Chairman Daniel Smith and Vice Chairman John DiGiulian. Mr. Ribble seconded the motion which passed unanimously. Martha Harris was not present for the vote.

Acting Chairman Hammack called for the first scheduled case.

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Page 361, October 23, 1990, (Tape 1), Scheduled Case of:

9:00 A.M. THE MOST REVEREND JOHN R. KEATING, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE/ST. PHILIPS CATHOLIC CHURCH, SP 90-P-053, appl. under Sects. 3-403 and 8-901 of the Zoning Ordinance to amend S-13122 for church and related facilities to delete school of general education and permit waiver of dustless surface requirement on approx. 13.44 acres located at 7500 St. Philips Ct., zoned R-4, Providence District, Tax Map 60-1((1))3. (CONCURRENT WITH SE 90-P-053)

Acting Chairman Hammack called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Strobel replied that it was. Acting Chairman Hammack 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, introduced Mary Ann Godfrey, Staff Coordinator with the Rezoning and Special Exception Branch. Ms. Kelsey stated that Ms. Godfrey had prepared the staff report for this case in conjunction with a Special Exception which she also handled.

Acting Chairman Hammack welcomed Ms. Godfrey, stating that it was nice to have her present.

Ms. Godfrey presented the staff report and stated that staff had determined that the application was in accordance with the Comprehensive Plan and in conformance with all applicable Zoning Ordinance requirements.

Lynne J. Strobel, of the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, stated that she did not have a lot to add to Ms. Godfrey's presentation because it was very accurate. She stated that the application had a favorable recommendation from staff and that the applicant had received approval from the Board of Supervisors for the Special Exception.

Mr. Kelley asked Ms. Strobel if she had read the Proposed Development Conditions. Ms. Strobel stated that she had and that she concurred with the them.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant SP 90-P-053, subject to the Proposed Development Conditions contained in the staff report dated September 24, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-P-053 by THE MOST REVEREND JOHN R. KEATING, BISHOP OF THE CATHOLIC DIOCESE OF ARLINGTON, VIRGINIA, AND HIS SUCCESSORS IN OFFICE/ST. PHILIPS CATHOLIC CHURCH, under Sections 3-403 and 8-901 of the Zoning Ordinance to amend S-13122 for church and related facilities to delete school of general education and permit waiver of dustless surface requirement, on property located at 7500 St. Philips Ct., Tax Map Reference 60-1((1))3, 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 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-4.
3. The area of the lot is 13.44 acres.

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

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

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

1. This Special Permit is granted for and runs with the land indicated in this application and is not transferable to other land.

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

3. 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 Exception/Special Permit Plat entitled CDA/ ST PHILIPS CHURCH/SCHOOL and prepared by Dewberry and Davis which is dated June 15, 1990 and revised August 30, 1990 and these conditions.

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

5. The modification to the dustless surface requirement is approved for the parking area and driveway shown on the plat except that the entrance shall be paved 25 feet into the site. 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 fine material as possible.

   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.

6. The maximum number of seats in the church shall be 500 with a corresponding number of parking spaces based on the requirements of Article 11. There shall be a maximum of 253 parking spaces in the paved parking lot as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements. All the parking spaces shall be of a size and the aisles of a width which will meet the Zoning Ordinance requirements and the Public Facilities Manual standards as determined by DEM and all parking shall be on site.

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

Under Section 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 commenced and is diligently pursued, or unless additional time is approved by the Board of Zoning Appeals because of the 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 which carried by a vote of 4-0. Mrs. Harris was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 31, 1990. This date shall be deemed to be the final approval date of this special permit.

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9:15 A.M. BRUCE P. GORDON, SP 90-C-055, appl. under Sect. 8-917 of the Zoning Ordinance to allow 3 dogs (12,500 s.f. min. lot size required for 3-4 dogs by Sect. 2-512) on approx. 12,139 s.f. located at 2107 Sheriff Ct., zoned R-3, Centreville District, Tax Map 38-1((18))268.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Gordon replied 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.

Mrs. Thonen asked Ms. James if a complaint had been lodged against the dogs. Ms. James stated that there was a complaint and a Notice of Violation was issued by Zoning Enforcement.

Mr. Ribble asked whether the complaint was about noise or the number of dogs. Ms. James stated that the complaint was about noise. She stated that the number of dogs present was revealed later by the applicant, himself, in the course of the noise complaint investigation.

Acting Chairman Hammack asked Ms. James if the applicant would be allowed to keep two dogs on the subject property. Ms. James stated that the applicant could do that without a special permit.

Mrs. Thonen pointed out that the applicant's property was very close to the size which would allow three (3) dogs on the property.

Bruce Gordon, 2107 Sheriff Road, Vienna, Virginia, presented the statement of justification. Mr. Gordon stated that he had secured employment in this area and had rented a house. He brought his family and three (3) dogs up with him from Atlanta. On the day of arrival, one of the dogs barked, which prompted the complaint. That dog has since been debarked and is an absent talker. When the Zoning Inspector came out to inspect the premises, he found nothing wrong, left his card, and Mr. Gordon called him back the next day. In the course of that conversation, Mr. Gordon informed the Inspector that he had three (3) dogs, causing the inspector to find Mr. Gordon in violation because of the size of the lot in relation to the number of dogs present. In addition to having the absent talker debarked, Mr. Gordon stated that he also has had the back yard fenced in, the area is kept clean, and many neighbors have contacted him to offer support.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to grant SP 90-C-055, subject to the Proposed Development Conditions contained in the staff report dated October 18, 1990, for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-055 by BRUCE P. GORDON, under Section 8-917 of the Zoning Ordinance to allow 3 dogs, on property located at 2107 Sheriff Ct., Tax Map Reference 38-1((18))268, 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 23, 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-3.
3. The area of the lot is 12,139 square feet.
4. The square footage of the lot is very close to what is required by the Ordinance for the number of dogs present on the lot.
5. One of the dogs is now an absent talker.
6. The yard is now fenced.

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 8-917 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only and is not transferable without further action of this Board and is for the location indicated on the application 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 applicant shall comply with Sect. 41-2-5 of the Fairfax County Code for Animals and Fowl, Unrestricted Dogs Prohibited: Leash Law, whenever the animals are off the property.

4. The yard shall be kept free of animal debris. The yard used to exercise the dogs shall be cleaned on a daily basis.

5. This approval shall be for the applicant's existing three dogs. If any of these specific animals die, or are sold or given away, no other animals shall replace them.

6. When the dogs are outside alone, they shall be kept within the fenced area shown on the plat. The dogs shall be outside only at times when the applicant is home. The dogs shall be housed indoors at all other times.

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.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mrs. Harris was not present for the vote. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 31, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 364, October 23, 1990, (Tape 1), Scheduled Case of:

9:30 A.M. ABBY WINLAND-HILLMAN, SP 90-V-058, appl. under Sects. 3-203 and 8-914 of the Zoning Ordinance to allow home child care facility and reduction to minimum yard requirement based on error in building location to allow playhouse to remain 8.0 ft. from side lot line (no accessory structure exceeding 7 ft. in height allowed in any minimum side yard by Sect. 10-104) and garage to remain 13.0 feet from side lot line and 11.0 ft. from rear lot line (15 ft. min. side yard and 12 ft. min. rear yard required by Sects. 3-207 and 10-104) on approx. 26,780 s.f. located at 3709 Colonial Ave., zoned R-2, Mt. Vernon District, Tax Map 110-2((2))3. (OTH GRANTED)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Winland-Hillman replied 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, stating that the application was really twofold: One part requested reduction to minimum yard requirement based on error in building location; the other part requested a home child care facility. Ms. James explained that this was the first application of its type to be processed under a new Zoning Ordinance Amendment which established a home child care facility as an accessory use. Ms. James stated that Leslie Johnson of Zoning Administration was present to answer any questions about the new Amendment, since she was instrumental in its development.

Mrs. Harris referred to the statement of justification, specifically the section referring to one or two employees, and asked Ms. James if that would present a problem. Ms. James stated that, by right, she believed the applicant would be allowed to care for up to seven (7) children with one employee residing in the home. Ms. James stated that the Ordinance did provide for the hiring of additional employees in conjunction with special permit approval.

Abby Winland-Hillman, 3709 Colonial Avenue, Alexandria, Virginia, thanked the Board for granting an Out-of-Turn Hearing and presented the statement of justification. She acknowledged that this application was a test case for the new Amendment to the Ordinance. She stated that she started out with a permit from Fairfax County, secured a license from the State of Virginia to form her business, and secured a business license from Fairfax County. Ms. Winland-Hillman stated that she has a Masters Degree in Education and her employee, who lives in her home, had a two-year degree from the Association of Montessori Internacionale.

Acting Chairman Hammack asked the applicant if the garage and the playhouse were there when she purchased the property. The applicant stated that they have been there for about ten years, according to the previous owner.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to grant SP 90-V-058, subject to the Proposed Development Conditions contained in the staff report dated October 18, 1990, for the reasons outlined 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-058 by ABBY WINLAND-HILLMAN, under Section 3-203 and 8-914 of the Zoning Ordinance to allow home child care facility and reduction to minimum yard requirement based on error in building location to allow playhouse to remain 8.0 ft. from side lot line and garage to remain 13.0 ft. from side lot line and 11.0 ft. from rear lot line, on property located at 3709 Colonial Ave., Tax Map Reference 110-2((2))3, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 23, 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;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, concerning the home child care facility, the Board of Zoning Appeals finds the application meets all applicable standards.

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 structures shown on the plat submitted with this application and not transferable to other land.

2. The applicant shall relocate the fence along the eastern lot line so that the fence does not encroach off-site and so that the fence is entirely contained on the subject property.

3. The Special Permit for a Home Child Care Facility is granted to the applicant only and is not transferable to other land or persons.

4. The maximum number of children on site at any one time shall not exceed nine (9) children; the total daily enrollment shall not exceed 15 children. No additional parking spaces are required for this use.

5. The hedges and shrubs located at the front of the driveway on either side of the brick columns shall be cut back or removed to provide and maintain a clear view of Colonial Avenue for those vehicles backing out of the driveway.

6. The shed located in the extreme southeast corner of the site shall be removed prior to the issuance of a non-residential use permit for the home child care center.

7. This use shall be subject to Chapter 30 of the Code or Sect. 63.1-196 of the Code of Virginia.

8. An inspection of this site shall be performed by the Zoning Enforcement Division six (6) months after the date of approval of the special permit to determine compliance with all special permit development conditions imposed in connection with this application. If it is determined that these conditions have not been met by the applicant, the Zoning Administrator shall undertake the appropriate procedures to effect compliance or the special permit use will be terminated.

9. This special permit for a home child care use is approved for a period of five (5) years.

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.

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.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 31, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley questioned whether the previous application should not have been submitted as two applications: One for the building in error and another for the home child care facility. Ms. James stated that was a consideration when the application was accepted, but she believed it was determined by the Application Acceptance Branch that one application would be sufficient, particularly in view of the fees that are required. Rather than having two fees, she said, both applications were combined into the higher fee, according to her understanding. The alternative was two applications combined into one staff report.

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Page 366, October 23, 1990, (Tape 1), Scheduled Case of:

9:45 A.M GEORGE D. & SONYA M. DUCHAK, VC 90-S-086, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 10.99 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 13,313 s.f. located at 6229 Martins Brandon Way, zoned R-C (developed cluster) and WS, Springfield District, Tax Map 53-4((8))519.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Duchak replied 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, stating that this subdivision was among those which were grandfathered as part of the comprehensive rezoning to the R-C District; however, she stated, it was not one of those lots which meets the special modifications for certain R-C lots. She stated that it is, therefore, appropriate that the applicants apply for a variance.

Mrs. Thonen asked Ms. James if she was correct in understanding that, if the property had been recorded before 1987, it would have been grandfathered. Ms. James stated that she believed the cutoff date had been 1982.

The applicant, Mrs. Duchak, 6229 Martins Brandon Way, Centreville, Virginia, presented the statement of justification and presented two (2) letters from neighbors offering support of the application.

Mrs. Harris told Mrs. Duchak that she had stated her case very nicely. Mrs. Harris stated that, going toward the back to the east, there was ample space to build the deck by right. She said that, from the pictures, the elevation seemed to be the same as on the side. She stated that the only hardships the applicant had mentioned were the windows and the basement. The applicant stated she had a twenty-five (25) foot tree that fell under the Virginia Run Homeowners Association covenant against removing any trees. Mrs. Harris pointed out that the proposed placement of the deck would not cause encroachment upon the tree. The applicant stated that, if she could not put the deck in the proposed location, and had to place it where a variance would not be required, the tree would have to be removed because the back lot line was angled and they would have to put the deck next to the chimney, which is also where the tree is. Mrs. Harris pointed out that any variance required for that location would be less than was being requested. Mrs. Duchak stated that there would be a conflict with the rear access door and, in order to be symmetrical, they would have to remove the tree. Mrs. Harris stated that the tree appeared to have been recently planted. Mrs. Duchak stated that the tree was planted about April 1, 1990, and the application was filed in June of 1990. She stated that they closed on their house on February 28, 1990, and they did not know about the regulations until the end of May or the beginning of June.

In support of the application, Bob Jansen, Director of Engineering for The Milton Company, 1430 Springhill Road, McLean, Virginia, stated they built and sold the house to the Duchaks. He stated that, if they had put a deck on the lot grading plan as an option for the future owner of the dwelling, and obtained a permit for it before the residential use permit was obtained, the Duchaks would have been able to build the deck by right and would not have had to apply for a variance, as a result of the grandfathering. Mr. Jansen stated the action was an oversight which they were now taking measures to avoid. Mr. Jansen stated that he was there in support of the Duchaks because he believed they had demonstrated that they had met the standards for a variance. He stated he believed they had made a conscientious effort to locate the deck in conformance with the requirements for the side and rear yards and the requirements of the R-C district.

Mr. Ribble stated that, when a builder put in a door as far up as the one on the Duchaks' house, they should also furnish a deck and not make it an option.

Mrs. Thonen stated she agreed with Mr. Ribble's observation that having a door so far off the ground should not be allowed because it is a safety hazard.

There were no other speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-S-086, subject to the Proposed Development Conditions contained in the staff report dated October 18, 1990, for the reasons outlined in the Resolution.

Mrs. Harris acknowledged that the lot is unusual and does have converging lot lines, but she stated that she believed that a deck could be placed for safety reasons at the rear of the house to allow access from the yard to the rear door with much less of a variance required. She stated that, even though the Homeowners Association would not allow them to take the tree down, it could be moved because it was just planted. Mrs. Harris stated that a 9.1 foot variance is more than she would like to support when she believed that a lesser variance could be maintained by having the same square footage of deck simply in a different location. She stated that she believed Mrs. Thonen's points were well taken and that she might consider a variance at a different spot, if it required a lesser variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-086 by GEORGE D. & SONYA M. DUCHAK, under Section 18-401 of the Zoning Ordinance to allow addition 10.99 ft. from side lot line, on property located at 6229 Martins Brandon Way, Tax Map Reference 53-4((8))519, 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 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-C (developed cluster) and WS.
3. The area of the lot is 13,313 square feet.
4. The property is in a district which was rezoned R-C in 1982.
5. The property was built and developed under the cluster provision of the Zoning Ordinance.

6. The only reason a variance is required is that the lot was not recorded until 1987; if it had been recorded in 1982, it would have been grandfathered, which is the reason why other property owners in the area have been able to build decks under the grandfather provision.
7. The existing door which opens onto ground that drops eight (8) feet straight down creates a safety hazard.
8. The lot has an irregular shape because one side is angled.
9. There is a tree in the rear of the lot which makes it almost impossible to put the deck anywhere else without a variance.

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

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

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

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

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

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

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

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.

Mr. Ribble seconded the motion which carried by a vote of 4-1; Mrs. Harris voted nay. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 23, 1990; the Board waived the eight-day waiting period. This date shall be deemed to be the final approval date of this variance.

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10:00 A.M. WALTER A. & NANCY F. SAUNDERS, VC 90-D-085, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15.57 ft. from side lot line (20 ft. min. side yard required by Sect. 3-E07) on approx. 2.0 acres located at 356 Walker Rd., zoned R-E, Dranesville District, Tax Map 7-2((1))19.

Acting Chairman Hammack called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Keller replied that it was. Acting Chairman Hammack 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, stated that she would like to welcome back Lori Greenlief who had been away for several months after having a baby. The Board welcomed Ms. Greenlief, stating it was nice to have her back.

Lori Greenlief, Staff Coordinator, presented the staff report.

Mrs. Harris asked how close the next house was to the property line. Ms. Greenlief stated that the dwelling on adjacent Lot 20 was in the northern portion of the lot where staff's research showed there was some construction. Ms. Greenlief stated she would check the plat further while Ms. Keller proceeded with her presentation.

Leeta Keller, 1446 Emerson Avenue, McLean, Virginia, presented the statement of justification. She stated the neighbors had no objections.

In answer to a question from Mrs. Harris, Ms. Keller stated the addition would be a kitchen/family room combination. She stated that the kitchen presently was eight (8) feet wide.

Mrs. Thonen stated that the lot appeared to be very well shaped. She stated that she could not find anything unusual about it. Ms. Keller stated that the applicant could not build to the rear because of the well, explaining that using termite treatment within 100 feet of a well was not permitted. Ms. Keller stated that they could not build in front because of the septic field.

Acting Chairman Hammack described the variance as a little pie-shaped wedge that cuts into the twenty (20) foot setback.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to grant VC 90-D-085, subject to the Proposed Development Conditions contained in the staff report dated October 18, 1990, for the reasons outlined in the Resolution.

Mrs. Thonen stated she believed that this was a convenience and was not convinced that it was a hardship.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-085 by WALTER A. & NANCY F. SAUNDERS, under Section 18-401 of the Zoning Ordinance to allow construction of addition 15.57 feet from side lot line, on property located at 356 Walker Road, Tax Map Reference 7-2((1))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 October 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 2.0 acres.
4. There is an unusual condition on the property in that the house is located way over to the side and skewed; whereas, if the house had been located in the center of the property, in a non-skewed fashion, this addition would have been possible by right.
5. This situation is non-recurring.
6. The strict application of the Ordinance would produce a hardship.
7. There is no way that the addition could be built to the rear of the house because of the well and the septic field.
8. The applicants are requesting a minimum variance of 4.5 feet, but on a graduated scale. Only a small portion of the footage on the side of this pie-shaped addition is going to turn into the side lot line, not the full proposed addition.

9. The addition will not be detrimental to the area.
10. The addition is in compliance with the harmony and spirit of the Ordinance.

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

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

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

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

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

1. This variance is approved for the location and the specific building 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 which carried by a vote of 4-1; Mrs. Thonen voted nay. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 31, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 370, October 23, 1990, (Tape 1), Scheduled Case of:

10:15 A.M. BRUCE M. & ANDREA M. HALPIN, VC 90-D-088, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 9,540 s.f. located at 12122 Eddyspark Dr., zoned R-3 (developed cluster), Dranesville District, Tax Map 11-1((4))264.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Halpin 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.

The applicant, Bruce M. Halpin, 12122 Eddyspark Drive, Herndon, Virginia, presented the statement of justification, stating that he and his wife were requesting approval to build a screened porch and deck on the back of their house.

Mrs. Harris stated that the applicant was asking for a very large variance and asked Mr. Halpin if he had considered putting the screened-in part of the deck to the right, in place of the open part of the deck, exchanging the two. Mr. Halpin stated that the problem with that was that the walkout patio door lies toward that short end of the lot and that is the natural location for the deck because it allows the ability to walk out in inclement weather without being exposed to the elements. Mrs. Harris stated that she understood the applicant was placing two large appendages on the house and asked why he could not reverse their positions to extend the open sided appendage into the back yard, because he would not need a variance if he did that. With the help of photographs, Mr. Halpin tried to explain why that would not allow direct access to the porch from the house and would deny use of the porch in inclement and cold weather.

Mr. Hammack asked Mr. Halpin if the screened-in porch would be on the same level and Mr. Halpin stated that it would all be on the same level.

Mrs. Harris asked Mr. Halpin if he knew when he purchased the house that the corner was right on the building setback. Mr. Halpin stated he knew nothing about the setback until the planner of the deck went to the County and someone there told him that a variance would be required.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mr. Ribble made a motion to grant VC 90-D-088, subject to the Proposed Development Conditions contained in the staff report dated October 18, 1990, for the reasons outlined in the Resolution.

Mr. Kelley stated that the believed the applicant had made a very good presentation for his case and that this was a good example of why the Board was there to grant variances.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-088 by BRUCE M. & ANDREA M. HALPIN, under Section 18-401 of the Zoning Ordinance to allow addition 15.0 ft. from rear lot line, on property located at 12122 Eddyspark Dr., Tax Map Reference 11-1((4))264, 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 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 (developed cluster).
3. The area of the lot is 9,540 square feet.
4. The lot contains topographical problems in that the back yard drops off at an acute rate.
5. There is open space behind this property.
6. The house is built at such an angle that a variance is required.

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

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

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

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

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

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

1. This variance is approved for the location and the specific building 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 which carried by a vote of 4-1; Mrs. Thonen voted nay. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 31, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 372, October 23, 1990, (Tape 1), Scheduled Case of:

10:30 A.M. PATRICIA A. STEVENS, VC 90-A-078, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot 1 having a lot width of 57.38 feet and proposed Lot 2 having a lot width of 52.76 feet (100 ft. min. lot width required by Sect. 3-206) on approx. 1.1094 acres Located at 4313 Holly Lane, zoned R-2, Annandale District, Tax Map 70-2((2))33A. (DEFERRED FROM 10/9/90 AT REQUEST OF PLANNING COMMISSION)

Acting Chairman Hammack stated there was a notation on the agenda that a withdrawal had been requested.

Denise James, Staff Coordinator, stated that, on October 18, 1990, the day the case was scheduled to go before the Planning Commission, she received a telefax letter from the applicant (which was at that moment being distributed to the Board). She stated that the letter said that its purpose was to inform the recipient of the applicant's intent to withdraw the subject variance application. The letter further stated that the applicant did not intend to attend the scheduled Planning Commission/BZA hearings. Ms. James stated that she did not see the applicant in the room and that she had been in contact with the applicant's agent and had requested an actual letter of withdrawal; however, she had not yet received such a letter.

Mrs. Thonen asked if the case could be deferred until a actual letter of withdrawal had been received. Ms. James stated that the Planning Commission had deferred the case until October 25, to give the Board of Zoning Appeals time to allow withdrawal of the case. Ms. James suggested that the Board could either defer the case or withdraw the case for lack of interest. Mrs. Thonen stated that, since the applicant had stated an intent, she believed that the Board could take action to withdraw the case.

Mrs. Thonen made a motion to allow the applicant to withdraw VC 90-A-078. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 373, October 23, 1990, (Tape 1), (DISCUSSION BETWEEN BOARD AND STAFF RE: HOME CARE FACILITIES)

Since there were a few minutes to spare before the next scheduled case could be called, Mr. Kelley referred to a case heard earlier, involving a home child care facility. He stated that he wished to discuss the subject of home child care facilities in general, especially the issue of making provisions for insuring the fitness of the caretakers and the persons running the facility, pointing out that it was not a land use issue. Acting Chairman Hammack stated that the Board had discussed this subject many times in the past. Acting Chairman Hammack acknowledged that fitness was not a land use issue and asked staff what was required of an applicant in order for them to meet the fitness requirements. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that applicants must obtain State and County licenses. Ms. Kelsey said she was sorry these questions were not brought up at the time Leslie Johnson was present, earlier in the meeting, since she was the drafter of that particular Amendment to the Zoning Ordinance. Ms. Kelsey stated that she did not know whether a background check had been run on applicants to determine their fitness to run a home child care facility. Ms. Kelsey stated that she would be glad to ask that question of the Office for Children and report back to the Board for them to decide whether or not it would be appropriate to incorporate the response to the question on each application. Acting Chairman Hammack noted that the application heard that date had copies of the applicant's licenses from the State and County. Ms. Kelsey stated that she did not know if those licenses indicated that a fitness check had been done, insofar as the background, experience, etc., of the applicant. Mr. Kelley stated that, by whatever means the State or County might use, he would just like to be assured that the caretakers were qualified to run the child care facility for which they were seeking a special permit. Mrs. Thonen stated that it would be nice if they had no criminal record. Mr. Kelley stated that, perhaps, the Board should not hear a request if the applicant had not obtained a license and that the procedure might now be a little loose. Acting Chairman Hammack stated that was the opinion about five years ago, and that he believed there had been an effort since then to tighten up the procedure. Acting Chairman Hammack stated that he did not know how tightly drawn the statute was to get State approval, but that even State approval was not in the picture five years ago. At that time, one could start a business just by complying with the Zoning Ordinance. Acting Chairman Hammack asked that Ms. Kelsey report back to the Board the following week on this subject. Ms. Kelsey told the Board that she would ask Ms. Johnson to come back and respond to any questions the Board might have.

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Page 373, October 23, 1990, (Tape 1), Scheduled Case of:

10:45 A.M. NICHOLAS TSIMBIDIS AND DEBRA L. SCRUGGS, VC 90-V-096, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 25.0 ft from lot line (50 ft. min. front yard required by Sect. 3-E07) on approx. 17,500 s.f. located on Nicotine Trail, zoned R-E, Mt. Vernon District, Tax Map 119-4((2))(21)34-40. (OTH GRANTED 9/11/90. DEF. FROM 10/18/90 FOR ADDITIONAL INFORMATION.)

Mrs. Harris advised the Board that, since she had not been present to hear previous testimony, she would abstain from participating in the hearing of this application.

Acting Chairman Hammack called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hammer replied that it was. Acting Chairman Hammack 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, stated that the applicant's agent had submitted new plats and had provided staff with a transparency, which she proceeded to display. She pointed out on the transparency that the house had been moved back an additional five (5) feet. Ms. Kelsey stated that she believed the seepage pits were in the approximate same location, but would let the applicant's agent respond specifically to that issue.

The applicant's agent, Norman Hammer, 447 Carlisle Drive, Herndon, Virginia, stated that Ms. Katherine Ghio, from the office of Donald F. Mori, P.C., spoke with Mr. Slattery of the Health Department, upon the request of the Board and the suggestion of Mr. Taylor who was there at the time of the original hearing. He said it was discovered that, as Mr. Taylor suggested, they were able to reorient the seepage pits and, thus, were able to move the house back an additional five (5) feet. Mr. Hammer stated that, also per the Board's request, they investigated the possibility of putting the septic field and the pits on another part of the lot. He said that Mr. Slattery indicated that the Health Department had performed extensive tests on this lot, and the rear yard area was the only place where the pits could be placed.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Ribble made a motion to grant-in-part VC 90-V-096, subject to the Proposed Development Conditions contained in the staff report dated October 11, 1990, because the lot is shallow and the applicant had agreed to move the house back another five (5) feet, as reflected in the Resolution.

Acting Chairman Hammack stated he would support the motion because he believed the applicant had demonstrated that there was no other location where they could place the septic field and the drainage pits, other than to the rear of the property, which really resulted in the

footprint being placed forward. In addition, he stated, they have taken the extra effort to minimize the variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-096 by NICHOLAS TSIMBIDIS AND DEBRA L. SCRUGGS, under Section 18-401 of the Zoning Ordinance to allow dwelling 25.0 ft. (THE BOARD ALLOWED 30 FT.) from lot line , on property located on Nicotine Trail, Tax Map Reference 119-4((2))(21)34-40, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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-E.
3. The area of the lot is 17,500 square feet.
4. The lot is shallow.
5. The applicant has agreed to move the house back five (5) extra 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-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

Page 375, October 23, 1990, (Tape 1), (NICHOLAS TSIMBIDIS AND DEBRA L. SCRUGGS, VC 90-V-096, continued from Page 374)

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. Kelley seconded the motion which carried by a vote of 4-0; Mrs. Harris asked to be excused from voting because she had not been present during previous testimony. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 31, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 375, October 23, 1990, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
The Enterprise School, SPA 85-C-049-2

Mrs. Thonen elaborated on the Board of Zoning Appeals' schedule through January 1991 and remarked on the excessive number of cases waiting to be heard. For this reason, she made a motion that the request be denied. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 375, October 23, 1990, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
George Tsentas, VC 90-L-115

Mrs. Thonen elaborated on the Board of Zoning Appeals' schedule through January 1991 and remarked on the excessive number of cases waiting to be heard. For this reason, she made a motion that the request be denied. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 375, October 23, 1990, (Tape 1), After Agenda Item:

Request for Out-of-Turn Hearing
VFFG, INC., SP 90-L-074

Mrs. Thonen elaborated on the Board of Zoning Appeals' schedule through January 1991 and remarked on the excessive number of cases waiting to be heard. For this reason, she made a motion that the request be denied. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 375, October 23, 1990, (Tape 1), After Agenda Item:

Approval of Resolutions from October 18, 1990

Mrs. Harris made a motion to approve the Resolutions as submitted by the Clerk. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 375, October 23, 1990, (Tape 1), After Agenda Item:

Approval of Minutes from August 7 and September 11, 1990

Mrs. Harris made a motion to approve the Minutes as submitted by the Clerk. Mrs. Thonen seconded the motion, which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Requests for Date and Time for Appeals
Louise R. Mason and Zane S. Mason
Suggested Date and Time of December 20, 1990 at 11:30 a.m.

Mrs. Thonen made a motion to schedule the appeals for December 20, 1990 at 11:30 a.m. Mr. Ribble seconded the motion.

Mrs. Harris stated that she had a question about accepting the appeals. Mrs. Thonen stated that she felt strongly about scheduling the appeals, and then deciding at the hearing whether or not they were within the Board of Zoning Appeals' jurisdiction. Mrs. Thonen stated that, until the Board could see the entire report, she could not oppose accepting the appeals. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that she believed the reason Mrs. Harris questioned accepting the appeals was that the decision being appealed, even though it was a determination by the Director, concerned the Subdivision Ordinance and not the Zoning Ordinance.

A discussion ensued about the issues surrounding the acceptance of appeals and Mrs. Thonen stated that, until the Board heard both sides, they were hard pressed to decide whether or not an appeal was within the purview of the Board of Zoning Appeals. Mrs. Thonen referred to a section of the Ordinance which stated that any aggrieved person could appeal to the Board of Zoning Appeals, the only exception being a proffer. She stated that she felt the issue needed to be worked out if the Board intended to start not accepting appeals.

Ms. Kelsey pointed out for the record that the appellant referenced 15.1-466 (K) (K1), of the Code of Virginia 1950 as amended, and did not reference the Zoning Ordinance at all. Ms. Kelsey asked the Board if they would like to defer this item until the following week.

Mrs. Thonen stated that she would like to go ahead and schedule the item and, if the information provided at the hearing was not adequate, the Board could decide not to accept the appeals. Acting Chairman Hammack stated that he agreed with Mrs. Thonen and, at the time of the hearing, if the Board became convinced that it was not appropriate for the Board to hear the appeals, they could vote accordingly.

Mrs. Thonen stated that December 20, 1990, was not a good time to hear the appeals. Ms. Kelsey advised the Board that the ninety-day time frame would be exceeded if they were pushed further ahead.

Mrs. Thonen made a motion again to schedule the appeals for December 20, 1990, at 11:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 4-1; Mrs. Harris voted nay. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:05 a.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

Paul W. Hammack Jr.
Paul Hammack, Acting Chairman
Board of Zoning Appeals

SUBMITTED: 11/13/90

APPROVED: 11/27/90

Pages
77
+
78
ARE Missing

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 30, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. Chairman Daniel Smith was absent from the meeting.

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

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Page 379, October 30, 1990, (Tape 1), Scheduled case of:

9:00 A.M. MOST REVEREND JOHN R. KEATING/ST. PAUL CHUNG CATHOLIC CHURCH, SP 90-V-009, appl. under Sect. 3-E03 of the Zoning Ordinance to allow church and related facilities on approx. 7.75 acres located at 10511 Gunston Rd., zoned R-E, Mt. Vernon District, Tax Map 114-3((1))13. (DEF. FROM 4/24/90 AT APPLICANT'S REQUEST FOR POSSIBLE REDESIGN OF SITE. DEF. FROM 6/21/90 AT APPLICANT'S REQUEST)

Mrs. Thonen noted that a letter requesting withdrawal had been received from the applicant and made a motion to allow the withdrawal of SP 90-V-009.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Chairman Smith was absent from the meeting.

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Page 379, October 30, 1990, (Tape 1), Scheduled case of:

9:00 A.M. DDG, INC., SPA 86-S-072-1, appl. under Sect. 5-503 of the Zoning Ordinance to amend SP 86-S-072 for health club to allow change of permittee on approx. 6.018 acres located at 10400 Premier Ct., zoned I-5, Springfield District, Tax Map 77-2((1))58, 58A and 58C. (OTH GRANTED 9/20/90)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Via 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 said staff believed that the application was in conformance with the requirements of the I-5 District, the General Standards for Special Permits, and the Standards for all Group 5 uses, therefore, staff recommended approval subject to the development conditions contained in the staff report. Ms. Bettard stated that the development conditions incorporated all applicable conditions of the previous special permit approval for the health club. She noted that Condition 11 relating to the 4 foot evergreen hedges, a requirement in the previous special permit, had not been complied with.

The applicant's attorney, Patrick M. Via, with the law firm of Hazel and Thomas, P.C., 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, addressed the Board and stated the request was merely for the change of permittee and said that the applicant concurred with the development conditions. Mr. Via said the applicant had given assurance that the required 4 foot evergreen hedge would be installed and asked the Board to grant the request.

There being no speakers in support or in opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 86-S-072-1 subject to the development conditions contained in the staff report dated October 23, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 86-S-072-1 by DDG, INC., under Section 5-503 of the Zoning Ordinance to amend SP 86-S-072 for health club to allow change of permittee, on property located at 10400 Premier Court, Tax Map Reference 77-2((1))58, 58A, and 58C, 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 30, 1990; and

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

1. That the applicant is the lessee.
2. The present zoning is I-5.
3. The area of the lot is 6.018 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

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

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

2. This approval is granted for the area delineated as "Area of Building Subject to Special Permit Application" on the plat submitted with this application (as drawn by Dewberry and Davis and dated January 15, 1987) and the associated required parking, as qualified by these Development Conditions.

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

4. All parking and loading spaces, and travel aisles shall conform to the geometric standards set forth in the Public Facilities Manual. Handicapped spaces shall be provided in accordance with the Zoning Ordinance and the Public Facilities Manual. All parking associated with this use shall be on-site.

5. There shall be a maximum of fifty (50) patrons associated with this use on the site at any one time.

6. There shall be a maximum of four (4) employees associated with this use on the site at any one time.

7. The applicant shall not conduct any group classes or special events between the hours of 4:00 p.m. and 6:30 p.m., Monday through Friday.

8. In the event the Zoning Administrator determines that there are more than fifty (50) patrons and four (4) employees on site at any one time, the Zoning Administrator may institute proceedings to revoke this special permit in accordance with Sect. 8-016 of the Zoning Ordinance.

9. An evergreen hedge, four (4) feet in height, shall be maintained along the eastern edge of the parking area in front of Champions Fitness Center.

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 and Mrs. Thonen seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 380, October 30, 1990, (Tape 1), Scheduled case of:

9:05 A.M. THE MOST REVEREND JOHN R. KEATING/ST. ANDREW THE APOSTLE CATHOLIC CHURCH, SP 90-S-064, appl. under Sect. 3-103 of the Zoning Ordinance to allow church and related facilities on approx. 22.68 acres located approx. 600 feet north of the intersection of Compton Rd. and Union Mill Rd., zoned R-1 and WS, Springfield District, Tax Map 74-2((1))pt. 7A (formerly 74-2((1))pt. 7, pt. 10). (OTH GRANTED)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Strobel 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, addressed the Board and stated that the site had previously been the subject of two concurrent applications, SE 90-S-012 and SP 90-S-020. He noted that on August 6, 1990 the Board of Supervisors had approved the special exception to permit the

construction and operation of a private school of general education, and on August 7, 1990 the Board of Zoning Appeals denied the special permit to allow a church and related facilities on the site. On the same date the Board granted a waiver of the 12 month time limitation on refiling the same or a similar application.

Mr. Riegle stated that the current application had been modified to provide a seating capacity of 1,170, to have 303 parking spaces, and to consist of 29,500 square feet of development. He said that the applicant was proposing to have church services and related activities seven days a week, with two morning services on Monday through Friday, one service on Saturday, and with four services on Sunday. Mr. Riegle noted that the applicant had reduced the square footage of the church by 5 percent, the parking by 32 spaces, and has removed the northern most row of parking. He used the plat from the previous application to point out to the Board the reduction in the building footprint and the modification of the parking area.

In regard to the transportation impact, Mr. Riegle stated that staff had estimated that the proposed use would create 1,800 vehicle trips on Sunday and more than 1,000 vehicle trips on Monday through Saturday. He noted that staff did not concur with the vehicle trip generation data submitted by the applicant and contained in Appendix 2 of the staff report. Mr. Riegle stated that viewed collectively, the use associated with the proposed church and the approved school are estimated by staff to generate a maximum of 3,000 vehicle trips per day. He expressed staff's belief that the level of use is not compatible with the present or future conditions of Compton Road or Union Mill Road as these roads are operating in excess of their design capacity and are not planned for improvement. He noted that the applicant had agreed to provide left and right turn lanes into and out of the site, but stated that the turn lanes would only affect traffic impact at the site entrances and that they would not address the larger issue of whether the streets could accommodate the traffic generated from the proposed use. Mr. Riegle noted that the applicant had provided the buffer recommended by the Comprehensive Plan along Compton Road and Union Mill Road. However, in summary, Mr. Riegle stated that the intensification of use, combined with the amount of physical development proposed on the site, is not considered harmonious with the Comprehensive Plan's recommendation for transitional, low density, residential development. He said that the use impacts have not been satisfactorily addressed, that the proposal is inconsistent with land use and transportation recommendation of the Comprehensive Plan, and with the purpose and intent of the R-1 District. Mr. Riegle concluded by stating that it is staff's belief that the application does not meet the general standards for approval; therefore, staff recommended denial.

The agent for the applicants, Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the Board and stated that initially the church had been designed for 1,500 seats, but after meeting with the County staff, both the footprint of the building and the seating had been reduced.

Ms. Strobel said that in taking direction from the Board's recent decision, the applicants had further reduced the request by 10 percent. She pointed out that the size of the church is in proportion to the present need for a Catholic Church in the area. Ms. Strobel expressed her belief that the church would be in harmony with the Comprehensive Plan and would be compatible with the community. She noted that the issue of intensity had been addressed by the applicants, and that the 23 acre site is adequate for a church of this size. She indicated that there is a 200 foot buffer along Compton Road, a 100 foot buffer along Union Mill Road, and that the stormwater management pond meets the BMP standards and conforms with requirements of the Water Supply Protection Overlay District. The footprint and number of parking spaces have been reduced and moved further from the northern property line. Ms. Strobel explained that the loop road through the property had been tightened up, the buffer area along the northern property line has been expanded to 68 feet, and that the applicant had requested shared parking with the school in an effort to provide as much open space as possible. She responded to staff's concerns regarding transportation issues by stating that the applicant will encourage pedestrian access to the property by providing a continuation of the trails along Compton Road and Union Mill Road, that a ride share coordinator has been appointed to actively formulate car pools, and noted that the church will be operating at off-peak transportation hours. Ms. Strobel also noted that the church will have two entrances on two separate roads and that because church is a family activity, the cars will carry more than one passenger.

In referring to the transportation analysis on page 10 of the staff report, Ms. Strobel stated that because the future parishioners are now attending other churches, having a church in their own community will alleviate, not add to traffic problems. She referred to page 4 of the staff report and stated the maximum height will be 35 feet to the peak of roof with a 30 foot average. She further noted that the existing trees will buffer the steeple. Referring to page 7 of the staff report, Ms. Strobel said that the longest side of the building is approximately 450 linear feet.

In summary, Ms. Strobel expressed her belief that it is important to provide residents with community services in their neighborhood. She noted that the design is efficient, as incorporating a church and school will allow overlap between the two uses She stated that the buffer requirements have been met, that the proposed site conforms to all acceptable height and bulk regulations of the R-1 District, and that the application is compatible with the intent of the Comprehensive Plan.

In response to Mrs. Thonen's question as to whether the proposed 0.08 FAR is based on development associated with the church and the approved school, Ms. Strobel stated that it was.

Mrs. Thonen expressed her concern with the amount of vehicle traffic that would be generated by the use and recommended that vans and buses be used to transport the students to and from school. She noted that the traffic on Sunday would be manageable, but emphasized the heavily traveled and dangerous roads in the vicinity. Ms. Strobel stated that the applicant was reluctant to provide buses because of the liability involved and because it was believed that buses parked on the site would not be in character with the residential nature of the community. Furthermore, Ms. Strobel said that the people attending the weekday masses would be the students and their parents, pointing out that this would not impact on the traffic situation.

In response to Mr. Kelley's question about the ride share coordinator, Ms. Strobel stated that it would not be a paid position.

Mrs. Harris questioned Ms. Strobel regarding the trails on Compton Road, and Ms. Strobel said that an eight foot asphalt trail would be provided along the easement on Compton Road which would hook-up with the planned trails in the area.

Ms. Strobel presented an architectural drawing of the proposed structure and stated that the building size had been reduced and the building would add aesthetic value to the area.

Vice Chairman DiGiulian called for speakers in support of the application. The following individuals came forward to testify.

Maura E. Rush, 13710 Springstone Drive, Clifton, Virginia, read her statement that she had presented to the Board which expressed her belief as to the justification for approval of the application. Among other issues, she noted the facility would be approximately one half of the intensity allowed by the Zoning Ordinance with a Floor Area Ratio of .08, that 70 percent of the congregation would reside within a two mile radius, that due to the lack of a church in the neighborhood the parishioners must drive a greater distance to attend mass, that 70 percent of the site will remain as open space, and that the proposed facility has been endorsed by the community and by the Board of Supervisors, as well as the Planning Commission.

In response to a question from Mrs. Harris as to the number of accidents on Compton Road, Ms. Rush stated that she occasionally travels the road, but noted that only 5 percent of the parishioners live east of the intersection. Ms. Rush explained that although students might attend the school, they would attend mass at St. Clare Mission. Ms. Strobel responded to Mrs. Harris' statement that at one point near a bridge on Compton Road there have been 42 accidents since February 1990, by noting that many of the roads in the area are dangerous but that if the residents did not attend the proposed church they would be using the roads to attend a church which is a greater distance away.

Mrs. Thonen asked if the students would attend mass at St. Clare Mission and then have to be transported to the school site. Ms. Strobel stated that the students would attend school and mass at the site.

The President of the West Fairfax County Citizens Association, Dick Frank, stated that the association, which encompasses 30 citizen associations, supports the application. He noted that the roads in the area are being improved and said that the church would contribute a much needed beneficial service to the community.

Mrs. Harris questioned Mr. Frank as to how the 3,000 vehicle trips per day that would be generated by the use would be compatible with the Comprehensive Plan. She noted that was in excess of 10 times the amount generated by residential development at the density recommended by the Plan and noted that in the General Standards it says to abide by the Guidelines in the Comprehensive Plan. Mr. Frank stated that the traffic generated already exist and in reality it is the current traffic that will be refocused. Mr. Frank explained that, although traffic concerns are genuine, a balance must be found to meet the need for community resources.

The President of the Compton Road Civic Association, Pat Blackwell, 13850 Compton Road, Centreville, Virginia, addressed the Board and said that the Association supported the request. She stated that the Civic Association had worked hard to keep open space and undisturbed land and expressed her belief that the application supports this goal. She mentioned that the trails on Union Mill Road, along with the improvement of the roads in the vicinity, will relieve the traffic concerns. Ms. Blackwell emphasized the need for churches close to residential neighborhoods so that the young church members would be able to participate in beneficial community activities.

Robert McDonald, 6110 Mountain Spring Lane, Centreville, Virginia, stated that the traffic congestion in the area was compounded by high school students being allowed to drive to school. He expressed his belief that if the County had safety concerns then they should address the issue of students driving to school when buses were available for their use.

In response to Mrs. Harris' question as to when the majority of traffic would be generated, Mr. McDonald said that the majority of the traffic would be generated on Sunday.

There being no further speakers in support and no speakers in opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack stated that he had a question of staff and Vice Chairman DiGiulian reopened the public hearing.

In response to Mr. Hammack's question regarding the provision for parking should the request for shared parking be denied, Mr. Riegle stated that the conditions had been written with a provision that suggested locations in which additional parking could be provided. He explained that the request for shared parking would have to be reviewed by appropriate County officials, but in the case of shared parking it has been staff's position that it is a case of interpretation; although if the difference is significant a new plat would have to be submitted.

Ms. Strobel said that the applicant had explored the possibility of shared parking with the Department of Environmental Management (DEM). She explained that although DEM would not issue an official decision prior to the submission of a formal application, they did inform the applicant by letter that shared parking did not appear to be a problem. Ms. Strobel again responded to the traffic concerns by explaining that only 5 percent of the traffic generated would be using Compton Road east with the majority generated from the Little Rocky Run Subdivision.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 90-S-064 with the changes as reflected in the Resolution and subject to the development conditions contained in the staff report dated October 23, 1990.

Mr. Kelley seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mrs. Harris stated she could not support the motion because she did not believe that the General Standards would be met and believed that with the combination of a church and school use on the site, that the application was not in harmony with the Comprehensive Plan.

Mrs. Thonen stated that she had been divided on the safety issues and with the community need for a church, but that after listening to the testimony on the land use and transportation issues, she would support the request. She stated that she believed that stricter controls should have been required for the school but noted that the regulation of the school had not been the Board of Zoning Appeals' responsibility. Mrs. Thonen remarked that there had been no citizen opposition to the request.

In response to Mrs. Thonen's question as to where she lived, Mrs. Harris stated that she lived approximately two miles from the proposed site but does not travel on Compton Road because she had been pushed off the road and considers it too dangerous to use.

Mr. Hammack stated that although he had opposed the original application and shared the traffic concerns, the issue is concerned with the school over which the Board of Zoning Appeals had no control. He expressed his belief that the vehicle traffic generated by the church services was not a valid reason for denial. Mr. Hammack noted the large size of the site, the need for a neighborhood church, the applicant's attempt to comply with the development conditions, and stated that the applicant had no control over the roads in the vicinity which lag behind the development.

The motion carried by a vote of 5-1 with Mrs. Harris voting nay. Chairman Smith was absent from the meeting.

Reverend Monsignor John Hannan, V.F., 200 N. Glebe Road, Suite 906, Arlington, Virginia, addressed the Board and thanked them for the decision. He stated that the applicant had tried to comply with the County regulations, with staff's concerns, assured the Board that the structure would add aesthetic value to the community, and expressed his hope that the moral impact generated by the use would have a beneficial influence on the community.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-064 by THE MOST REVEREND JOHN R. KEATING/ST. ANDREW THE APOSTLE CATHOLIC CHURCH, under Section 3-103 of the Zoning Ordinance to allow church and related facilities, on property located approximately 600 feet north of the intersection of Compton Road and Union Mill Road, Tax Map Reference 74-2((1))pt. 7A (formerly 74-2((1))pt. 7, pt. 10), Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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-1 and WS.
3. The area of the lot is 22.68 acres.
4. The application is in compliance with all applicable standards contained in the Zoning Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 (drawn by Pacuilli, Simmons & Associates, Ltd. dated August, 13 1990, and revised through September 20, 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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform to these conditions, as well as the Zoning Ordinance requirements.

5. The maximum number of seats shall be 1,026. If a shared parking agreement is obtained, the maximum number of seats may be increased to 1,170. Handicapped parking shall be provided in accordance with Code requirements. All the parking shall be required to be contained on site and shall be of a size, and the aisles of a width, which meet the Zoning Ordinance requirements and the Public Facilities Manual standards as determined by DEM.

6. Due to the potential for asbestos fibers in the soil, if excavation into the bedrock is necessary for construction, appropriate safety measures as determined necessary by DEM and/or the Fairfax County Health Department, shall be implemented to protect workers on the site. If naturally occurring fibrous asbestos minerals are present, dust control techniques including but not limited wet suppression and covered transport shall be implemented as determined necessary by DEM.

7. Note # 15 on the Special Permit Plat shall be deleted. Limits of clearing and grading shall be preserved as shown on the Special Permit Plat except where necessary as determined by DEM for road crossings or utility easements. Existing vegetation may be used to fulfill Transitional Screening requirements as approved by the County Arborist. A Landscape Plan for the purpose of identifying, locating and preserving individual mature, large and/or specimen trees and tree save areas on the site to the greatest extent possible shall be submitted to the County Arborist for review and approval. Preliminary rough grading shall not be permitted on site prior to County Arborist approval of a tree preservation plan. The submitted landscape plan shall specifically detail existing vegetation to be preserved on all boundaries of the subject property. Vegetation shall be preserved and/or provided at a type and density as shown on the landscape plan. Along the northern property line, parallel to the parking area, plantings which meet the density intent of Transitional Screening 3 shall be provided in a 50 foot wide area as approved by the County Arborist. Barrier C, a planted hedge, shall be provided along the northern lot line, parallel to the parking areas, as determined by the County Arborist. The plantings contained in the Barrier shall contribute toward the fulfillment of the density intent of Transitional Screening 3. The barrier requirement shall be waived for the remaining boundaries of the site.

8. Parking lot landscaping shall be provided in accordance with the Zoning Ordinance as determined by the Department of Environmental Management (DEM).

9. Foundation plantings, the purpose of which shall be to soften the visual impact of the buildings, shall be provided around the structures on the property. The type, size and location of these plantings shall be approved by the County Arborist.

10. All outdoor lighting fixtures used to illuminate the parking area shall not exceed 12 feet in height, shall be of low intensity design, shall focus directly on the subject property. No outdoor area shall be lighted at any time other than necessary for evening functions or special occasions, except for necessary security lighting which shall be confined to the site. There shall be no lighting in the northernmost two (2) rows of parking except as may be required for security purposes and as may be required by Fairfax County.

11. Prior to the commencement of construction, a Phase 1 Archaeological Study shall be performed on the subject site. The County Archaeologist shall be contacted to perform this study. If unable to perform the study prior to construction, a qualified archaeologist as determined by Fairfax County shall be hired by the applicant to conduct such study.

12. Stormwater Best Management Practices (BMP's) shall be provided in the form of a dry pond in the area depicted on the submitted plat. This pond shall be designed as an extended detention facility to aid in the removal of hydrocarbons in accordance with the Public Facilities Manual standards as may be acceptable to DEM. Subject to the approval of the Department of Public Works and Department of Environmental Management, the proposed pond may be waived if it is determined that the water quality and quantity requirements of WSPOD are otherwise met.

13. At a minimum, erosion and sedimentation control shall be provided in accordance with the Public Facilities Manual (PFM). If determined by the Department of Environmental Management (DEM), at the time of site plan review, that additional erosion and sedimentation control measures beyond PFM standards are desirable, additional measures shall be provided to the satisfaction of DEM.

14. Right and left turn lanes shall be provided into the site entrance on Compton Road and a right turn lane shall be provided into the site entrance on Union Mill Road. These turn lanes shall be constructed to a standard as required by VDOT.

15. As shown on the Plat an additional four (4) feet of pavement shall be constructed along the site's frontage to Compton Road, as may be acceptable to DEM and VDOT. All construction shall be to a standard as required by DEM and VDOT.

16. As shown on the Plat an eight (8) foot wide trail located in a ten (10) foot public access easement shall be provided along Compton Road and an six (6) foot wide trail located in a ten (10) foot wide public access easement shall be provided along Union Mill Road.

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. Kelley seconded the motion which carried by a vote of 5-1 with Mrs. Harris voting nay. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:00 a.m. and reconvened at 10:30 a.m.

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Page 385, October 30, 1990, (Tapes 1 & 2), Scheduled case of:

9:15 A.M. RECONSIDERATION HEARING: CROSSROADS BAPTIST CHURCH, SP 90-M-036, appl. under Sect. 3-303 of the Zoning Ordinance to allow church and related facilities on approx. 1.1286 acres located at 3537 Moncure Ave., zoned R-3 and HC, Mason District, Tax Map 61-4((1))112. (OTH GRANTED 5/22/90)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before

the Board was complete and accurate. Ms. Pripeton 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 the application had been denied by the Board of Zoning Appeals on July 31, 1990. He said that on August 7, 1990, a reconsideration hearing was granted. Mr. Riegle explained that at the previous hearing, staff's concerns were that the size of the church on a one acre site would generate an intensity of development that would not be in harmony with the residential recommendations of the Comprehensive Plan, nor the Zoning Ordinance. He noted that the site could not accommodate the required screening or provide sufficient separation between the church and the adjacent residential uses, and said that 80 percent of the site is proposed to be occupied by structures or impervious surfaces. Mr. Riegle affirmed that the applicant had submitted a revised architectural rendering of the structure which had reduced the height of the church by 7 feet and the steeple by 8 feet. He noted that the cupola is considered a part of the building and explained that the slope of the rear of the building had been reduced. Mr. Riegle said that the height of the building, the amount of lot coverage and impervious surface, the lack of adequate screening and open space remain unresolved, and noted that staff believes that there is a significant discrepancy between the intensity of development proposed on the site and that recommended by the Plan. He stated that the County Arborist had advised staff that the proposed density of plantings in some areas cannot be increased; but did make recommendations for additional plantings along Hoffmans Lane, addition of foundation planting around the building, and additional trees along one property line. He noted that despite the recommendations by the County Arborist, staff did not support the applicant's request for waivers or modification of transitional screening on all sides of the property. In summary, Mr. Riegle stated that staff believes that the intensity of the proposal, combined with the lack of screening and buffering results in an application that is not in harmony with the land use recommendations of the Comprehensive Plan, or the intent of the R-3 Zoning District and recommended denial. He said that the applicant had informed staff that in terms of calculating the gross floor area, the engineer made a mistake and although the footprint of the building has not changed, the square foot should be calculated to be 11,335 square feet.

In response to Mrs. Harris question regarding the three story apartment building adjacent to the site, Mr. Riegle stated that he believed it was 40 feet high.

Mrs. Thonen asked what the height of the church would be, and Mr. Riegle stated that the proposed church would be 40 feet high and the steeple would add an additional 39 feet. She referred to a letter received from a member of the community and asked if the cross shown on the drawing would further add to the height of the church, and Mr. Riegle stated that he did not have that information.

The applicant's lawyer, Arlene L. Pripeton, 10195 Main Street, Suite B, Fairfax, Virginia, addressed the Board and noted that she had previously spoken to the Board on the application. She stated that the abutting four story apartment building was approximately 45 feet high and noted that the abutting lot to the rear of the site was vacant and said that the church hoped to purchase that property. Ms. Pripeton noted that the applicant had believed that many of the concerns of the community had been resolved and expressed surprise at the letter of opposition. She noted that the applicant had met with Supervisor Tom Davis, the Homeowners Association, and the neighbors on numerous occasions. Ms. Pripeton used the viewgraph to point out that there are no connecting roads with the church property and the residential neighborhood to the rear of the site, so there would be no traffic impact on their roads. She noted that the applicant has met with staff and has revised the application by decreasing the entrances from two to one, agreed to provide an underground storm sewerage system, to honor the County Arborist's suggestion on landscaping and to add additional trees, to provide a sidewalk in front of the site, not to park buses on the site, to lower the building and steeple height, and to the proposed development conditions. She expressed her frustration by stating that when the applicant had met with the neighbors and the Homeowners Association they had supported the request, that until the letter presented to her at the public hearing complaining about the height of the steeple, no one had even mentioned this concern.

In response to Mrs. Thonen's question about the Board's recommendation to lower the height of the steeple, Ms. Pripeton stated that the height of the building had been reduced by 7 feet and the steeple by 8 feet.

Ms. Pripeton stated that each time the applicant has bowed to the requests of the neighbors a new stipulation was added. She explained that the applicant has agreed to provide a 7 foot brick wall 8 foot inside the applicant's property line, and to landscape that 8 foot section even though it essentially would provide an 8 foot extension to the neighbors' backyards. Ms. Pripeton noted that a majority of the community supported the request and noted that the neighbors who signed the petition in opposition did not live on the adjoining streets. Ms. Pripeton pointed out that the existing church was located four lots from the proposed site and said that the congregation was from the immediate area, noting that the use would not generate any additional traffic on the roadway. She explained to the Board that although in the letter of opposition a new site was recommended; the applicant believed that the proposed site which had already been purchased is close to the congregation and is more suitable to their needs. In summary, Ms. Pripeton stated that she believed the church would provide a transition between the apartment buildings and the residential houses in the area.

The applicant, Louis C. Baldwin, Pastor of Crossroads Baptist Church, 3530 Moncure Avenue, Baileys Crossroads, Virginia, addressed the Board and said that the intensity issue had been of concern. He noted that the apartment buildings adjacent to the site are highly developed, that across from the site is a Fairfax County Homeless Shelter, and stated that he has worked in the area since 1971 and expressed his belief that the church would be beneficial to the area. He noted that the surrounding area is already developed, that the church is not in a position to purchase land in a different location, and that the only waiver the church is requesting is for screening. He expressed his belief that although the church has done everything possible to appease the citizens in opposition, they do not want the church in the neighborhood.

Mrs. Harris asked if the roof could be modified along with the height of the steeple so as to provide a more transitional use. Pastor Baldwin explained that if the structure were reduced the design would have to be changed. He added that the church needed the space and that it had cost $82,000 for the present design. Mr. Baldwin expressed his belief that no matter what conditions he agreed to, the opposition would find another to take its place, and said that there are basically two different neighborhoods. He explained that one neighborhood has been in existence for many years and the other is a recently established community.

Vice Chairman DiGiulian called for speakers in support. The following individuals came forward to testify.

Bud Calvert, Pastor of the Fairfax Baptist Temple, 9524 Braddock Road, Fairfax, Virginia, addressed the Board and stated that he is a peer of Pastor Baldwin and has worked closely with the Crossroads Baptist Church congregation. He expressed his belief that the church would be compatible with the neighborhood, that the copula is not part of the main structure, and that the church would be beneficial to the community, and recommended approval of the application.

Claudia A. Woods, 250 S. Whiting Street, Apartment 405, Alexandria, Virginia, addressed the Board and stated that the church was committed to God, the County, and the people of the community. She expressed her belief that the church would service not only Fairfax County but the immediate community. Ms. Woods pointed out to the Board that one in two black youngsters grow up without a father and in poverty, many black teenagers are out of work and usually unskilled and under-educated, one in four black births is to a teenager, and one in twenty-one black men will be murdered. Ms. Woods stated that Crossroads Baptist Church is not only dedicated to the congregation but actually buses children from the ghetto areas in an attempt to guide and help them to live useful lives so they can contribute to their communities. She further stated that church members visit prisons on Friday evening to instill hope and provide guidance to the prisoners. She pointed out that the church would like to work with the authorities and the neighborhood to clean up the drug handout in the immediate area. She expressed her belief that the church would be beneficial to the community and its positive influence in the neighborhood would help to increase the property value of the residential homes.

Iris G. Brown, 5511 Gary Avenue, Alexandria, Virginia, expressed her support for the church and stated that the church provides English classes for Spanish speaking people, and also tutors children and adults.

There being no further speakers in support, Vice Chairman DiGiulian called for speakers in opposition.

The President of the Homeowners Civic Association of Sunset Manor, Gerald K. Fay, 3612 Dannys Lane, Alexandria, Virginia, stated that he had not been consulted about the proposed application. He expressed his opposition to the request and said that a new and more suitable site was on the market and suggested that the applicant build the church on that property. He noted that the applicant had met with the County Arborist, had agreed to construct the 7 foot brick wall, and to bring down the height of the steeple, but said in the Association's view these concessions are not adequate. He mentioned the height of the building, the intensity of use, the footprint of the building, the traffic increase that would be generated by the use, the noise that may be generated, the lighting of the parking lot, and expressed his belief that these issues had not been resolved. Mr. Fay expressed grave concerns that pedestrians crossing the church property will lead to an increase in pedestrian traffic through his neighborhood. He used the viewgraph to show the adjoining neighborhood and said he feared that the building of the church could eventually lead to a second entrance on Paul Street which would cause traffic to use his neighborhood as a shortcut from Route 7 to Columbia Pike.

Mrs. Harris stated that there are no roads going through the church property and asked how the application could increase vehicular traffic. Mr. Fay stated that if the lot was made into a parking lot, this could be used as a road.

He noted that a vacant lot near the proposed site had been used by four wheel vehicles. He again suggested that the church purchase property in another location. Mr. Fay stated that he had been somewhat tolerant of Pastor Baldwin, but since he refused to relocate the church to the suggested location, he had to question Pastor Baldwin's real motivation. He expressed his belief that Pastor Baldwin did not serve his congregation well and that he was not serving the cause of the neighborhood relations well. He stated that it was not the

Homeowners Civic Association's business to advise the congregation, but that it is their business and the Board's business to safeguard the neighborhood and the property values; therefore, he requested the Board deny the application.

In response to Mrs. Harris' inquiry as to the location of his property, Mr. Fay used the viewgraph to show the Board the location of his property. He said although an apartment house abutted his property and the church building would not be visible, the steeple would be.

Bill Pascoe, 3492 Paul Street, Alexandria, Virginia, stated that he has been in opposition to the church and expressed concern regarding the height of the steeple and suggested the church purchase property at another location and noted the testimony regarding the busing of children from other neighborhoods to the existing church.

Mr. Ribble stated he did not think that it was appropriate for the speaker to advise the applicant on where to locate the church. Mr. Pascoe pointed out that the church was requesting special waivers and a special permit for this use. Mr. Ribble said that the church would have to obtain a special permit on any proposed site and Mr. Pascoe stated that the other property was larger and therefore, would be a better site.

In commenting about the connection between the two neighborhoods, Mr. Pascoe stated that the church parking lot would be closer to Paul Street and in his judgment effectively create a road. He noted the existing problems with pedestrian traffic, motorcycles, and mini bikes.

In response to questions from the Board, Mr. Pascoe used the viewgraph to point out the site and said that Paul Street was approximately 35 feet from the church property. He stated that the vacant lot was not owned by the applicant but that all the neighbors were trying to stop people from using it. Mr. Pascoe said that the church parking lot would create a temptation for people and be used as a road, although as a member of the Board suggested if the property were developed as R-3 a street would be installed. Mr. Pascoe noted that the police had been notified but have not been able to stop the activity on the vacant lot, and said that the "no trespassing signs" installed had been stolen. Mr. Pascoe noted that although the residents have been unable to police the vacant lot and the church did not own the property, they should be held responsible. He expressed his belief that if new houses were built on the property instead of the church, the vacant lot would be better policed. In summary, Mr. Pascoe said that problems with the height, the traffic, the intensity, and the noise have not been resolved.

Casey J. Bergman, 3530 Courtland Drive, Falls Church, Virginia, expressed his concerns stating that he had purchased his property in 1989 because it was within the beltway and in an established residential community. He noted the residential low density character of the community and said that the church would not be in harmony with the community. He said that he did not want to discuss racial issues, but said that the lot adjacent to the existing church contains abandoned cars with people living in them. He said that he had called Zoning Enforcement and had since been advised that the police should be notified. He mentioned the drug problem in the area and said that the church had not taken steps to rid the community of these problems.

Vice Chairman DiGiulian called for rebuttal.

Pastor Baldwin stated he was disturbed by the derogatory remarks regarding his character. He explained that the church had purchased the proposed site and expressed resentment regarding the suggestion that they move to another location. He said that although the church had been under surveillance by people in opposition, that until he had asked Supervisor Tom Davis for assistance, the people opposing the church had refused to meet with the church members to discuss their concerns. Pastor Baldwin said that the church buses do go outside the immediate community to bring children in need of guidance to the facility, but stated that these children are supervised at all times. He expressed his belief that the height of the building did not represent the real problem, and said that he was told at a Civic Association meeting that a wall surrounding the building was needed to keep the congregation from entering their neighborhood. He noted that the church had no control over, and was not responsible for the problems with cars, drugs, and motorcycles referred to by the Civic Association. Pastor Baldwin said that he too has called the police and has asked people not to loiter. In summary, he stated that the church has done everything possible to appease the community, noting that the waiver of the 25 foot transitional screen had to be requested because of the 24 foot fire lane requirement, and asked for approval.

Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 90-M-036 for the reasons as reflected in the Resolution and subject to the development conditions contained in the staff report dated October 23, 1990.

Mr. Hammack seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mrs. Thonen stated that she could not support the motion because of the bulk of the church and the impact on the neighborhood. She stated that she believed the use would not be in harmony with the community, there is opposition from the residents, the steeple is too high, and the transitional screening could not be met.

Mr. Ribble supported the motion and stated that basically there are two communities involved, and noted that the applicant has made every attempt to comply with the County's requirements and with the community's concerns.

Mr. Hammack expressed his support of the motion and said that the reduction in building height made it a better application. He noted that the church would be a good transition use in the area.

Mr. Kelley said that he too supported the motion and said that the Board must make a decision on the church owned lot. He said that the application met the standards required for the granting of a special permit.

Mrs. Thonen stated that she too voted on the property now owned by the church and that the suggestion from the opposition regarding another site did not enter into her decision. She said that she did not believe that it is a neighborhood church.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-M-036 by CROSSROADS BAPTIST CHURCH, under Section 3-303 of the Zoning Ordinance to allow church and related facilities, on property located at 3537 Moncure Avenue, Tax Map Reference 61-4((1))112, 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 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 and HC.
3. The area of the lot is 1.1286 acres.
4. The property has been slated for a transitional use and it would be an R-3 development if so developed. This is a transitional use not only between the area within this neighborhood but the area to Paul Street and Danny's Lane.
5. Churches are permitted in a residential zoning district if they meet the standards.
6. The application meets the required standards, as applicable, and will be in harmony with the general purpose of the Zoning Ordinance.
7. The existing church is four lots away from the proposed site, therefore there will be no difference in the traffic generated or the traffic circulation from this church.
8. The general standards set forth in the Zoning Ordinance requiring landscaping and screening have been met as far as the applicant can meet them on the site.
9. There is adequate parking on the site. There has been no mention of inadequate drainage.

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 (drawn by Huntley Nyce & Associates, P.C. dated May 1990 and printed July 30, 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 use shall be subject to the provisions set forth in Article 17, Site Plans. Any plan submitted to the Department of Environmental Management pursuant to this Special Permit shall conform to these conditions, as well as the Zoning Ordinance requirements.

5. The maximum seating capacity shall not exceed 232; the number of parking spaces shall correspond to the seating capacity based on the requirements of Article 11 as determined by DEM. There shall be a maximum of 60 parking spaces as shown on the plat. Handicapped parking shall be provided in accordance with Code requirements. All the parking spaces shall be of a size and the aisles of a width which will meet the Zoning Ordinance requirements and the Public Facilities Manual standards as determined by DEM and all parking shall be on site.

6. Transitional Screening shall be provided as shown on the Landscape plan dated May 1990 with the following additions supplementation and modification. All plantings shall be subject to review and approval by the County Arborist office.

   On the northernmost side of the site in the area south of the proposed entrance, seven (7) large deciduous trees shall be planted and shall include one or more of the following species, America or Little Leaf Linden, Red Maple, Green or While Ash, Honey Locust, Oak or Zelkova. Each of these trees shall have a caliper of at least 2.5 inches at the time of planting. To screen automobile headlights, areas between these trees shall be planted with low evergreen shrubs which shall include one or more of the following species. Evergreen Cotton Baster, Mugo Pine, Junipers, Winter Creeper, Evergreen Bayberry. These shrubs shall have a planted height of three (3) feet.

   Two additional deciduous trees shall be planted on the parking lot island located next to the northeast corner of the structure. Each of these trees shall have a caliper of at least 2.5 inches at the time of planting.

   Large evergreen trees on shown on the submitted landscape plan on the southern, eastern and western sides of the site shall be planted at the density generally depicted on the landscape plan and shall include one or more of the following species. Norway or White Spruce, Blue Spruce, Austrian Pine, Scotch or Lobolly Pine, Leyland Cypress. Emphasis shall be given to the incorporation of Leyland Cypress trees along the southern, eastern and western sides of the site due to their potential for rapid growth. All trees noted as large evergreens shall have a planted height of 10 feet. Medium evergreen trees shown on the submitted landscape plan on the northern, southern, and western sides of the site shall include one or more of the following species Upright Juniper, Virginia Cedar, Arborvitae, Upright Yew. Medium evergreens shall have a planted height of 6-8 feet.

   Foundation plantings designed to soften the visual appearance of the structure shall be planted around the building foundation as may be acceptable to the County Arborist. These plantings shall include Dogwoods, Silverbells, Magnolias, and Crab Apples

7. All outdoor lighting fixtures used to illuminate the parking area shall not exceed 12 feet in height and shall be of such a design and so located and oriented as not to produce glare or cause illumination in excess of 0.5 foot candles on the adjacent existing residential uses. No outdoor area shall be lighted at any time other than when necessary due to evening functions or special occasions.

8. Stormwater detention shall be provided as determined necessary by DEM. If underground detention is used, the tanks shall be locked and secured such that children residing in the area are unable to enter the detention facility.

9. Subject to DEM approval, a sidewalk shall be provided along site's frontage to Hoffmans Lane, and crosswalks for pedestrians shall be clearly marked across the travel aisles in the parking areas.

10. No buses shall be parked or stored on the site.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be 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 which carried by a vote of 5-1 with Mrs. Thonen voting nay. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 11:35 a.m. and reconvened at 11:48 a.m.

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Page 391, October 30, 1990, (Tapes 2 and 3), Scheduled case of:

9:30 A.M. SARAH S. BURY, VC 90-P-089, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed Lot 8B having a lot width of 50.08 ft. (150 ft. min. lot width required by Sect. 3-106) on approx. 3.8593 acres located at 10614 Samaga Dr., zoned R-1 (developed cluster), Providence District, Tax Map 37-3((10))8.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bury 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 and said that staff believed that there are significant environmental impacts associated with the development proposal; substantial clearing and grading will be required to accommodate the septic fields, the building envelope, and the driveway. She stated that the proposal would be in direct conflict with the Comprehensive Plan and EQC Policies, and noted that because of its sensitive environmental nature, the Difficult Run area had been subject to a study which made specific land use and density recommendations. Ms. James said that the study recommended a density of .51 dwelling units per acre which is above the applicant's planned range of .1 to .2. She noted that the lot had been part of a cluster subdivision with an area set aside for homeowners open space and expressed staff's belief that a resubdivision of the lot would not be in keeping with the purpose and intent of the original subdivision; and stated that an undesirable precedent would be set if the request were granted. In summary, Ms. James stated that it was staff's belief that the application does not meet the standards required for a variance, the applicant has reasonable use of the property, the applicant has not demonstrated undue hardship, the recent code changes to the gift lot provisions are applicable, the subdivision would be a substantial detriment to adjacent properties, and the variance would not be in harmony with the intended purpose and spirit of the Zoning Ordinance and would be contrary to the public interest.

Mrs. Harris' asked if the lot had been recorded as part of the subdivision and Ms. James affirmed that it was.

The applicant's attorney, Andrew G. Bury, Jr., with the law firm of Sherman, Bury, and Fromme, P.C., 10482 Armstrong Street, Fairfax, Virginia, addressed the Board and said that Lots 7 and 8 are not cluster lots in the subdivision. He noted that none of the area in the subdivision or the common area, Parcel A, had been taken into account in order to meet the requirements for the R-1 lot. He explained that when he consulted Ms. James on the matter, he had been told that on a grading plan there was a note that suggested that Lots 7, 9, 10, 15, and 17 were regular lots. He said that he did not believe that this was correct and that the subdivision plat and the density requirement would bear him out. Mr. Bury asked the Board to take into account that the application for the gift lot was filed in early 1989 before the change in the Zoning Ordinance, but that the application had not been accepted until late 1990. He expressed his belief that the Board of Supervisors did not intend to prohibit gift lot subdivisions that met the 20 foot frontage and land density requirements. He addressed staff's concern for the EQC and said that the land encompasses some floodplain area, but noted that he could remove all the existing trees in the area and this too would create an EQC problem. He stated that approval of the variance would ensure that staff had some control over the future development in the area and of the trees on the property. Mr. Bury mentioned the staff's concern with the location of the proposed septic field and said that the Health Department had, subject to conditions, approved the site. He said that in 1989 a similar variance, VC 89-P-139, was approved by the Board, and although it did not have EQC problems, it did have transportation and environmental problems. Mr. Bury again informed the Board that the initial application had been submitted prior to the changes in the Ordinance and stated if the Department of Environmental Management (DEM) had approved the request, then he would not be before the Board today. He said that DEM had taken into account the EQC and density problems, and the only hold-ups on the approval are the granting of the subject variance and a mandatory waterflow study. Mr. Bury expressed surprised with the neighbor's opposition and said he would respond to their concerns during rebuttal.

There being no speakers in support, Vice Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

The President of the Avon Glen and Avon Park Civic Association, Robert C. Moore, 10604 Samaga Drive, Oakton, Virginia, read a petition in opposition to the subdivision. He expressed their concerns regarding the protection of the EQC and said that the proposed subdivision would allow a building to be totally within the EQC which is contrary to the statue, ordinances, and practices of land use in Fairfax County. Mr. Moore said that the access road and the house would have to be built on the heavily sloped land adjacent to Rocky Branch and would have a negative environmental impact on Rocky Branch and on Difficult Run. He also expressed concerns regarding the substantial clearing and grading that would be required and noted the financial hardship this would impose on Lot 9. Mr. Moore stated that the proposed road would also present a safety hazard on Samaga Drive and on the horse trail that ran through the property. In summary, he stated that the applicant does not reside on the property which is contrary to the intention of gifting adjacent property to family members, and asked the Board to deny the request.

Timothy Green, 10616 Samaga Drive, Oakton, Virginia, addressed the Board and said that DEM had originally rejected the application and noted that the variance was for 100 feet. He stated that the Health Department's concerns regarding the septic field, soil stabilization, and the environmental issues had not been adequately resolved. Mr. Green said that the applicant's husband is a real estate attorney and was well aware of the limitation's regarding the property. With regard to the EQC, he noted that 85 percent of the lot square footage is with the EQC and noted that the County's urban space has been reduced by 23 percent since 1975. In summary, he stated that the application did not meet the required standards and asked that the request be denied.

Marc C. Joseph, 10616 Samaga Drive, Oakton, Virginia, stated that he opposed the request because of the damage that would occur to the environment and the hardship the subdivision would present to his property. He said he did not believe that the subdivision would be in compliance with the Comprehensive Plan; and noted an additional structure and the proposed road would require massive clearing of the land.

There being no further speakers, Vice Chairman DiGiulian call for rebuttal.

Mr. Bury came forward and stated that Parcel F, owned by Stanley Martin, was totally within the EQC and had been approved for two lot, although he did understand that it had been a compromise to a court case. He said that the dedication to the land included a declaration of restricted covenant which provided for the Avon Glen Homeowners Association, and although Mr. Moore said he represented the Association, it is in fact inactive. He did concede that he had installed a horse trail on the property. Mr. Bury again stated that when he had developed the land, he had options to the location of the house and road and said that even now he can remove trees at will. He expressed resentment with the community's interest in his personal life and stated the reason for renting the house was that he and his wife are separated. He said that it was his wife's intention to move back into the house and to give the gift lot to her father, thereby, satisfying the gift lot provisions.

Mrs. Harris made a motion to deny VC 90-P-089 for the reasons reflected in the Resolution.

Mr. Ribble seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mr. Hammack said that although he could not support the request at this time Mr. Bury had raised some interesting question. He stated that he would be willing to defer decision for a week in order to study the staff report and the site plan.

Mr. Ribble said that he too realized that the applicant had raised some interesting points and could support Mr. Hammack's proposal.

Mrs. Harris said she could see no reasonable cause under the standards to authorize a variance. She said that if studying the original subdivision plat would help, she would be more than willing to wait.

Staff presented the original subdivision plat to the Board for study.

In response to Mrs. Harris' question regarding the plat, Ms. James said the portion encircled in blue on the plat stated that the subdivision was under Section 2-408 of the Cluster Division of the Zoning Ordinance in effect at that time. She noted that Lots 7 and 8 met R-1 requirements but did not indicate that it was not part of the cluster subdivision. Ms. James said that the entire Avon Glen Subdivision was subdivided at one time and was approved as a cluster subdivision.

Mrs. Harris read some of the required standards and told Mr. Hammack that these were the reasons she could not support the variance. In response to Mr. Hammack's remark regarding the need for a variance, Mrs. Harris noted that the applicant was not appealing the DEM decision but was requesting a variance.

Vice Chairman DiGiulian called for a vote. The motion carried by a vote of 4-0 with Mrs. Thonen and Mr. Kelley not present for the vote. Chairman Smith was 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-P-089 by SARAH S. BURY, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots, proposed Lot 8B having a lot width of 50.08 feet, on property located at 10614 Samaga Drive, Tax Map Reference 37-3((10))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 October 30, 1990; and

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

1. That the applicant is owner of the land.
2. The present zoning is R-1 (developed cluster).
3. The area of the lot is 3.8593 acres.
4. The subject property is an extremely unusual piece of property, not only topographically but in size and shape but does not meet any of the other standards.
5. The condition or situation on the subject property is not general; there are other properties in this subdivision and in the area that are very similar so it is not an unique property.
6. Strict applicant of the Zoning Ordinance would not produce undue hardship; there is use of the property by the applicant.
7. The zoning applicable to this property is 0.1 to 0.2 dwelling units per acre and the applicant is requesting 0.5 which is well above what the Comprehensive Plan has envisioned for this area.
8. The strict application of the Zoning Ordinance does not prohibit reasonable use of the property; if this variance were granted it would clearly be a special privilege or convenience as opposed to confiscation of the property.
9. The granting of the variance would cause substantial detriment to adjacent properties in addition to the subject property itself. When the property was originally divided it was left not part of the cluster subdivision because of the sensitive EQC. The substantial clearing and grading that would have to take place for this subdivision would be detrimental to the area.

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

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

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Thonen and Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990.

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Page 394, October 30, 1990, (Tape 3), Scheduled case of:

9:45 A.M. CARTER B. & PAULETTE P. SIMPSON AND RJL ASSOCIATES, INC., VC 90-D-087, appl. under Sect. 18-401 of the Zoning Ordinance to allow resubdivision of Lots 18, 19, 20 and 21 with proposed Lot 21 having a lot width of 84.5 ft. (150 ft. min. lot width required by Sect. 3-106) on approx. 4.5728 acres located at 10007 and 10009 Thompson Ridge Ct., zoned R-1, Dranesville District, Tax Map 12-4((21))20, 21; 13-3((10))18, 19.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Simpson 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 believes that although the lots have an unusual shape that if a hardship exists, it is self created. Ms. Bettard noted that the preliminary plat attached to Appendix 5 of the staff report indicated that the lots had been originally proposed to be subdivided in a more uniform shape. However, in Appendix 6 the final subdivision plat revealed that one additional lot was added, thereby redesigning the shape of the lots. She stated that the lots were redesigned to maximize the development potential of the property and noted that other lots within the area were of similar design. Ms. Bettard stated that although redesigning the lots would improve the subdivision, staff believes that RJL Associates, Inc. should have rectified the situation by eliminating one lot.

The applicant, Carter B. Simpson, 10007 Thompson Ridge Court, Great Falls, Virginia, presented letters of support to the Board and said that it was only after he had purchased the property that he had realized the problems involved with the shape of the lot. He noted that due to the odd shape of the lot, he could not put a deck on the house nor install a swing set in the back yard. The driveway is actually on lot 21 and his side yard is actually used at a front yard for Lot 19. Mr. Simpson said that the shape of the lot not only restricted his use of the land, but also created problems for his neighbors. He expressed his belief that redesigning the lots would be very beneficial to the subdivision and noted that there would be no increase in density.

Mr. Simpson addressed the neighbor's letter of concern and said that no drainfields or houses will be relocated closer to the neighbor's property and the granting of the variance would have no detrimental effect on any other property and asked the Board to rectify the hardship on his land.

In response to Mrs. Harris' question as to whether the variance to the lot width was for his lot, Mr. Simpson said no. He said that when he approached the contractor, he was told that in order to resolve the problem on his lot, four lots would have to redesigned. He admitted that he purchased the lot as it is shaped, but noted that he did not realize the limitations this would impose upon the property. Again, Mr. Simpson stressed that, if granted, the variance would benefit the community.

Vice Chairman DiGiulian called for speakers in support.

Richard Peters, Co-Chairman of Planning and Zoning Committee of the Great Falls Citizens Association, addressed the Board and expressed support for the request. He noted that the extraordinary condition needed relief, and although the builder could be faulted, the County too must take responsibility for approving the lot.

Wes Greenway, 10011 Thompson Ridge Court, Great Falls, Virginia, addressed the Board and said that he too had purchased his lot not realizing the effects resulting from an odd shaped lot. He noted the restrictions imposed upon the Simpson's lot and stated that Mr. Simpson was new to this area when he purchased the land. He expressed his belief that the community supported the request and asked the Board for approval.

There being no further speakers in support and no speakers in opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 90-D-087 for the reasons as reflected in the Resolution and subject to the development conditions contained in the staff report dated October 21, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-087 by CARTER B. AND PAULETTE P. SIMPSON AND RJL ASSOCIATES, INC., under Section 18-401 of the Zoning Ordinance to allow resubdivision of Lots 18, 19, 20, and 21 with proposed Lot 21 having a lot width of 84.5 feet, on property located at 10007 and 10009 Thompson Ridge Court, Tax Map Reference 12-4((21))20, 21; 13-3((10))18, 19, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 30, 1990; and

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

1. That the applicants are the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.5728 acres.
4. The applicants have met the nine standards required for a variance.
5. The lot has an extraordinary topographical condition and has an unusual shape.
6. The lot has constraints with the drain field which have created an unusual situation.
7. Straightening out the lot lines will benefit all the lots as to setback requirements.

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

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

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

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

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

1. This variance is approved for the resubdivision of the existing into five (5) lots as shown on the plat (noted as Hickory Creek Estates), prepared by M.D.T. dated June, 1999.

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 additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 396, October 30, 1990, (Tape 3), Scheduled case of:

10:00 A.M. ANTHONY D. AND MELISSA C. TOBAT, SP 90-P-059, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow carport to remain 3.5 ft. from side lot line (5 ft. min. side yard required by Sects. 3-407 and 2-412) on approx. 10,465 s.f. located at 2616 West St., zoned R-4, Providence District, Tax Map 50-1((2))10. (CONCURRENT WITH VC 90-P-092)

10:00 A.M. ANTHONY D. AND MELISSA C. TOBAT, VC 90-P-092, appl. under Section 18-401 of the Zoning Ordinance to allow addition 24.9 ft. from front lot line (30 ft. min. front yard required by Sect. 3-407) on approx. 10,465 s.f. located at 2616 West St., zoned R-4, Providence District, Tax Map 50-1((2))10. (CONCURRENT WITH SP 90-P-059)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Tobat replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, addressed the Board and stated that the structure was developed as a single family detached dwelling with an attached carport. He said that the surrounding properties are zoned R-4 and are developed with single family detached dwellings. The special permit request is for an error in building location to allow the attached carport to remain 3.5 feet from the side lot line. Based on the minimum yard requirements and the allowed extension, the carport should be located at least 5.0 feet from the lot line; therefore, the applicants are requesting a modification of 1.5 feet to the minimum side yard requirement.

He noted that staff's research regarding the construction of the carport found that the carport existed in its present location when the applicants purchased the property. The building permit associated with the construction of the house and carport indicated that the structure is 5 feet from the lot line; but, the current survey shows that it is 3.5 feet from the lot line.

Mr. Jaskiewicz explained that the applicants were also requesting a variance to allow a building addition 24.9 feet from the front lot line; therefore, they were requesting a modification of 5.1 feet to the minimum front yard requirement.

He noted that the last sentence of Appendix 1 of the staff report is in error and should be deleted.

The applicant, Anthony Tobat, 2616 West Street, Falls Church, Virginia, addressed the Board and stated that he had purchased the property in 1986, but only became aware that the carport was in error when he had applied for the variance. He explained that the carport and house are not located squarely on the lot, the carport which has been in its present location for 20 years and is too close to the lot line for approximately 8 feet of its 20 foot length. Mr. Tobat stated that the neighbor on the abutting property at 2610 West Street, has no objection to the carport. He noted that the staff report indicated that the applicants were not responsible for the non compliance, and also determined that the error would not be detrimental to the use and enjoyment of other properties in the immediate vicinity. Mr. Tobat said that to force compliance to the minimum yard requirement would create an extreme hardship and asked the Board to grant the special permit request.

Mr. Tobat stated that one of the reason that they had purchased the house in 1986 was because the large side yard would allow for expansion. He explained that he did not realize that the side yard, facing Woodley Place, is not a side yard with a 10 foot setback but is considered a front yard with a 30 foot setback. Mr. Tobat said that he would like to construct an addition to enlarge the present dining room and to add a bedroom with a bath, as shown in the sketch submitted with the application. He noted that because of the 10 foot utility easement running through the middle of the back yard, the proposed location is the only site available

for the addition. He expressed his belief that with combination of the two front yards on a corner lot combined with the utility easement constituted a hardship. He noted that it would not be a recurring condition with corner lots because a utility easement through the middle of the back yard is not common. Mr. Tobat said the present dining area is too small and that the three bedrooms with one bath are not adequate for his growing family. He expressed his belief that the strict application of the Zoning Ordinance would effectively not allow an addition to the house. He explained that the allowed space of 12.9 feet would be reduced to 10.0 feet because of the fireplace and the thickness of the walls, and therefore there would not be room for a bath. He stated that the character of the zoning district would not be changed by the granting of the variance since the style and height of the proposed addition would conform to the present structure. He expressed his belief that the hardship is not shared with others in the community who have been able to construct additions within the requirements of the Zoning Ordinance. Again, he noted that the utility easement restricts the use of the back yard for an addition, that there would be no detriment to the adjoining properties, and asked the Board to grant the variance request. He informed the Board that he had the written support of the neighbors, and said that he believed that the application met all the requirements necessary for the granting of a variance.

Mr. Hammack's asked about the setbacks for other dwelling that face onto Woodley Street, and Mr. Jaskiewicz stated that the dwellings on adjacent Lots 8 and 9 are approximately 40 feet from the front lot line and the dwelling on Lot 1 is approximately 40 feet from the side lot line.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 90-P-059 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated October 23, 1990 with the deletion of the last sentence in the proposed development condition referencing the Non-Residential Use Permit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-P-059 by ANTHONY D. AND MELISSA C. TOBAT, under Sections 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to allow carport to remain 3.5 feet from side lot line, on property located at 2616 West Street, Tax Map Reference 50-1((2))10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 30, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,465 square feet.
4. The granting of the special permit will not impair the intent or purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of the property in the immediate vicinity.
5. The granting of the special permit will not create an unsafe condition with respect to both other properties and public street.
6. To force compliance with the setback requirements would cause an unreasonable hardship on the applicants.

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 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.

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 this development condition.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack made a motion to grant VC 90-P-092 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 23, 1990.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-P-092 by ANTHONY D. AND MELISSA C. TOBAT, under Section 18-401 of the Zoning Ordinance to allow addition 24.9 feet from front lot line, on property located at 2616 West Street, Tax Map Reference 50-1((2))10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 30, 1990; and

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

1. That the applicants are the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 10,465 square feet.
4. The addition would be a little close, some of the houses on Woodley Street are set back pretty far, but on this property there are double front yards.
5. There is a utility easement running through the property which effectively precludes any development to the rear.

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

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

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

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

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

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

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

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.

Mr. Ribble seconded the motion which FAILED by a vote of 3-2 with Vice Chairman DiGiulian, Mr. Hammack and Mr. Ribble voting aye; and Mrs. Harris and Mrs. Thonen voting nay. Mr. Kelley was not present for the vote and Chairman Smith was absent from the meeting. Four affirmative votes are necessary for the granting of a variance or special permit.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 399, October 30, 1990, (Tape 3), Scheduled case of:

10:15 A.M. WILLIAM F. III AND JENNY C. PATE, VC 90-L-090, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 8.5 ft. from side lot line (12 ft. min. side yard required by Sects. 3-307 and 2-412) on approx. 16,800 s.f. located at 6348 Meriweather Lane, zoned R-3, Lee District, Tax Map 81-3((15))18.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Pate replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, addressed the Board and stated that the property is zoned R-3 and is developed with a single family detached dwelling with a deck and a swimming pool. He noted that the surrounding area is also zoned R-3 with single family detached dwellings. He said that the applicant is requesting approval of a variance to the minimum side yard requirement in order to replace a set of wood stairs on the side of the dwelling. He said that the applicant had stated that the existing stairs were in place when the property was purchased and that they would like to replace the stairs which are in disrepair. He explained that the proposed stairs would be 8.5 feet from the side lot line; therefore, the applicants are requesting a variance of 3.5 feet to the minimum requirement.

In response to Mrs. Thonen's question, Mr. Jaskiewicz said that the original stairs are also 8.5 feet from the side yard, and that the applicants would merely be replacing the original stairs that are in disrepair.

The applicant, William F. Pate, III, 6348 Meriwether Lane, Springfield, Virginia, addressed the Board and said that the staff report was correct in detail and the proposed stairs would not be any larger than the original stairs. He explained that when the property was purchased in 1979, he did not realize that the previous owner had constructed the deck without a building permit. Mr. Pate said that when he added the swimming pool he had constructed concrete stairs from the pool to the wooden deck stairs, again he noted that he did not realize that the previous owner had built the deck stairs without the required permit. He stated that when he applied for a building permit to replace the deteriorating deck and stairs he was told the stairs were not in conformance with the side lot line requirement; therefore, a permit could not be issued.

Mr. Pate expressed his belief that the topography of the lot and the concrete stairs that were installed so that they would meet the deck stairs created exceptional conditions, and that a denial of the request would create an undue hardship. He used the tax map on the viewgraph to point out the abutting property and noted that his neighbor had submitted written support for the request.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-L-090 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 23, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-090 by WILLIAM F. III AND JENNY C. PATE, under Section 18-401 of the Zoning Ordinance to allow construction of deck 8.5 feet from side lot line, on property located at 6348 Meriweather Lane, Tax Map Reference 81-3((15))18, 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 30, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 16,800 square feet.
4. The house was built in 1965 and the applicants bought the house in good faith.
5. There might be a safety hazard if the applicants do not repair the steps and the deck.
6. The applicants have met the nine standards required for a variance.
7. This exceptional situation is not shared by others in the neighborhood.
8. The request is supported by the neighbor on the abutting property and there is no opposition to the granting of the variance.
9. There is an exceptional situation or condition 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 building/garage addition shown on the plat included with this application and is not transferable to other land.

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

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 which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 401, October 30, 1990, (Tape 3), Scheduled case of:

10:30 A.M. KAE SHIK AND SUNG MOON AND DON AND SUNG LEE, VC 90-D-030, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling to remain 7.2 ft. at closest point from street lines of a corner lot (30 ft. min. front yard required by Sect. 3-307) on approx. 10,077 s.f. located at 1542 Chain Bridge Rd., zoned R-3 and SC, Dranesville District, Tax Map 30-4((2))(4)40B. (CONCURRENT WITH SE 90-D-015. DEF. FROM 6/21/90 AND 9/20/90)

Vice Chairman DiGiulian called the applicant to the podium and Mr. Hansbarger came forward.

The agent for the applicants, William H. Hansbarger, with the law firm of Baskin, Baskin, Jackson, and Hansbarger, 301 Park Avenue, Falls Church, Virginia, addressed the Board and stated that the application had previously been deferred by the Board of Zoning Appeals so that Board of Supervisors could act upon the special exception. He expressed his belief that the application was in accord with the principle and standards for variances as set forth in the Zoning Ordinance and asked the Board of Zoning Appeals to grant the request. He explained that when the structure was constructed in the 1920's it had been in conformance but since that time the roads had been widened. He stated that the structure had previously been used as an office, that the special exception to continue the use had been granted by the Board of Supervisors, and again asked the Board of Zoning Appeals for approval of the variance.

In response to Mrs. Harris' question on whether the Board of Supervisors had granted the special exception, Jane Kelsey, Chief, Special Permit and Variance Branch, said that the special exception had been approved on September 24, 1990, and that the only condition imposed was that the special exception would expire in March of 1991. She explained that all of the special exceptions granted had been given the same expiration date in order that the recommendations of the Comprehensive Plan could be implemented for that particular area in McLean.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 90-D-030 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated June 14, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-030 by KAE SHIK AND SUNG MOON AND DON AND SUN LEE, under Section 18-401 of the Zoning Ordinance to allow a dwelling to remain 7.2 feet at closest point from street lines of a corner lot, on property located at 1542 Chain Bridge Road, Tax Map Reference 30-4((2))(4)40B, 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 30, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3 and SC.
3. The area of the lot is 10,077 square feet.
4. There are extraordinary conditions on this property.
5. The road has moved closer to the house, rather than the house attempting to expand closer to the road.
6 Strict application of the Zoning Ordinance would produce an undue hardship on the owners of the property. They would have to move the house to conform with the requirements.
7. The character of the zoning district will not be changed by the granting of this variance.
8. The variance would be in harmony with the intent and purpose of the Ordinance.
9. The whole area is going to change at some given date and this variance will ensure that this house can stay in its present location.

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

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

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

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

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

1. This variance is approved for the location of 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 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.

Page 403, October 30, 1990, (Tape 3), (KAE SHIK AND SUNG MOON AND DON AND SUNG LEE, VC 90-D-030, continued from Page 402)

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 7, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 403, October 30, 1990, (Tape 3), Scheduled case of:

11:00 A.M. UNITED LAND COMPANY APPEAL, A 90-L-014, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Director of Department of Environmental Management's decision that all building permits must be obtained in order to extend the approval of a site plan, and that the issuance of a Building Permit for the construction of a retaining wall does not extend the approval of the entire site plan on approx. 13.49 acres of land located at 3701 thru 3736 Harrison Lane and 3600 through 3657 Ransom Pl., zoned R-8, Lee District, Tax Map 92-2((31))Parcel C and Lots 1 through 86.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the appellant had submitted a letter requesting a deferral of approximately 90 days. She noted that the appellant was present to answer any questions the Board may have.

Mrs. Thonen requested that the deferral date be in the middle of February and noted that the appellant had been working very hard to settle the appeal.

Ms. Kelsey suggested a date of February 12, 1991.

Mrs. Thonen made a motion to defer A 90-L-014 to February 12, 1991 at 9:00 a.m. The motion carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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Page 403, October 30, 1990, (Tape 3), After Agenda Item:

Approval of Resolutions from October 23, 1990 Hearing.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that in the St. Phillip's Resolution, the sentence after Condition 6 which reads, "the above proposed conditions are staff recommendations and do not reflect the position of the Board of Supervisors", should be deleted.

Mrs. Harris made a motion to approve the Resolution with deletion of the fourth paragraph from the bottom which begins with, "the above proposals" and ends with "until adopted by that Board", be stricken from the record.

Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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Page 403, October 30, 1990, (Tape 3), After Agenda Item:

Approval of Minutes from September 6, 1990 Hearing.

Mr. Hammack made a motion to approve the Minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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Page 403, October 30, 1990, (Tape 3), After Agenda Item:

Request for Out-of Turn Hearing
Heritage Woods Associates, SP 90-S-081

Mr. Hammack made a motion to grant the request.

Jane Kelsey stated that staff had just received the application and it would not be necessary to restaff the application as long as there had been no major changes in the application.

After a brief discussion, the Board stated that it did not believe a staff report would be necessary, that the previous staff report should suffice and agreed to schedule the public hearing on December 4, 1990 at no set time.

Page 404, October 30, 1990, (Tape 3), (REQUEST FOR OUT-OF-TURN HEARING, HERITAGE WOODS ASSOCIATES, SP 90-S-081, continued from Page 403)

The motion carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman Smith was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 1:10 p.m.

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

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

SUBMITTED: January 16, 1991

APPROVED: January 17, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 8, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and, John Ribble. Chairman Daniel Smith was absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:20 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 405, November 8, 1990, (Tape 1), Scheduled case of:

9:00 A.M. LARRY B. & CLAUDIA ELIZABETH RALSTON, SP 90-M-039, appl. under Sect. 8-901 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow garage to remain 7.1 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 20,061 s.f. located at 3023 Aspen Lane, zoned R-3, Mason District, Tax Map 51-3((6))25. (DEF. FROM 9/20/90 PER REQUEST OF P.C. MEMBER)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Hansbarger replied that it was. Vice Chairman DiGiulian 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 on behalf of Bernadette Bettard, Staff Coordinator, who was not present due to a scheduling conflict.

Ms. Kelsey began by stating that the subject property is located in an older subdivision where many additions have been constructed since the houses were originally built. The applicant is requesting approval of a reduction to the minimum side yard requirement to allow a garage to remain 7.1 feet from a side lot line and Sect. 3-307 requires a minimum side yard of 12.0 feet in the R-E District. Therefore, the applicants are seeking a modification of 4.9 feet to the minimum required side yard. However, research of the files in the Zoning Administration Division did not reveal that any Special Permits for building errors have been received in the immediate vicinity. Although the garage was neatly constructed, staff was concerned that allowing additions of such magnitude that encroach into the required yards may set an undesirable precedent in the area. Staff did not believe that vegetation could be provided to mitigate the adverse effects of the building error on the lot to the west, due to the topography of the property.

She then noted the following corrections to the staff report: Conditions 1 and 2 should reflect "addition" rather than shed; the building permit and associated plat shows the garage 13 feet from the lot line; and, at the bottom of page 2 it notes vegetation exists between the deck and golf course, which is not correct.

William Hansbarger, attorney with the law firm of Baskin, Baskin, Jackson & Hansbarger, 301 Park Avenue, Falls Church, Virginia, stated that the property is zoned R-3 which requires a minimum lot size of 10,500 square feet and the subject property is 20,061 square feet. The applicants purchased the property in 1975 and replaced a single car garage with the existing garage in order to store two antique cars. (Mr. Hansbarger submitted before and after photographs to the Board.)

He stated that before beginning construction the applicant contacted a builder and entered into a contract. There is a freestanding garage and driveway on the abutting property and the builder mistakenly took the curve of the neighbor's driveway for the lot line between the two properties. Mr. Hansbarger stated that when the measurement was taken by the builder he determined the measurement to be 25 feet when it was actually 20.1 feet. If the error had been only 10 percent, he noted it could have been corrected administratively. Mr. Hansbarger stated that after measuring Mr. Fairchild, contractor for the applicants, went to obtain a building permit at which time he was given a plat on which he noted the dimensions of the garage showing a distance of 13 feet from the highway. When a County Inspector visited the site to inspect the garage just prior to its completion, he told the applicants that it appeared that the garage was too close to the property line. After removing some of the dirt, he uncovered a stake used to mark the property line and told the applicants that they should apply for a variance. (Mr. Hansbarger submitted into the record a copy of the plat submitted by the applicant to obtain the building permit, a copy of the contract showing the amount the applicants paid to have the present garage constructed, and a copy of the building plans that were on file with the County.)

In closing, Mr. Hansbarger stated that the error was made in good faith and through no fault of the property owner, the reduction will not impair the purpose and intent of the Ordinance, it will not be detrimental to the neighborhood, it will not create any unsafe condition with respect to other properties or the public street, and to enforce compliance with the minimum yard requirements in this instance would result in a substantial hardship to the applicants. He added that Mr. Ralston had asked him to tell the Board that he was sorry that the error had occurred and that he would apologize to his neighbors who had been inconvenienced or aggravated by the error. (Mr. Hansbarger submitted a petition in favor of the request signed by the neighbors into the record.) He asked the Board to grant the request.

Mrs. Thonen asked Mr. Hansbarger if he had seen the letters and petition in opposition to the request. He replied that he had not seen them until he arrived at the Board room. Mrs. Thonen read a statement from the letter submitted to the Board from Mr. Frazier, an abutting property owner, which stated that he had approached the applicant about the closeness of the garage to the property line and the applicant "brushed him off." She added that Mr. Frazier also stated that at his request, Supervisor Davis asked an Inspector to visit the site, and that following an survey used to identify the property line, that Mr. Frazier himself paid for, the applicant pulled up the stake and threw the stake marking the property line away.

Mr. Hansbarger stated that was not the way that he understood the case and the applicant was present and could address the Board if he wished to do so. He added that Mr. Frazier approached the applicant and suggested that windows be installed on the side of the garage that faced his property which the applicant did.

Mrs. Thonen stated that she would like to hear from the applicant.

The applicant, Larry Ralston, 3023 Aspen Lane, Falls Church, Virginia, came forward.

Mrs. Thonen stated that the Board had received several letters, one in particular from Mr. Frazier, and asked Mr. Ralston to address the incident involving the removal of the stake. In response to Mrs. Thonen's question, Mr. Ralston explained that he was approached by Mr. Frazier and they discussed the garage. Mr. Ralston stated that he had not realized that there was a problem with the garage and that he believed that he had done everything possible not to disturb his neighbor. He explained that the garage was started in December 1989, was completed in February 1990, and the Inspector told him about the problem in February 1990 when the garage was 95 percent complete. At the request of the Inspector, Mr. Ralston contacted his builder and they immediately began the Special Permit process. When the applicant's property was being surveyed, Mr. Ralston stated that Mr. Frazier hired the surveyor on the spot to measure from his house to the property line. (He submitted a copy of the surveying bill to the Board.)

Mrs. Harris asked if the applicant had copies of the plats mentioned in Appendix 4 of the staff report. Mr. Ralston replied that he did not. Mrs. Harris stated that one of the plats clearly showed his original house 43 feet from the side lot line. She asked Mr. Ralston if he had measured the distance from the lot line by the neighbor's driveway. Mr. Ralston stated that the builder had asked him where he thought the lot line was and he told him. The builder then obtained a plan from the County and drew the location of the garage on the plan and obtained the necessary permits. Mr. Ralston added that he had not seen any of the paperwork until he was informed of the violation.

In response to a question from Mrs. Thonen, Mr. Ralston replied that he purchased the house in October 1975.

Mr. Kelley asked the applicant at what stage in the construction was he approached by Mr. Frazier. Mr. Ralston stated that the garage was approximately 70 percent complete. He added that none of his neighbors had made any comment about the size or location of the garage.

There were no speakers in support of the request and Vice Chairman DiGiulian called for speakers in opposition to the request. He explained that anyone representing a civic or homeowners association had 5 minutes to speak and all other speakers had 3 minutes.

The applicant's next door neighbor, John Frazier, 3019 Aspen Lane, Falls Church, Virginia, came forward. He stated that he did not believe that the structure is compatible with the applicant's house or the street and that he believes that the structure looks like a racing stable hooked on to the applicant's house. Mr. Frazier stated that he had approached the applicant about the structure being too close to the property line and received no response. When Mr. Frazier saw Mr. Ralston's surveyor on his property, he asked him to survey his property, which he did, and Mr. Ralston pulled up the stake and threw it away. Mr. Frazier expressed concern with what the garage might be used for if the applicants decide to sell the property.

Mr. Kelley asked the speaker if the walls were already up when he talked to Mr. Ralston. Mr. Frazier stated that following a comment by one of the neighbors he became concerned with the location of the garage. He added that he had felt sure that the applicant would know where the property line was since he had shown such an interest in the townhouse development going up behind his house.

Arlene Whitten, 3015 Aspen Lane, Falls Church, Virginia, stated that she and her husband lived two houses away from the applicant. She called the Board's attention to the plat used by the applicant to obtain the building permit which showed that the garage would be built 13 feet back from the side lot line. Ms. Whitten stated that she found it difficult to believe that the applicants had erred in the location of the garage as he had both an architect and a builder, and the applicants had been there to oversee the construction. She added that she believed that the applicants were aware of the side yard requirement and did know the location of the property line. Ms. Whitten stated that Mr. Ralston, the County Inspector, personally told the applicants and their builder that the structure was too close to the property line. She stated that she had also discussed the problem with the Inspector who had inspected the footings and the slab, the last inspection taking place in January, and no

other requests for inspections have been recorded since that time. With respect to the size of the garage, she stated that it would be more appropriate to call the structure a warehouse.

Vice Chairman DiGiulian asked the speaker to sum up as her time for speaking had expired quite awhile ago.

Ms. Whitten asked the Board to deny the request as she did not believe that the applicant had satisfied standards B, C, and D. She added that the structure is too close, it encroaches on the neighbor's property, it is too large, and the applicants did not do what they said they would do.

John D. Holman, 3001 Aspen Lane, Falls Church, Virginia, stated that he would be very brief. He stated that he had lived in the Sleepy Hollow Subdivision for 50 years and during those 50 years he had been before the Board for every reason in the world, but this was the first time for this type of request. Mr. Holman stated that the original covenants required half acre lots and many of the lots are much bigger. He commended staff on the staff report and read a portion it into the record which noted staff's consern that to allow an addition of such magnitude to encroach into the required yard may set an undesirable precedent in the area. Mr. Holman stated that he believed that such a precedent was the beginning of the end of the subdivision.

Harold Whitten, 3015 Aspen Lane, Falls Church, Virginia, stated within the last year, with the cooperation of Supervisor Davis, discussions have taken place with the developer of a townhouse development being constructed behind the houses on one side of Aspen Lane which includes the applicants' property. During one of those discussions, Mr. Whitten stated that he recalled the applicant specifically stating that he would make sure that anyone living in the townhouses who wished to construct a porch would obtain a variance. He added that this remark indicated to him that the applicant was well aware of his property line location. In closing, Mr. Whitten stated that he believed the garage was built without any regard for the zoning rules and regulations that all the neighbors must live under.

Hank Strickland, Planning Commissioner from Mason District, addressed the Board and stated that he had lived in the Sleepy Hollow Subdivision for over 21 years. He thanked the Board for granting a deferral in order for the citizens to review the particular aspects of the case. Commissioner Strickland stated that he did not believe that it was desirable for the Planning Commission to review the case as it is clearly the responsibility of the Board of Zoning Appeals. He stated that he supported the neighbors in their opposition and that he believed that the application should be denied based on the testimony presented.

In rebuttal, Mr. Hansbarger stated that it was very unlikely that the subject property would be rezoned commercial because of the addition. He continued by stating that the addition could have been constructed in the rear of the property, but it was determined that the present location is a good addition to the house. The addition does not detract from the aesthetics of the neighborhood and that he believed that the error was made in good faith. He added that perhaps if the applicant had the plat included in the staff report the applicant would have known that the structure was too close. With respect to the alternatives, Mr. Hansbarger stated that the applicant could construct a carport which could come 5 feet from the property line. If the applicant were to change the garage to a carport, Mr. Hansbarger stated he believed that would be far more unsightly than the garage, that the structure does meet the requirements of Sect. 8-914, and asked the Board to grant the request.

Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny 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 90-M-039 by LARRY B. AND CLAUDIA ELIZABETH RALSTON, under Section 8-901 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow garage to remain 7.1 ft. from side lot line, on property located at 3023 Aspen Lane, Tax Map Reference 51-3((6))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 November 8, 1990; and

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

1. That the applicants are the owners of the land.

Page 408, November 8, 1990, (Tape 1), (LARRY B. & CLAUDIA ELIZABETH RALSTON, SP 90-M-039, continued from Page 407)

2. The present zoning is R-3.
3. The area of the lot is 20,061 square feet.
4. The applicant has not presented testimony showing that he acted in good faith.
5. This could have been corrected because the garage the applicant removed set back 19 feet from the side lot line so a "red flag" should have gone up.
7. If the request were granted, it would be detrimental to the surrounding property owners.
8. The applicant could move the side of the garage back 6 feet without too much expense.
9. The applicant could have constructed the garage in the rear of the property without encroaching on the neighbor.

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 which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 16, 1990.

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Page 408, November 8, 1990, (Tape 1), Scheduled case of:

9:15 A.M. MINDY & KENNETH SOSNE, VC 90-A-094, appl. under Sect. 18-401 of the Zoning Ordinance to allow carport 2.0 ft. from side lot line (5 ft. min. side yard required by Sects. 3-407 and 2-412) on approx. 8,464 s.f. located at 4418 Medford Dr., zoned R-4, Annandale District, Tax Map 71-1((15))141.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Sosne 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.

The co-applicant, Kenneth Sosne, 4418 Medford Drive, Annandale, Virginia, submitted a letter to the Board which explained that the gas line was lowered to ground level in August 1988 and the line is now 6 inches above ground because the ground continues to recede. He stated that because of the way the house is angled on the lot, the back edge of the carport will be 2 feet from the property line, but the front of the carport will meet the 5 foot setback. Mr. Sosne stated that the contractor has recommended that any construction come within 2 feet on the back edge to allow for proper grading in order to hold the soil in place. The neighbor on the side of the proposed construction has poured concrete and erected a lean to type carport and gravel to retain the soil. Mr. Sosne stated that there is a step down from the applicants' property to the neighbors because of the way the property was originally graded.

In response to a question from Mrs. Harris, Mr. Sosne explained that the problem is that he has lost approximately 2 feet of ground and had an exposed gas line. He stated that he would like to construct the carport and grade the property so the problem will not continue and the contractors have indicated that this is the best solution.

Mr. Kelley asked the applicant to address a notation in the statement of justification that the next door neighbor had done the same type of thing. Mr. Sosne explained that the neighbor has constructed a carport made of fiber glass panels with a aluminum top and poured two cement runners to park cars on and laid gravel along that side of his property.

Mr. Kelley asked staff if the applicants' neighbor had obtained a variance for the construction. Ms. Bettard stated that staff's research had not shown any variance being granted.

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

Mrs. Harris made a motion to deny the request. She stated that perhaps there is a drainage problem on the site, but an adequate carport could be built by right and other mitigating measures could be done to correct the drainage problems without obtaining a variance. Mrs. Harris added that the granting of the variance would be a special privilege and not approaching confiscation of the property.

Mr. Ribble seconded the motion.

Mrs. Thonen made a substitute motion because only one corner of the carport required a variance and she stated that there is an unusual situation on the property with respect to

the gas line and the soil. She agreed that a retaining wall could be constructed but there is not adequate room and that the carport could be built to help stabilize the soil. Mrs. Thonen added that if the property was not shaped as it is, did not have the topographical problems that it has, and if the request was for a larger variance she could support the motion to deny. She 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 November 1, 1990.

Mr. Kelley seconded the motion.

A discussion took place between Mr. Kelley and the applicant as to whether or not the variance could be reduced by 1 or 2 feet. Following that discussion, Mrs. Thonen asked the Board if it would make a difference if she amended her motion to allow the applicant to construct 3 feet from the lot line. Mr. Ribble stated that he better understood the situation and would support Mrs. Thonen's motion.

Mrs. Harris asked the applicant if he had looked at other mitigating measures. Mr. Sosne explained that he had discussed alternatives with the contractor and the contractor suggested that they apply for a variance.

Mrs. Thonen called for the question.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-A-094 by MINDY AND KENNETH SOSNE, under Section 18-401 of the Zoning Ordinance to allow carport 2.0 ft. from side lot line, on property located at 4418 Medford Drive, Tax Map Reference 71-1((15))141, 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 8, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,464 square feet.
4. The applicants have satisfied the nine required standards for the granting of a Variance.
5. The subject property has an unusual situation because it has an exceptional shape and topographic conditions.
6. The subject property was acquired in good faith.
7. The granting of the request will not impact the neighbors.
8. The strict application of the Ordinance would produce an undue hardship on the applicants and restrict all reasonable use of their property.
9. The use will not be a substantial detriment to the surrounding properties and will be in harmony with the Ordinance.

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

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

Page 410, November 8, 1990, (Tape 1), (MINDY & KENNETH SOSNE, VC 90-A-094, continued from Page 409)

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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.

Mr. Kelley seconded the motion which carried by a vote of 4-1 with Mrs. Harris voting nay; Mr. Hammack not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 16, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 410, November 8, 1990, (Tape 1), Scheduled case of:

9:30 A.M. ANTIOCH BAPTIST CHURCH, SP 90-S-057, appl. under Sect. 3-C03 of the Zoning Ordinance to allow church and related facilities on approx. 3.63 acres located at 6531 Ox Rd., zoned R-C and WS, Springfield District, Tax Map 87-1((1))6.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Gibbs 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, called the Board's attention to an addendum containing a transportation report revealing that the requested improvements have been funded.

She continued by stating the applicant is requesting approval of a special permit in order to construct a 400 seat church and related facilities and noted that there will be church services conducted twice on Sundays with choir rehearsals and bible study/prayer services one evening a week, on different evenings. Based on staff's analysis contained on pages 7, 8, and 9 of the staff report, Ms. Bettard stated it is staff's judgment that the request is too intense and the applicant has not met standards 1 through 6 of Sect. 8-006 of the Zoning Ordinance. Ms. Bettard stated that staff has recommended mitigative measures such as additional screening, more preservation of trees and open space, a reduction in the number of the proposed seats, and a reduction in the required parking and the amount of impervious surfaces. Staff also recommended physical redesign of the affected intersection and the relocation of the proposed entrance to the site. However, these issues have not been resolved; thus, staff recommended denial.

She called the Board's attention to the revised transportation report just distributed to them which indicated that funding had been approved for construction of the widening of Ox Road from Burke Center Parkway to Burke Lake Road. Ms. Bettard informed the Board that Charles Deeney, with the Office of Transportation, was present to respond to questions.

John Q. Gibbs, 6408 Brentford Drive, Springfield, Virginia, pastor of the church, came forward. He stated that the church was founded in January 1989 with a group of five individuals but the membership now exceeds 85 people with an average attendance on Sunday morning of 100. (He asked members of the congregation who were present to stand to show their support of the request.) Pastor Gibbs explained that the church currently meets at 8:00 a.m. on Sunday morning in the Salvation Army facility located on Braddock Road for worship service and the members go to individual houses for Sunday School. The church is a member of the Southern Baptist Convention Incorporated and the organization is in full support of the request. Pastor Gibbs stated that he appreciated staff's concerns but that he did not agree with staff's findings on a great number of issues and that Larry McDermott, with Dewberry and Davis, would address those concerns following his own comments.

With respect to the issue of land consolidation, Pastor Gibbs stated that the church had discussed the possibility of purchasing the adjacent property but the property owner was unwilling to sell. He pointed out that a similar institutional use could not be established on the adjacent property without a Special Permit or Special Exception and that this determination should be considered at the time an application is filed on the adjacent property.

Pastor Gibbs addressed the issue of incompatibility by stating that he has found in his travels throughout the County that schools and churches are located in the residential communities. He added that he believed that such uses, if designed properly, serve as an asset to and are accepted by the community.

Regarding the intensity issue, Pastor Gibbs stated that early in the special permit process staff expressed concern with the applicant's request for 400 seats. He explained that the church has grown rapidly in the past two years and the 400 seats will be needed by the time the application goes through the site plan and construction process. Pastor Gibbs stated that the number of seats had been agreed upon by the church's finance committee and that it was not economically sensible to reduce the number of seats.

Pastor Gibbs stated that the church is providing 50 percent open space which seems appropriate for the proposed use.

In addressing the transportation concerns, Pastor Gibbs stated that it cannot be argued that the proposed church will generate more traffic than would be generated if the property was developed as permitted by the current zoning. He stated that the impact of the increased traffic generation will be insignificant since the proposed hours of operation of the church will not be during rush hour. Pastor Gibbs thanked the Board for their time and called Mr. McDermott to the podium.

Larry McDermott, project manager for the church, came forward and stated that there were three unresolved issues dealing with transportation, environment, and intensity. Upon beginning the design of the church, Mr. McDermott stated that his firm researched the Comprehensive Plan and coordinated with the Virginia Department of Transportation (VDOT) and the Office of Transportation (OT). During this coordination, he stated that it became clear that the realignment to the west of Ox Road is fully funded in the Six Year VDOT Program and that there is 1.5 million dollars budgeted this year to do the preliminary work. Mr. McDermott stated that during his conversations on November 7, 1990, with both VDOT and OT, he was told by Sam Chamberlain, with OT, that the total funding for this project is anticipated and construction is planned for 1993. Based on an estimated cost of $150,000 to improve the intersection of Stoney Road and Ox Road, as well as a full section to the entrance to the property, he stated the entrance to the subject site was designed off of Ox Road. Mr. McDermott stated that Old Ox Road will serve as a collector street or a service drive to only a few properties once the road has been realigned. With respect to sight distance, Mr. McDermott stated that there is a curve in the road but when the entrance is located to the west the entrance will meet the standards.

Regarding the issue of the property being located in the Occoquan Watershed, Mr. McDermott stated that his firm considered this when they designed the project and that is why there is 47 percent open space. He added that this is a very conservative figure to take into consideration any error that might occur in the field during construction. Mr. McDermott stated that he could not dispute the fact that 80 percent of the site is going to be cleared but noted that once the church and the storm water management facility is built and the septic fields and wells are dug, there will be approximately 65 percent impervious surface. The applicant has committed to put inlets in the parking lot which was designed to limit the amount of impervious surface by double loading the majority of the parking lot and has committed to pipe all the water back to the storm water facility.

With respect to intensity, Mr. McDermott stated that the Floor Area Ratio (FAR) will be .052, which is almost half that is allowed by the Zoning Ordinance.

Mr. McDermott addressed the development conditions and asked that Development Condition number 12 be deleted. He asked that Development Condition number 6 be modified to read:

> "Transitional Screening 2, consisting of a 35 foot screening yard, shall be provided on all boundaries of the property where such screening does not conflict with the proposed

parking area, storm water management facility, septic field area and proposed well sites. In those areas where the 35 foot screening yard cannot be accommodated, Transitional Screening 1 shall be provided and supplemental planting installed to obtain the equivalent effectiveness of Transitional Screening 2 as determined by the County Arborist. The size, type and location of the supplemental plantings shall be approved by the County Arborist to assure the equivalent of Transitional Screening 2."

Mrs. Harris stated that the site broke both ways and asked how the drainage to the west would be handled. Mr. McDermott used the viewgraph to show the location of the break and explained that very little of the drainage shed is going to the west. He assured the Board that all the water will be picked up off the impervious surface, piped back over the grade and back to the storm water management facility.

Vice Chairman DiGiulian called for speakers in support of the request.

C. S. Peterson, 6400 Stoney Road, Fairfax Station, Virginia, supported the church's request since it was his understanding that within three years Route 123 would be realigned.

In response to a question from Mrs. Harris, Mr. Peterson pointed out the location of his property on the viewgraph. He stated that there was not a drainage problem and the water does not drain into the pond on Lot 2A.

There were no further speakers in support of the request and Vice Chairman DiGiulian called for speakers in opposition to the request.

John Rogers, 6525 Ox Road, Fairfax, Station, Virginia, came forward and stated that he had lived on his property for fourteen years and expressed concern that the rural character of the neighborhood would be changed if the special permit was granted. He noted that Stoney Road was a narrow road, was already heavily traveled with citizens going to Burke Lake, and would not accommodate the traffic generated by the church. With respect to the drainage, Mr. Rogers stated that there is a drainage problem at the intersection of Ox Road and Stoney Road and water stands on the road after a rain storm. He added that the water does not drain into the pond on his property. Mr. Rogers stated even if the Board reduced the parking and the seating capacity, the application would still not be acceptable because people would still attend the church and would be parking along Stoney Road.

In rebuttal, Pastor Gibbs stated that the church would not be completed until approximately 1993 or 1994 and by then the realignment of Route 123 will be finished, thereby eliminating the traffic problem on Old Ox Road. He stated that he believed that the engineering firm acquired by the church is the best in the country and has developed a plan to alleviate any drainage problem. Pastor Gibbs added that he was encouraged by the fact that the property owner behind the church is in support of the request. In closing, he stated that land in Fairfax County is very difficult to find and very expensive. He asked the Board for its approval.

Mrs. Harris noted that in the statement of justification it was mentioned that the facade of the proposed church had not been finalized and asked if the footprint was final. Pastor Gibbs replied that it was.

There was no further discussion 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 November 1, 1990 with the deletion of condition number 12 and condition number 6 reworded as follows:

"6. Transitional Screening 2, consisting of a 35 foot screening yard, shall be provided on all boundaries of the property where such screening does not conflict with the proposed parking area, storm water management facility, septic field area and proposed well sites. In those areas where the 35 foot screening yard cannot be accommodated, Transitional Screening 1 shall be provided and supplemental planting installed to obtain the equivalent effectiveness of Transitional Screening 2 as determined by the County Arborist. The size, type and location of the supplemental plantings shall be approved by the County Arborist to assure the equivalent of Transitional Screening 2."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-057 by ANTIOCH BAPTIST CHURCH, under Section 3-C03 of the Zoning Ordinance to allow church and related facilities, on property located at 6531 Ox Road, Tax Map Reference 87-1((1))6, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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-C and WS.
3. The area of the lot is 3.63 acres.
4. The applicant's agent testified that the applicant has tried to resolve the three major issues relating to environmental, transportation, and density; and, although it is not absolute, it appears they have done so.

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 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 use shall be to 400 seats with a corresponding minimum of 100 parking spaces. All parking shall be on-site.

6. Transitional Screening 2, consisting of a 35 foot screening yard, shall be provided on all boundaries of the property where such screening does not conflict with the proposed parking area, storm water management facility, septic field area and proposed well sites. In those areas where the 35 foot screening yard cannot be accommodated, Transitional Screening 1 shall be provided and supplemental planting installed to obtain the equivalent effectiveness of Transitional Screening 2 as determined by the County Arborist. The size, type and location of the supplemental plantings shall be approved by the County Arborist to assure the equivalent of Transitional Screening 2.

7. A tree preservation plan shall be established in coordination with and subject to the approval of 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.

8. All drainage of the site shall be directed into the stormwater dry pond on the northeast portion of the site. A drainage inlet or inlets may be may be placed at the front of the site to drain the entire parking lot into the stormwater management pond. 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. This stormwater dry pond may be expanded if required to meet the BMP requirements, but shall not extend into the required transitional screening yard.

9. The barrier requirement shall be fulfilled by the fence as shown on the Special Permit Plat.

10. Right-of-way dedication shall be provided as necessary to accommodate the improved design of the intersection of Stoney and Ox Roads. This right-of-way 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, which ever occurs first. The amount of dedication shall be determined by VDOT and the Department of Environmental Management (DEM).

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

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

    The lights shall focus directly onto the subject property.

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

12. Parking lot landscaping shall be provided in the parking lot in accordance with Sect. 13-106 of the Zoning Ordinance and the provisions of the Public Facilities Manual. Foundation plantings, the purpose of which shall be to soften the visual impact of the building, shall be provided around the structure on the property. The type, size and location of these plantings shall be approved by the County Arborist.

13. The building height shall not exceed 36 feet.

This shall not relieves 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 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 which 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 November 16, 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 11:12 a.m.

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Page 414, November 8, 1990, (Tape 2), Scheduled case of:

9:45 A.M. LYNN G. TERHAR, SP 90-S-078, appl. under Sects. 3-C07 and 8-913 of the Zoning Ordinance to allow additions 11.6 ft. from side lot line and 32.2 ft. from front lot line (20 ft. min. side yard and 40 ft. min. front yard required by Sect. 3-C07) on approx. 10,560 s.f. located at 15113 Bernadette Ct., zoned R-C and WS, Springfield District, Tax Map 33-4((2))404.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Terhar 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 and stated that the lot was recorded prior to July 26, 1982 and the modifications requested will not result in front or side yards less than the yard required by the cluster provisions of the R-2 Zoning District under which this section was developed. Staff has determined that the application meets all the applicable Zoning Ordinance standards for modification of minimum yards for certain R-C lots.

The co-owner of the property, John Terhar, 15113 Bernadette Court, Chantilly, Virginia, came forward. He explained that the proposed addition will bring his house more in line with the other houses in the neighborhood that have been granted variances. Mr. Terhar added that many of the houses have single car garages and many have porches that go from the front of the house to the side.

There were no speakers to address the request and Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant the request subject to the development conditions contained in the staff report dated October 30, 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-078 by LYNN G. TERHAR, under Section 3-C07 and 8-913 of the Zoning Ordinance to allow additions 11.6 ft. from side lot line and 32.2 ft. from front lot line, on property located at 15113 Bernadette Court, Tax Map Reference 33-4((2))404, 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 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-C and WS.
3. The area of the lot is 10,560 square feet.
4. The applicant has met the applicable 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 8-913 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 additions shown on the plat included with this application and is not transferable to other land.

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

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. Ribble seconded the motion which 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 November 16, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 415, November 8, 1990, (Tape 2), Scheduled case of:

10:00 A.M. LEWIS W. ROSE, SP 90-A-061, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow addition to remain 7.1 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 22,865 s.f. located at 5306 Ravensworth Rd., zoned R-3, Annandale District, Tax Map 70-4((4))(59)41.

Vice Chairman DiGiulian 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 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 stated that the applicant received a Notice of Violation because the existing carport has been enclosed with plastic and wood lattice material. With respect to the gazebo, Ms. James stated that during site inspections with Stanley Manolis, Zoning Inspector with the Zoning Enforcement Division, no such structure was found although there is a wood frame attached to the rear of the existing carport which is covered with black plastic. (She called the Board's attention to photographs contained in the file.) Ms. James stated that staff did not recommend any additional screening as the site is very wooded and heavily vegetated. However, she stated that if the Board did choose to grant the request, staff recommended that the applicant obtain a new building permit and the appropriate code inspections. Ms. James called the Board's attention to development condition number 2 which addressed this issue.

Mrs. Harris stated that there was no way that a car could be parked in the structure since it is closed off and asked how it could be designated as a carport. Ms. James explained that the structure was originally approved as a carport in the 1970's and the applicant obtained a building permit after the fact when a Notice of Violation was issued to him. She stated that a building permit was granted which is outlined in the staff report. Ms. James stated that how the structure is utilized now does not seem to be for a carport, but that it is noted as such on the plat and that is the use that was approved on the building permit.

The applicant, L. W. Rose, 5306 Ravensworth Road, North Springfield, Virginia, came forward and presented the Board with a copy of his presentation and other supporting documents. He stated that this is a very old matter and that he finds himself in the same position as in 1979. Mr. Rose explained that the purpose of this structure is too save energy which he has been trying to do since 1973 when the first oil shortage occurred and President Bush has now joined the endeavors by signing the 1990 Clean Air Act. He added that Clean Air Advocates and Energy Conservationists have been encouraged to insulate roofs, install storm windows, maintain furnaces in residential dwellings, and wear warm sweaters. In addition to this, Mr. Rose added that citizens can construct wind breaks, plant trees and shrubs, put up trumby walls to trap the warm air, solar panels, and low grade structures.

Mr. Rose stated that the structure that is in question is a trumby wall which deflects the cold north air from the brick face of his house but still allows the light into the house through the translucent plastic and by doing this certain energy is stored in the brick of the building. Mr. Rose stated the structure might fit the description of a gazebo, trellis, and lattice which have become a matter of great interest in the modern urban environment. (He called the Board's attention to document number 6 which were photographs of other gazebos in the surrounding area and to a Sears and Roebuck advertisement.) Mr. Rose noted an article in the Practical Homeowners Magazine in August 1990, which stated that many of the California architects are constructing freestanding structures similar to the one on his property. He added that because of the pie shape of the lot the distance from the side lot line increases to 15.1 feet at the rear of the structure making the average distance of the structure from the side lot line 11.1 feet. Mr. Rose called the Board's attention to the plat attached to the approved building permit which notes that translucent plastic covering on the vertical surface is included.

Vice Chairman DiGiulian informed the applicant that his time for speaking had expired.

In summary, Mr. Rose stated that energy conservation is very important to senior citizens of Fairfax County. He added that he believed that if he was allowed to continue with the conservation measures that he could continue to conserve energy at 1 therm per day. Mr. Rose asked the Board to grant the request.

In response to a question from Mrs. Harris, Mr. Rose replied that he did have a classic automobile inside the structure.

Vice Chairman DiGiulian called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Louis B. Wagner, 7205 Homestead Place, North Springfield, Virginia, Chairman of the Zoning Committee, North Springfield Civic Association, and member of the Annandale District's Planning Horizon Task Force, came forward. Mr. Wagner stated that the Association agrees with the neighbors who strongly oppose the application. During his review of the case file, Mr. Wagner stated that he had not found a copy of a letter from Mr. and Mrs. Frances J. Bowham, the applicant's next door neighbor, which contained photographs and a petition with 34 signatures.

Mr. Hammack informed the speaker that the Board had received the documents.

Mr. Wagner continued by stating that the letter gave a good description of what the neighbors are now living with. (He submitted additional photographs of the applicant's property to the Board.) Mr. Wagner stated that in the 31 years that he has lived in North Springfield he has never seen such a "hodge podge, monstrous" structure. He indicated that the structure is not architecturally pleasing and it appears that the structure was just put together "helter skelter." Under background in the staff report, Mr. Wagner stated that it is noted that the applicant has received several Notices of Violation concerning the carport over the years and should not be allowed to get away with another violation. Mr. Wagner agreed with staff that the standards under Sections 8-914 and 8-006 have not been met and added that he did not believe that the noncompliance was done in good faith. He stated that the structure in its present location is a negative visual impact on neighboring properties and has the potential to set an undesirable precedent since there are many lots in the vicinity which are developed with open carports. In closing, Mr. Wagner stated that if it was the Board's intent to grant the request, that the approval be contingent on the development conditions contained in the staff report.

Arthur LaRoche, 7700 Elgar Street, North Springfield, Virginia, stated that he lived approximately four or five houses from the applicant; therefore, he is not in a position that he would have to look at the "hodge podge" day in and day out. He asked the Board to deny the request although he believed the applicant's environmental plea is certainly a consideration. Mr. LaRoche stated that he would like the applicant to address the value of

the automobile that is stored in the structure and to respond as to who built the gazebo/carport. In closing, Mr. LaRoche stated that if the applicant could move the structure to California he would be most happy to have him do so.

Wendell W. Steward, 5312 Ravensworth Road, Springfield, Virginia, came forward and stated that he lives three houses from the applicant. He stated that he was 1 of the 34 signatures on the petition submitted by the Bowhams in opposition to the request and that Mr. Bowham would be present but he had recently suffered a heart attack. Mr. Steward agreed with the comments of the other speakers and added that the structure was a disgrace to North Springfield, Fairfax County, and to the State of Virginia.

In rebuttal, Mr. Rose stated that he was unhappy that the neighbors are not pleased with the structure but at the same time he believed that he was making a contribution to a national program. He stated that he would be willing to put trees or shrubs around the offending structure if that would appease the neighbors and that he saw no particular benefit to be gained by the removal of the structure.

Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny 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 90-A-061 by LEWIS W. ROSE, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow addition to remain 7.1 ft. from side lot line, on property located at 5306 Ravensworth Road, Tax Map Reference 70-4((4))(59)41, 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 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.
3. The area of the lot is 22,865 square feet.
4. The applicant has not presented testimony showing that he acted in good faith.
5. The granting of the request would be detrimental to the neighbors.
6. The removal of the structure will not be a hardship on the applicant.

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 which 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 November 16, 1990.

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Page 417, November 8, 1990, (Tape 2), Scheduled case of:

10:15 A.M. BESSIE M. SHULTZ, SP 90-L-056, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow shed to remain 2.3 ft. from side lot line and 1.1 ft. from rear lot line (12 ft. min. side yard and 10 ft. min. rear yard required by Sects. 3-307 and 10-104) on approx. 11,600 s.f. located at 3902 Lakota Rd., zoned R-3, Lee District, Tax Map 82-2((5))(F)25.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Shultz replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Page 418, November 8, 1990, (Tape 2), (BESSIE M. SHULTZ, SP 90-L-056, continued from Page 417)

Denise James, Staff Coordinator, presented the staff report. She stated that the shed was constructed by a contractor and he had indicated to staff that he would be present for the public hearing but he was not. Ms. James explained that since the applicant is hard of hearing she would try to assist her by explaining the statement of justification contained in the staff report. She continued by stating that the applicant indicated that both she and the contractor were not aware that a building permit was required. During conversations with both the applicant and the contractor, Ms. James stated that she was told that the existing shed replaced a smaller shed that was in the same approximate location on the applicant's property. Based on a complaint, she stated that a Notice of Violation was issued to the applicant. Ms. James stated that the shed is very visible from the street and from the rear yards of adjacent properties. If the applicant were to reduce the height of the shed to 8.5 feet or less, Ms. James stated that the shed could remain in its present location but this may not be as aesthetically pleasing as relocating the shed altogether. If it is the Board's intent to grant the request, she stated that staff would recommend screening the shed with evergreen plantings within 45 days. However, Ms. James stated that staff would support a modification to that timeframe due to the weather constraints.

Mr. Ribble asked if there was a contract between the applicant and the builder. Ms. James stated that it was her understanding that there was only a verbal agreement since the contractor's mother is a good friend of the applicant.

Mr. Kelley stated that he would like to hear from the builder. The other Board members agreed. Mr. Hammack suggested that the audience be polled to determine if there was anyone present who wished to speak to the request.

Vice Chairman DiGiulian called for speakers in support or in opposition and there was no reply.

Mrs. Thonen stated that it had been her understanding that citizens used to be able to construct sheds without a building permit. Ms. James replied that was correct if the shed was under 150 square feet. Mrs. Thonen noted that she could understand how the contractor would think that a building permit was not necessary but that he should been aware of the setbacks. She asked staff for a deferral date.

Mrs. Thonen made a motion to defer the case to November 27, 1990 at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Page 418, November 8, 1990, (Tape 2), Scheduled case of:

10:45 A.M. DAVID C. ARESON, VC 90-D-076, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 10.3 feet from side lot line (15 ft. min. side yard required by Sect. 3-207) on approx. 12,335 s.f. located at 6808 Nesbitt Place, zoned R-2, Dranesville District, Tax Map 21-4((12))5. (DEF. FROM 9/27/90 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. Areson 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's research indicated that dwellings on adjacent Lots 4 and 6 are located 18.0 feet and 34.1 feet from the shared lot lines. Ms. Bettard stated that the house location plat attached to the staff report as Appendix 4 indicates that in 1959 the location of the carport was 10.3 feet from the lot line. She added that a carport was and is allowed to extend 5 feet into the required minimum side yard provided the carport is open and enclosed only on the side that is attached to the dwelling. Ms. Bettard stated that the house location plat dated December 7, 1959, also indicates that an open porch is located directly behind the carport and is 12.3 feet from the side lot line. The subject plat indicates that the porch is now screened and enclosed, thus it appears that the porch was enclosed after 1959. Prior to 1978, Ms. Bettard stated the Zoning Ordinance required a side yard of 20.0 feet and allowed screened porches to also extend into the required side yard. She noted a correction to page 1 of the staff report which incorrectly stated that the Zoning Ordinance required a side yard of 12.0 feet when it is actually 20.0 feet. Ms. Bettard stated that this case was previously deferred in order for the applicant to be present and it is the applicant's argument that the carport is actually a garage and is grandfathered under Section 15-101.3 of the Ordinance. Staff does not believe the Section is applicable to this property since the Zoning Ordinance refers to PR Districts.

The applicant, David Areson, 14 Hendrie Avenue, Riverside, Connecticut, came forward and stated that two of the neighbors and the tenant, who lives in the house, were present in support of the request. He stated that he was seeking a variance in order to enclose an existing carport which would consist of a door addition and repairs to the west side. (He submitted architectural drawings to the Board and pictures showing the existing deterioration of the carport and pictures of the neighboring houses.) Mr. Areson explained that he would enclose the carport to bring it into conformance with the neighborhood as his house is the

only one that presently does not have an enclosed garage. He pointed out that an open carport allows people the ability to tell when a house is vacant simply by seeing whether or not a car is there. With a garage, Mr. Areson stated that the door can be closed to hide the fact that the car is not there. Mr. Areson added that approximately one year ago the house was broken into when the car was gone and added that he believed that this would not have happened except the intruder could readily tell the house was vacant because of the absence of the car in the carport.

Mr. Areson continued by stating that a garage could not be constructed in the front yard as it would not be in conformance with the neighborhood and would be a detriment to the neighborhood. Because of a severe drop off in the back yard, Mr. Areson stated that a garage could not be constructed there. He addressed the standards by stating that the property has exceptional shape as it is pie shaped, the property is 90 feet wide on the south side of the house and 97 feet on the north side of the house, the north end of the property is approximately 108 feet wide, and if the house had been built further back on the property a garage could have been enclosed without a variance. Mr. Areson stated the granting of the request would not be a detriment to the adjacent properties. He called the Board's attention to three letters in support of the request from the adjoining neighbors and noted that two of the neighbors were present in support of the application. He stated that the character of the district will not be changed but will allow him to bring his property in line with the neighborhood, the request will be in harmony with the Ordinance, and the property was acquired in good faith. In closing, Mr. Areson stated that upon completion of the construction new shrubs will be added on the west side of the garage and a licensed contractor will be used to do the construction.

Vice Chairman DiGiulian called for speakers in support of the request.

Deborah W. Page, 1017 Shipman Lane, McLean, Virginia, spoke in support of the request based on the deterioration of the carport as noted by the applicant.

Mildred S. Hewitt, 6804 Nesbitt Place, McLean, Virginia, stated that she and her husband thought it would be great if the carport were enclosed.

Young Ja Lee, 6808 Nesbitt Place, McLean, Virginia, tenant at the subject property, came forward and stated that she would like the carport enclosed for safety reasons.

There was no 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 September 18, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-D-076 by DAVID C. ARESON, under Section 18-401 of the Zoning Ordinance to allow enclosure of existing carport to 10.3 ft. from side lot line, on property located at 6808 Nesbitt Place, Tax Map Reference 21-4((12))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 November 8, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 12,335 square feet.
4. The subject property has an extraordinary shape and topographical conditions.

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat 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. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 16, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 420, November 8, 1990, (Tape 2), Scheduled case of:

11:00 A.M. WILLIAM W. HOLT, VC 90-V-061, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of dwelling 25.0 ft. from street line of corner lot and 20.0 ft. from other street line of corner lot (30 ft. min. front yard required by Sect. 3-407) on approx. 8,800 s.f. located at 6116 Woodmont Rd., Tax Map 83-3((14))(11)18. (DEF. FROM 8/7/90 - NEEDS NEW PLAT INCLUDING STRUCTURE. DEF. FROM 10/2/90 AT APPLICANT'S REQUEST, FOR REVISIONS TO PLAT)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Basham 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 this case had been deferred from October 2, 1990 and proceeded to outline the application for the Board. On August 7th, she stated that the Board deferred the public hearing in order for the applicant to submit new plats specifying the footprint of the proposed dwelling. On October 2nd, Ms. Bettard stated that the applicant submitted plats which indicated a proposed uncovered stoop on the Woodmont Street side of the proposed dwelling. After reviewing the plats, staff informed the Board that the stoop would also require a variance, thus the Board deferred hearing the proposed application so the applicant could amend the application to include the proposed stoop. She stated that the applicant was requesting variances of 5.0 feet from Summit Terrace Drive and 10.0 feet from Woodmont Road.

D. Thomas Basham, President, Basham & Associates, 8805 Sudley Road, Manassas, Virginia, engineer and surveyor for the applicant came forward. With respect to the hardship, Mr. Basham stated that he believed that when the Zoning Ordinance was instituted and the R-4 zoning was placed on the subject property the hardship was inflected on the applicant. The setbacks for the subdivision, Mr. Basham stated, were originally 25 feet and noted that he believed that a copy of the original plat was contained in the Board's package. He stated that the applicant lives on the adjoining property and although he has owned the subject property for quite some time he has not chosen to build on the lot until now. Mr. Basham stated that he would consider the changing of the setbacks to be a form of confiscation as the lots do not now meet the criteria for the R-4 lots, especially the corner lots. Mr. Basham stated that there are many houses in the neighborhood who enjoy permitted extensions to the same point the applicant is requesting and beyond, and there have been other variances granted in the area because of the idiosyncrasies of the subdivision. He added that the applicant is not trying to take advantage of the idiosyncrasies, but is merely a victim of what the Ordinance has done and he would like to build a colonial house that he has dreamed about over the years.

With respect to the size of the proposed house, Mr. Basham stated that it would be a two story house with a 12 x 12 pitched roof and noted that the house would meet the County's criteria for height. (He called the Board's attention to the photographs of the proposed house.) He explained that the portion of the house in the back wing is approximately almost half the height of the rest of the house and the tallest portion of the house will face Woodmont Street. Mr. Basham noted that the height is drawn from the grade up to the mid point of the roof. In closing, Mr. Basham stated that he believed that this is one case that a variance is warranted. He added that the applicant's house will be very similar to other colonials and asked the Board to grant the request.

Mr. Ribble asked if the other houses that he referred to had required variances. Mr. Basham stated that he believed that some had.

The applicant, William W. Holt, 6118 Woodmont Road, Alexandria, Virginia, came forward and stated that he planned to line the proposed house up with the existing houses. He stated that he has owned the lot since 1947 and could have gotten some relief on taxes by integrating the subject lot into the lot that he currently lives on but he chose not to do so. Mr. Holt added that he believed that since the County reduced the lot size by implementing the R-4 zoning, the taxes should have been reduced accordingly. With respect to the design of the house, Mr. Holt explained that it would be a replica of a Williamsburg Colonial and there are similarly designed houses in the neighborhood. He stated that his neighbor was recently granted a variance in order to construct a garage 2.0 feet from the shared lot line and his proposed house will be 10.0 feet from the shared lot line.

Vice Chairman DiGiulian asked the speaker to sum up as his allotted time for speaking had expired.

Mr. Holt submitted photographs of other houses in the neighborhood to the Board.

Mr. Kelley asked how long ago the sidewalks were constructed. Mr. Holt stated that they had been there for quite awhile and were just replaced. He noted that the water and sewer lines have already been laid on the subject property.

Mr. Ribble asked if the rendering submitted to the Board represented the house that he planned to build and Mr. Holt replied that it did.

Vice Chairman DiGiulian called for speakers in support of the request and hearing no reply called for speakers in opposition to the request.

Charles Andrene, 6120 Woodmont Road, Alexandria, Virginia, stated that he was the applicant's next door neighbor and would be affected by the decision to build on the subject property. He stated that he and the neighborhood did not want to prohibit the applicant from building his dream house, but they were concerned that the proposed house would not be in keeping with the neighborhood. Regarding other variances that have been granted in the neighborhood, Mr. Andrene stated 4 years ago when he appeared before the Board on another variance request, it was explained to him that the dwelling or addition should be in keeping with the neighborhood. He stated that the applicant's decision was fine except for the scale of the house and that he believed that the proposed structure would be massive for the lot size, would impact the neighborhood, and would not be in keeping with the neighborhood.

Mr. Kelley asked how far the speaker's property was from the street. Mr. Andrene stated that given the variance that he had received his house set back 25 feet from the street. He explained the variance that he had received was for a covered porch and the issues raised by the Board at his public hearing was that the house would be in keeping with the rest of the block, which it was. Mr. Kelley asked if the bulk of the proposed house was the problem and Mr. Andrene replied in the affirmative.

Bruce R. McBrearty, 6117 Woodmont Road, Alexandria, Virginia, came forward and expressed concern about the size of the dwelling on the lot and added that the neighbors are usually involved as a partner in a variance request. Mr. McBrearty stated that the neighbors appear to be against this variance as 76 of the homeowners have signed a petition in opposition. With regard to the size of the house, he stated that from his calculations it appears that

the proposed house will be between 6,000 and 7,000 square feet, which will be about 2 to 3 times the size of many of the houses in the neighborhood. Mr. McBrearty stated that the corner where the applicant plans to build is one of the more busier corners in the neighborhood, there is a school bus stop at the corner, there is no stop sign on the Woodmont through street, and the sight distance is not adequate. (He showed the Board a graph indicating where the citizens, who had signed the petition, lived in proximity to the applicant's property.)

Jane Wells, 2000 Summit Terrace, Alexandria, Virginia, stated that she is concerned about the size of the proposed house and the possibility that it will "plunge her property into shadow." She explained that her house is a split level which is approximately 22 feet in height and that when she purchased her house one of its best features was the sunny yard. Ms. Wells stated that she also had done construction on her property and that she had to comply with the rules and did not do some of the things that she would have liked to do to avoid the variance process. She stated that she did not want to be unreasonable as she thought that the proposed house was a very handsome house, but that she did believe that the house was too large for the lot.

In response to questions from Mr. Hammack about the setbacks, Ms. Wells agreed that the applicant was within his legal right to build the proposed house if it meets the County's specifications, but that she did not want it any closer to the lot line than allowed. She stated that her house sets back 29 feet from the sidewalk.

Michael Mulcahy, 1931 Summit Terrace, Alexandria, Virginia, stated that he has lived in the neighborhood for 12 years and his house was built in the early 1930's which was one of the reasons that he bought in the neighborhood. He stated that it appears that the applicant would like to put up as much house as he can fit on the given space. Mr. Mulcahy stated that he realized that there was not much that could be done about the height of the house, but he believed that with the size of the proposed house the closer it is to the lot line the larger the shadow it will cast on his property. He encouraged the Board to carefully review the request as he believed that the proposed house would be too massive for the lot.

Alan G. Gray, 1932 Summit Terrace, Alexandria, Virginia, agreed with the previous speakers' comments and added that the house seemed to be much too big for the lot. He added that he believed that the footprint of the house could be scaled down to improve the setback, particularly on the Woodmont side for safety reasons.

Mr. Gray replied that the houses on Woodmont Street set back 25 feet, in response to a question from Mr. Hammack.

In rebuttal, Mr. Basham stated that most of the speakers, who spoke in opposition, enjoy the same or worse encroachment than the applicant is requesting. He stated that the footprint of the house is approximately 2,500 square feet with a lot of that being the garage and added that the building envelope is 2,800 square feet which is less footprint than the Ordinance requires. Mr. Basham stated that this will be a nice two story house.

Mr. Kelley stated that it appears to a three story house. Mr. Basham explained that it will be a two story house, although there will be dormers in the attic. Mr. Kelley told Mr. Basham that he planned to make a motion that would basically take off the third floor. Mr. Basham noted that would be inconsistent with the definition of "height" in the Zoning Ordinance. Mr. Kelley stated that he would make that a condition and that the applicant could reduce the height of the proposed house and come to the Board with a revised plat. Mr. Basham stated that he did not mean to sound combative and asked if the Board was actually going to increase the requirements of the Zoning Ordinance with respect to the height of the structure. Mr. Kelley replied that was correct. Mr. Basham replied that was very interesting and asked if it was some form of give and take as far as relieving the applicant on one hand and restricting him on the other and asked if that were legal.

Mr. Basham continued by stating that both he and the applicant had met with the neighbors and discussed the proposed structure and that he believed that the applicant had done everything that he can do.

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

Mr. Kelley made a motion to deny the request for the reasons noted in the Resolution.

Mr. Hammack stated that he believed that this is a clear case of convenience to the applicant. He agreed that it is a very impressive proposal but there is an adequate envelope to build a house in, although it might not be quite what the applicant would like. He added that the variance request is too large.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-061 by WILLIAM W. HOLT, under Section 18-401 of the Zoning Ordinance to allow construction of dwelling 25.0 ft. from street line of corner lot and 20.0

ft. from other street line of corner lot, on property located at 6116 Woodmont Road, Tax Map Reference 83-3((14))(11)18, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 8, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-4.
3. The area of the lot is 8,800 square feet.
4. The lot is too small for what the applicant proposes to construct.
5. The applicant has not demonstrated a hardship.
6. The granting of the request would be detrimental to the adjoining property owner.

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

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

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 16, 1990.

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Page 423, November 8, 1990, (Tapes 2-3), Scheduled case of:

11:15 A.M. WESTFIELDS CORPORATE CENTER ASSOCIATES LIMITED PARTNERSHIP, VC 90-S-109, appl. under Sect. 18-401 of the Zoning Ordinance to allow 8 ft. high fence around entire perimeter of lot on approx. 68.03 acres located on Sully Rd., zoned I-3, I-5, WS, and AN, Springfield District, Tax Map 43-2((1))pt. 13. (OTH GRANTED)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Fifer 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 Sect. 10-104 of the Ordinance permits a maximum fence height of 4.0 feet in any front yard on any lot and a maximum fence height of 7.0 feet in any side or rear yard on any lot in the I-3 and I-5 zoning districts. Ms. Bettard added that Par. D of Sect. 10-104 allows a 8.0 foot high fence or wall in any yard of industrial use; however, this property is proposed to be developed as an office use, thus variances of 4.0 and 3.0 feet to the minimum height requirement for a fence is required.

Ms. Bettard called the Board's attention to a letter received from the applicant requesting that the name of Rockwell International, Inc. be added to the application.

Carson Lee Fifer, Jr., attorney with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, came forward to represent the applicant. He explained that at the time the out-of-turn hearing was granted to the applicant the name of the company purchasing the subject property could not be revealed. Mr. Fifer asked that Rockwell International is now requesting that their name be added to both the application and to the resolution.

Mr. Fifer introduced William Rader, attorney for Rockwell International; William Keech, Senior Vice President, Henry A. Long Company, who is basically responsible for the Westfields project; Philip Yates, with Dewberry and Davis; and Marianne Bundren and R. Lin Lemon, Jr., attorneys with McGuire, Woods, Battle & Boothe.

He used the viewgraph to show the location of the subject property and explained it fronts on Sulley Road, is bounded by Willard Road and the interior road of Westfields, is approximately 68 acres, and is located in a I-3 and I-5 zoning districts. Mr. Fifer stated that Rockwell International plans to purchase the subject property in order to construct a six building facility that will eventually be over 1,000,000 square feet. Rockwell International is requesting approval to construct a 8.0 foot high fence, Mr. Fifer stated, because the type of work to be performed will deal with top secret projects.

Mr. Fifer stated that he believed that the applicant had met all the general standards and used the viewgraph to show the Board the type of fence the applicant proposes to erect. He added that another variance will be requested in the future as Rockwell International has requested that three strands of barbed wire be installed on top of the fence. Mr. Fifer assured the Board that this would be a very attractive fence and will not cause any adverse impact and the Westfields Architectural Committee has reviewed and approved the request. With respect to the standards, he stated that he believed that the applicant had met all the general standards, in particular 7, 8, and 9.

Regarding the development conditions, Mr. Fifer asked that the development conditions be revised to read:

> "This variance is approved for the location shown on the plat included with this application prepared by Dewberry and Davis, entitled "Variance Plat/Westfields", dated September 20, 1990. This fence shall not be more than 8 feet in height."

He stated that this revision should eliminate any problems when they come back in to request the barbed wire. He also asked the Board to waive the eight days since closing is scheduled for November 15th.

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

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 amended as requested by the applicant.

Mr. Kelley and Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

Mr. Kelley made a motion to waive the eight day waiting period. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was 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-S-109 by WESTFIELDS CORPORATE CENTER ASSOCIATES LIMITED PARTNERSHIP AND ROCKWELL INTERNATIONAL, INC., under Section 18-401 of the Zoning Ordinance to allow 8 foot high fence around entire perimeter of lot, on property located at Sully Road, Tax Map Reference 43-2((1))pt. 13, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 8, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is I-3, I-5, WS, and AN.
3. The area of the lot is 68.03 acres.
4. The subject property has an exceptional shape and size.
5. The request will not be detrimental to the adjoining property owners nor will it change the zoning district in any way.

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

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

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

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

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

1. This variance is approved for the location shown on the plat included with this application prepared by Dewberry and Davis, entitled "Variance Plat/Westfields", dated September 20, 1990. This fence shall not be more than 8 feet in height.

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.

Mr. Kelley and Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

Mr. Kelley made a motion to waive the eight day waiting period. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

Page 426, November 8, 1990, (Tapes 2-3), (WESTFIELDS CORPORATE CENTER ASSOCIATES LIMITED PARTNERSHIP, VC 90-S-109, continued from Page)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 8, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 426, November 8, 1990, (Tape 3), After Agenda Item:

Approval of Minutes for September 20, 1990

Mr. Ribble made a motion to approve to approve the Minutes as submitted by the Clerk. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

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Page 426, November 8, 1990, (Tape 3), After Agenda Item:

Additional Public Hearing For January 10, 1991

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that last week following the Board meeting Vice Chairman DiGiulian and Mrs. Thonen indicated that staff was scheduling too many cases on one day. She stated that because of the 90-time limitation some of the applicants have refused to be scheduled for January 15th; therefore, staff suggested an additional meeting on January 10th in order to divide the cases between the three meetings.

Mr. Kelley made a motion to accept staff's suggestion. Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

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Page 426, November 8, 1990, (Tape 3), After Agenda Item:

Approval of Resolution for St. Andrew the Apostle, SP 90-S-064

Mr. Hammack asked why a motion was needed on the Resolution. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the approval is only a technicality because the Resolution became final on November 7th. However, staff faxed the Resolution to Mr. Hammack on November 7th and he suggested changes to finding of fact number 4 and development condition 5.

After reading the condition, Mr. Hammack agreed with the revised wording. He stated that staff was correct and it had been his intent to make the Resolution as noted by staff. He then made a motion to approve the Resolution.

Mr. Ribble seconded the motion which carried by a vote of 4-0 with Mrs. Harris and Mrs. Thonen not present for the vote. Chairman Smith was absent from the meeting.

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Page 426, November 8, 1990, (Tape 3), After Agenda Item:

Zane Mason and Louise Mason Appeals

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board accepted the two Mason appeals and scheduled them on December 20, 1990 at 11:30 a.m. Ms. Kelsey explained that the times have now been set by the Clerk and suggested that perhaps the Board would like to reschedule the time for the Mason appeals to 10:45 a.m.

Mr. Hammack so moved. 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 12:45 p.m.

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

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

SUBMITTED: January 10, 1991 APPROVED: January 17, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 13, 1990. The following Board Members were present: Acting Chairman Paul Hammack; Martha Harris; Mary Thonen; and John Ribble. Chairman Daniel Smith, Vice Chairman John DiGiulian, and Robert Kelley were absent from the meeting.

Mr. Hammack called the meeting to order at 8:10 P.M. and Mrs. Thonen gave the invocation.

Mrs. Harris made a motion to have Paul Hammack serve as Acting Chairman in the absence of Chairman Daniel Smith and Vice Chairman John DiGiulian. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Mr. Kelley also was absent from the meeting.

There were no other Board Matters to bring before the Board and Acting Chairman Hammack called for the first scheduled case.

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Page 427, November 13, 1990, (Tape 1), Scheduled case of:

8:00 P.M. TIMOTHY G. PETKO, SP 90-S-060, appl. under Sect. 8-913 of the Zoning Ordinance to allow addition 14.0 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07) on approx. 12,508 s.f. located at 4516 Silas Hutchison Dr., zoned R-C and WS, Springfield District, Tax Map 33-4((2))521.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Petko replied that it was. Acting Chairman Hammack 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. Ms. Kelsey stated that the applicant was requesting a special permit for a reduction in the minimum side yard requirements in an R-C district to allow the construction of an attached garage to fourteen (14) feet from the side lot line. She said that the Zoning Ordinance requires a minimum side yard of twenty (20) feet in an R-C district; therefore, the applicant is requesting a modification of six (6) feet to the minimum requirement.

Ms. Kelsey said that staff had reviewed the application under the standards of Section 8-913 of the Zoning Ordinance and staff believed that the application met all of the standards. Ms. Kelsey stated that staff, therefore, recommended approval of the application, subject to the Proposed Development Conditions contained in Appendix 1 of the staff report.

The applicant, Timothy G. Petko, presented the statement of justification, stating that he planned to build a two-car garage to keep his vehicles off the street and for storage space.

Mr. Petko requested a waiver of the eight-day waiting period, if the Board should see fit to grant his request. Acting Chairman Hammack stated that the Board would consider that after they had voted on the application.

There were no speakers, so Acting Chairman Hammack closed the public hearing.

Mrs. Harris made a motion to grant SP 90-S-060 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 8, 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-060 by TIMOTHY G. PETKO, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to allow addition 14.0 ft. from side lot line, on property located at 4516 Silas Hutchison Dr., Tax Map Reference 33-4((2)521, 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 13, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 12,508 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C District on July 26, 1982.
6. Such modification in the yard shall result in a yard not less than the minimum yard requirement of the zoning district that was applicable to the lot on July 25, 1982.

Page 428, November 13, 1990, (Tape 1), (TIMOTHY G. PETKO, SP 90-S-060, continued from Page 427)

7. The resultant development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety and welfare of the area.
8. The applicant has met the provisions for approval of modification to the minimum yard requirement for certain R-C lots as contained in Sect. 8-913 of the Zoning Ordinance.

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

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

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

1. This special permit is approved for the location of the specific addition (garage) shown on the plat included with this application and is not transferable to other land.

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

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.

Mrs. Thonen seconded the motion which carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1990; the Board waived the eight-day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 428, November 13, 1990, (Tape 1), After Agenda Item:

Approval of Resolutions from November 8, 1990

Mrs. Harris 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. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

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Page 428, November 13, 1990, (Tape 1), After Agenda Item:

Request for Additional Time
St. Gabriel's Day Care/Poor Sisters of St. Joseph, SPA 80-M-078-2

Mrs. Harris made a motion to grant an additional six (6) months, with a new expiration date of May 18, 1991. Mrs. Thonen seconded the motion, which carried by vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

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Page 428, November 13, 1990, (Tape 1), After Agenda Item:

Request for Additional Time
Northern Virginia Primitive Baptist Church, SP 88-P-088

Mrs. Harris made a motion to grant an additional six (6) months, with a new expiration date of June 7, 1991. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

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Page 428, November 13, 1990, (Tape 1), After Agenda Item:

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

Mrs. Harris pointed out that the applicant had requested a sixty (60) day extension; however, she stated, just to insure that construction is commenced and that the applicant has

Page 429, November 13, 1990, (Tape 1), (REQUEST FOR ADDITIONAL TIME, GALLOWAY UNITED METHODIST CHURCH, SP 88-P-001, continued from Page 428)

sufficient time to get through the site review process, staff recommended an additional six (6) months, with a new expiration date of April 20, 1991, and so moved. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

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Page 429, November 13, 1990, (Tape 1), After Agenda Item:

Request for Waiver of the Twelve-Month Time Limitation on Refiling
Clarence B. and Ruth B. Warren, VC 90-V-070

The Board was in receipt of a letter stating that Mr. Warren believed he had failed to make his presentation to the best of his ability. Mr. Warren also had indicated that no letters of opposition to his request had been received. Mrs. Thonen said that, since the applicant believed that he could prove hardship if the Board gave him another chance, she would like to give him another chance, and made a motion to waive the twelve (12) month time limitation on refiling. Mr. Ribble seconded the motion.

Mrs. Harris stated that she remembered this case really well and that she remembered that both she and Mr. Kelley had asked Mr. Warren to address the hardship aspect of the case. Mrs. Harris stated that she believed that Mr. Warren had answered to the best of his ability and as honestly as he could. She stated that, if the rest of the Board wanted to give him another chance, she would not object. Mrs. Thonen said that if the applicant did not meet the standards, perhaps he could revise his application, but that she always believed in giving people another chance.

Acting Chairman Hammack called for a vote which carried by 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

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Page 429, November 13, 1990, (Tape 1), After Agenda Item:

Approval of Minutes from October 2, 1990

Mrs. Harris made a motion to approve the minutes as submitted by the Clerk. Mr. Ribble seconded the motion, which carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

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Page 429, November 13, 1990, (Tape 1), After Agenda Item:

Request for Reconsideration
Larry B. and Claudia Elizabeth Ralston, SP 90-M-039
Heard on November 8, 1990

Mrs. Harris made a motion to deny the reconsideration. She stated that she remembered the garage being about forty-eight (48) feet over the setback line and also being considerably larger than a conventional garage. Mrs. Harris stated that she remembered that Mrs. Thonen, in her motion, gave a great deal of credence to Mr. Frazier, the next-door neighbor, having a problem with his property line because Mr. Ralston pulled the stake out of the ground. Mrs. Harris stated that her original vote was due to the bulk of the building, the amount that it exceeded the required setback and the fact that it was a major infringement. Mrs. Thonen stated that she had looked at the mistake section of the standards, especially the clause referring to the mistake having been made in good faith. She said that, with everyone telling Mr. Ralston that he was over the line, she believed that he had failed to qualify for a show of good faith. Mrs. Thonen also elaborated on the size and angle of the garage. Mrs. Thonen seconded the motion, which carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting. The Board took this item up again later in the meeting.

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Page 429, November 13, 1990, (Tape 1), Scheduled case of:

8:30 p.m. JAMES C. MOONEY APPEAL, A 90-M-016, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the operation of a summer camp by The Montessori School of Northern Virginia, Inc. is allowed under Special Permit S 80-A-057 and that the term "normal school year" allows the school to operate on a year round basis on approx. 2.77 acres located at 6820 Pacific La., zoned R-2, Mason District, Tax Map 71-2((8))93B.

Jane W. Gwinn, Zoning Administrator, stated that the Montessori School of Northern Virginia (MSNV) was first issued a special permit in 1967. An amendment was approved in 1980 and, in August 1990, a special exception was granted for some changes in the use and because the school has a maximum daily enrollment larger than 100 students. Ms. Gwinn stated that the

issue under appeal was whether, under the special permits, the operation of a summer day camp by the School was allowed. Ms. Gwinn stated that her position was that the operation of the summer camp was a permitted component of the school operation. She stated it was allowed under the definition of "school of general education" as set forth in the Zoning Ordinance today, as well as the definition that was in effect in 1967, when the school was first established. Ms. Gwinn stated that there were no specific conditions in the special permit that address the summer camp, and it was her position that it is a permitted component of the school.

Mrs. Harris stated that there was a lot of talk about what constitutes a normal school year. She asked Ms. Gwinn if the public schools offered the day care program in 1967 that they now offer and asked if it would have occurred to anyone in 1967 that a normal school year would have included a summer camp. Ms. Gwinn replied that she did not know what the Fairfax County School system was doing in 1967, so she could not really state what people had in their minds at that time. Ms. Gwinn noted, however, that it was her position that the definition set forth a minimum but did not set forth a maximum of what was considered to be a normal school year. Ms. Gwinn stated that she viewed the description of "giving regular instruction at least five (5) days a week, except holidays, for a normal school year of not less than seven (7) months" as setting forth minimum parameters in an effort to explain the use, but the definition does not reference a maximum. Ms. Gwinn stated that "not less than" was the limiting factor.

The appellant, James C. Mooney, Jr., 5009 Dodson Drive, Annandale, Virginia, came forward. He stated that he would like to ask what everyone considered to be a normal school year in Fairfax County schools. He stated that the Montessori School opened up in his subdivision in 1967 with a great deal of controversy because it was one mile from the major route in the subdivision and, in his opinion, safety and tranquility were major issues. Mr. Mooney stated that the Board of Zoning Appeals made a very good ruling back in those days, after hearing much discussion, trying to accommodate both sides. He stated that Mr. Smith made the ruling. Mr. Mooney said that Mr. Smith said in his ruling that the School promised to do anything to build on the site, that they would agree to anything except putting a road through to Montgomery because they could not afford it. Mr. Mooney referred to the minutes and stated that what was said was very clear; namely, that the school was to be used for no purpose other than a school. In fact, Mr. Mooney stated, the minutes reflect "school purposes only." He stated that no meetings of parents or students after school hours were included. Mr. Mooney stated that the school had agreed to the conditions before they paid for the land, stating that they could live within the restrictions with no problem. He said that "they" promised to be good neighbors. Mr. Mooney stated that, after the school moved in twenty-two years ago, they managed to violate every zoning restriction in the County and as many laws as they could. He stated that, as a neighbor, the School has been a terror to the community. Mr. Mooney alleged that the School conducted illegal day care with no license, permit, or authorization. He stated that the School had no regard for the community and no regard for the County laws. Mr. Mooney alleged that the School had a practice of "telling you anything and then go about business the way they want to go about business." Mr. Mooney referred to the minutes, stating they mentioned the eventuality of the school having economic problems but not running any other activities without a permit because the community was afraid the School would conduct other activities on the site which would be even more disruptive to the community. He said traffic was the major problem at that time and that it still is the major problem. Mr. Mooney stated that there was a promise made regarding car pooling, with a limit of thirty cars. He said the number of cars immediately went up to 107 and has remained at that number over the years.

Mr. Mooney stated that the Zoning Administrator's adventure camp ruling says "normal school year." He stated that the adventure camp is not in strict compliance with the special permit. Mr. Mooney stated that it is an additional activity and an expansion activity, which had just begun after ten years of operation. Mr. Mooney stated the School described the adventure camp as non-academic in nature. He said it was stated when the Zoning Administrator was at a meeting in (Supervisor) Tom Davis' office. Mr. Mooney alleged that he was told that the camp was started, not for academic purposes, not for educational purposes, not part of the school program, but in order to entice more people to come to the school. Mr. Mooney said it was a commercial enterprise; he said they call it education. Mr. Mooney said that, when he asked Mr. Shoup at the meeting, "...how much is recreational, how much is education...," Mr. Shoup did not know. Mr. Mooney alleged that Mr. Shoup said it had been approved on the basis of three (3) conditions, stating that one reason was overwhelming community support. Mr. Mooney said he asked Mr. Shoup who in the community was giving the overwhelming support and said that Mr. Shoup had no answer. Mr. Mooney stated that he asked Mr. Shoup for the paperwork and that there was no paperwork. Mr. Mooney stated that the first paperwork in the file was from him. He stated that there were never any rulings prior to this point, or that "they" cannot find it. Mr. Mooney stated that, "... the second reason they said they approved this was that, '...we do this all the time because it makes life easy for everybody. You see, if we didn't do this, people...' what were his words, I hate to start paraphrasing...he said '...we do this type of thing all the time.'" Mr. Mooney said he asked Mr. Shoup what happens if the community disagrees because, he said, the community did not even have a say about what happened. Mr. Mooney stated that Mr. Shoup stated, "...Well, then, it's your right to go before the BZA and appeal it." Mr. Mooney expressed displeasure about having to go through the time and expense because, he said, most people are too intimidated to go through the process to appeal something and that he believed MSNV should have gone back through the permit process. Mr. Mooney stated that none of the elementary schools in Virginia have summer programs. He stated that they have recreational programs and other things which are run through the Park Service, etc.

Mrs. Thonen stated that Fairfax County Public Schools also had summer education programs in the elementary schools. When Mr. Mooney asked which one, Mrs. Thonen stated that there was a summer program at Woodlawn School and probably Hayfield School. Mr. Mooney stated that it was probably part of the SACC program for the summer, stating there are certain elementary schools which are approved for SACC and Woodlawn is one of them. He stated there were about seven and that all elementary schools which have SACC during the winter do not have the program during the summer. Mr. Mooney stated that SACC was a day care program and Mrs. Thonen stated that Fairfax County Public Schools have educational summer programs. She stated that she had spent time on the phone checking this subject out with the schools. Mr. Mooney said that he had checked his area supervisor's office and was told his area did not have any. Mr. Mooney stated that the adventure camp is not a component of the school, but is a recreational activity and is not remedial in nature from the year before, nor is it preparatory for the next year. Mr. Mooney contended that it stands alone, has a separate enrollment, and has a separate staff. They only thing which makes it part of Montessori, he said, is that it is held on the site. Mr. Mooney reiterated his belief that the adventure camp should have been compelled to go through the special permit program.

Mr. Mooney stated that Mr. Shoup had said, "...there is an assumed element of education; therefore, they can run it as a general school of education." Mr. Mooney said he asked what he meant by an assumed element of education and he said that Mr. Shoup stated, "...they are doing something...and if they are doing something they must be learning something, and if they're learning something, that falls underneath the school of general education." Mr. Mooney compared Mr. Shoup's alleged statement to walking down the street or being at the meeting insofar as learning something without being in a school of general education.

Mr. Mooney addressed the topic of normal school year. He stated that the term "normal" is not defined by the County. Mr. Mooney stated that the County did not define it because the State regulations say that a school year is 180 days. Mr. Mooney said that the County says the school year is 183 days. Mr. Mooney said that the State does not define the normal school year because they give the local jurisdiction the latitude to arrange bus service. Mr. Mooney went on to offer his opinion of what was normal. He stated that what was normal for an elementary school was not normal for a high school. He expressed a belief that it is fully acceptable to say that a summer program in a high school which supports the past year, the coming year, or the football team is part of the normal school year. Mr. Mooney stated that it is not acceptable for the Montessori School to operate for twelve (12) months out of the year because their entire history of twenty-three (23) years has been from September to June. He questioned why they have suddenly decided that their normal school year consists of twelve (12) months, when none of the elementary schools in the area has a twelve (12) month school program, acknowledging that Woodlawn might be an exception. Mr. Mooney also acknowledged that some schools had academic programs in the summer, but said he believed they were not continuing programs.

Mrs. Thonen stated that she knew that the Christian schools had summer programs.

Mr. Mooney stated he would sum up by asking the Board to review the restrictions placed upon the Montessori School and enforce the restrictions. Mr. Mooney asked that the Montessori School be obliged to go through a formal process to change any restrictions formerly placed on their operation. He stated that, just because a high school or George Mason University had a twelve (12) month school year, he did not believe that Montessori as a preschool should have a twelve (12) month school year.

Mrs. Harris asked, if this had been going on since 1976, why Mr. Mooney now was challenging the operation. Mr. Mooney stated that he moved into the community two years ago, but people who have been living in the community have gone down to the school on a regular basis to speak with school personnel. He stated that the school had never had its permit posted as required by the County. He stated that the school stated that they did not know they had a permit and then, when it was explained to them, they stated they did not understand it. Mr. Mooney stated that, since the new permit was approved in August, the School had four violations lodged against them. He stated that, in meetings with the school, they did not seem to understand the complaints. Mr. Mooney stated that he believed the County had been very lax in enforcing anything having to do with the Montessori School.

Mrs. Thonen asked Mr. Mooney if he had a copy of the violations he had referred to and he stated that he had copies and had turned them into the County and received a reply. Mr. Mooney stated that the School had conducted meetings on a Saturday afternoon. He stated that, under their new permit, the School is authorized to conduct a limited number of activities on week ends, which they agreed to in negotiations with the neighborhood. One of the limitations the neighborhood had asked of the School was, for peace and tranquility in the community, no heavy equipment noise before 10:00 a.m. on Saturdays or before Noon on Sundays. Mr. Mooney stated that on a particular Saturday, the School had caterpillar tractors and chain saws operating at 7:00 a.m., having notified only one neighbor prior to the work. This particular action took place during the time before the condition limiting such action took effect. According to Mr. Mooney, the School officials did not know that they were not in violation but proceeded anyway.

Mr. Mooney expressed an opinion that the School officials believed they could do anything they wanted to do and call it education.

Mrs. Thonen stated that, in reply to Mr. Mooney's complaint that teachers were meeting on weekends, they were allowed to do so under the special permit. Mrs. Thonen read from the condition covering the activity. Mr. Mooned contended that the community had to be notified in advance and Mrs. Thonen stated that she did not find that in her copy.

Mr. Hammack referred to Condition 9 and asked Mr. Mooney why the heavy equipment was present on school property. Mr. Mooney stated it was there to widen the parking lot to provide for the day care center. Mr. Mooney stated the School was in violation because they failed to obtain a building permit prior to construction. Mr. Hammack stated the activity was not in violation because it was not related to school activities. Since Mr. Mooney had stated he became a member of the community only two years ago, Mr. Hammack asked him about his comment that the School had been committing violations for twenty-three (23) years and asked if the alleged violations had been reported to anyone. Mr. Mooney stated that he had been told by neighbors that they had gone to the school and talked to personnel there. He stated that the alleged violations were not reported to the County because the neighbors did not know at the time that they were violations and had been told by school personnel that their activities were legal. Mr. Hammack stated that someone must have known if violations were being committed because the special permit had been opposed at its inception and some of those people who originally opposed it and knew about the Development Conditions might still be in the neighborhood. Mr. Mooney stated that virtually every neighbor within five (5) houses of the school had moved because that was the most impacted area, in his opinion, insofar as noise. The present immediate neighbors, he stated, are not the original owners. He stated that one man moved totally because of the decision in favor of the School.

Mr. Hammack asked Mr. Mooney when the adventure camp had started. Mr. Mooney replied that, according to the School, the adventure camp had started approximately ten (10) years after MSMV opened, in approximately 1977. Mr. Hammack referred to Mr. Mooney's contention that the adventure camp was not a normal school activity because Mr. Mooney thought it was not academic. Mr. Hammack asked Mr. Mooney why he did not consider the adventure camp a normal school activity. Mr. Mooney stated that, generally speaking, the public elementary schools in Northern Virginia did not offer summer camps. Also, he stated, the purpose of the summer camp was not originally intended, nor had it later become intended, as an academic or school endeavor. Mr. Mooney stated his opinion was that it was an advertising tool to draw people to the school during the normal school year. Mr. Hammack referred to the slide Mr. Mooney had shown dealing with the camp and stated that it said in part that the activities ranged from arts and crafts, nature study, field trips, water play, music, films and stories, culminating in an end-of-camp celebration and a sleep-over camp-in. Mr. Hammack asked Mr. Mooney if he contended that these activities had no academic merit at all. Mr. Mooney stated that he contended that anything one did had some kind of educational merit. He stated it was the same as going down to Camp Friendship in the Quantico area, or one of the other summer camps. He stated he believed that they all had an academic or educational aspect. Mr. Mooney stated that the primary purpose of the activity at the School was not educational, but was recreational. Mr. Hammack asked Mr. Mooney what, in his opinion, was recreational for a three (3) to six (6) year old or six (6) to nine (9) year old. Mr. Mooney replied that education could be almost anything, from walking down the street to playing at Disney World. Mr. Hammack stated that maybe, then, arts and crafts, nature studies, field trips, water play, music, etc., could be educational for children in those age groups. Mr. Mooney said there was no question that they could be educational. Mr. Mooney stated that the question came down to whether it was within the scope of the 1967 permit and whether it was envisioned as an activity or an expansion of the activity. Mr. Mooney contended that he believed the school was not envisioned to run for twelve (12) months out of the year or anything more than nine (9) months. He stated that it was supposed to run from 9:00 a.m. to 3:00 p.m. in order to preclude traffic in the neighborhood when the children were on their buses, and nothing during the summer. Mr. Mooney stated that, when they started the summer camp, it was an expansion and was in violation of Sect. 8-004. Mr. Hammack asked Mr. Mooney if any activities were being conducted outside the hours during which the School was allowed to operate. Mr. Mooney replied that there were none.

The following people spoke in support of the appellant: Richard E. Ely, 6825 Pacific Lane, Annandale, Virginia; David F. Borowski, 6824 Pacific Lane; Lorraine B. Ely, 6825 Pacific Lane; John Sullivan, 2826 Pacific Lane; Donald J. Burke, 4707 Dodson Drive.

The concerns of those speaking in support of the appellant were: Limiting the Montessori School to a nine (9) month school year; prohibiting operation during the summer except for repairs, maintenance and staff activities; traffic and parking issues; pedestrian and vehicular safety; violation of the special permit by the School; dilution of the residential quality of the neighborhood; that the summer camp was an extension of the child care facility; and growth in the number of children enrolled.

Mr. Hammack stated that presently, in reviewing school applications, tighter Development Conditions are usually imposed. He stated that, since the County Board of Supervisors had the opportunity to grant the special exception in this case, the Board of Zoning Appeals had no authority to change Development Conditions which were imposed at that time, nor add any that they might believe were desirable, such as parking on site.

Mrs. Thonen asked the Zoning Administrator if, when the Board approved the special exception for child care, it allowed for the child care center to operate in the summer. Ms. Gwinn

referred to Attachment 10, par. 11, which addressed extended care and (a) said that children receiving extended care shall be enrolled in the school of general education. She referred to (d) on Page 4 of the Board's Resolution, stating that "...extended day care shall be provided only on school days from the hours of 7 to 9 and from 3 to 6 during the normal school year." Mrs. Thonen stated that she had read the entire Resolution and could not find any limitation on the normal school year. Mrs. Thonen stated that she could find no limitation precluding the Montessori School from operating in the summer. Mrs. Harris stated that the Resolution also stated that the special exception would not be extended any time further than what was granted in the special permit in 1967. The Board concurred among themselves that the normal school year definition rested with them, according to the Board of Supervisors' ruling.

Keith Martin, Esquire, 2299 Clarendon Boulevard, Arlington, Virginia, Counsel to the Montessori School, spoke in support of the Zoning Administrator's decision. Mr. Martin elaborated on how Supervisor Davis allowed the citizens of the community surrounding the School to participate in negotiating the Development Conditions which were adopted by the Board of Supervisors on August 6, 1990, which he said are usually prepared by the Planning staff of the Zoning Evaluation Division, and are usually reviewed and approved by the County Attorney. Mr. Martin said the School worked with the people from the community, sometimes until 3 o'clock in the morning. He said the School is acutely aware of the concerns of the community and is continuing to work with them. Mr. Martin expressed regret regarding the attitude of the community toward the School and said he believed they stood in wait of any minor infraction with which to find fault. Mr. Martin stated that the School intended to operate within the letter of the law and wished to return to the issue of interpretation of whether the summer camp is a continuation of the general school of education.

Mrs. Thonen expressed a desire to explore the curriculum of the School. Mr. Martin referred Mrs. Thonen to Betsy Mitchell, the Headmistress of the School, and Eileen Reynolds, the President of the School, who were present and ready to answer questions.

Mrs. Harris asked if children who attended the summer camp had to be students during the rest of the year. Again, Mr. Martin referred Mrs. Harris to Ms. Mitchell and Ms. Reynolds.

Ms. Mitchell introduced herself as the Administrator or Principal of the Montessori School of Northern Virginia (MSNV), living at 6718 Princess Ann Lane. She expressed her strong support for the decision of the Zoning Administrator that the operation of a summer camp by MSNV is a permitted use of the original special permit, that there is no maximum limit on the number of months the school may operate, that a summer camp is a program component of the overall use of a school of general education and does not constitute a separate use. Ms. Mitchell stated that she was not at MSNV when they started their summer program, but in speaking with people who were there, she believed it was about five years after they opened. She stated that previous summer programs had varied in length and content, usually running about three (3) weeks to a month in the summer. She stated traditional Montessori classes were offered. Topics of study such as 18th century life, photography, and archaeology were examples, she said. Ms. Mitchell stated that all of the programs included daily instruction and educational experience consistent with Montessori philosophy, and have incorporated recreational features as well. She stated that they have allowed students and staff to benefit from shared experiences throughout the year, and that there was no record of complaints about the programs. Ms. Mitchell stated that MSNV has been repeatedly reassured by the County that they were engaged in a permitted use.

Mrs. Harris asked Ms. Mitchell if the children who attended the summer camp had to be students during the rest of the year. Ms. Mitchell stated that, at the present time, they had a Development Condition which required that, but it had not been required in the past. Mrs. Harris stated that their flier stated "summer camp" and learning more about environment through non-academic activities. Mrs. Harris felt this could be interpreted as non-academic in nature. Ms. Mitchell stated that, when the flier was recently produced, it described the type of program being offered at that time. Ms. Mitchell stated that the type of program they had offered over the years had been varied. She said that some years it had been very academically oriented, particularly in regard to the older children. The younger children, three (3) to six (6) years of age, were involved in a program with more of a theme approach. During the past year, for example, they had a medieval theme for the program, which they would not consider academic. Mrs. Harris asked Ms. Mitchell if, when someone signs up for a program and has to pay a year's tuition, the summer camp is included. Ms. Mitchell stated that it was not.

In support of the Zoning Administrator's decision, Aileen Reynolds, 8901 Burke Road, Burke, Virginia, stated that, as a parent volunteer, she served as President of the Montessori School of Northern Virginia. Ms. Reynolds elaborated on the child care situation in Northern Virginia and the need for more programs to relieve the deficit. Ms. Reynolds referred to the Comprehensive Plan, the emphasis placed on private sector providers, and the need for the County to assist such organizations. Ms. Reynolds stated that, in their recent special exception process, staff established that MSNV satisfied the location guidelines for child care centers.

Mrs. Thonen asked Ms. Reynolds if the teachers who taught during the school year were part of the staff which taught in the summer. Ms. Reynolds stated that most of the summer staff consisted of teachers who taught during the school year.

Mrs. Thonen stated to Ms. Gwinn that, when she was calling schools in an effort to gather information for this hearing, it appeared to her that the State requirements are the same as shown in the special exception, setting only the minimum number of days but not setting the maximum number of days of which a school year must consist. Ms. Gwinn stated that it was her understanding that the State only set requirements for the minimum number of days.

Larry S. Williams, 11427 Meath Drive, Fairfax, Virginia, stated that he is the parent of two children at MSNV, also serving as a parent volunteer as Chairman of the Building and Grounds Committee, and spoke in support of the Zoning Administrator's decision. Mr. Williams stated that schools operating up to minimum standards produced a generation of students unable to compete in the global business community; unschooled and uncaring of their environment; in many cases, even unable to identify the continents on a globe. He stated that MSNV students, by contrast, cry on the last day of school instead of bolting for the doors. They go on, he said to be representative in disproportionate numbers in the gifted and talented programs. Mr. Williams addressed the definition of a normal school year and the need for a longer school year because of a thirst for knowledge experienced by the children in this area. Mr. Williams stated that, for some children, the summer program can be an important component in developing a solid foundation. Mr. Williams stated he believed that the recreational aspect of the summer program did not diminish the program's impact. Mr. Williams stated he was aware that school systems across the nation were considering remedial actions which include the extension of the school year, inclusion of summer programs, and extension of school hours.

Andrew Brzozowicz, 6209 Wilmington Drive, Burke, Virginia, stated that he has two children at MSNV, plus the fact that his wife is a primary teacher there. Mr. Brzozowicz expressed concern about the defeat recently of the bond issue dealing with providing funds for year-round SACC programs in the public schools. He stated that this was further indication that the existing public school programs were unable to meet the demand for before and after school care for the growing number of children in this County. Mr. Brzozowicz stated that the Comprehensive Plan for Fairfax County encourages public and private groups to work together in these efforts.

Mrs. Harris stated that she has three (3) children and that she elects, sometimes, to send them to Fairfax Schools when they offer recreational programs during the summer. She stated that she felt that it was her decision to take that course of action. She stated that it was Mr. Brzozowicz' decision to send his children to the MSNV summer program. The point was, she said, that the summer enrollment was not a prerequisite for the children to be accepted for the next school year. Mrs. Harris asked Mr. Brzozowicz if he thought that in 1967, when "they" said a normal school year, that they thought that meant twelve (12) months. Mr. Brzozowicz said that times have changed in that regard.

Susan Lee, 8917 Ball Hill Place, Burke, Virginia, spoke in support of the Zoning Administrator's decision. Ms. Lee addressed the definition of "normal school year," and stated she is also a teacher at MSNV, and supported the summer program as part of the normal school year.

Ellen Hambleton, 7117 Woodland Drive, Springfield, Virginia, spoke in support of the Zoning Administrator's decision and stated that, from second grade on, she and all of her brothers and sisters attended summer recreation programs in the Fairfax County School System at Crestwood School, Washington Irving, and Robert E. Lee, as early as 1958. She stated that her friends who went to private schools, such as Congressional and Flint Hill, attended summer camps at their private schools. She stated that the atmosphere of the County School buildings, whether under the administration of the Fairfax County Schools or the Fairfax County Recreation Departments, and the use of the facilities for children in the summer, have not changed since 1967. She said she did not think the use for summer activities by private schools has changed since 1967. She stated that she sent her children to Fairfax County summer recreation programs, but did not consider them to be different than a private school's programs.

Mrs. Harris stated that, where she lived, they didn't have summer facilities in the schools. She asked Ms. Hambleton if she considered them part of the normal school year. Ms. Hambleton stated that her mother considered them normal. She said there were six children in her family and, when school got out, they were all signed up for the summer recreation program at Crestwood, every year, and that she did consider it normal. Ms. Hambleton stated that she believed the same programs existed in the public schools as in the private schools.

The Board made reference to earlier statements by Mr. Mooney regarding complaints about the School. Ms. Gwinn stated that County Zoning files did not show a history of complaints in connection with the operation of MSNV. She stated she first became aware of some concerns about the school the past summer, but did not find anything else in the files regarding any past history of problems. She said that the issue regarding the camp was posed to Mr. Shoup in a meeting with some citizens and was prompted by the special exception application. She stated that her determination, however, was made in response to a citizen inquiry. Ms. Gwinn stated that her office was not aware of the School being in violation for approximately twenty years. Even though Mr. Monney stated there had been four violations, she that Mr. Mooney may have filed four complaints, but her office did not find any violations. Ms. Gwinn stated that, concerning the issue of the caterpillar, part of the special exception approval which the School obtained on August 6 was to allow some additional uses for the addition of a parking area. She stated that the School went through the process of obtaining a special exception, but did not need a building permit, only site plan approval which they obtained.

She stated that the activity referred to was necessary to make use of the special exception; i.e., expanding the parking lot. Because of all the citizens' concerns, Ms. Gwinn stated that her staff spent a tremendous amount of time investigating this situation before issuing the Non-Residential Use Permit for the special exception. As a result of the investigation into the citizens' concerns, appropriate Conditions were imposed when approving the special exception. Ms. Gwinn stated that her office was very careful to make sure that all was as it should be and that, if any problems existed, her office would be aware of them from the beginning. Ms. Gwinn stated, with regard to the normal school year, that Leslie Johnson was present and had spoken to Robert Marshall of the Instructional Services of the Fairfax County School Board, who noted that summer programs, both academic and enrichment oriented, are offered at elementary schools. Mr. Marshall stated, she said, that the programs usually run from 9:00 a.m. until 12:00 Noon, for a maximum duration of five weeks. Ms. Gwinn stated that Mr. Marshall informed Ms. Johnson that these activities had been offered throughout the County. She said that there were three types of programs which would vary from area to area. In addition to the academic and enrichment programs which might be open to students within an area, individual schools may make the decision to offer programs geared to their own students, and that there also may be accelerated programs offered. Some of the school-based programs may run for three weeks, Ms. Gwinn stated. Ms. Gwinn stated there may also be some recreational programs being offered, but those are being run by the Park Authority.

Mrs. Harris asked Ms. Gwinn if a fee was required for the summer programs, and if transportation was also provided by the parents. Mrs. Harris stated that she was not required to pay for her child to learn math during the school year but, if she signed him up for one of the summer programs, she was under the impression that she would have to pay extra. Ms. Gwinn stated that, because she was less familiar with the subject than Mrs. Harris, she accepted Mrs. Harris' premise that she would have to pay for a summer math program but she stated that, just because there was a charge for the summer math program, it did not mean that it was not part of the school program.

Ms. Gwinn addressed the possibility of any suggestion that her decision was made because there was tremendous community support and stated that the suggestion was false. She stated that the question was posed, her office looked at the Zoning Ordinance and the special permit, and it was her office's judgment that the activity was permissable. She stated that community support had nothing to do with the decision.

Mrs. Thonen referred to 1980, when the special permit amendment application was submitted to change the ages of the children. She said it was her understanding that, anytime a special permit or special exception came before the appropriate Board, conditions could be added, and asked Ms. Gwinn if her understanding was correct. Ms. Gwinn stated that it was a difficult question to answer and it may be something that had come up recently. Ms. Gwinn stated that the amendment was to change the age range for students. Mrs. Thonen stated that she knew it was true for special exceptions and was pretty sure it was the same with special permits that, if the Board wanted to add any new conditions, that was the time to do it. Mrs. Thonen referred to the time that the special exception came before the Board of Supervisors (BOS) and asked if that would not have been an appropriate time to consider the definition of the normal school year. Mrs. Thonen stated that she would presume the subject did not come up at that time and asked Ms. Gwinn if it had. Ms. Gwinn stated that she did not know the answer, but agreed with Mrs. Thonen as to the appropriate time. Ms. Gwinn stated that her decision was made prior to the BOS' action on the special exception and that it had always been her position that the definition was certainly within the scope of the BOS' authority when addressing the special exception, but she was not prepared to speak on that subject.

Acting Chairman Hammack told Mr. Mooney he would give him two minutes for rebuttal.

Mr. Mooney stated that eighty percent of the children who go to the Montessori School would not even be required to go the Fairfax County School System. He referred to the comparison being made with activities offered by Fairfax County. He stated that, when they talk about elementary school, they are talking about middle school and high school. He stated that the elementary schools do not really have the programs that he was talking about for summer school. He stated that when elementary was referred to, staff and the Zoning Administrator were really talking about middle-high. Regarding the 1967 ruling, Mr. Mooney stated that the group of citizens who met with the County representatives agreed that they would defer back to the Board of Zoning Appeals, based upon a decision in 1967, on what constituted the normal school year, because the citizens contended that in 1967 the normal school year was nine months and the School contended it should have been twelve months, based on the Zoning Administrator's comments. Because of that, he said, the citizens referred the decision to the Board of Zoning Appeals. Mr. Mooney stated that the School was built after the subdivision was built. He contended that Amusement Park's have themes, but schools have curricula, in his opinion. He stated that he believed the summer session had a theme and not a curriculum. Mr. Mooney stated he believed that the child care facility was muddling the issue. He asked if they are running a day care center or a school. Mr. Mooney stated that the decision about the summer camp should be a legal decision and not based upon the Zoning Administrator's ruling or on her work load, which he stated is what Mr. Shoup told him. Mr. Mooney stated that Mr. Shoup had told him that, "...if he didn't rule this way, they would have an inordinate amount of work and all they'd be doing is enforcing restrictions all the time," which was interrupted by sounds of disbelief from the Board; to which Mr. Mooney responded by saying, "there were witnesses there ma'am, there were three of us there and

Supervisor Davis was there, so he probably spoke out of turn and that's what got us riled up and made us move in this direction to begin with...it's why we felt we had been so abused. The process had been circumvented. Due process had not been used. We feel due process should be used and you have the process (in the) County to do it...and we feel if the School wants to do things, let them do it that way. Thank you for your time."

Acting Chairman Hammack declared the public hearing closed.

Mrs. Thonen made a motion to uphold the determination of the Zoning Administrator. She stated that she had spent a great deal of time reading the material on this appeal and checking with different people. She said she had listened to what Mrs. Harris had said about paying for summer activities, and acknowledged that it may be true, but she said that the Montessori School received payment for every session provided by their school, so the fact that summer school required payment does not mean that it is not part of the curriculum. She stated that they have the same teachers teaching during the rest of the year as they have during the summer camp and it is a fact that they do teach photography, archaeology, music, and art, which are classes that are taught in other schools. Mrs. Thonen stated that she did call several religious schools in the area and they also have summer classes. She pointed out that a maximum term was not included in the definition of a normal school year and, in checking with the State, she found that emphasis is placed upon making sure that the minimum requirement is met. If the minimum is not met, there can be no qualification as a school of general education. Mrs. Thonen also pointed that there were other opportunities when the appellant could have requested that changes in the school year be defined, specifically in 1980 at the time of consideration of the special exception. Mrs. Thonen said that, from all the information she had gathered, the requirement was that a normal school year consisted of five days a week for seven months a year. She believed the Montessori School had met that qualification and she could not find any area where they had not met the standards for a school of general education. For all these reasons, Mrs. Thonen stated that she made a motion to uphold the Zoning Administrator.

Mr. Ribble seconded the motion.

Mrs. Harris stated that she would not support the motion. Mrs. Harris stated that she would like to go on record as stating that the Zoning Administrator, Jane W. Gwinn, and Mr. (William) Shoup had taken on issues of a much greater scope than this and that she has never known either one of them to back away because they thought there were going to be a lot of appeals. Mrs. Harris stated that they had taken on an enormous number of people before and have never backed away once, so she did not believe that Mr. Shoup would have supported a decision that he believed was not right just because he thought that not doing so would encourage more appeals to come forth in the future. Mrs. Harris also stated that, based on a normal school year and what was decided in 1967, if she chose not to send her children to summer school, or summer camp, or summer recreation, it was her choice and decision. She stated that, for nine months of the year she did not have a choice, but had to send her children to school. Mrs. Harris was not of the opinion that a normal school operates year round. Mrs. Harris stated that she agreed with many of the things that Mrs. Thonen said but, for the reasons she stated, she could not support the motion.

Acting Chairman Hammack stated that the interpretation of the Zoning Administrator is reasonable, based upon her review and the review of her staff of applicable ordinances and what is permitted in a school of general education. Acting Chairman Hammack stated that, as he saw it, the essence of Ms. Gwinn's interpretation is based upon the Zoning Ordinance, which permits activities such as the summer camp. Acting Chairman Hammack said that he did not believe that Mr. Mooney had demonstrated that the summer camp program was not educational, as it may serve more than one purpose when dealing with young children, some of whom are hardly ready to be involved in academic curricula on a twelve-month basis. Acting Chairman Hammack stated that, in looking over the 1967 Board of Zoning Appeals Conditions, he did not find that the Development Conditions contained any limitation on the length of the school year, which he said was of some consequence in his mind because Mr. Smith, who was not present but is still a member of the Board, was very careful to limit the hours of operation and some of the other activities that could take place. He stated that he was quite sure that if it was the Board's intention to limit the school year to less than twelve (12) months, they would have and could have done it at that time. Acting Chairman Hammack stated that, furthermore, in looking at Article 20, the definition of a school of general education, he believed that the Zoning Administrator was correct in that to be accredited as the type of school in question, the school was required to operate a minimum length of time, a certain number of days per week with the exception of Holidays, in order to be accredited; but he did not believe there was a limitation on the operation of the school at other times of the year. Acting Chairman Hammack stated that, for the reasons he outlined, he would support the interpretation of the Zoning Administrator.

Mrs. Thonen stated that never for a minute did she think that Bill Shoup would make a statement such as Mr. Mooney had attributed to him regarding the reason for making the determination. She stated that she knew Mr. Shoup well because he used to be a member of the Board of Zoning Appeals staff and that she never saw him back off from work.

Mrs. Harris asked Ms. Gwinn to clarify the fact that, while the motion which was made in 1967 did not specify a school of general education, it was automatically assumed to be a school of general education because Section 30.7.2 was cited. Ms. Gwinn stated that was the case.

Page 437, November 13, 1990, (Tape 1), (JAMES C. MOONEY APPEAL, A 90-M-016, continued from Page 436)

Acting Chairman Hammack pointed out that the Section cited in 1967 still reads the same and that there was not and is not a maximum stated. Acting Chairman Hammack stated that he strongly believed that, had the Board intended to apply a maximum length to the normal school year, they would have, since they did apply specific guidelines to hours of operation, no weekend activities, etc. Acting Chairman Hammack pointed out that Chairman Smith had been active on the Board until recently, when his health began causing him problems. He said it was unfortunate that he was not present to give the Board guidance in this case.

The motion to uphold the Zoning Administrator's decision carried by a vote of 3-1; Mrs. Harris voted nay. Chairman Smith, Vice Chairman DiGiulian and Mr. Kelley were absent from the meeting.

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Page 437, November 13, 1990, (Tape 2), Scheduled case of:

9:00 P.M. ANTIOCH KOREAN BAPTIST CHURCH, SP 90-M-048, appl. under Sect. 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 4.1981 acres located at 6355 Lincolnia Rd., zoned R-2, Mason District, Tax Map 72-1((1))54.

Selwyn P. Thint, Agent for the applicant, PSI Design Group, 5510 Cherokee Avenue, Alexandria, Virginia, came forward and requested a deferral of this application in order to have time to address the concerns of the staff, reflected in the staff report.

Mike Jaskiewicz stated that staff had no object to the request.

Acting Chairman Hammack asked if there was anyone present, pro or con, who had any interest in this request and there was no response.

A hearing date of February 12, 1990 was requested by Mr. Thint and Mr. Jaskiewicz stated that February 12, 1990 at 9:15 a.m. was available.

Mrs. Thonen made a motion to defer SP 90-M-048 to February 12, 1990 at 9:15 a.m. Mr. Ribble seconded the motion which carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

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The Board took a short recess at this time.

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Page 437, November 13, 1990, (Tape 2), After Agenda Item:

Request for Reconsideration
Larry B. and Claudia Elizabeth Ralston, SP 90-M-039
Heard on November 8, 1990

This item was discussed earlier in the meeting, but William H. Hansbarger, Esquire, 301 Park Avenue, Falls Church, Virginia, was not present earlier, so he now requested an opportunity to address the request. Mr. Hansbarger asked the Board to grant a request for reconsideration because he believed that, since there had been no complaint about the construction of the garage until it had been finished, the only recourse the applicant had was to come before the Board of Zoning Appeals. Mrs. Thonen stated that she had voted against the request because of the immense size and bulk of the garage and, as Mrs. Harris enjoined, it was as big as the house. Mr. Hansbarger stated that he was trying to work out a solution with the adjoining neighbor to have the boundary line adjusted to convey 4.9 feet to the applicant, by subdividing if necessary, and then giving the neighbor a perpetual easement over the land that he had conveyed. Mr. Ribble asked Mr. Hansbarger how much time he would need. Mr. Hansbarger stated that he would like about thirty (30) days to implement his plan. Mrs. Harris asked Mr. Hansbarger if he had talked with Mr. Frazier. Mr. Hansbarger stated that he had tried to talk with Mr. Frazier, and had gone to his house, but had not heard from him yet. Mr. Hansbarger maintained that the neighbors had not complained about the addition until after it was built. Mrs. Thonen said that the neighbors had maintained that they had complained about the size of the addition before the area had even been surveyed, telling the applicant that it appeared to be too close. Mrs. Thonen further stated that the fact that the garage was so large and protruded so far into the back had a great deal of bearing on the Board's decision.

Mrs. Thonen made a motion to reconsider the Board's reconsideration and Mrs. Harris seconded the motion. Mrs. Thonen asked if there were any objections and made a motion to schedule a reconsideration for Larry B. and Claudia Elizabeth Ralston, SP 90-M-039 in thirty (30) days.

Acting Chairman Hammack stated that he believed the Board needed to vote on the motion to reconsider. He reiterated the motion and stated that it had been seconded. The motion carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

Page 438, November 13, 1990, (Tape 2), (REQUEST FOR RECONSIDERATION, LARRY B. AND CLAUDIA ELIZABETH RALSTON, SP 90-M-039, continued from Page 437)

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board needed to make a motion to reconsider approval of the Resolutions of November 8, 1990. Mr. Ribble so moved. Mrs. Harris seconded the motion to reconsider the approval of the Resolutions of November 8, 1990. The motion carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting. Acting Chairman Hammack restated that it had been moved and seconded that decision to approve the Resolutions of November 8, 1990 would be reconsidered.

Mrs. Thonen said she believed the hearing would need to be advertised if, indeed, the application were to be reconsidered. A discussion ensued regarding the proper procedure to give Mr. Hansbarger an opportunity to work out a solution to the problem.

Mr. Ribble quoted from Mr. Hansbarger's letter, wherein he requested reconsideration of the application and intended to provide additional testimony. Mrs. Thonen stated her objection to reconsideration of the issues in the application. Mr. Hansbarger stated that he was changing his request from what he had requested in his letter.

Acting Chairman Hammack stated that he believed that Mr. Hansbarger was now requesting that the Board consider deferral of approval of the Resolution on their earlier decision. Acting Chairman Hammack stated that, if the Board allowed Mr. Hansbarger an additional thirty (30) days, as he requested, he might not need another hearing, but he could then request a reconsideration if he failed to work something out. Acting Chairman Hammack stated that no decision was being made to hear new testimony. If Mr. Hansbarger failed to work something out in thirty (30) days, he would renew the request made in the letter before the Board, requesting reconsideration.

Acting Chairman Hammack asked for a vote on deferring decision on the approval of the Resolution for SP 90-M-039 until December 11, 1990 at 11:45 a.m. The motion carried by a vote of 3-1; Mrs. Thonen voted nay. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

Because the Board had made a motion which cancelled their approval of the Resolutions for November 8, 1990, Mrs. Harris made a motion to approve the Resolutions of November 8, 1990, with the exception of the Ralston case. Mr. Ribble seconded the motion which carried by a vote of 4-0. Chairman Smith, Vice Chairman DiGiulian, and Mr. Kelley were absent from the meeting.

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Page 438, November 13, 1990, (Tape 2), Scheduled Item:

JAMES C. MOONEY APPEAL, A 90-M-016

Mr. Mooney, who had been before the Board earlier in the evening to argue his appeal, requested permission to be allowed to speak again.

Mr. Mooney stated that, during the course of the proceedings, many times things are said which later are found not to be what one may have wanted to say. Mr. Mooney stated that he had an apology to make because of a disparaging remark that should not have been made when misquoting a statement which Mr. Shoup allegedly had made. He stated that what Mr. Shoup actually said was that, "If, in fact, a school year was found to be only nine months, they would so busy enforcing the restrictions, they would have no time to do anything else." Mr. Mooney stated that he was sorry if any reference he made might have been taken any other way and it was unintended.

Acting Chairman Hammack thanked Mr. Mooney and added that Mr. Shoup had never been afraid to take on a case that was controversial.

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As there was no other business to come before the Board, the meeting was adjourned at 10:40 p.m.

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

Paul W. Hammack, Jr.
Paul Hammack, Acting Chairman
Board of Zoning Appeals

SUBMITTED: December 20, 1990

APPROVED: January 8, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 27, 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 DiGiulian were absent from the meeting.

Mr. Hammack called the meeting to order at 9:13 a.m. and Mrs. Thonen 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. Ribble seconded the motion which carried by a vote of 5-0.

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Page 439, November 27, 1990, (Tape 1), Scheduled case of:

9:00 A.M. BESSIE M. SHULTZ, SP 90-L-056, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow shed to remain 2.3 ft. from side lot line and 1.1 ft. from rear lot line (12 ft. min. side yard and 10 ft. min. rear yard required by Sects. 3-307 and 10-104) on approx. 11,600 s.f. located at 3902 Lakota Rd., zoned R-3, Lee District, Tax Map 82-2((5))(F)25. (DEFERRED FROM NOVEMBER 8, 1990, FOR CONTRACTOR TO BE PRESENT)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Shultz replied 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, stated that this case had been deferred from November 8, 1990, in order for the contractor to be present to represent the applicant. She stated that the applicant is requesting approval of a special permit to allow a shed to remain 1.1 feet from the rear lot line and 2.3 feet from the side lot line.

Mr. Cope, engineer with B & B Remodeling, 310 W. Maple Avenue, Suite 193, Vienna, Virginia, contractor for the applicant, stated that the existing shed replaced an older one. He stated that he is a licensed roofing and siding contractor and was not aware that a shed over 150 square feet required a building permit until he was contacted by Ms. James. Mr. Cope stated that the shed was constructed to Code and that the height of the shed was his fault because he had not checked into the restrictions prior to construction.

In response to questions from the Board, Mr. Cope stated that the shed is anchored to a concrete slab, therefore it cannot be moved. He added that the existing shed is approximately 50 square feet larger than the previous shed, and because of the A-frame roof peak, the shed is 3 to 4 feet higher. Mr. Cope stated that the present shed was built on the existing concrete slab with the exception of a slight extension towards the front property line and is no closer to the lot lines than the previous shed.

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

Mrs. Thonen stated that she believed that the error was made in good faith and made a motion to grant the request subject to the development conditions contained in the staff report dated October 30, 1990.

Ms. James stated that staff would have no objection to revising development condition number 3 to reflect "six months" for planting the additional screening.

Mrs. Thonen accepted the revision 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 90-L-056 by BESSIE M. SHULTZ, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow shed to remain 2.3 feet from side lot line and 1.1 feet from rear lot line, on property located at 3902 Lakota Road, Tax Map Reference 82-2((5))(F)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 November 27, 1990; and

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

The Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

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

2. A building permit shall be obtained for the shed which indicates that all requisite inspections have been made and building codes met within sixty (60) days of the date of approval of this application.

3. A minimum of six (6) evergreen shrubs six (6) feet in height shall be planted around the front and sides of the shed within six (6) months of the date of approval of this application.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. This special permit shall be null and void if the above listed conditions are not met.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 440, November 27, 1990, (Tape 1), Scheduled case of:

9:00 A.M. COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-2, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 82-S-102 for a country club to allow addition of land area for development of a 9 hole golf course on approx. 158.3763 acres located at 5110 Ox Rd., zoned R-C and WS, Springfield District, Tax Map 68-1((1))(1)17,18,20; 68-3((1))(1)pt. 6. (DEF. FROM 6/21/90 AT APPLICANT'S REQUEST. DEF. FROM 9/11/90 FOR ADDITIONAL INFORMATION)

Acting Chairman Hammack noted that the Board had received a request for a deferral.

Greg Riegle, Staff Coordinator, explained that this application was tied directly to an application submitted by the Fairfax Covenant Church having to do with the deletion of land area which the Country Club planned to incorporate into its application. Mr. Riegle stated that in September the Board denied the Church's application and since that date the Country Club has not submitted any new submissions to staff as to their intentions. He added that he had discussed this with the Country Club's representative who indicated the Country Club still wished to pursue its request but because staff had not yet received any revisions staff recommended an indefinite deferral of the Country Club's application.

Page 441, November 27, 1990, (Tape 1), (COUNTRY CLUB OF FAIRFAX, INC., SPA 82-S-102-2, continued from Page 440)

Acting Chairman Hammack asked if the applicant's representative was present. Hearing no reply, he noted that a letter had been submitted to the Board from the Country Club's attorney, Steve Best, indicating concurrence with staff's recommendation of an indefinite deferral.

Mrs. Thonen so moved. Mrs. Harris seconded the motion.

Acting Chairman Hammack stated that he believed that under the circumstances the deferral was a good recommendation.

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 441, November 27, 1990, (Tape 1), Scheduled case of:

9:15 A.M. HAROLD KRIVELL, JR., SP 90-A-063, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain approx. 6.1 ft. from side lot line (12 ft. min. side yard required by Sects. 3-307 and 10-104) on approx. 25,057 s.f. located at 5623 Ravenel La., zoned R-3, Annandale District, Tax Map 79-2((2))(73)13.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Krivell replied 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. She stated that the rear of the property abuts Lake Accotink Park, is developed with a single family dwelling, and is zoned R-3. Ms. James stated that the applicant was requesting approval of a modification to the minimum yard requirements based on an error in building location for a framed shed which is 10.6 feet in height. She stated that a minimum side yard of 12 feet is required in the R-3 District and Sect. 10-104 of the Ordinance states that no accessory structure exceeding 8.5 feet in height may be located in any minimum required side yard; therefore, a 12 minimum side yard is required, thus the applicant was seeking a modification of 5.9 feet to the minimum side yard requirement.

Ms. James called the Board's attention to development condition number 2 which recommended plantings around the shed. She stated that staff would not object to changing the time to "six months."

In response to a question from Mrs. Thonen about the easement, Ms. James explained that a sanitary sewer easement runs over both property lines and that the shed was measured from the property line.

Mrs. Harris noted that it appears that there is screening around the shed and asked if the planting suggested by staff is in addition to those already there. Ms. James stated that it was.

The applicant, Harold G. Krivell, 5623 Ravenel Lane, Springfield, Virginia, came forward and stated that the shed was built in good faith and he believed that he had complied with all guidelines. He stated that one of the guidelines that he had followed was the Ravensworth Farms Covenants and Restrictions which were filed with the County in 1962. Under those covenants, Mr. Krivell stated that point 10 stipulates that, "no building shall be located nearer than 8 feet to an interior lot line except that no side yard shall be required for a garage or other permitted accessory building located 60 feet or more from a minimum building setback line." Mr. Krivell explained that he believed that the shed is approximately 130 feet from the front of the lot and 60 feet from the minimum setback line. He stated that the shed is constructed 6 feet from the easement rather than 5 feet that is recorded on his lot. Mr. Krivell added that the other 10 feet of the easement is on the neighbor's property.

Mr. Krivell explained that the shed was constructed in its present location because the lot is a sloping lot and in the areas that do not slope there are gas lines. On the south side of the lot, he stated there is a flood easement and pointed out that there is a drainage problem in the area where the other sheds are located. He stated that there are approximately 79 trees in the rear of the lot with many of them being 3 foot in diameter. (He submitted photographs to the Board of other sheds in the neighborhood that have received variances, special permits, or are in violation of the Ordinance.) Mr. Krivell submitted a copy of a letter from the Chairman of the Architectural Review Committee to the Board and read a portion of the letter into the record stating that the acceptance was based solely on appearance. He stated that he had received no negative comments from the neighbors with the exception of one individual. In closing, Mr. Krivell stated that he would be willing to put plantings around the shed but wanted to await the outcome of the public hearing.

In response to a question from Acting Chairman Hammack, Mr. Krivell replied that the neighbor's house on Lot 12 was approximately 75 to 80 feet away.

Acting Chairman Hammack called for speakers in support of the request and hearing no reply he called for speakers in opposition.

James Kwait, 5621 Ravenel Lane, Springfield, Virginia, owner of Lot 12, came forward and submitted a copy of his presentation to the Board. He summarized his written comments by stating that the shed is obtrusive to his property and the park like setting of his property is negatively impacted by the size, location, height, and color of the applicant's shed. Mr. Kwait stated that the shed is very definitely in violation of the Ordinance which he believed was prepared for just this type of situation. He pointed out that there is a sanitary sewer easement 5 feet on the applicant's property and 10 feet on his property and any attempt on his part to install barriers similar to the applicant's would be limited by that easement. Mr. Kwait stated that he believed shifting the shed to within the 12 foot setback would mitigate its obtrusiveness to his property. He added that he believed there were other locations to locate the shed and that the shed can be seen from his recreation room, where he spends a lot of his time. Mr. Kwait called the Board's attention to page 2 of the staff report and noted that the requested plantings will take some time to be effective; however, shifting the structure, planting, and repainting the structure might make a significant difference.

Acting Chairman Hammack informed Mr. Kwait that his allotted time for speaking had expired.

In summation, Mr. Kwait called the Board's attention to the final point in his written presentation which responds to the applicant's statement of justification.

In response to a question from Mrs. Thonen, Mr. Kwait replied that the applicant's house is painted a dark grey and the shed is a bright battleship grey with white trim.

Mr. Kelley asked the speaker if he had taken any action during construction of the shed. Mr. Kwait answered that he had talked to the applicant and invited him to come into his house to look at the shed from his viewpoint and offered to help relocate the shed.

Mr. Kwait stated that he would find the shed objectionable even if there are plantings added, in response to a question from Acting Chairman Hammack. He added that the shed is directly up against the sewer easement and if the plantings cannot be placed in front of the shed they will have little impact. Acting Chairman Hammack asked if it would be acceptable if the color was changed and Mr. Kwait answered it would help.

Margo Wilson, fiancee of Mr. Kwait, came forward and stated that she objected to the color of the shed as it gave the appearance of a public shower type of structure set among the trees.

In response to question from the Board regarding other possible locations, Mr. Krivell replied that the flat area of his lot is very wet and there is a gas line located there. He agreed there is a possibility of moving the shed 6 feet forward and added that the shed is sitting on concrete blocks.

In rebuttal, Mr. Krivell stated that the photographs submitted by the neighbor are from the lot line rather than from the neighbor's house and give a different perspective of what the neighbor really sees from his living room. He added that the neighbor has to look beyond his own shed to see the one on his property. Mr. Krivell explained that he built the shed because the carport could not be enclosed without replacing the entire slab. He stated that he had 5 to 6 foot pines that he could plant behind the shed.

Mrs. Harris asked if he could plant the trees in the easement and Mr. Krivell stated that he had discussed this with staff and he had been told that it could be done.

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

Mrs. Harris made a motion to deny the request for the reasons reflected in the Resolution.

Acting Chairman Hammack agreed with the motion and stated that he believed that the applicant had failed to demonstrate that the shed would not be detrimental to the neighbor.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-A-063 by HAROLD KRIVELL, JR., under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain approximately 6.1 feet from side lot line, on property located at 5623 Ravenel Lane, Tax Map Reference 79-2((2))(73)13, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

Page 443, November 27, 1990, (Tape 1), (HAROLD KRIVELL, JR., SP 90-A-063, continued from Page 442)

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 27, 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 25,057 square feet.
4. The non-compliance was done in good faith.
5. The reduction will not impair the intent and purpose of the Zoning Ordinance but the applicant can easily move the structure.
6. Whenever possible, the Board should try to enforce the minimum yard 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 as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

Mrs. Thonen seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 1990.

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Page 443, November 27, 1990, (Tapes 1-2), Scheduled case of:

9:30 A.M. WARREN A. AND JACQUELYN CULPEPPER, SP 90-D-062, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow roofed deck to remain 7.0 ft. and eave to remain 4.0 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307) on approx. 10,836 s.f. located at 1720 Margie Dr., zoned R-3, Dranesville District, Tax Map 30-3((13))36.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Culpepper replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Michael Jaskiewicz, Staff Coordinator, presented the staff report and stated that the subject property is zoned R-3, contains 10,836 square feet, and contains a one-story walkout single family detached dwelling. The applicants are requesting approval of a special permit for a modification to the minimum side yard requirement based on an error in building location to allow the existing building addition to remain 7.0 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the applicants are requesting a modification of 5.0 feet to the minimum side yard requirement. The Zoning Ordinance allows an extension of 3 feet into the minimum yard for roof overhangs, but the roof overhang is located approximately 4.0 feet from the side lot line. Therefore, the applicants are requesting a modification of 8.0 feet to the minimum side yard requirement for the overhang.

The applicant, Warren Culpepper, 1720 Margie Drive, McLean, Virginia, came forward and stated that he had not prepared a fancy lawyer presentation, but he did understand that if he did not prevail that one might be involved. He asked the Board if they had read the paperwork associated with the case.

Mrs. Thonen assured the applicant that the Board had received all documentation. Mr. Ribble noted that the letter submitted by the applicant was not legible and asked him to address those comments.

Mr. Culpepper continued by stating that he had submitted a plan and obtained a building permit which was approved as built. He stated that the Ordinance requires the supports for the roof, which are over both the deck and the carport, to be 12 feet from the lot line. Mr. Culpepper stated that he put the supports and roof exactly where he had indicated on the plan and Don Smith, who has now retired, approved the permit. He stated that he was confused as to how there could be a problem when he built the structure like he had indicated on the plan.

In response to questions from Acting Chairman Hammack, Mr. Culpepper replied that he did not recall when he did the construction but that he had done what he was told to do and he was a "little bent out of shape" that somebody did not like it.

Mr. Culpepper stated that it made no sense to him that there was a different set of regulations for a carport and a deck when they are under the same roof. He called the Board's attention to a letter from his next door neighbor, who is the most affected by the structure, which stated that he had no objection.

Acting Chairman Hammack informed the applicant that the Board had received letters in opposition. Mr. Culpepper stated that he did not care to see them.

Mr. Culpepper then read excerpts from a few of the letters that he had in support of the request.

Acting Chairman Hammack asked the applicant to address the land use issues and told him it was not a popularity contest. Mr. Culpepper disagreed.

Mr. Culpepper stated that he was an honest, hard working, Marine fighter pilot, who is medically retired because of insulin dependency and bouts of depression. He stated that he had always found it hard to "roll over and play dead" or to accept that he could not do something that he really wanted to do or had to do. He stated that he had done three overseas unaccompanied tours, two in Viet Nam. During that time, he could not control his diabetes with diet and upon completion of that tour he was relocated to Cherry Point, North Carolina.

Acting Chairman Hammack informed the applicant that his allotted time for speaking had expired.

In summary, Mr. Culpepper stated when he returned 15 years ago from his tour in Viet Nam, his neighbor, Grady Fuller, moved into the neighborhood and has done nothing but aggravate the neighbors and terrorize the children since he moved into the neighborhood.

In response to a question from Mr. Ribble, Mr. Culpepper replied that his neighbors had not approached him during the construction.

Mrs. Thonen noted that the approved structure and the one built looks different. Mr. Culpepper disagreed. Mrs. Harris stated that the plan noted that the deck was to be no closer then 12 feet from the side lot line and the roofed deck would then align with the outside of the shed, thus maintaining a 12 foot distance from the side lot line.

Mr. Culpepper explained that the rafters go all the way out to the supports. He stated that this was done at the request of a County Inspector by his wife and the carpenter while he was in the hospital suffering from depression.

With respect to the violation, Mr. Culpepper stated that he could not understand exactly what violation exists.

Mrs. Thonen stated that he built the structure too close to the property line. Mr. Culpepper disagreed and again stated that it was built as approved by Mr. Smith. Mr. Culpepper explained that the deck had to be built that far out because the supports were in the ground in concrete as shown on the approved building plan. He agreed that if the deck had not been extended out to the supports there would be no problem.

Mr. Culpepper read an excerpt from a letter that he sent to William Shoup, Deputy Zoning Administrator, which stated that, "I tried to do too much and got in over my head. It was unduly complicated because I put the deck and the carport under the same roof and there was different regulations for each of them and nobody could understand how to interpret it." He stated that Mr. Smith approved the plan because he considered the eave overhang requirement 3 feet into any minimum required yard.

Acting Chairman Hammack called for speakers in support of the request.

William A. Duggan, 1708 Margie Drive, McLean, Virginia, stated that he had been a neighbor of the applicants since 1970 and that he did not believe that the addition was a detriment to the neighborhood. He added that many of the neighbors have added decks and carports. Mr. Duggan stated that the applicant and his family have been very active in the neighborhood and he believed that the applicant is an honest man. With respect to the County Inspectors, he stated that he had also had problems and stated that he understood how confusing the process could be. Mr. Duggan asked the Board to grant the request.

Patricia Daul, 1724 Margie Drive, McLean, Virginia, stated that she believed that the deck looked really nice and stated that Mrs. Culpepper had done the best she could to follow the instructions while Mr. Culpepper was in the hospital.

Robert Dubois, 7007 Gerard Street, McLean, Virginia, stated that he believed that the structure added to the neighborhood and that it is an attractive structure. He added that it would be a shame if the applicant had to remove the structure.

There were no further speakers in support of the request and Acting Chairman Hammack called for speakers in opposition to the request.

Hunter Harrison, 6849 Old Dominion Drive, McLean, Virginia, represented Mr. and Mrs. Fitzpatrick, adjacent neighbors to the applicant on the opposite side of the house. He stated that the applicants experienced problems under a prior building permit and the initial structure was found not to exist as originally approved. When that error was discovered, the applicants were granted an administrative variance for the violation, which robbed the neighbors of the right to protest. In this permit, Mr. Harrison stated that the applicants have repeatedly violated the terms of the permit. He stated that there are parts of the permit that have not yet been built and although the deck looks clear now, the applicant is authorized to construct a room, which will enclose most of the structure. Mr. Harrison disagreed with the applicant's testimony and stated that there was no safety reason for extending the roof out to the lot line and that he believed that showed premeditation on the part of the applicant. He called the Board's attention to a walkway that the applicant constructed which goes all the way around, which is in violation. He stated that the applicant's hot tub was not built as approved since the applicant rotated the hot tub 90 degrees toward the other deck and extended it to the rear yard.

In response to questions from Mrs. Thonen, Mr. Harrison replied there are no buildings around the jacuzzi, but there is a 4 foot deck.

Mr. Harrison stated that he did not believe that the Board could find that the applicant had acted in good faith.

Acting Chairman Hammack asked the speaker to summarize as his allotted time for speaking had expired.

In summation, Mr. Harrison asked the Board to deny the request.

In response to questions from the Board, Mr. Harrison replied that the Fitzpatricks contacted the County when he saw the roof being erected; therefore, the applicant has been on notice since day one. He explained that the applicant extended the existing slab in addition to the other construction.

Jane Kelsey, Chief, Special Permit and Variance Branch, read the guidelines for a deck and carport from Sect. 2-412 of the Zoning Ordinance, in response to a question from Mrs. Thonen.

Tom McGuire, 1717 Margie Drive, McLean, Virginia, stated that he was opposed to the structure based on its appearance as it changed the looks of the neighborhood.

Mr. Ribble asked the speaker if he had approached the applicant at any stage of the construction. Mr. McGuire explained that he no longer lives at the property on Margie Drive and did not see the structure until he visited his property.

Grady Fuller, 1721 Margie Drive, McLean, Virginia stated that he strongly opposed the structure because he did not believe what the applicant had done was right.

In rebuttal, Mr. Culpepper stated that he did not believe that the staff had really understood what he had planned to construct, since he had asked permission to build a carport and deck under one roof. He stated that he was not aware of any violations associated with the deck. Mr. Culpepper stated that he had modeled the deck after a similar one on his block with the only difference being the walk across the front that goes from the deck to the front door of his house. With respect to the jacuzzi and the hot tub, he explained that he had built that at his wife's request and stated that he would finish the construction as told to do.

Mrs. Harris stated that she did not understand why the eave is so much larger than the deck. Mr. Culpepper stated that the deck can extend 3 feet and it was approved by Mr. Smith. He added that the only difference was the extension of the deck which the carpenter did at the request of the County Inspector.

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

Mr. Ribble made a motion to grant the request as he believed that the applicant had acted in good faith and pointed out that things do sometimes get confused. He stated that he remembered another case where a building permit had been issued and the applicants built the addition on the opposite side of the house. He said he did not know what Mr. Smith, with Zoning Administration, told Mr. Culpepper, but that he belived that Mr. Culpepper understood Mr. Smith to say that it was all right for him to proceed.

Mr. Kelley stated that he would reluctantly second the motion as he did not believe there was any bad faith involved.

Mrs. Thonen stated that she would also support the motion because she could understand how the mistake happened because there was more then one section of the Ordinance involved.

Mrs. Harris stated that this was a difficult case, but she would not support the motion because the applicant could move the deck back a little to bring the structure into compliance.

Acting Chairman Hammack stated that the applicant had the structure all laid out on the building permit that was approved. Although he did not like the result, the County had issued a permit and the applicant had constructed the deck based on what he believed he had the authority to do. Thus, the applicant had acted in good faith, and the County had issued the building permit in error.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-D-062 by WARREN A. AND JACQUELYN CULPEPPER, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow roofed deck to remain 7.0 feet and eave to remain 4.0 feet from side lot line, on property located at 1720 Margie Drive, Tax Map Reference 30-3((13))36, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 27, 1990; and

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

The Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This 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.

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 this development condition.

Mr. Kelley seconded the motion which carried by a vote of 4-1 with Mrs. Harris voting nay. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 1990. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 10:50 a.m. and reconvened at 11:00 a.m.

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Page 447, November 27, 1990, (Tape 2), Scheduled case of:

9:45 A.M. JOSEPH P. BAILEY AND MHUNG BAILEY, SP 90-S-047, appl. under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow addition to remain 19.6 feet from one street line of a corner lot (25 ft. min. front yard required by Sect. 3-203), on approx. 13,009 s.f. located at 12701 Heatherford Pl., zoned R-2 (developed cluster), Springfield District, Tax Map 66-2((5))364. (DEF. FROM 10/9/90 - NOTICES NOT IN ORDER)

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McGinnis replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Michael Jaskiewicz, Staff Coordinator, presented the staff report and stated the application was deferred from October 9th to allow the applicants' agent to meet the notice requirement set forth in the Zoning Ordinance.

He stated that the applicants co-own Lot 364 which is 13,009 square feet, is zoned R-2, and is developed with a two-story single family detached dwelling. The applicants are requesting approval of a special permit for a modification to the minimum front yard requirement based on an error in building location to allow the existing sunroom to remain 19.6 feet from the Ashleigh Road right-of-way. The Zoning Ordinance requires a minimum front yard of 25 feet; therefore, the applicants are requesting a modification of 5.4 feet to the minimum front yard requirement.

In response to a question from Mrs. Harris, Mr. Jaskiewicz replied that the sunroom was shown on the grading plan as outlined on page 2 of the staff report.

The applicants' agent, Robert McGinnis, 120 North Lee Street, Falls Church, Virginia, came forward. He explained that the applicants entered into a contract while the dwelling was under construction and asked that a sunroom be included with the house. When the sunroom was staked, Mr. McGinnis stated that it was done incorrectly and the error was not discovered until the applicants prepared to move into the house. Mr. McGinnis stated that it would be a great hardship to the applicants if the sunroom had to be removed.

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

Mr. Kelley made a motion to grant the request subject to the development conditions contained in the staff report dated October 2, 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-047 by JOSEPH BAILEY AND MHUNG BAILEY, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirement based on error in building location to allow addition to remain 19.6 feet from one street line of a corner lot, on property located at 12701 Heatherford Place, Tax Map Reference 66-2((5))364, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 27, 1990; and

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

The Board has determined that:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

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

1. This special permit is approved for the location and the specified dwelling addition shown on the plat ((prepared by Runyon, Dudley, Anderson Associates, Inc. and dated (revised) July 3, 1990)) submitted with this application and is not transferable to other land.

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

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 which carried by a vote of 5-0. Chairman Smith and Vice DiGiulian were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 448, November 27, 1990, (Tape 2), Scheduled case of:

10:00 A.M. OAKTON BAPTIST CHURCH, VC 90-S-095, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21.0 ft. from front lot line (40 ft. min. front yard required by Sect. 5-307) on approx. 0.87 acres located at 14001 Sullyfield Circle, zoned I-3, WS, HC, Springfield District, Tax Map 34-4((1))39.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Strickland 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 explained that the church is requesting a variance to the front lot line in order to construct an addition. When the Virginia Department of Transportation (VDOT) constructed a service road adjacent to the property, Mr. Riegle stated it created a second front yard on the property, thus causing the need for the variance.

Donald E. Strickland, with Monaco and Strickhouser, P.C., 4248-B Chain Bridge Road, Fairfax, Virginia, came forward and stated that the property was originally purchased by the Episcopal Diocese in 1953 and the first building was constructed in 1900. He stated that one of the Mosby Rangers and a Fairfax County Judge is buried in the cemetery on the subject property. The applicant purchased the property in 1985 and until this year there were two accesses to the property, with one being off Route 50. In January 1990, the Highway Department condemned the area behind the church and closed the access from Route 50. Following that change, Mr. Strickland explained the site had to be redesigned to incorporate that change and the site plan was submitted and is pending in the Department of Environmental Management, awaiting the outcome of the public hearing. Although the addition would meet the rear setback, Mr. Strickland explained that it would not meet the front yard setback.

With respect to the standards for a variance, Mr. Strickland stated that he believed that the church had met the standards and the hardship is unique, almost to the point of confiscation. He asked the Board to grant the request.

In response to a question from Mrs. Harris, Mr. Strickland replied that the front of the church will become a glassed in lobby but the existing front of the church will not be altered.

There were no speakers, either in support or in opposition, and Acting Chairman Hammack 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 November 13, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-S-095 by OAKTON BAPTIST CHURCH, under Section 18-401 of the Zoning Ordinance to allow addition 21.0 feet from front lot line, on property located at 14001 Sullyfield Circle, Tax Map Reference 34-4((1))39, 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 27, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is I-3, WS, and HC.
3. The area of the lot is 0.87 acres.
4. The applicant has met the nine required standards for a Variance.
5. Through no fault of the applicant, the highway department constructed a service drive which changed the rear yard to a front yard thereby creating two front yards on the property.
6. The applicant has specifically met Standards 1, 2, and 3 with respect to an extraordinary and unusual situation.
7. The strict application of the Zoning Ordinance will alleviate an undue hardship on the applicant.
8. The undue hardship is not shared generally by other properties in the I-3 zoning district with respect to the bulk angle.

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

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

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

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

difficulty or unnecessary hardship that would 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. A Building Permit shall be obtained prior to any construction.

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.

Mr. Kelley and Mr. Ribble seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 450, November 27, 1990, (Tape 2), Scheduled case of:

10:15 A.M. E. LAKIN PHILLIPS, SP 90-C-065, appl. under Sect. 3-103 of the Zoning Ordinance to allow accessory dwelling unit on approx. 4.3014 acres located at 2733 Centreville Rd., zoned R-1, Centreville District, Tax Map 25-1((1))pt. 34.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Roberts 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 applicant was requesting approval for an accessory dwelling unit on 4.3 acres located on Centreville Road. The subject property is located on Centreville Road, is zoned R-1, and is presently developed with a single family detached dwelling. The adjacent property is developed with residential uses and two churches. There is a pending rezoning application filed on the subject property, RZ 87-C-076, which proposes to rezone the property from R-1 to R-2. The application is scheduled to be heard by the Planning Commission on March 27, 1991.

He added that there was a previous request to establish an accessory dwelling on the subject property heard by the Board on July 1990, SP 90-C-034, which was denied. Mr. Riegle informed the Board that a copy of Minutes and Resolution pertaining to that case was contained in Appendix 7 of the staff report. He stated that the proposed accessory dwelling unit was identical to that which was proposed in July 1990. The accessory dwelling unit will be located at the rear of the existing dwelling, will consist of 1,776 square feet, and is proposed to be a rental unit. In reviewing the application, staff had some concerns about the amount of lot coverage proposed. The existing dwelling is a multi-story structure. The accessory dwelling will be a single structure and will have a significant amount of coverage involved. However, staff did note that the proposed construction met all the requirements of the R-1 and R-2 Districts; therefore, the structure could be built by right. He called the Board's attention to pages 4, 5, and 6 of the staff report which outlined staff's findings that the application met the applicable standards and staff's recommendation of approval.

Joseph Roberts, Roberts Comp Plan, Inc., 10500 Safer Avenue, Suite C, Fairfax, Virginia, planner and agent for applicant, came forward. He stated that the applicant has resided in Fairfax County since 1964 and has resided on the subject property since retiring as a professor from George Washington University in 1986. Mr. Roberts stated that the applicant is 75 years old, and although he is still very active, he is looking ahead to the time when it will be more convenient for him to live on one level as opposed to the four levels in the existing dwelling. Mr. Roberts explained that the opportunity of being able to rent out the principle dwelling will afford the applicant eased living conditions, as well as an alternate source of income. He noted that staff had indicated that the application met all the applicable requirements of the Zoning Ordinance as it relates to accessory dwelling units. Mr. Roberts stated that the proposed unit will not represent an unusual change in the neighborhood in terms of size or footprint of the combined principle dwelling and the accessory dwelling unit. He submitted a handout to the Board showing the ultimate size of the lot given the pending rezoning on which the principle and proposed accessory dwelling unit will be placed. (Mr. Roberts showed the Board a exhibit depicting structures in the vicinity of the applicant's property.) He asked the Board to approve the request.

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

In response to question from Mrs. Harris, Mr. Riegle replied that the gross floor area ratio includes basements but it does not include cellars. The applicant computed the lower floor of the existing structure as a basement and thus included the square footage in the computation from which the size of the accessory structure is determined.

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

Mrs. Harris made a motion to granted the request for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated November 13, 1990. She further stated that even though this application does not look like the other applications the Board has approved for accessory dwelling units, it did meet the standards the Board has to go by; thus, the Board had to approve it.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-065 by E. LAKIN PHILLIPS, under Section 3-103 of the Zoning Ordinance to allow an accessory dwelling unit, on property located at 2733 Centreville Road, Tax Map Reference 25-1((1))pt. 34, 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 27, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 4.3014 acres.
4. The applicant has presented testimony showing compliance with the general standards for the Special Permit.
5. The accessory dwelling unit does not look like the other units that the Board has reviewed, but the accessory structure is 34 percent of the total of the principal dwelling unit and the accessory unit, and the guidelines allow 35 percent.
6. The structure is within the building restriction lines.

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 by Alexandria Surveys dated June 28, 1989 and revised through June 14, 1990. This Special Permit is for 4.3 acres of land. Prior to any subdivision of this land, the special permit shall be amended to reflect the accurate acreage.

3. This Special Permit is subject to the issuance of a building permit for internal alterations to the existing single family dwelling for the establishment of an accessory dwelling unit.

4. The accessory dwelling unit shall occupy no more than 35 percent of the principal dwelling unit; a maximum of 1,776 square feet.

5. The accessory dwelling unit shall contain no more than two bedrooms.

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.

Page 452, November 27, 1990, (Tape 2), (E. LAKIN PHILLIPS, SP 90-C-065, continued from Page 451)

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.

10. There shall be a minimum of four (4) parking spaces provided on the site. The existing parking shall be deemed to satisfy this requirement.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 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 which carried by a vote of 4-1 with Mr. Hammack voting nay. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 5, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 452, November 27, 1990, (Tape 2), Scheduled case of:

10:30 A.M. JOHN M. THOBURN AGENT FOR ROBERT L. THOBURN T/A FAIRFAX CHRISTIAN SCHOOL & THOBURN LIMITED PARTNERSHIP, A 90-C/D-017, appeal under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that if the private school of general education as approved in Special Exception SE 88-C/D-098 is implemented, then Condition #6 of SE 88-C/D-098 limits the use of the five structures on the property to those uses set forth in the special exception and precludes residential use of the structure at 10700 Sunset Hill Road as long as the special exception use exists, on approximately 29.15 acres located at 10700 Sunset Hills Road and 1620, 1624, 1628, 1630 Hunter Mill Road, zoned R-E, Centreville and Dranesville Districts, Tax Map 18-3((1))4, 5; 18-3((3))2, 3, 4A.

Acting Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Thoburn replied that it was. Acting Chairman Hammack then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Acting Chairman Hammack informed the appellant that there was some question as to whether the Board would hear the case due to the lateness that the Board had received the staff report. He asked Ms. Gwinn if she had any comments.

Jane Gwinn, Zoning Administrator, agreed that perhaps it would be beneficial for the case to be deferred in order for the Board to review the staff report.

Acting Chairman Hammack asked the Board for comments. Mrs. Thonen stated that she believed that it would be unfair to the appellant for the Board to hear the case without first reviewing the staff report. She then made a motion to defer. Mr. Ribble seconded the motion.

Mrs. Harris stated that she was prepared to go forward but supported Mrs. Thonen's motion. She stated that the other members should have an opportunity to review the staff report before hearing the appeal.

Mr. Thoburn asked that the Board hear the case and defer decision. Mr. Kelley stated that he was opposed to that approach.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a deferral date and time of December 11, 1990 at 11:00 a.m.

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 453, November 27, 1990, (Tape 2), Scheduled case of:

Approval of Minutes for September 27, 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 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 453, November 27, 1990, (Tape 2), Scheduled case of:

Acceptance of Airston Appeal

Mrs. Thonen made a motion to accept the appeal as being complete and timely filed and scheduled the public hearing for January 15, 1991 at 11:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 453, November 27, 1990, (Tape 2), Scheduled case of:

Acceptance of Kenneth E. Lester Appeal

Mrs. Thonen made a motion to accept the appeal as being complete and timely filed and scheduled the public hearing for January 24, 1991 at 11:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 453, November 27, 1990, (Tape 2), Scheduled case of:

Intent to Defer Hie C. Kim and Won Kil Paik, Trustees of the Virginia Presbyterian Church, SP 90-L-050

Mrs. Thonen made a motion that the Board issue an intent to defer the above referenced case. Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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Page 453, November 27, 1990, (Tape 2), Scheduled case of:

Rescheduling of Cases to January 10, 1991

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that due to the number of cases on the January 8th night meeting Vice Chairman DiGiulian requested that a special meeting be scheduled for January 10th. Vice Chairman DiGiulian also requested that no more than three cases be scheduled for that date. Ms. Kelsey explained that because of the 90-day requirement there were ten cases and an appeal scheduled on January 15th. She asked the Board's permission to move three more cases to January 10th from January 15th.

Mrs. Harris suggested that four cases be moved and made a formal motion to that effect. Mr. Ribble seconded the motion which carried by a vote of 5-0. Chairman Smith and Vice Chairman DiGiulian were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

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

Paul Hammack, Jr.
Paul Hammack, Acting Chairman
Board of Zoning Appeals

SUBMITTED: January 17, 1991 APPROVED: January 24, 1991

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 29, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; and Robert Kelley. Chairman Daniel Smith and John Ribble were absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 455, November 29, 1990, (Tape 1), Scheduled case of:

9:00 A.M. PENDER UNITED METHODIST CHURCH, SPA 83-C-068-1, appl. under Sect. 3-103 of the Zoning Ordinance to amend SPA 83-C-068 for church and related facilities to allow temporary trailer, shed addition, nursery school, and child care center on approx. 5.0 acres of land located at 12500 Lee Jackson Memorial Hwy., zoned R-1, Centreville District, Tax Map 45-4((1))8.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Taddeo replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the applicant, Pender United Methodist Church, was requesting an amendment to their existing Special Permit, SP 83-C-068, to permit the addition of a portable classroom trailer, a shed, and a nursery school/child care center. The Church is open daily from 8:00 a.m. to 3:00 pm, and holds worship services primarily on Sundays with two morning services at 8:30 a.m. and 11:00 a.m. Sunday School is scheduled from 9:40 a.m. to 10:40 a.m. throughout the year. There are three full time employees. The site presently consists of a one-story church sanctuary with 540 seats attached to a two-story building, an adjacent play area, a storage shed, and a paved parking lot for 185 vehicle spaces. The floor area ratio allowed is .15; this application provides .13.

The proposed classroom trailer would be used to handle the anticipated overflow of the Sunday School and would be utilized for adult Sunday School between 9:30 a.m. and 10:45 a.m. on Sunday mornings throughout the year. The maximum number of adults in attendance in the proposed trailer would be 45 with 2 teachers. The shed addition is for the purpose of storing items used for church ministry to the community.

The nursery school and child care center have been operating for several years without benefit of special permit approval. The nursery school/child care center has served approximately 40 children with 4 employees during the hours of 9:00 a.m. to 12:00 p.m. The applicant has now proposed to have a total of 75 children in attendance with 14 employees. The hours of operation would be from 9:00 a.m. to 12:15 p.m. for the morning session and from 1:00 p.m. to 3:30 p.m. for the afternoon session.

Mr. Jaskiewicz said that staff found that the portable classroom trailer, shed addition, and the existing nursery school and child care center could be incorporated with minimal intensification of the site. He further stated that the uses would be in harmony with the Zoning Ordinance and the Comprehensive Plan provided that they are adequately screened from Route 50 and the adjacent Fair Woods subdivision. Staff believed that such screening should include both landscaping and physical barriers to alleviate visual and noise impacts. Furthermore, the placement of the trailer would be for a temporary classroom use and as such should be conditioned for a 5 year term.

Mr. Jaskiewicz stated that with the implementation of the Proposed Development Conditions in Appendix 1, the application met the applicable Zoning Ordinance standards and staff recommended approval.

Mr. Jaskiewicz noted that for the purpose of clarification, proposed Development Condition 5 should read, "The maximum daily enrollment for the nursery school and child care center shall be limited to a total of 75 children"; and proposed Development Condition 6 should read, "The maximum hours of operation for the nursery school and child care center shall be 9:00 a.m. to 3:30 p.m., five days a week."

Mrs. Thonen referred to a letter from a resident in Fair Woods Subdivision concerning the screening and asked if the proposed landscaping would screen the church from Route 50. Mr. Jaskiewicz assured Mrs. Thonen that the landscaping would be reviewed by the County Arborist and expressed his belief that the required screening would be sufficient. Mrs. Thonen referred to page 2 of Appendix 1 and asked if the existing strip of mature trees would remain.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained to Mrs. Thonen that staff had not received the referenced letter; therefore could not speak to the issue. Mrs. Thonen asked Ms. Kelsey to review the letter and answer the inquiry later in the public hearing.

The agent for the applicant, Richard F. Taddeo, Trustee, Pender United Methodist Church, 12500 Lee Jackson Highway, Fairfax, Virginia, addressed the Board and assured Mrs. Thonen that the mature trees would remain. He explained that the proposed site for the trailers and shed was on the other side of the property and the area referred to in the letter would remain in its present condition.

Mr. Hammack asked Mr. Taddeo to examine the letter and the attached map. After reviewing it, Mr. Taddeo stated that the proposed trailer and shed would not cause the removal of any trees and all the existing trees on the property would remain.

Mr. Taddeo stated that he had no problem with the staff report and thanked the staff for their work on the application.

In response to a question from Mr. Hammack regarding the reason for the temporary trailer, Mr. Taddeo replied that the trailer would be used for the overflow from the Sunday School. He explained that the church plans to build an addition within the next 5 years, and reassured the Board that the applicant understood that the trailer would be temporary.

Mr. Hammack questioned the need for such a large storage shed and asked what materials would be used in the construction of the shed. Mr. Taddeo stated that the church stored materials for the Western Christian Fairfax Ministry and explained that the shed would be sectioned off so that people in need would be able to select the different items. He further stated that he did not have the architectural drawing of the shed, but noted that it would be frame. Mr. Hammack stated that he would not support a large warehouse type shed if it was not a compatible structure.

Vice Chairman DiGiulian called for speakers in support and the following citizens came forward.

Guy Hamilton, 3813 Chantilly Road, Chantilly, Virginia, President of the Chantilly Estates Citizen Association, expressed his support for the application and said that the church not only served the religious needs of the community, but also the needs of small associations that do not have meeting facilities. He stated that the church is an asset to the community and asked the Board to grant the request.

Bob Parks, 4821 Piney Branch Road, Fairfax, Virginia, addressed the Board and stated that he is a member of the church and noted that the facility was beautiful and well kept. He said that the proposed shed would be an improvement to the property and would be in harmony with the existing structure. He stated that the church served the community both religiously and socially. He noted that the Sunday school facility was overloaded and asked the Board to grant the request.

There being no further speakers in support and no speakers in opposition, Vice Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 83-C-068-1 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 13, 1990, with changes in Conditions 5 and 6 as recommended by staff and the addition of Condition 15 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT AMENDMENT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 83-C-068-1 by PENDER UNITED METHODIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 83-C-068 for church and related facilities to allow temporary trailer, shed addition, nursery school, and child care center, on property located at 12500 Lee Jackson Memorial Highway, Tax Map Reference 45-4((1))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 29, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 5.0 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 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Kephart & Chan, dated November 6, 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 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 except that the submitted Site Plan should include an accurate depiction of the existing parking lot configuration as qualified by Condition No. 5 below.

5. The maximum daily enrollment for the nursery school and child care center use shall be limited to a total of 75 children.

6. The maximum hours of operation for the nursery school and child care center use shall be from 9:00 am. to 3:30 pm., five days a week.

7. There shall be a maximum number of fourteen (14) employees for the nursery school and child care center on site at any one time.

8. The parking lot represented on the plat shall be redesigned and a revised Special Permit plat submitted detailing the changes. The redesign shall be prepared in accordance with the Office of the County Arborist to achieve the following objectives:

   - The provision of a maximum of 185 parking spaces; it is noted that only 150 parking spaces are required by the provisions of the Zoning Ordinance.

   - The final grade and limits of clearing for the parking lot, the location of the islands within the lot and the driveway accesses to Alder Woods Drive shall be designed to preserve the existing quality specimen trees that are currently located in this area of the site to the extent practicable.

   - The provision of transitional screening as required by Article 13 of the Zoning Ordinance using existing quality vegetation to the extent practicable in accordance with the provisions set forth in Par. 4 of Sect. 13-104. A twenty-five (25) foot wide unbroken strip of open space shall be provided in accordance with the Transitional Screening 1 requirements along the western and northern lot lines; however, the specified plantings for the Transitional Screening 1 requirement shall be required only along the northern lot line and the rear 350 feet of the western lot lines. Along the rear portion of the eastern lot line, the twenty-five (25) foot wide unbroken strip of open space may be reduced to a minimum of fifteen (15) feet provided additional plantings are provided to shield the headlights of vehicles parked in the lot. Along the eastern lot line, the specified plantings for the Transitional Screening 1 requirement shall be required only along the rear 300 feet of the lot line. The barrier requirement shall be waived along all lot lines.

9. In order to achieve a coordinated planting design along the Route 50 Corridor, a minimum of three (3) major shade trees supplemented by seven (7) flowering trees, such as Dogwood or Rosebud, shall be maintained within the front yard. The shade trees shall be a minimum of six (6) feet in overall height at the time of planting and shall have an ultimate height of fifty (50) feet or greater.

10. The seating capacity shall not exceed 540 and at least the minimum number of parking spaces shall be provided in accordance with Article 11 of the Zoning Ordinance.

11. Parking lot lights shall not exceed twelve (12) feet in height and shall be shielded to prevent any projection off the church property.

12. Additional plantings shall be provided along the rear and two sides of the trailer and shed and shed addition to soften the impact of these building masses upon the adjacent residential use located to the north. The species, location, planted height and number of plantings shall be reviewed and approved by the County Arborist.

13. The trailer shall be approved for a period of five (5) years from the final approval date of SPA 83-C-068-1.

14. In order to achieve maximum exterior noise levels of 65 dBA Ldn within the play area, noise attenuation structures such as acoustical fencing, walls, earthern berms, or a combination thereof, shall be provided for those outdoor recreation areas unshielded by topography or built structures. If acoustical fencing or walls are used, they shall be architecturally solid from the ground up with no gaps or openings. The structure must be of sufficient height to adequately shield the impacted area from the source of the noise.

15. The existing shed and the proposed addition thereto shall be constructed of frame or of a similar material so as to be compatible with the existing facility and with the surrounding residential community.

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 which carried by a vote of 5-0 with Chairman Smith 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 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 458, November 29, 1990, (Tape 1), Scheduled case of:

9:15 A.M. ODALYS CARBONELL, SP 90-S-067, appl. under Sect. 3-C03 of the Zoning Ordinance to allow home child care facility on approx. 20,000 s.f. located at 6501 White Post Rd., zoned R-C and WS, Springfield District, Tax Map 64-2((4))130.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Carbonell replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, stated that the subject property, outlined in green on the overhead transparency, contains 20,000 square feet, and is located at the entrance of Section 1A of Gatepost Estates, a single family detached subdivision zoned R-C. It is generally located south of Lee Highway, and west and north of Interstate Route 66.

He said that the applicant, Ms. Odalys Carbonell, is a co-owner of Lot 130, and was requesting special permit approval for a Home Child Care Facility. The facility would have a maximum of 9 children at any one time during the weekday hours from 6:00 a.m. to 10:00 p.m. No maximum daily enrollment had been specified by the applicant. Further, the applicant proposed that there would be up to two employees excluding the applicant, within the hours of operation and one employee at any one time.

He noted that the application is the second special permit request for a home child care facility to come before the BZA under the new Zoning Ordinance Amendment. The Amendment permits a Home Child Care facility with a maximum of seven (7) children at any one time in a single family detached dwelling by right. An increase in the number of children permitted (in this case, 9 children) and the employees (in this case, 2 employees) must be approved by the Board of Zoning Appeals.

Mr. Jaskiewicz stated that staff recommended that the Board limit the hours of operation to 6:00 a.m. to 6:00 p.m. due to adverse traffic impacts on the adjacent residences during the evening and limit the total daily enrollment to 12 children due to the existing driveway and parking configuration layout and the need to provide simultaneous parking for the homeowners, the employee, and the clientele. Proposed Development Conditions incorporating these recommendations were included in the staff report.

He informed the Board that Leslie Johnson, Assistant to the Zoning Administrator, was present to answer any questions the Board may have regarding the Zoning Ordinance Amendment.

The applicant, Odalys Carbonell, 6501 White Post Road, Virginia, addressed the Board and stated that her Commonwealth of Virginia, Family Day Care Home, Conditional License, limited her capacity to care for 9 children at any one time. She said that she would like to use the license to its full capacity and noted that quality child care in Fairfax County is in great demand. She stated that her facility had passed the Fairfax County Health Inspections, Fire Marshall Inspections, is listed with the Fairfax County Office for Children, works with the subsidized program to help low income families with their needs, had passed Virginia State licensing inspections, and is approved for the USDA food program.

Ms. Carbonell referred to the letters of support and said that she needed the special permit in order to continue caring for the children. She explained to the Board that the children were delivered to and picked up from the day care at different times; therefore, parking and transportation presented no problems. She referred to staff's recommendation for a 6 foot, board on board, fence to surround the play area and asked that this condition be implemented in early April when the weather is more suitable for installation.

Ms. Carbonell said that for the past year, she has provided an evening child care program for the parents who work evening hours. She expressed her belief that this service has had no detrimental effect on the neighborhood and submitted a petition of support from the neighbors. Ms. Carbonell explained that she is one of the few providers of evening child care and asked the Board to extend the hours of operation from 6:00 a.m. to 10:00 p.m. Ms. Carbonell stated that she would like to care for a maximum of 9 children at any one time between the hours of 6:00 a.m. and 6:00 p.m., a maximum of 4 children between the hours of 6:00 p.m. and 10:00 p.m., and asked the Board to grant the request.

In response to Mr. Hammack's question regarding the number of children that receive evening care, Ms. Carbonell said that she presently provides for 2 children on a drop-in basis and 1 child on a part-time basis.

Mr. Kelley asked if the drop-in children were scheduled. Ms. Carbonell stated that although the service was scheduled there is no payment if the child does not come.

Mrs. Thonen expressed her concerns regarding the evening child care and said that she believed that the 10:00 p.m. pickup would have a detrimental impact on the neighborhood.

In response to Mr. Hammack's question regarding Ms. Carbonell's thirteen hour workday, Ms. Carbonell explained that the children nap for two hours during the day and that the children cared for in the evening are put to bed at 8:30 p.m. She stated that single mothers have need of the evening care because they work at food stores, computer firms, or hospitals. Ms. Carbonell said that if the special permit is granted, she would have one employee from 6:00 a.m. to 6:00 p.m.; and that while she was unsure if there would be a need for another employee from 6:00 p.m. to 10:00 p.m., she would like a provision in the development conditions that would allow for this employee. Ms. Carbonell said that she had canvassed the neighborhood and that the neighbors supported the request.

Vice Chairman DiGiulian called for speakers in support and the following citizen came forward.

William (Chuck) Allen, 603 N. Fillmore Avenue, Sterling Park, Virginia, addressed the Board and said that he just returned from West Germany where he had been involved with the employee's assistance program where he was required to inspect several types of child day care facilities. Mr. Allen explained that his wife, a registered nurse, was required to work the evening shift and that he was unable to pickup his son until 7:00 p.m. He stated that he had investigated many child care facilities in order to provide the best possible care for his son and found that Ms. Carbonell's answered his needs. He noted that because of the staggered hours, there is no traffic or parking problems.

There being no further speakers in support or any speakers in opposition, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen stated that she had concerns regarding the hours of operation, but after reading the petitions and letters of support, she conceded that the late pickups did not present a problem in the neighborhood. She expressed her belief that 10:00 p.m. was too late for the pickup of children in a residential neighborhood, but said that she would be willing to support a request that limited the hours to 8:00 p.m. or 9:00 p.m.

Mr. Kelley stated that he would be willing to support the request for 10:00 p.m., and that he was very impressed with Mr. Allen's statement regarding the need for evening child care. He said he would be more inclined to limit the use to 3 years.

In response to Mr. Hammack's inquiry as to whether she had been providing care from 6:00 a.m. until 10:00 p.m., Ms. Carbonell said that she had been doing so for the past year. She again explained that she cared for children from 2 years to 6 years of age, the children nap for two hours in the day, and the children cared for in the evening are put to bed at 8:30 p.m.

Mrs. Thonen noted that if the evening hours were limited to 9:00 p.m. Ms. Carbonell would not have to put the children to bed.

Mrs. Thonen stated that she had been very reluctant to approve the application but since reading the petition and letters of supports, and listening to the testimony, she could support the request.

Mrs. Thonen made a motion to grant SP 90-S-067 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 13, 1990 with the changes in Condition 3 as recommended by staff and reflected in the resolution.

In response to Mrs. Harris' suggestion that the applicant be given until early April to install the fence required by Condition 6, Mrs. Thonen stated that the standards of a child care center must be met before the use is legal.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-067 by ODALYS CARBONELL, under Section 3-C03 of the Zoning Ordinance to allow home child care facility, on property located at 6501 White Post

Road, Tax Map Reference 64-2((4))130, 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 29, 1990; and

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

1. The applicant is the co-owner of the land.
2. The present zoning is R-C and WS.
3. The area of the lot is 20,000 square feet.
4. There were petitions and letters in support presented to the Board.
5. The staff report and the testimony were supportive of the request.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. The Special Permit for a Home Child Care Facility is granted to the applicant only and is not transferable to other land or persons.

3. The maximum number of children on site at any one time shall not exceed nine (9) children; the total daily enrollment shall not exceed 12 children during the hours of 6:00 a.m. to 6:00 p.m., weekdays and shall not exceed 4 children during the hours of 6:00 p.m. to 9:00 p.m.

4. The side-by-side parking spaces indicated on the plat shall be removed and the area used for vehicular turnaround. No additional parking spaces shall be required nor provided for this use.

5. One (1) employee shall be on the premises at any one time but no more than two (2) employees shall be on the premises during the hours of operation and they shall not be on the premises at the same time.

6. In order to achieve maximum exterior noise levels of 65 dBA Ldn within the play area, noise attenuation structures such as acoustical fencing, walls, earthern berms, or a combination thereof, shall be provided for the outdoor play area, unshielded by topography or built structures. If acoustical fencing or walls are used, they should be architecturally solid from the ground up with no gaps or openings. The structure must be of sufficient height to adequately shield the impacted area from the source of the noise. To partially satisfy these requirements, the applicant shall install a six (6) foot high wood board-on-board fence surrounding the play area.

7. This use shall be subject to Chapter 30 of the Code or Sect. 63.1-196 of the Code of Virginia.

8. This special permit for a home child care use is approved for a period of five (5) years from the final approval date of this Special Permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. This Special Permit shall not be valid until this has been accomplished.

An inspection of this site shall be performed by the Zoning Enforcement Division prior to the issuance of a Non-Residential Use Permit (Non-RUP), to determine compliance with the conditions of the Special Permit and periodically thereafter. A copy of the inspection reports shall be placed in the Special Permit file for this use.

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.

Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 5-0 with Chairman Smith 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 7, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 401, November 29, 1990, (Tape 1), Scheduled case of:

9:30 A.M. STEVEN C. BELLING AND ANNETTE E. GEHM-BELLING, SP 90-P-068, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow 12 ft. high shed to remain 2.9 ft. from side lot line (10 ft. min. side yard required by Sects. 3-407 and 10-104) on approx. 11,287 s.f. located at 2930 Pine Spring Rd., zoned R-4, Providence District, Tax Map 50-3((19))(3)22.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Belling replied that it was. Vice Chairman DiGiulian then asked for disclosures from the Board Members and, hearing no reply, called for the staff report.

Mike Jaskiewicz, Staff Coordinator, presented the staff report. He stated that the staff report had been prepared by Howard Bierman, Planning Intern, Zoning Evaluation Division. He used the viewgraph to point out the location of the property and noted that the surrounding neighborhood consists of single family dwellings, zoned R-4. Mr. Jaskiewicz explained that the application was for a modification to the minimum side yard requirement based on an error in building location to allow the existing accessory storage structure to remain 2.9 feet from the side lot line. The Zoning Ordinance states that an accessory structure in excess of 8.5 feet in height must meet the District's side yard requirement of 10.0 feet; therefore, a modification of 7.1 feet was requested. Mr. Jaskiewicz noted that a copy of a letter, together with photographs, in opposition to the request was included in the Board's package.

The applicant, Steven C. Belling, 2930 Pine Spring Road, Falls Church, Virginia, addressed the Board and explained that he had constructed the shed in the fall of 1986. He stated that he needed the shed to store gardening equipment, auto supplies, and sporting equipment. Mr. Belling stated that he had telephoned the appropriate Fairfax County Office and was told that as long as the shed was under 150.0 square feet a building permit was not required. He said that no height or location restriction was mentioned. Mr. Belling noted that he had chosen the design of the shed to be in harmony with the neighborhood. He stated that the 96.0 square foot shed high windows shield the articles being stored from view and also allows indirect lighting for the work area. Mr. Belling explained that the shed had been located adjacent to the neighbor's shed and is convenient to the driveway. He stated that the area as too shady for a garden, no trees or shrubs would have to be removed, and it blends in with the surroundings. He stated that when he informed the neighbors of his plan to construct the shed, no one had any objections.

Mr. Belling went on to explain that subsequently, the neighbor's shed along with an apple tree had been removed. He stated that on July 18, 1990, the Zoning Enforcement Branch cited him for constructing the shed in violation of Section 10-104 of the Zoning Ordinance. He noted that the shed had been in place for almost four years, the design is aesthetically appealing, the error in building location was made in good faith, the shed would be extremely difficult to remove, and the rear height of the shed is within the 8.5 foot limitation. Mr. Belling stated that if required to adhere to the Zoning requirement, he intends to shorten the height of the shed and add an additional 50.0 square feet. He submitted a petition recommending approval of the application from neighbors and officers of the Pine Spring Civic Association. Mr. Belling asked the Board to specify the landscaping and screening requirements and inquired if a privacy fence could be substituted for the screening. If the request was not granted, Mr. Belling requested a six month extension before compliance must be met.

Mrs. Harris asked Mr. Belling to clarify his statement regarding the addition of 50.0 square feet to the shed. Mr. Belling explained that if he was required to lower the height of the shed, he would add an additional 50.0 square feet in order to retain the same amount of storage capacity.

There being no speakers in support, Vice Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Nancy H. Brooks, 2932 Pine Spring Road, Falls Church, Virginia, addressed the Board and stated that her house abuts the applicant's property and referred to her written statement and pictures presented to the Board. Ms. Brooks said that she had not been consulted about the construction of the shed and noted that she had filed a complaint in March, 1990. She expressed her belief that the applicant realized the shed would be in violation and said she was told by Mrs. Gehm-Belling that if the County ever inquired about the shed, "they would act dumb." Mrs. Brooks informed the Board that Mrs. Gehm-Belling is an officer of the Pine Spring Civic Association which had supported the request. She stated that the applicant was attempting to confuse the issue by placing the blame on the County and on her for filing the

complaint, when the problem is a shed that is in violation. Ms. Brooks said that because she wished to remain friendly with the applicants, she had been hesitant in filing the complaint. Ms. Brooks stated that the applicants had not been sensitive to her position. She asked the Board to deny the request.

Elizabeth B. Baskerville, 2901 Pine Spring Road, Falls Church, Virginia, referred to the letter she had submitted to the Board and said that she has been an acquaintance of Ms. Brooks for approximately 15 year. She stated that Ms. Brooks is a responsible homeowner, a community activist, and former editor of the Civic Association newspaper. She expressed her belief that the large, orange colored shed is an eyesore and that it could have been placed in a more suitable location. Ms. Baskerville asked the Board not to lower the standards of the community and to deny the application.

Vice Chairman DiGiulian called for rebuttal.

Mr. Belling again stated that he had no knowledge of the Zoning Ordinance until after the shed was build. He explained that when the neighbors commented on the height of the shed, he had called the County several times and only when he specifically inquired about height restrictions was he told that the County Libraries would have copies of the Zoning Ordinances. He referred to the pictures which showed the apple tree and shed that Ms. Brooks removed and noted that Ms. Brooks' shed had been an eyesore. Mr. Belling said that he had built his shed in order to screen Ms. Brooks' shed, that it was located at the lowest level of the property, and it blends in well with the area. He referred to the petition of support from the neighbors.

Vice Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny SP 90-P-068 for the reasons reflected in the Resolution.

Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

Mr. Belling asked if the decision meant that the shed had to be removed from its present location or if the height of the shed could lowered. In response to Vice Chairman DiGiulian's request that staff answer Mr. Belling's question, Jane Kelsey, Chief, Special Permit and Variance Branch, stated that while staff could not answer this question, they would direct Mr. Belling to the appropriate County Office.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-P-068 by STEVEN C. BELLING AND ANNETTE E. GEHM-BELLING, under Section 8-914 of the Zoning Ordinance to allow reduction of minimum yard requirements based on error in building location to allow 12 foot high shed to remain 2.9 feet from side lot line, on property located at 2930 Pine Spring Road, Tax Map Reference 50-3((19))(3)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 November 29, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-4.
3. The area of the lot is 11,287 square feet.
4. The non compliance was done in good faith.
5. To leave the shed in its present location would be very detrimental to the next door neighbor.
6. Due to the way the houses are situated on the lots, the shed obstructs the neighbor's view.
7. The shed can be moved in its present state to another area where it would not infringe on the side lot line and this would allow enough space to screen the shed.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

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Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 7, 1990.

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The Board recessed at 10:20 a.m. and reconvened at 10:25 a.m.

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Page 463, November 29, 1990, (Tape 1), Scheduled case of:

9:45 A.M. ELIZABETH S. WOODRUFF, VC 90-V-097, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached garage 5.0 ft. from side lot line and 10.0 ft. from rear lot line (15 ft. min. side yard and 16.10 ft. min. rear yard required by Sect. 3-207 and 10-104) on approx. 15,464 s.f. located at 7952 Bolling Dr., zoned R-2, Mount Vernon District, Tax Map 102-2((12))173.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Ms. Woodruff 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 the site is located east of Fort Hunt Road on the west side of Bolling Drive. It is zoned R-2 and a portion of the rear property line abuts property developed as St. Lukes Episcopal Church. He noted that the request was to permit the construction of a 16.10 foot high detached garage, 5.0 feet from the rear lot line and 10 feet from the side lot line. Mr. Riegle said that the height of the garage established a minimum rear yard requirement of 16.10 feet and that the minimum side yard in the R-2 District is 15.0 feet; therefore, the applicant was requesting a variance of 10 feet to the minimum side yard and 6.1 to the minimum rear yard requirement. He noted that the dwelling on the adjoining lot is 50.0 feet from the shared property line, and the dwelling on Lot 175 is approximately 21.0 feet from the shared lot line.

The applicant, Elizabeth S. Woodruff, 7952 Bolling Drive, Alexandria, Virginia, addressed the Board and stated the request was generated by the unusual shape of the lot. She used a transparency on the viewgraph to point out the minimum 15.0 side and the 16.10 minimum rear yard requirement. She explained that because of the angle of the rear lot line, any increment that brings the proposed structure in from the side lot line would necessitate that it be brought forward as well. Ms. Woodruff said that adhering to the Zoning Ordinance would mean that the garage would be located in the middle of the southwest half of the rear yard and because of the limited space would prohibit access to the front of the garage. She expressed her belief that the proposed location was the best possible site for a garage and noted that neighboring lots do not share the rear lot line configuration problem. Ms. Woodruff stated that she would do extensive landscaping on the western side of the property and asked the Board to grant the request.

Mrs. Harris stated that although the applicant had given logical reasons for the need of a garage there was an existing garage on the property, and any hardship or inconvenience would be self-inflected. She asked Ms. Woodruff why the existing garage could not be used and an addition be added to the house. Ms. Woodruff stated that she needed a two car garage and that adding onto the existing garage would create an adverse impact on the neighborhood. Mrs. Harris referred to the applicant's statement of justification noting that it said that the two car garage would substantially add to the resale value of the property. Ms. Woodruff stated that she needed a two car garage and if the existing garage were expanded a variance would still be needed.

Mrs. Thonen stated that if the applicant added 11.0 feet to the existing garage only one variance would be needed. She noted that the standards are higher for a detached garage. Ms. Woodruff explained that to the rear of the property is the parking lot for St. Lukes Church; therefore, the proposed location is the best possible place for a garage.

Mr. Kelley stated that he had been concerned with the application but upon visiting the site, believed that the proposed location is the best solution for the problem. He noted that if the existing garage were expanded, there would be an adverse visual impact from the street. Ms. Woodruff expressed her belief that if the existing garage were expanded it would destroy the character of the house.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to defer the request for decision only until December 4, 1990. Mrs. Thonen seconded the motion.

After a brief discussion it was the consensus of the Board that a visit to the site would be necessary before a vote on the application could be rendered.

The motion carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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10:00 A.M. SALVATORE J. BELLOMO/JANICE L. BELLOMO, VC 90-C-100, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 16.6 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) on approx. 10,503 s.f. located at 9528 Rockport Rd., zoned R-3, Centreville District, Tax Map 38-1((17))19.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bellomo 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 the subject site is located at the south end of Rockport Road, and northeast of Northside Park near the Town of Vienna. The property is zoned R-3 and is developed with a single family dwelling. It is surrounded by similarly developed lots in the Concord Green subdivision, which are also zoned R-3 and developed with single family dwellings.

She said that the applicants were requesting a variance to allow construction of an addition 16.6 feet from the rear lot line. Sect. 3-307 of the Ordinance requires a minimum rear yard of 25.0 feet in an R-3 District. Thus, a variance of 8.4 feet to this requirement was requested.

Ms. Bettard stated that research in the files of the Office of Zoning Administration revealed that a variance had been previously granted for the deck. On November 6, 1979, the Board of Zoning Appeals (BZA) approved V-258-79, to allow the construction of a deck 19.0 feet from the rear yard. Only one other variance, on Lot 32, was granted by the BZA in the immediate area.

The applicant, Salvatore Bellomo, 9628 Rockport Road, Vienna, Virginia, addressed the Board and stated that they would like to construct a 12.0 by 17.0 foot outdoor room within the limits of the deck. He expressed his belief that the proposed addition would enhance the neighborhood. He noted that the rear of his lot abutted the natural wooded Northside Park. Mr. Bellomo stated that the property was acquired in good faith. He noted the exceptional narrowness, shallowness, steep slope, and the triangular shape of the lot. He explained that in order to provide a driveway, the existing structure was built toward the rear of the lot creating a large front yard and a small rear yard with adverse topography. Mr. Bellomo stated that the southern side yard contained a public easement and the northern side yard contained very steep slopes. He expressed his belief that the proposed site was the only suitable location for the addition. In closing, he stated that many of his neighbors have constructed outdoor rooms, the addition would enhance the neighborhood, the character of the zoning district would not be changed, and that the strict application of the Zoning Ordinance would create a demonstrative hardship.

In response to Mrs. Thonen's question about what the room would be used for, Mr. Bellomo said it would be used to enjoy the outside without being annoyed by the insects. Mrs. Thonen stated that she was concerned because the applicant had previously received a variance for the deck and had returned to request another variance for an addition. Mr. Bellomo stated he had demonstrated a hardship and under the Zoning Ordinance could request a variance.

Mrs. Harris questioned Mr. Bellomo as to the hardship and he said that within the neighborhood there were no triangular lots and they could build an addition by-right. Mrs. Harris noted that Lots 4, 5, 6, 7, 17, 18, and 20 were triangular shaped. Mr. Bellomo explained that structures on these lots were placed closer to the front and did not have the same adverse topographic conditions.

Mr. Kelley asked if the applicant had considered the addition when he originally applied for the deck variance. Mr. Bellomo explained that at the time the deck variance was requested, he had young children and wanted to extend the living area. He further stated that the children were presently in college and the addition would be for his own enjoyment.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny VC 90-C-100 for the reasons reflected in the Resolution. Mrs. Harris seconded the motion.

Vice Chairman DiGiulian called for discussion.

Mr. Kelley stated that he could not support the motion. He expressed his belief that if the addition had been requested with the original variance request it would have been granted. He said that the configuration of the lot and the location of the house on the property justified the applicants' request.

Vice Chairman DiGiulian stated that he could not support the motion, noting that he had voted for the deck variance. He expressed his belief that the applicants' irregular shaped lot, the topographic problems, and the location of the structure on the lot created a hardship.

The vote on the motion to deny was 2-2 with Mrs. Harris and Mrs. Thonen voting aye; and Vice Chairman DiGiulian and Mr. Kelley voting nay. Mr. Hammack was not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

Vice Chairman DiGiulian explained to Mr. Bellomo that 4 affirmative votes were need for the granting of a variance. Mr. Bellomo said that he had established that the denial would restrict a use on the property and that he had presented a case for hardship, and asked what legal procedures were at his disposal. Vice Chairman DiGiulian informed Mr. Bellomo that he had the right to appeal the decision to the Fairfax County Circuit Court or to request a waiver of the 12 month time limitation.

The Board advised Mr. Bellomo to strengthen his position and said that there may be more Board members at the next hearing. Mr. Bellomo then requested a waiver of the 12 month time limitation

Mr. Kelley made a motion to waive the 12 month time limitation for the refiling of a new application. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

In response to Mrs. Thonen's request that staff advise Mr. Bellomo regarding the waiver, Jane Kelsey, Chief, Special Permit and Variance Branch, assured the Board that staff would assist him.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-C-100 by SALVATORE J. BELLOMO/JANICE L. BELLOMO, under Section 18-401 of the Zoning Ordinance to allow addition 16.6 feet from rear lot line, on property located at 9528 Rockport Road, Tax Map Reference 38-1((17))19, 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 29, 1990; and

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

1. The applicants are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 10,503 square feet.
4. The request does not meet the standards necessary for the granting of a variance.
5. The porch would be a convenience and there are many porches in the area that are not closed in.
6. A variance for a deck was previously granted to the applicant and he has reasonable use of the land.

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

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

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

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

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

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

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 2-2 with Mrs. Harris and Mrs. Thonen voting aye; and Vice Chairman DiGiulian and Mr. Kelley voting nay. Mr. Hammack was not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

Mr. Kelley made a motion to waive the 12 month time limitation for the refiling of a new application. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 7, 1990.

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Page 466, November 29, 1990, (Tape 2), Scheduled case of:

10:15 A.M. GLADYS F. BOWERS, VC 90-L-098, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 31.75 ft. from front lot line (35 ft. min. front yard required by Sect. 3-207) on approx. 21,851 s.f. located at 8600 Woodlawn Ct., zoned R-2, Lee District, Tax Map 100-4((1))5.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Bowers 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 the property is zoned R-2 and is located just north of Richmond Highway and east of Fort Belvoir. Adjacent property to the north, south, and east are zoned R-2 and developed with single family detached dwellings. The property to the west is zoned R-20 and is developed with single family attached dwellings.

He stated that the applicant was requesting a variance to the minimum front yard requirement to permit construction of a second story addition to 31.75 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 35 feet in the R-2 district. Therefore, the applicant was requesting a variance of 3.25 feet to the minimum front yard requirement for the proposed addition.

Mr. Riegle noted that the applicant had submitted architectural renderings to better depict the proposed renovations as shown on the viewgraph. He stated that the location of the existing dwelling does not conform to the current minimum yard requirements of the R-2 district, but does meet the definition of a nonconforming use provided by the Zoning Ordinance. He added that the Zoning Ordinance specifies that any changes to such a use must meet the requirements of the current Ordinance; therefore, a variance is required.

Mr. Riegle stated that the applicant's architect was present and also noted the petition of support that was included in the staff report.

Mrs. Harris asked if the extension would extend any further than the existing porch line and Mr. Riegle confirmed that it would not.

The applicant's son, Richard W. Bowers, 8600 Woodlawn Court, Alexandria, Virginia, addressed the Board and stated that his 72 year old mother and his sister, who is totally disabled from cerebral palsy, occupy the house. He explained that for the past 5 years he had lived overseas and had just recently returned to the area. He said that he would like to move into the house in order to assist his mother and sister.

Mr. Bowers stated that the house was built on a larger lot approximately 60 years ago. He explained that over a period of time, the lot had been subdivided which has caused the house

to be situated in an unusual place on the lot. Mr. Bowers said that while the lot is large, the house is very small and he proposes to enlarge the two upstairs rooms and to add a bathroom for his family's needs.

He presented a model of the addition and noted that the proposed addition would be too close to the lot line. He further noted that because of changes in the Zoning Ordinance, a significant portion of the existing structure is in violation. Mr. Bowers stated that the addition would enhance the existing structure, that the footprint would not be changed, the neighbors support the request, and that the application met the nine standards necessary for the granting of a variance.

In closing, Mr. Bowers stated that the proposed improvements are needed so that he can reside there and care for his mother and sister. He expressed his belief that the addition would have no detrimental impact on the neighborhood, the renovations would add aesthetic value to the neighborhood, and the character of the zoning district would not change and asked the Board to grant the request. Mr. Bowers said his architect was present to explain the addition plans in greater detail.

The applicant's architect, Victoria Rixey, 3034 M Street N.W., Washington, D.C., addressed the Board and said that the existing house has two bedroom and one bath on the ground floor, and a small bedroom upstairs. She expressed her belief that the variance request is minimal in nature to both the existing house and neighborhood and does not change the footprint of the structure. Ms. Rixey stated that the neighbors supported the request and the proposed addition would be aesthetically compatible with the character of the existing structure. She explained that the size of the addition was established by many factors such as the existing stairway and chimney which necessitates that the bedroom be located toward the front of the property. She added that architecturally the proposed planned addition would enhance the area.

There being no speakers to the request, Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 90-L-098 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 13, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-L-098 by GLADYS F. BOWERS, under Section 18-401 of the Zoning Ordinance to allow addition 31.75 feet from front lot line, on property located at 8600 Woodlawn Court, Tax Map Reference 100-4((1))5, 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 29, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 21,851 square feet.
4. The property was acquired in good faith.
5. When the house was built in the 1930's, it met all the applicable requirements.
6. The property was resoned subsequent to the construction of the dwelling so the dwelling is a lawful nonconforming use which may remain in its present location.
7. The addition will not intrude any further into the front yard than the existing dwelling.
8. The application meets the nine standards necessary for the granting of a variance.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

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

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

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 which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 7, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 468, November 29, 1990, (Tape 2), Scheduled case of:

10:30 A.M. JOHN W. EDGEMOND, VC 90-P-099, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot 1 having a lot width of 115.0 ft. and proposed Lot 2 having a lot width of 40.0 ft. (150 ft. min. lot width required by Sect. 3-106) on approx. 2.8311 acres located at 11256 Waples Mill Rd., zoned R-1, Providence District, Tax Map 46-4((1))27.

The applicant's attorney, Keith C. Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., 2200 Clarendon Boulevard, 13th floor, Arlington, Virginia, addressed the Board and asked for a deferral. He stated that proposed Development Condition 3 requested the consolidated access of the driveways for Lot 1 and 2. Mr. Martin explained that after receiving the staff report, he consulted the applicant who agreed to the condition. Therefore, a deferral is requested so that the applicant could obtain a revised plat.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted the Board's heavy schedule and suggested a date of February 21, 1991 at 9:00 a.m. Mr. Martin agreed with the suggestion.

Mrs. Thonen made a motion to defer VC 90-P-099 until February 21, 1991, at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 469, November 29, 1990, (Tape 2), Scheduled case of:

10:45 A.M. FAIRFAX COVENANT CHURCH, SPA 87-S-075-2, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 87-S-075 for church and related facilities to allow addition of land area, reconfiguration of parking area and building footprint, and deletion of landscaping on approx. 16.9103 acres located on Ox Road, zoned R-C and WS, Springfield District, Tax Map 68-3((1))pt. 6 and 68-1((1))pt. 20. (OTH GRANTED)

The applicant's attorney, Sarah H. Reifsnyder, 4020 University Drive, Fairfax, Virginia, addressed the Board and requested a deferral. She explained that an issue had been raised by the applicant's engineers regarding the limits of clearing and grading in compliance with the proposed development conditions. Ms. Reifsnyder explained that a slightly revised plat would have to be submitted.

Mrs. Thonen made a motion to defer SPA 87-S-075-2 to February 21, 1991 at 9:15 a.m. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 469, November 29, 1990, (Tape 2), Scheduled case of:

11:00 A.M. HIE C. KIM & WON KIL PAIK, TRUSTEES OF THE VIRGINIA PRESBYTERIAN CHURCH, SP 90-L-050, appl. under Sects. 3-103 and 3-203 of the Zoning Ordinance to allow church and related facilities on approx. 2.452 acres located at 6021 Franconia Rd., zoned R-1, R-2, and H-C, Lee District, Tax map 81-4((2))5, 5A, 6A, 7. (DEFERRED FROM 10/18/90 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and said a motion of intent to defer had been made at the last meeting because the Planning Commission would be hearing the application. She suggested a deferral date of February 21, 1991 at 9:30 a.m.

Mr. Kelley made a motion to defer SP 90-L-050 to February 21, 1991. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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The Board recessed at 11:15 a.m. and reconvened at 11:30 a.m.

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Page 469, November 29, 1990, (Tape 2), Scheduled case of:

11:15 A.M. HARDEE'S FOOD SYSTEMS, INC., VC 90-P-108, appl. under Sect. 18-401 of the Zoning Ordinance to allow open parking 4.0 ft. from front lot line (10 ft. min. front yard required under Sect. 11-102) on approx. 0.71 acres located at 2936 Gallows Rd., zoned C-5, Providence District, Tax Map 49-4((1))-12A. (OTH GRANTED)

Vice Chairman DiGiulian stated that the Board had been advised that the notices were not in order. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that the owner of the subject property also owns the adjacent property, therefore he was not notified. She said there is a letter in the file from the owner that grants the applicant the right to use the property in the requested manner. Ms. Kelsey stated that Mr. Hobson had additional information to present to the Board.

The applicant's attorney, Richard R. G. Hobson, with the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, addressed the Board and noted the two letters of support presented to the Board from the owner of the property. He stated that the letters documented the fact that the owner was notified as required under the Zoning Ordinance.

Vice Chairman DiGiulian accepted the letters as documented proof that the owner of the property had been notified and instructed Mr. Hobson to proceed with his presentation.

Mr. Hobson reaffirmed that the affidavit before the Board was complete and accurate. He expressed his belief that the application was a housekeeping type of request. He explained that it was for a front yard setback variance to the open parking provision under Section 11-102 of the Zoning Ordinance to vary the distance from 10 feet to 4 feet.

Vice Chairman DiGiulian stated that the Board would like to hear the staff report before Mr. Hobson presented his case.

Greg Riegle, Staff Coordinator, addressed the Board and stated that the property is located on the west side of Gallows Road, south of Route 29. He noted that the applicant was requesting a variance to allow the development of open parking spaces to 4 feet from the front lot line. Mr. Riegle said that Section 11-102 of the Zoning Ordinance requires that

off-street open parking be located at a minimum of 10.0 feet from the front lot line. As a matter of background, there is an existing restaurant on the site. The rezoning and special exception approving the redevelopment of the existing facilities on this site were approved by the Board of Supervisors in September of 1989. He stated, that based on an interpretation of Barbara Byron, Director of the Zoning Evaluation Division, it was determined that approval of the rezoning and special exception did not expressly waive the requirements specified in Paragraph 9 of Section 11-102 which are the provision that require the 10.0 foot setback for open parking spaces. Mr. Riegle said that the applicant is requesting a variance to allow parking spaces 4.0 feet from the front lot line. These parking spaces will be immediately adjacent to a sidewalk, but not to the street. He noted the letter of support from the Providence District Supervisor, Katherine K. Hanley, which is included in the staff report.

In response to Mr. Kelley's question as to whether the staff supports the request, Mr. Riegle said that staff does not take a position on variance applications.

Mrs. Thonen said that the staff report stated that the applicant, the staff, the Planning Commission, and the Board of Supervisors all agreed at the time of the rezoning that the application was complete; therefore, this application was a matter of housekeeping. Mr. Riegle stated that he would not contend Mrs. Thonen's conclusion.

Mr. Hobson stated that the application met the qualifications of the Zoning Ordinance. He said that the property was acquired in good faith, has an unusual shape and narrowness, the undue hardship is not generally shared, strict application of the Zoning Ordinance would produce undue hardship and restrict the reasonable use of the property, and the character of the zoning district will not be changed by the changing of the variance. He expressed his belief that the Board of Supervisor had intended to provide the open parking places when they granted the special exception and the granting of the variance would carry out the purpose of the Ordinance as applied and approved by that Board.

Mr. Hobson said that along Merrifield Road there is an existing wall and shrubbery that the applicant would like to preserve and that a building on the immediately adjacent property prevents further acquisition of the property. He asked the Board to grant the request.

There being no speakers to the request, Vice Chairman closed the public hearing.

Mrs. Harris made a motion to grant VC 90-P-108 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated November 13, 1990.

Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

Mr. Hobson requested that the Board waive the eight day waiting period requirement.

Mrs. Harris made a motion to waive the eight day waiting period requirement. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble 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-P-108 by HARDEE'S FOOD SYSTEM, INC., under Section 18-401 of the Zoning Ordinance to allow open parking 4.0 feet from front lot line, on property located at 2936 Gallows Road, Tax Map Reference 49-4((1))12A, 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 29, 1990; and

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

1. The applicant is the lessee of the land.
2. The present zoning is C-5.
3. The area of the lot is 0.71 acres.
4. The property has many of the characteristics necessary for the granting of a variance such as shallowness and shape.
5. The variance request is minimal in nature.
6. The request is in accordance with the Zoning Ordinance.
7. The acquisition of additional land to prevent the need for a variance would be impossible.
8. There is a hardship on the property which approaches confiscation.

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

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

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

Mrs. Harris made a motion to waive the eight day waiting period requirement. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 29, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 471, November 29, 1990, (Tape 2), Scheduled case of:

11:30 A.M. LUCK STONE CORPORATION, SPA 81-S-064-3, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SPA 81-S-064-2 for stone quarry and accessory uses to allow deletion of previously imposed Development Condition on approx. 200.2692 acres located at 15950 Lee Highway, zoned R-C, I-6, NR and WS, Springfield District, Tax Map 64-1((4))7A; 64-1((1))1, 4, 13, 14, 15, 17, 38, and 39. (OTH GRANTED)

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Spence 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 said the property consists of slightly more than 200 acres of land. It is located on both the north and south sides of Route 29 and is zoned R-C and I-6, and is part of the Natural Resources Overlay District and also part of the Water Supply Protection Overlay District.

He stated that the request is for approval of a special permit amendment to modify a development condition imposed by the BZA in 1989 in conjunction of approval of SPA 81-S-064-1. The request specifically pertains to previously imposed Condition 4 as displayed on the viewgraph. He noted that the applicant had requested that a portion of the condition pertaining to the submission of a site plan be deleted or modified. Mr. Riegle stated that concerning this request staff had consulted with the Department of Environmental Management, the Office of Transportation, and the other contributing departments. He stated that they have agreed that it is possible to modify the condition in a manner which would still allow staff to achieve the implementation of the development conditions relating to the right-of-way dedication and the provision of right and left turn lanes into the site. Therefore, staff had recommended a modification of the condition as reflected in the revised proposed development conditions.

Mr. Riegle said that it was staff's understanding that it was the applicant's intention to request a deferral of the decision on the application. He explained that staff and the applicant had reached a point where a conceptual agreement has been reached as to how the condition should be worded; however, the applicant has additional submissions and plans that affect their frontage on Route 29. He noted that staff and the Department of Transportation have agreed to the request for deferral of the decision.

In conclusion, Mr. Riegle noted that since there are no changes to the development or use of the site, staff believes that the implementation of the previously imposed development conditions would provide the mitigation measures and environmental protection necessary for the use to meet the applicable standards for approval. He stated that staff had no outstanding issues.

The applicant's attorney, Royce A. Spence, 7297-A Lee Highway, Falls Church, Virginia, addressed the Board and stated that he had written a letter to the Board dated August 14, 1990, which outlined the applicant's position as to the reason for wanting to change from a site plan to a development plan. He noted that the applicant felt that some of the Zoning Ordinance requirements were extraordinarily restrictive, expensive, and unnecessary. Mr. Spence stated that he also believed that they would conflict with some of the prior development conditions and decisions of the Board of Zoning Appeals.

Mr. Spence stated that he had met with Virginia Department of Transportation and the Department of Environment Management and the basic consensus was that the original submission done in March 1989, was adequate and would preserve the safety of the public. He expressed his belief that it would accomplish the Board's intentions and also save the applicant unnecessary expenses. He stated that the applicant agreed with the proposed revised development condition which required a public improvement plan.

In response to Mrs. Harris' question on whether he was requesting a deferral, Mr. Spence stated that although he would prefer to receive a decision today, he would acquiesce to staff's request. He expressed his belief that a one week deferral would be significant.

In response to Mrs. Thonen's question as to whether a site plan was required, Mr. Spence said that a site plan was only restricted to the entrance, the road work, and did not cover the whole landfill. Again, Mr. Spence stated that he had met with the various County agencies. He asked that the condition as stated in the revised staff report be adopted.

After a brief discussion, it was the consensus of the Board to continue the hearing but to defer the decision.

There being no speakers in support, Vice Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Robert Slattery, an employee of Filmdex, Inc., 15500 Lee Highway, Centreville, Virginia, stated that his company's well had been contaminated with silt. He explained that the company that tested the well believed that the sulfate contamination could be from a rock quarry. He said that he had a long list of problems that were caused by Luck Stone Corporation. Mr. Slattery stated that there were other neighbors present who had expressed concerns regarding the application. He asked if he could comprise a list of the community's concerns and present it to the Board before the final decision is rendered.

Vice Chairman DiGiulian stated that the Board would hold the record open for written testimony.

Mr. Slattery stated that the blasting on the daily basis at the quarry interfered with the company's business. He noted that among other problems the blasting causes traffic to be halted, causes articles to fall from their walls, and creates stone to be thrown in the air.

Mr. Slattery said that the Virginia Run Homeowners had expressed their concerns regarding the blasting and the effect the quarry has on their wells.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board and stated that staff had been unaware of any complaints regarding the quarry. She said that staff had checked with Zoning Enforcement and had been told that there were no complaints lodged against the quarry. Ms. Kelsey noted that the special permit was reviewed on an annual basis and informed the citizens present at the meeting that all complaints should be addressed to Zoning Enforcement.

Mr. Slattery stated that his company is informed before any blasting takes place and that the blasting is also monitored by the quarry.

Ms. Kelsey suggested a deferral date of December 11, 1990 at 12:00 noon. In response to Mrs. Thonen's question, Ms. Kelsey stated that there were twelve cases scheduled on that day.

Vice Chairman DiGiulian stated that the case would be deferred for decision only with only written testimony being accepted.

Mr. Kelley stated that the case before the Board was not the annual review, but a very limited, narrow request. He expressed his belief that it did not encompass the operation and methods and blasting at the quarry.

Mr. Riegle confirmed Mr. Kelley's conclusions and stated that most of Mr. Slattery's complaints were enforcement issues. He emphasized that there were numerous conditions pertaining to blasting and environmental measures and noted that there were no complaints in Zoning Enforcement records.

In response to Mr. Slattery question as to whether the request was for expansion, the Board informed him that this was not the case and that any complaints should be lodged with Zoning Enforcement. They explained that although there is an annual review of the quarry, the variance before the Board dealt with one aspect of the operation.

In response to the Board's inquiry, Mr. Riegle stated that the annual review would be in June 1991.

Mr. Spence stated that the management of the quarry had not been aware of the neighbors' concerns and the testimony from Mr. Slattery was the first indication of any problems. He expressed his desire to meet with the citizen to resolve any issues of concern before the June public hearing.

Mr. Kelley said that the Board would be very interested in the testimony from the community and asked Mr. Slattery to return for the annual review hearing. He asked staff to inform Mr. Slattery of the appropriate County office at which to file the complaint. He also advised Mr. Slattery to meet with Mr. Spence to resolve any issues of concern.

Mrs. Thonen asked Mr. Slattery to inform the other neighbors that Zoning Enforcement is the proper place to lodge the complaints. She explained to Mr. Slattery that the Board set the standards and conditions for an application but did not have enforcement powers.

There being no further speakers in opposition, Vice Chairman DiGiulian called for rebuttal.

Mr. Spence stated that he had received a telephone call from Mr. Dean, Vice President of the Virginia Run Homeowners Association, on the previous day. He said he had explained the nature of the application to Mr. Dean and was told that the Association had no problem with the request. Mr. Spence said that he had attempted to have meetings with the homeowners but was removed from the agenda by Kettler and Scott, the developer who controls the Association. He further added that Mr. Dean had promised to assist him in this matter. Mr. Spence said that the applicant was sensitive to the issues and would be meet with the citizens to resolve any issues of concern.

Vice Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to defer SPA 81-S-064-3 for decision only to December 4, 1990 at 9:30 p.m. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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Page 473, November 29, 1990, (Tape 2), After Agenda Item:

Legal Fees
Ardak Corporation
Reston Inn Corporation

Mrs. Thonen stated that there were two lawsuits pending on these cases against the Board. Mrs. Thonen made a motion to authorize funds of $2,500 for legal fees for Ardak Corporation, In Chancery No. 118717; and $2,500 for legal fees for Reston Inn Corporation, In Chancery No. 118720, in order to retain Brian McCormack, with the law firm of the Dunn, McCormack,

Page 474, November 29, 1990, (Tape 2), (AFTER AGENDA ITEM, LEGAL FEES, ARDAK CORPORATION AND RESTON INN CORPORATION, continued from Page 473)

MacPherson, and Maxfield to represent them. The motion carried by a vote of 4-0 with Mr. Hammack not present for the vote. Chairman Smith and Mr. Ribble were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:00 noon.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Vice Chairman
Board of Zoning Appeals

SUBMITTED: January 29, 1991

APPROVED: February 5, 1991

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on December 4, 1990. The following Board Members were present: Vice Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. Chairman Daniel Smith was absent from the meeting.

Vice Chairman DiGiulian called the meeting to order at 8:00 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman DiGiulian called for the first scheduled case.

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Page 475, December 4, 1990, (Tape 1), Scheduled case of:

8:00 P.M. ALMAS REAL ESTATE, INC., VC 90-M-102, appl. under Sect. 18-401 of the Zoning Ordinance to allow resubdivision of 2 lots into 2 lots of different configuration, with proposed Lot 4A having a width of 12.0 ft. (80 ft. min. width required by Sect. 3-306) on approx. 30,000 s.f. of land located at 3504 Lake St., zoned R-3, Mason District, Tax Map 61-2((17))(K)3 and 4.

Vice Chairman DiGiulian called the applicant's representatives to the podium and asked if the affidavit before the Board was complete and accurate. Mr. and Mrs. Al-Saigh 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. Ms. James stated that the property is located generally south of Route 7, Leesburg Pike, and west of Columbia Pike in the Baileys Crossroads area. She said that the property to the immediate north is developed with apartments and is zoned R-20; the subject property is zoned R-3 and developed with single family detached dwellings.

Ms. James stated that the applicant was requesting a variance to the minimum lot width requirement in order to subdivide the existing lot into two lots: Lots 3A and 4A. She said that the existing single family dwelling in the front will remain and a second lot is proposed in the rear of the property. Ms. James said that the proposed lot width for lot 4A is 12 feet and the Zoning Ordinance requires a minimum lot width of 80 feet for this district. She stated that the applicant, therefore, was requesting a variance of 68 feet in order to create a second lot in the rear of the property.

Ms. James stated that staff has discussed the Proposed Development Conditions with the applicant's representatives, who had expressed their willingness to provide the mitigating measures recommended by staff. She stated that these measures, however, do not overcome staff's position that the proposed variance is not compatible with the existing development in the neighborhood and that, if approved, the proposed subdivision would set a destabilizing precedent in the area. Ms. James stated that, based upon the analysis of the land use, transportation, and environmental issues outlined in the staff report, staff did not believe that the subject application met all the required variance standards. In particular, Ms. James said, staff did not find that the lot had any unusual shape, size, or topographical conditions. She said that staff further believed that the character of the area would be changed if a variance was granted as the proposed lot sizes were approximately half the size of the lots surrounding the site.

One of the applicant's representatives, Nellie J. Al-Saigh, 3133 Cofer Road, Falls Church, Virginia, presented the statement of justification. She stated that, before the Corporation bought the property, the owners looked at the real estate documents and found that each of the two subject lots had a separate address, 3504 and 3506 Lake Street; each was listed as being 15,000 square feet in size, with 3506 listed as a buildable lot. She stated that both lots were assessed separately. Mrs. Al-Saigh expressed a belief that there was only one other similar lot in the neighborhood which might lend itself to this same situation. Mrs. Al-Saigh stated that they had no intention of building a house on the back lot at any time in the near future, but they would like to have the paper work done so that they could easily proceed at a later date and so that they could use this as a selling point.

Vice Chairman DiGiulian asked if there was anyone present who wished to speak in support of the application. Hearing no response, he asked if there was anyone who wished to speak in opposition to the application.

Barry Caron, 3483 Washington Drive, Falls Church, Virginia, said he was the President of the Courtland Park Civic Association, and stated that a number of his neighbors and members of the Civic Association were also present and ready to oppose the request. Mr. Caron opposed the request for a variance, which he said had caused an immediate and highly negative response. He stated that he had received a great number of letters and phone calls in this regard, which were presented to the Board, along with a petition. He pointed out that there were over ninety (90) names on the petition and that he could have gotten far more, but felt he had achieved the purpose.

Other persons speaking in opposition to the request were: Hank Strickland, Mason District Planning Commissioner, who stated that he was also speaking for Supervisor Tom Davis, Member of the Board of Supervisors, representing the Mason District; Jon Winchester, 3510 Lake Street, Falls Church, Virginia; Catherine D. Jones, 3500 Lake Street, Falls Church, Virginia; K. Hino, 3509 Gordon Street, Falls Church, Virginia; Jim Neary, 3523 Blair Road, Falls Church, Virginia; and Ralph Falcone, 3525 Tyler Street, Falls Church, Virginia. The concerns of the speakers were: changing the basic pattern of one home on two narrow, rectangular lots

of varying size, but around 30,000 square feet; the deviation would set an unfortunate precedent; the property values would be affected; the lack of a valid reason for the request; and the eventual change in the appearance of the neighborhood.

Mrs. Al-Saigh was given two minutes for rebuttal. She stated that she bought the house in June of 1989. Mrs. Al-Saigh stated that Almas Real Estate Development should not bear the cost of furnishing a park for the neighborhood. She suggested screening by the neighbors who objected to their plan. She stated that she was making this request so that future owners could build, if that should be their desire.

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

Mr. Hammack made a motion to deny VC 90-M-102 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 90-M-102 by ALMAS REAL ESTATE, INC., under Section 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 2 lots of different configuration, with proposed Lot 4A having a width of 12.0 ft., on property located at 3504 Lake St., Tax Map Reference 61-2((17))(K)3 and 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 December 4, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 30,000 square feet.
4. The hardship claimed by the applicant is shared generally by other properties in the same zoning district which would be at least potentially susceptible to the same type of development.
5. There is no indication that the variance would not be detrimental to adjacent properties or that the character of the zoning district could not be changed by the granting of the variance.
6. This application is for the convenience of the applicant and convenience is not a legitimate reason for granting a variance. It was admitted by the applicant that this variance was requested to make the property more attractive to potential buyers.

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

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

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 1990.

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Page 477, December 4, 1990, (Tape 1), Scheduled case of:

8:15 P.M. PARKWOOD BAPTIST CHURCH AND WEEKDAY EARLY EDUCATION CENTER, SPA 84-A-048-2, appl. under Sect. 3-103 of the Zoning Ordinance to amend SPA 84-A-048-1 for church, child care center, and related facilities to allow three trailers on approx. 8.6782 acres located at 8726 Braddock Rd., zoned R-1, Annandale District, Tax Map 70-3((1))6.

Vice Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Reverend Al Lawson 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. She stated that the property is located on the north side of Braddock Road, just east of the intersection with Woodland Way. She said that it is zoned R-1 and contains 8.67 acres. Ms. James stated that Holy Spirit Catholic Church is located to the west and north of the site; to the east and south are properties zoned R-3 and developed with single family detached dwellings.

Ms. James stated that the applicant was requesting permission for the addition of three temporary classroom trailers to the existing church and child care uses on the site. She said that the existing church facility contains 350 seats. Ms. James said that a child care facility also operates within the church, Monday through Friday, from 10:00 a.m. to 2:00 p.m., with a total daily enrollment of 85 students. She said that the number of parking spaces provided is 192, which is in excess of the requirement for the child care and church uses on the site. Ms. James said that no changes are proposed to the uses on the site other than use of the trailers, which will be limited to Sunday School classroom use and Wednesday evening adult classroom use.

Ms. James said that this applicant had been before the Board of Zoning Appeals in September of 1989 and had obtained approval for a change in the hours of operation, an increase in the maximum number of employees, and an increase in the number of parking spaces.

Ms. James advised that staff recommended relocating one of the proposed trailers to avoid the necessity for pedestrians to cross the parking lot travel aisles in order to access the trailer, and that the applicant had agreed to make the change. She said that staff had reviewed the issues of interparcel access and a right turn deceleration lane, which were noted in the earlier application in 1989. She said that, while staff believed that these issues should be addressed, the development conditions to require these improvements were not recommended, based on the applicant's request for the temporary classroom trailers; however, if future building additions are proposed for the site, these issues should be addressed at that time.

Ms. James stated that, with the relocation of the third trailer, staff believed the amendment request met all applicable special permit standards and recommended approval of the amendment request, subject to the Proposed Development Conditions contained in the staff report dated November 27, 1990. At that time, Reverend Lawson submitted a revised plat, showing the relocation of the trailer. Ms. James asked the Board to defer making a decision on this request until staff had an opportunity to review the new, revised plat.

Reverend Al Lawson, 8726 Braddock Road, Annandale, Virginia, represented the applicant and stated that the applicant had just received the revised plat which was being distributed to the Board, along with a substitute page 4 for the staff report, which he showed on the viewgraph and explained to the Board. Reverend Lawson stated that Parkwood Baptist Church was a growing congregation which did not have enough physical space to meet its Bible teaching needs on Sunday mornings. He stated that the request was for the temporary use of three trailers while they prepare for a permanent solution. Reverend Lawson stated that he

had worked very closely with the community association, Stonehaven, which had helped the church in locating the trailers. He stated that he concurred with staff's proposal regarding the relocation of one of the trailers. Reverend Lawson explained that the portable classrooms would not be used for the child care program because they would not meet the County requirements. He stated that he concurred with everything in the staff report.

Mr. Hammack asked Reverend Lawson if he concurred with the dedication for the road, as requested in Appendix 1. Reverend Lawson replied that he did, explaining that it was not shown on the plan because the engineer and architect could not get it done in time.

Mr. Hammack asked Reverend Lawson if the church had plans to construct a new addition. Reverend Lawson stated that they had an in-house master plan and were in the process of studying their needs, after which they would prepare site plans for review by the County.

Mr. Hammack pointed out that the Board received many requests from churches for temporary trailers and appreciated the need for them; however, he wished to discourage the assumption that the trailers could be kept forever. Reverend Lawson stated that the plan for the trailers was only temporary, to relieve congestion which might discourage participation by the congregation.

Mrs. Thonen reminded Reverend Lawson that the special permit was for only five (5) years and he stated that he fully understood and concurred.

Dorothy Byrns, 5114 Althea Drive, Annandale, Virginia, past President of Stonehaven Civic Association and currently on the Executive Board, on the Annandale District Plan Review Committee, and an adjoining property owner, spoke in support of the request. She stated that the Association had met with the church and that, as long as the trailers are placed as they currently are shown, she did not believe they could be seen from the surrounding homes. She stated, however, that the church earlier had an illegal trailer parked further back on the lot, which was visible. Ms. Byrns stated that it would be objectionable to the Association if there was a deviation from the planned locations. She said they would not object as long as the situation was not permanent.

There were no more speakers, so Vice Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to defer decision on SPA 84-A-048-2 until December 11, 1990, at 12:00 Noon, in order to give staff time to review the new plats.

Mrs. Harris seconded the motion and asked Ms. James to include in the Conditions that these trailers were to be used specifically for Sunday School as opposed to child care. The motion carried by a vote of 6-0. Chairman Smith was absent from the meeting.

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Page 478, December 4, 1990, (Tape 1), Scheduled case of:

8:30 P.M. ALYCE M. CHESSNOE, SP 90-S-066, appl. under Sect. 3-303 of the Zoning Ordinance to allow home child care facility on approx. 14,886 s.f. located at 9701 Glenway Ct., zoned R-3 (developed cluster), Springfield District, Tax Map 88-1((7))397.

Vice Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board was complete and accurate. Mrs. Chessnoe 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. Ms. Bettard stated that the subject property is generally located east of Old Keene Mill Road, at the east end of Glenway Court. She said that the property is zoned R-3 and developed under the cluster provisions of the Zoning Ordinance with single family, two-story dwellings. Ms. Bettard said that properties zoned R-3 under the cluster provisions with single family detached dwellings abut the subject site to the north and south; homeowners' open space and a small park abut the property on the east.

Ms. Bettard stated that the applicant was requesting special permit approval for a home child care facility. She said that the proposed home child care facility would be licensed by the Commonwealth of Virginia, would have a maximum of nine children at any one time, and would be operated from 6:30 a.m. until 6:30 p.m., Monday through Friday. Ms. Bettard said that the applicant's statement of proposed use indicated that there would be only one employee in addition to the applicant. Ms. Bettard said that the applicant had stated that the one employee, who is the mother of the applicant, lives within the residence. She stated that the applicant's statement of justification indicated that all of the children arrive between 6:45 a.m. and 9:15 a.m. Ms. Bettard stated that the school-aged children, who are cared for before school begins, walk to school at 8:15 a.m. and noted that conversations with the applicant indicated that the preschool children arrive only after the school-aged children have departed.

Ms. Bettard stated that it was staff's conclusion that the application met the standards for special permit approval with the Proposed Development Conditions. Therefore, she said, staff

recommended approval of SP 90-S-066, subject to the revised Proposed Development Conditions contained in Appendix 1 of the staff report dated November 27, 1990, which amended hours to reflect the applicant's amended request and conditioned the number of employees to one (1), which had inadvertently been left out.

The applicant, Alyce M. Chessnoe, 9601 Glenway Court, Burke, Virginia, presented the statement of justification. She stated that she had been a teacher for ten (10) years, a parent for nineteen (19) years, and a child care provider and advocate for fourteen (14) years. Ms. Chessnoe expressed appreciation to staff for their study and portrayal of her involvement in the home. Ms. Chessnoe distributed a booklet to the Board describing her activities. She stated she was licensed by the State. Ms. Chessnoe stated that she had three concerns with the staff report: the number of children she would care for per day; the time they would actually arrive; and the need to address substitute care givers in the home. Ms. Chessnoe referred to the staff report stating that the total number of children for whom she would provide care during the day was ten (10). Ms. Chessnoe used a bar graph to explain arrivals and departures of children to and from her home. Ms. Chessnoe stated that she continued to care for children who had reached a stage where they required only part-time care, even though it would be more lucrative to replace them with children who require full-time care, and requested raising the total of number of children to twelve (12) in order to continue caring for children presently in her care. Ms. Chessnoe referred to the statement in the staff report regarding her mother being her only helper. She stated that having no provision for a substitute would create a problem in the event of a doctor's appointment, a school conference, etc., on the part of either her or her mother. Ms. Chessnoe requested a provision for a paid substitute to fill this need. Ms. Chessnoe stated that she had the support of all of the neighbors on her street, except one, plus some others in the Cherry Run development. Ms. Chessnoe offered letters of endorsement from the parents of children for whom she had been caring.

Mrs. Thonen referred to page 3 of the Zoning Ordinance, where it was stated that seven (7) children are permitted at any one time in a single family detached home, unless an increase is approved by the Board of Zoning Appeals. Mrs. Thonen pointed out to Ms. Chessnoe that, by right, she was allowed to care for the seven (7) children and would need permission from the Board to increase that number to nine (9). Mrs. Thonen stated that she did not know if the Board could waive that because the Zoning Ordinance stated that no employees, whether paid or unpaid, except persons who use the dwelling as their primary residence, shall be involved in the home child care facility. Ms. Chessnoe stressed the need for a paid backup employee to come into the home to provide relief in the case of previously mentioned occasions which necessitated her or her mother leaving the house. Ms. Chessnoe referred to another case, heard on October 23, 1990, when the Board allegedly granted permission to another family day care provider to have either one or two helpers who were not residing in the home. Mrs. Thonen stated she was quoting from a section of the Zoning Ordinance covering applications for home care facilities, addressing the use limitations set forth in par. 6, Sect. 10-103. Mr. Hammack stated that he was not sure that the case which the Board approved, to which Ms. Chessnoe was referring, was for the same kind of facility. He asked Ms. Chessnoe if she had made application for the greater number to which she referred and for a substitute care taker, or if this was something she just brought up for the first time; in which case staff had no opportunity to analyze her request. Ms. Chessnoe stated that it was not until she reviewed her mail from the County that she decided it might be appropriate to amend her original application for the greater number of children and the substitute care taker. Mr. Hammack referred to the section of the application which stated that Ms. Chessnoe's mother would be her only helper, and he said he was wondering how staff could have been expected to evaluate the potential of another helper when their recommendations were based upon her application.

Mrs. Thonen referred to number 8, where Ms. Chessnoe said that the number of employees shall be limited to one and asked Ms. Chessnoe if that referred to an outside employee or if it referred to her mother. Ms. Bettard told Mrs. Thonen that if she read "G" it might clarify this point. Mr. Hammack then questioned the parking situation, which was covered by the statement that two spaces would accommodate what was proposed, and asked if the statement would impact on the hiring of another employee. Jane Kelsey, Chief, Special Permit and Variance Branch, asked for permission to answer. She stated that this was only the third application of this type which had come before the Board. Ms. Kelsey stated that one of the main concerns was the impact on adjacent property of children playing outside, and the other was the number of parking spaces required. She said that in the last application, the applicant was going to have an employee who lived outside the home and that employee would be using one of the parking spaces which was available; so a condition was added, stating that the applicant would stagger the arrivals and departures of the children, in an effort to address that problem. Ms. Kelsey suggested that the Board might consider using the same approach in this instance. Ms. Kelsey stated that the previous application did not have the advantage of a cul-de-sac location with a pipestem driveway off the cul-de-sac, which serves the applicant's property and the adjacent property, giving the applicant more flexibility.

Ms. Chessnoe stated that her proposed helpers would be walking to her home. Mrs. Thonen stated that it appeared to her that Mrs. Chessnoe was trying to introduce a commercial situation within the neighborhood. Mrs. Thonen stated that she was in support of home care, but she believed that it should be limited and under strict control, especially the aspect of branching out. Ms. Chessnoe explained that the extent to which a substitute would be utilized would be minimal; i.e., in the case of personal business which could not be handled at any other time. Ms. Chessnoe also explained that the space in front of the garage is as large as two car lengths and expanded on the parking situation.

The following people spoke in support of the applicant's request: Candace S. Frankel, 6023 Makely Drive, Fairfax Station, Virginia; Larry Schwartz, 6734 Stonecutter Drive, Burke, Virginia; Helen Heald, 9910 Lakepointe Drive, Burke, Virginia; Richard E. Edelman, 9704 Glenway Court, Burke, Virginia.

All of the above persons spoke highly of Ms. Chessnoe's dedication and stressed the lack of any type of child care facilities in the area. Some stressed the advantage of keeping the same care giver over many years; Ms. Chessnoe had been caring for children in one of the families for 12-1/2 years. They stated that she provided a loving and caring environment for their children, above and beyond that of a baby sitter. Ms. Heald represented the Family Child Care Providers of the Northern Virginia Family Day Care Association and stated that Ms. Chessnoe was meeting the needs of families in the Burke area by providing continuity of care from toddler age to grade school age, and making it possible for siblings to stay together. Mr. Edelman addressed the traffic situation and stated that he had never seen any problem in the six years that he had lived across the street from Ms. Chessnoe.

Mrs. Harris asked what would happen if Ms. Chessnoe went on vacation and an inspector happened to come at that time, would she be in violation of her permit? Ms. Kelsey said she would be, unless the revised Development Conditions were accepted, which state that the number of employees shall be limited to one (1), which would provide for her to have an employee present when she was not there. Ms. Chessnoe stated that she closed for vacations. Mrs. Harris asked if two people were required to be present for the number of children specified. Mrs. Harris hypothesized a situation when Ms. Chessnoe would not be present and her mother would be caring for ten (10) children by herself, asking if it would be a violation. Ms. Kelsey stated that it might be in violation of State regulations, which Ms. Kelsey said she was not familiar with.

Mrs. Thonen asked that two letters of support be entered into the record.

Mrs. Harris made a motion to grant SP 90-S-066 because the testimony of the applicant and members of the community, who show inordinate support of the applicant's services, indicate that this use is needed in the community; testimony indicates that parking is adequate and transportation does not present a problem; and the applicant has agreed to arrange the arrivals and departures of the children in a staggered pattern. Mrs. Harris stated the permit is subject to the revised Proposed Development Conditions which supersede those contained in the staff report dated November 27, 1990. Mrs. Harris changed Development Condition 8 to state that the number of non-residential employees shall be limited to one (1).

Mr. Kelley stated that he would vote against SP 90-S-066 because he believed that it was approaching a commercial operation, which he said he did not believe belonged in a residential area. Mrs. Thonen stated that she agreed with Mr. Kelley and would also vote against SP 90-S-066 because she believed that this situation was like a home operation and, in such a case, those residing in the home should provide the service. Mr. Kelley stated also that he believed approval of this request would set an unfavorable precedent. Vice Chairman DiGiulian asked if the objection was to the one employee, rather than to the resident of the home. Mr. Kelley stated that his objection was to the number of children. Mrs. Thonen stated that the Ordinance limited the number of children on site at any one time to seven (7), then it was expanded to nine (9), and she felt it was snowballing. Mrs. Thonen stated that she did not feel that changes were in order so early in this type of situation. She pressed to limit the number of children to seven (7).

Mr. Hammack stated that the Ordinance allows the Board to grant permission for a greater number of children and that was why the application was before the Board. He stated that what Ms. Chessnoe had pointed out about needing a substitute was probably a defect in the statute that would appear to prohibit any substitute in the event of illness. Mr. Hammack stated that the operation should not be required to shut down in such an eventuality. He stated that he shared the concern about the number of children and that he would not have voted for the increased number that Ms. Chessnoe proposed, but he believed the nine (9) on site at any one time and the maximum of ten (10), considering the support offered by the community, would make him tend to go along.

Mrs. Harris asked Mrs. Thonen if she would support the motion if Mrs. Harris reduced the term of the special permit to three (3) years and Mrs. Thonen said no.

Mr. Ribble stated that he would be willing to support the motion if the term of the permit were reduced, just to see how it would work. He stated that, if there were any complaints, the Board had the option not to renew the permit.

Mrs. Harris amended her motion by reducing the number of years to three (3) and it was seconded by Mr. Hammack, who had previously seconded her motion.

Ms. Kelsey requested a clarification of the amended motion, verifying that Condition 8 was changed to state that the maximum number of non-residential employees shall be limited one (1) and the term would be limited to three (3) years (reflected in Condition 6).

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 90-S-066 by ALYCE M. CHESSNOE, under Section 3-303 of the Zoning Ordinance to allow home child care facility, on property located at 9601 Glenway Ct., Tax Map Reference 88-1((7))397, 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 4, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3 (developed cluster).
3. The area of the lot is 14,886 square feet.
4. The testimony of the applicant and members of the community, who show inordinate support of the applicant's services, indicate that this permit is needed in the community.
5. Testimony indicates that parking is adequate and transportation does not present a problem.
6. The applicant has agreed to arrange the arrivals and departures of the children in a staggered pattern.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat (prepared by Dewberry, Wealon, & Davis, and updated on August 29, 1990 by Alyce M. Chessnoe) submitted with this application.

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

4. The maximum number of children on site at any one time shall not exceed nine (9) children; the total maximum daily enrollment shall not exceed ten (10) children. The garage shall be used for the required parking for the residence and shall not be converted to any other use. The driveway which can accommodate two (2) parking spaces shall be deemed sufficient for the Home Child Care Facility. No additional parking spaces are required for this use.

5. The site shall be available for inspections performed by the Zoning Enforcement Division to determine compliance with all special permit development conditions imposed in connection with this application. If it is determined that these conditions have not been met by the applicant, the Zoning Administrator shall undertake the appropriate procedures to effect compliance or the special permit use will be terminated.

6. This special permit for a home child care use is approved for a period of three (3) years from the final date of approval of this Special Permit.

7. The hours of operation shall be limited to 6:30 a.m. to 6:30 p.m., Monday through Friday. There shall be staggered arrival and departure times for the preschool and school aged children so as to prevent traffic congestion in the neighborhood.

8. The number of non-residential employees shall be limited to one (1).

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

Mr. Hammack seconded the motion which carried by a vote of 4-2; Mrs. Thonen and Mr. Kelley voted nay. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 482, December 4, 1990, (Tapes 1 & 2), Scheduled case of:

8:45 P.M. POOR SISTERS OF ST. JOSEPH, SPA 80-M-078-3, appl. under Sect. 3-303 of the Zoning Ordinance to amend SPA 80-M-078-2 for convent and child care facility to allow 2 additions on approx. 4.62 acres located at 4319 Sano St., zoned R-3, Mason District, Tax Map 72-2((1))20.

Vice Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. McCormack 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, stating that the site is located slightly north and east of Lincolnia Road. He said that the property is zoned R-3 and is designated on the Comprehensive Plan map for governmental, public facilities or institutional uses. Mr. Riegle referred to the viewgraph, pointing out that it indicates abutting property on three sides is developed for residential use, and Queen of Apostles Church lies to the south.

Mr. Riegle stated that the site is presently developed with two special permit uses: a convent in which five (5) nuns reside and a child care center approved for a maximum daily enrollment of 99 students.

Mr. Riegle said that the application proposed an amendment to the approved special permit to allow the construction of a small chapel and a dining hall. He said that the proposed structures will be used by the sisters who reside in the convent, and that there are no plans to change or alter the maximum daily enrollment or operation of the child care center.

Mr. Riegle stated that the proposed chapel would be located on the eastern side of the existing convent and that it will add 2,000 square feet of developed space to the site. He said that the proposed dining hall would be located on the western side of the site and would add 368 square feet of developed space. With these additions, he said, the floor area ratio on the site is 0.07; 0.25 is allowed by the Zoning Ordinance. Mr. Riegle stated that the elevations of the proposed structures are contained in Appendix 8 of the staff report.

Mr. Riegle stated that staff would also like to note that, since the last review and approval of the two special permit uses on the site, the required parking for a child care center had increased. He said that, in line with the increase, the applicant proposed adding nine (9) parking spaces to meet the new requirement. Also with regard to parking, Mr. Riegle stated that the special permit plat had not provided parking for the convent. He stated that it was staff's recommendation that parking be provided in accordance with the requirement for a single family dwelling. Mr. Riegle stated that these issues were resolved by the Proposed Development Conditions, which gave the applicant two options: (1) to pursue approval of a shared parking agreement, or (2) to provide two additional spaces in a manner which does not disrupt any of the required screening. Mr. Riegle stated that the special permit plat does provide additional screening measures between the additional parking spaces and Sano street.

Mr. Riegle stated that the use of the site as a convent and child care center is in harmony with the plan map designation and that the site had been designed in a manner which located structures and parking as far from the adjacent residential development as possible. He said that it was staff's judgment that the height, bulk, and architecture of the proposed building additions are in keeping with low density residential development which surrounds the site. He said that, accordingly, with the implementation of the Proposed Development Conditions aimed at preserving the open space and providing screening, this application could meet all applicable standards for approval.

Mr. Riegle stated that it was staff's understanding that the applicant agreed to all of the Proposed Development Conditions and that there are no outstanding issues

James L. McCormack, LBA, Ltd., 10300 Eaton Place, Fairfax, Virginia, represented the applicant and presented the statement of justification. Mr. McCormack stated that, as part of the application, the applicant was requesting permission for landscaping to be placed adjacent to those areas which represent activity areas, as opposed to landscaping around the perimeter. Mr. McCormack stated that the purpose of the landscaping was to provide screening

and buffering from the adjacent residential areas. He stated that the applicant agreed with the conditions proposed by staff, including the two (2) additional parking spaces. He stated that the only concern they had was with Condition 9, pertaining to the entrance location. Mr. McCormack stated that the entrance location shown on the plat had been the subject of much discussion in the past. He stated that there is presently a site plan pending in Bonding, which has been completely reviewed and approved by the County and by the Virginia Department of Transportation (VDOT). He stated that the entrance location shown on the plat represents that which VDOT had requested and approved. Mr. McCormack stated that proposed Condition 9 implies that the entrance should be relocated, but leaves the approval up to VDOT and DEM. He said he believed the Condition should be reworded to eliminate the implication that relocation of the entrance is required. Mr. McCormack stated that the applicant concurred with all of the other conditions.

Mr. Riegle stated that VDOT had approved the current entrance location. The primary concern of the Office of Transportation, he said, was that VDOT would maintain the right to review the plan and make the final determination.

Mrs. Harris stated that she could not see the connection between adding a dining hall and a kitchen area and putting in two additional parking places. Mr. Riegle explained that the requirement for the additional parking stemmed from the Zoning Ordinance Amendment which changed the manner in which parking requirements are calculated for child care centers and has no connection to the development proposed at the present time. Mr. Riegle explained that staff is required to reevaluate any amendment application under the current Ordinance requirements, as amended in the interim.

Mrs. Thonen asked Mr. McCormack if waiving some of the landscaping and screening would impact on the neighbors. Mr. McCormack stated that it would not and showed on the viewgraph how the applicant proposed to arrange the landscaping.

Mr. Ribble asked Mr. McCormack if he would like to write up a development condition which would be acceptable to the applicant, concerning the location of the entrance. Mr. McCormack stated that he had no problem with simply stating that the entrance location shall be as approved by DEM (Department of Environmental Management) and VDOT. Mr. Ribble asked about the screening and Mr. McCormack stated that he believed that had been taken care of.

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

Mr. Ribble made a motion to grant SPA 80-M-078-3, subject to the Proposed Development Conditions contained in the staff report dated November 27, 1990, as modified. Mr. Ribble stated that Condition 9 shall now read that the location of the entrance shall be determined by VDOT.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-M-078-3 by POOR SISTERS OF ST. JOSEPH, under Section 3-303 of the Zoning Ordinance to amend SPA 80-M-078-2 for convent and child care facility to allow 2 additions, on property located at 4319 Sano St., Tax Map Reference 72-2((1))20, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-3.
3. The area of the lot is 4.62 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by LBA Limited, revised through September 4, 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. Transitional Screening shall be modified and provided as depicted on the special permit plat with the following additions. Additional plantings shall be provided in an area extending from the eastern edge of the existing gravel driveway to the northeast corner of the day care kitchen approved in conjunction with SPA 80-M-078-2. These plantings shall be designed to screen the existing and proposed development from the adjacent residential uses to the north and east and shall be comprised of a minimum of two deciduous trees with a 2.5 inch caliper and a single row of evergreen trees six feet in planted height placed at 10 feet on center. Limits of clearing and grading shall be as shown on the plat.

6. The barrier requirement shall be waived.

7. Right-of-way dedication to facilitate the realignment of Sano Street with Berlee Drive shall be provided as depicted on the special permit plat. This right-of-way shall convey to the Board of Supervisors in fee simple on demand at such time as it is necessary to provide for the realignment of Sano Street. Ancillary construction easements shall be provided to facilitate this improvement.

8. Curb and gutter shall be installed in accordance with the Public Facilities Manual along the frontage of Sano Street to the satisfaction of the Director, Department of Environmental Management (DEM).

9. The location of the entrance shall be determined by VDOT.

10. Maximum daily enrollment of the child care center shall not exceed 99.

11. Unless approval of a shared parking agreement is obtained from the Board of Supervisors, two (2) parking spaces shall be added such that a minimum of 21 parking spaces shall be provided on the site. If the additional two spaces are added, they shall not be located closer than 80 feet from Sano Street and their location shall not disrupt the vegetation and screening depicted on the plat as determined by DEM.

12. The driveway shall be marked with "One-Way and "Do Not Enter" signs as determined necessary by DEM.

13. Stormwater detention shall be provided as determined by DEM. If a detention pond is required its location shall not disrupt the limits of clearing and grading or any of the required plantings. If a waiver of the requirements for storm detention is approved, existing vegetation in the northeast and southeastern areas of the site shall be reviewed and supplemented if it is determined necessary by DEM to ensure that sufficient vegetation is present to properly slow runoff and allow for the natural percolation of stormwater into the soil.

14. The storage shed presently located 8.6 feet from the side lot line shall be removed or be relocated on the site such that its location is in conformance with the location regulations for accessory structures provided by Sect. 10-104 of the Zoning Ordinance.

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

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 which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 486, December 4, 1990, (Tape 2), Scheduled case of:

9:00 P.M. HERITAGE FOREST ASSOCIATES, SP 90-S-081, appl. under Sects. 3-803 and 8-915 of the Zoning Ordinance to allow a community center and recreational facilities and waiver of the dustless surface requirement on approx. 4.41 acres located at 14150 Federation Drive, zoned R-8, Springfield District, Tax Map 65-2((1))pt. 23. (OTH GRANTED)

Vice Chairman DiGiulian called the applicant's agent to the podium and asked if the affidavit before the Board was complete and accurate. Mr. Mattheisen 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 stated that the property is located at the intersection of Old Centreville Road and Federation Drive in the Heritage Estates subdivision; the site contains 3.82 acres and is zoned R-8; the surrounding properties are also zoned R-8 and are developed with single family attached dwellings.

Ms. Greenlief said that the special permit application was for a community recreation facility. She stated that the use was previously approved for the site on January 19, 1988, with a plat more or less identical to the present plat. Ms. Greenlief stated that site plan approval had been obtained, but construction had not begun before the special permit expired. She said that this application was filed to again allow the special permit use on the property. She stated that, briefly, the proposal included a swimming pool with a capacity for 183 persons, a community center with a capacity for 60 persons, two tennis courts and, ultimately, 81 parking spaces.

Ms. Greenlief stated that staff had completed an abbreviated staff report and had attached it to the staff report which had been completed for the previous approval. Ms. Greenlief stated that she would be happy to answer any questions. She stated that staff was recommending approval of SP 90-S-081, subject to the Proposed Development Conditions dated December 4, 1990, which had been distributed to the Board. Ms. Greenlief stated that the conditions had been revised from those which appeared in the staff report, to incorporate three transportation conditions which had been imposed the last time, but inadvertently had been left out of the revised set of conditions for the new special permit. Ms. Greenlief called the Board's attention to Condition 20 and stated that the Condition should read, "...plat dated July 1990, revised August 1990," and also noted that the word "road" was misspelled.

Michael D. Mattheisen, of the law firm of Dickstein, Shapiro & Morin, 8300 Boone Boulevard, Suite 800, Vienna, Virginia, represented the applicant and stated that the only reason for the application was to reactivate the previous approval, so that the recreational amenities on the site, which were under construction, might now be completed. He stated that the previous approval had expired, unnoticed by Department of Environmental Management (DEM) or the applicant, and the applicant was eight (8) months into construction before the oversight was discovered and work on the project had to stop. Mr. Mattheisen stated that the plat which was submitted with the application was, in fact, a copy of the approved site plan and the work would be completed in accordance with the plan. Mr. Mattheisen stated that the applicant had no objections to the changes which staff had made in the Proposed Development Conditions.

The following people spoke in favor of granting the request: Karen Ulrich, 6372 Generals Court, Centreville, Virginia; John Strickland, 6350 Generals Court, Centreville, Virginia; Jennifer Prater, 14027 Betty Ross Lane, Centreville, Virginia; Richard Smith, 14112 Red River Drive, Centreville, Virginia; and Dotti Rubino, 14073 Betsy Ross Lane, Centreville, Virginia. The concerns of these neighbors were that the unfinished construction site is unsightly; it is a safety hazard, especially for children playing in the area; the recreation facilities promised by the developer have not been completed; property values were being effected by the unsightly and hazardous conditions.

Mr. Kelley asked Ms. Prater if she had noticed a lot of dust in the area of the unfinished construction, as the Board had a request to approve the application without granting the dustless surface waiver. Ms. Prater stated that she did not see a lot of dust coming from the area now; but she believed that, once construction had begun, there would be a certain amount of dust. Ms. Prater stated that it was her understanding that there would be a gravel parking lot, which she did not believe would pose a problem because of its limited size.

Mrs. Thonen asked Mr. Kelley to notice Condition 17, which she felt would relieve his concern about the dust issue.

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

Mr. Kelley made a motion to grant SP 90-S-081, subject to the revised Proposed Development Conditions dated December 4, 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-081 by HERITAGE FOREST ASSOCIATES, under Sections 3-803 and 8-915 of the Zoning Ordinance to allow a community center and recreational facilities and waiver of the dustless surface requirement, on property located at 14150 Federation Drive, Tax Map Reference 65-2((1))pt. 23, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-8.
3. The area of the lot is 4.41 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-403, 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. However, upon conveyance of the property to the Heritage Estates 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 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 by Greenhorne & O'Mara, Inc., dated 7/90, revised 8/90 and these development conditions.

5. The maximum number of employees on site at any one time shall be four (4).

6. The regular hours of operation for the pool shall be from 9:00 a.m. to 9:00 p.m. The hours of operation for the tennis courts shall be from 7:00 a.m. to 10:00 p.m. The hours of operation for the community room shall be from 9:00 a.m. to 10:00 p.m. Swim team practice may begin at 8:00 a.m. The community room shall not be used for meetings during swim meets. There shall be no more than four swim meets per year.

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

   - Limited to six (6) per season.

   - Limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur.

   - Shall not exceed beyond 12:00 midnight.

   - A written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

   - Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

8. There shall be no use of bullhorns, whistles (except in emergencies), loudspeakers or amplification before 9:00 a.m. or after 9:00 p.m. and all noise shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code.

9. If lights are provided for the pool and parking lot, they shall be in accordance with the following:

   - The combined height of the light standards and fixtures shall not exceed 12 feet for the pool and parking lot.
   - The lights shall be designed so as to focus the light directly onto the facility.
   - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

10. There shall be a minimum of forty-seven (47) parking spaces for the pool and community center and eight (8) spaces for the tennis courts. The maximum number of spaces for the total use once Federation Drive is realigned shall be eighty-four (84).

11. Transitional Screening 1 shall be provided along the northwestern, northeastern and southern lot lines as shown on the plat submitted with this application. The screening may be modified to allow for entrance features in the area on either side of Federation Drive realigned where it intersects with Lot 16 to the north. Foundation plantings shall be provided around the bathhouse to the satisfaction of the County Arborist. The trees currently planted in the screening yards which have died shall be replaced.

12. The Consumer Services Section of the Environmental Health 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.

13. 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 circumstance 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. Any pool in excess of three (3) feet in depth shall be required to have a hydrostatic relief valve.

14. Best Management Practices (BMP) shall be provided as determined by the Director, Department of Environmental Management.

15. Temporary grading and construction easements shall be provided for the construction of Federation Drive.

16. The waiver of the dustless surface shall be approved for a period of five (5) years to begin from the final approval date of this special permit.

17. 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.

18. Dedication of land for public street purposes shall be provided as shown on the Generalized Development Plan proffered in conjunction with RZ 78-S-093.

19. The entrance to the recreation facility shall be thirty (30) feet in width.

20. Dedication shall be provided, generally in conformance with the plat dated July 1990, revised August 1990, to facilitate the construction of a connector road between the subdivision to the north and Federation Drive across the subject property.

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

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 which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 488, December 4, 1990, (Tape 2), Scheduled case of:

9:15 P.M. ELIZABETH S. WOODRUFF, VC 90-V-097, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached garage 5.0 ft. from side lot line and 10.0 ft. from rear lot line (15 ft. min. side yard and 16.10 ft. min. rear yard required by Sect. 3-207 and 10-104) on approx. 15,464 s.f. located at 7952 Bolling Dr., zoned R-2, Mount Vernon District, Tax Map 102-2((12))173. (DEFERRED FROM 11/29/90 FOR DECISION ONLY)

Mr. Kelley stated that he had wanted an opportunity to go by and look at this property again, which he did. He stated he still saw no problem with the request. Mrs. Thonen stated that she also went by to see the property and also had no problem with the request.

Mr. Kelley made a motion to grant VC 90-V-097 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 13, 1990.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 90-V-097 by ELIZABETH S. WOODRUFF, under Section 18-401 of the Zoning Ordinance to allow detached garage 5.0 ft. from side lot line and 10.0 ft. from rear lot line, on property located at 7952 Bolling Dr., Tax Map Reference 102-2((12))173, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-2.
3. The area of the lot is 15,464 square feet.
4. The lot has an irregular shape.
5. Granting this request would have no detrimental effect on surrounding properties.

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

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

6. That:

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

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

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

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

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

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

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

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

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

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

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. Thonen seconded the motion which carried by a vote of 6-0. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 1990. This date shall be deemed to be the final approval date of this variance.

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Page 489, December 4, 1990, (Tape 2), Scheduled case of:

9:30 P.M. LUCK STONE CORPORATION, SPA 81-S-064-3, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SPA 81-S-064-2 for stone quarry and accessory uses to allow deletion of previously imposed Development Condition on approx. 200.2692 acres located at 15950 Lee Highway, zoned R-C, I-6, NR and WS, Springfield District, Tax Map 64-1((4))7A; 64-1((1))1, 4, 13, 14, 15, 17, 38, and 39. (OTH GRANTED) (DEFERRED FROM 11/29/90 FOR DECISION ONLY)

Greg Riegle, Staff Coordinator, advised the Board that revised Proposed Development Conditions were being distributed to the Board, along with a letter from Mr. Spence, the applicant's agent, indicating concurrence. Mr. Spence could not be present because of a family emergency. Mr. Riegle stated that representatives of the applicant were present to answer questions. Mr. Riegle stated that the applicant had submitted a plat depicting the right-of-way and that the recommended Conditions had been incorporated into the plat.

Mr. Hammack made a motion to grant SPA 81-S-064-3, subject to the revised Proposed Development Conditions dated November 30, 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-064-3 by LUCK STONE CORPORATION, under Section 3-C03 of the Zoning Ordinance to amend SPA 81-S-064-2 for stone quarry and accessory uses to allow deletion of previously imposed Development Condition, on property located at 15950 Lee Highway, Tax Map Reference 64-1((4))7A and 64-1((1))1, 4, 13, 14, 15, 17, 38, 39, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 4, 1990; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-C, I-6, NR and WS.
3. The area of the lot is 200.2692 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-105 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 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. A Public Improvement Plan shall be submitted to the Department of Environmental Management for review and approval. This Plan shall accomplish the following:

   - Right and left turn lanes designed to a standard as required by VDOT shall be provided for access from Lee Highway to the site as depicted on the plat submitted with the approval of SPA 81-S-064-2.

   - Dedication of right-of-way to eighty (80) feet from centerline of Lee Highway shall be provided for future road improvements along the site's frontage as depicted on the plat prepared by Patton Harris Rust and Associates dated December 2, 1987. This right-of-way shall be conveyed to the Board of Supervisors in fee simple on demand.

   - The applicant shall dedicate a 50 foot strip from its property line along State Route 621 north of Route 29-211 as depicted on the plat prepared by Patton Harris Rust and Associates dated December 2, 1987. This right of way shall be conveyed to the Board of Supervisors in fee simple on demand. Temporary grading and construction easements shall be provided to facilitate future construction at such time as final construction plans are prepared.

5. This permit is granted for a period of five (5) years from the approval date of SPA 81-S-064-2 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.

6. Landscaping and screening shall be required in accordance with the plan submitted to the County Arborist in conjunction with SPA 81-S-064-2 to ensure the use is adequately screened from the adjacent residentially zoned, planned, and used properties and Lee Highway. The existing vegetation between the access road to the asphalt plant and the proposed maintenance building shall be supplemented to the level of Transitional Screening 3 as may be acceptable to the County Arborist. Landscape and operations plans shall show preservation of the designated Environmental Quality Corridor. Maintenance of existing flow to the existing stream shall be maintained for the term of this use.

7. Fifty (50) percent of the cost of seismographic and noise monitoring equipment as required by Zoning Enforcement and the total cost of training shall be provided by the applicant.

8. Air quality monitoring equipment shall be provided by the applicant and installed as necessary and as required by the County Health Department to demonstrate the attainment and maintenance of Fairfax County ambient air quality standards.

9. The total cost of enforcement services shall be absorbed by the applicant.

10. The applicant shall not exceed the limits of excavation as established and reflected on the operations plan submitted with this application.

11. Berms shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains. The berms shall be landscaped with plantings in accordance with a landscape plan submitted and approved by the County Arborist.

12. The berm shown along the northern lot line on the north side of Rt. 29 shall be designed so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site. If the stream channel needs to be realigned, channel modifications shall be conducted in general conformance with the guidelines and recommendations set forth in the State Water Control Board manual entitled Hydrologic Modifications.

13. Run-off from the new structures on site shall be diverted through one or more of the existing settling ponds on site.

14. There will be no excavation access to and from the subject property other than by the tunnel under Route 29-211.

15. The buffers shall be provided as shown on the operations plan and shall be left in their natural state except around the pond and berm area which shall be planted in accordance with Condition 12 above.

16. The existing restoration plan shall be maintained current and shall be implemented according to the progress of the operations plan. The operations plan and the restoration plan shall be reviewed during each annual review.

17. A bond of $2,000 per acre to ensure restoration of the property shall be continued for the duration of this mining operation.

18. There shall be no processing or storage of processed rock north of Route 29-211.

19. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.

20. Millisecond delay caps or their equivalent shall be used in all blasting operations, with no blast to exceed 10,000 pounds. No single millisecond delay charge shall be loaded in excess of 1,000 pounds. That blasts not exceeding 15,000 pound with a single millisecond delay charge of 1,500 pounds may be permitted in specific areas of the site with the approval in writing of the Zoning Enforcement Division in accordance with the County and State guidelines.

21. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.

22. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.

23. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring.

24. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.

25. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.

26. All present dust control equipment including the Hognson March Dust Control System, shall continue to be maintained and operated.

27. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.

28. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday only.

29. All blasting material shall be handled and stored in accordance with standards and regulations established by the United States Bureau of Mines.

30. There shall be no work performed other than sales of materials or maintenance activities on facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m. There shall be no work on Sundays.

31. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as available to them.

32. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.

33. Traffic control practices shall be detailed and rigidly enforced to ensure that public roads in the immediate vicinity of the quarry are closed to all traffic during blasting activities.

34. The Zoning Administrator or designated agent, shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.

35. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing shall be used to satisfy the barrier requirement and completed to extend around the entire perimeter of the site. This barrier shall be a minimum of six (6) feet in height.

36. Water quality monitoring reports shall be provided by the applicant quarterly for one year to the Office of Comprehensive Planning (OCP), Environment and Heritage Resources Branch. Parameters to monitored shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients, chemical oxygen demand (COD), metals and alkalinity. After a full year of data has been provided monitoring reports shall continue to be provided quarterly, except the presence of metals which do not require monitoring pursuant to the standards as determined by the Office of Comprehensive Planning shall be deleted from the quarterly monitoring. Monitoring report shall be provided quarterly if no evidence of water quality problems exists as determined by OCP and the Environmental Quality Advisory Council. If any evidence of a toxic pollution problem exists additional testing shall be required in accordance with EPA guidelines.

37. Best Management Practices (BMP) shall be provided as determined by the Director of the Department of Environmental Management.

38. The office shall be built no closer to the highway than it is now.

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 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. Ribble seconded the motion which carried by a vote of 5-0; Mrs. Harris was not present for the vote. Chairman Smith was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 12, 1990. This date shall be deemed to be the final approval date of this special permit.

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Page 492, December 4, 1990, (Tape 2), After Agenda Item:

Approval of Resolutions from November 27, 1990

Mrs. Thonen made a motion that the Resolutions be accepted as submitted by the Clerk. Mr. Ribble seconded the motion, which carried by a vote of 5-0; Mrs. Harris was not present for the vote. Chairman Smith was absent from the meeting.

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Page 492, December 4, 1990, (Tape 2), After Agenda Item:

Request for Additional Time
First Church of Christ Scientist, SP 88-L-093

Mrs. Thonen made a motion to grant the request for additional time. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mrs. Harris was not present for the vote. Chairman Smith was absent from the meeting. The new expiration date is December 21, 1991.

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Page 493, December 4, 1990, (Tape 2), AFTER AGENDA ITEM:

Request for Reconsideration
Annette E. Gehm-Belling and Steven C. Belling, SP 90-P-068

The captioned application was heard on November 29, 1990, and denied. The Board was in receipt of a request to reconsider the decision. A copy of the letter is in the case file.

Mr. Kelley stated that he could see no reason for reconsideration and made a motion to deny the request. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mrs. Harris was not present for the vote. Chairman Smith was absent from the meeting.

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Page 493, December 4, 1990, (Tape 2), After Agenda Item:

Request for Out-of-Turn Hearing
Creative Play School, Inc., SPA 89-V-046-1

Mr. Hammack made a motion to deny the request for an out-of-turn hearing. Mrs. Thonen went into the issue of the brick wall and its impact on the small yard. It was her understanding that the school could not operate until the issue was resolved.

Ralph Smalley, owner of the school, came forward and give a history of the case and issues. His concern appeared to be the possession of a Certificate of Occupancy when he is ready to open the doors of the school on January 7, 1991. He stated that, if the Board denied him an out-of-turn hearing, he could not proceed with the work required.

Mr. Kelley asked staff to enlighten him about whether failure to grant the out-of-turn hearing to modify his original request would deny Mr. Smalley his Certificate of Occupancy. Jane Kelsey, Chief, Special Permit and Variance Branch, replied that it would. She stated that Condition 9 had been placed on the use by the Board of Zoning Appeals after discussion at the public hearing, indicating that it was not overlooked. Ms. Kelsey stated that the Condition must be met before Mr. Smalley could be issued an occupancy permit to do the expansion. Ms. Kelsey stated that it was her understanding that Mr. Smalley was presently operating. Ms. Kelsey stated that, in order for the request to be heard before Christmas, it would have to heard on December 20, 1990. Since the current date was December 4, the twenty-day prior notice required by the Zoning Ordinance could not be met. Ms. Kelsey stated that there also was not sufficient time to prepare a staff report.

The Board asked for an explanation of why the request had taken so long after its receipt to be brought before them. Ms. Kelsey explained that there was a valid question concerning the application which needed clarification by the Zoning Administrator before the application could be processed, although Mr. Smalley disagreed.

Mrs. Thonen made a motion to schedule SPA 89-V-046-1 at the earliest possible time. She suggested that Board Members take a look at the property and determine what effect a seven-foot brick wall would have on the property.

Ms. Kelsey stated that the first available date to hear the request was January 8, 1991. Mr. Hammack made a motion to place SPA 89-V-046-1 on the schedule for January 8, 1991, for an out-of-turn hearing. Mrs. Thonen seconded the motion, which carried by a vote of 5-0. Mrs. Harris was not present for the vote. Chairman Smith was absent from the meeting.

Mr. Kelley asked if it would "do any good" if the Board made a sense of the Board Resolution that a Certificate of Occupancy be granted, pending the outcome of the hearing. Mr. Hammack asked Mr. Smalley how long he had known that he wanted to delete the fence. Mr. Smalley stated that he never really wanted to because he never saw the sense of it. He stated that his first concern was to gain approval, then go to the architect, then go to DEM to see what else was required. Mr. Smalley stated that he came to the Board as soon as he could, after all the preliminaries.

A discussion ensued during which Mr. Smalley tried to describe the position of the wall in relationship to the existing building.

Mr. Kelley reiterated his motion, stating that it was the sense of the Board of Zoning Appeals that the Creative Play School, Inc., should be allowed to open if they met all other conditions and requirements of the County, with the exception of anything covered by the special permit amendment before the Board. Mrs. Thonen asked if it was true that the School could legally operate while the application was being processed. Vice Chairman DiGiulian replied that he did not believe that was true of a special permit; he believed that all the requirements of the special permit had to be met. Mr. Hammack pointed out that Mr. Smalley had stated that he never had obtained his original occupancy permit for the addition. At this point, Mr. Ribble seconded the motion.

Mr. Kelley stated that he did not believe that a special meeting should be set up just to accommodate the request. Mr. Hammack stated that some people had legitimate problems with affidavits and out-of-turn hearing requests and that staff did a fairly good job, better than they used to. Vice Chairman DiGiulian called for a vote on the motion for the sense of the Board and the motion carried by a vote of 4-1. Mr. Hammack voted nay. Mrs. Harris was not present for the vote. Chairman Smith was absent from the meeting.

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Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the Clerk, Betsy Hurtt, had asked for the Board's approval to change the scheduled time of the Airston Appeal on the January 17, 1990 agenda from 11:00 a.m. to 10:30 a.m., in order to eliminate a gap in the schedule. Mr. Hammack made a motion to change the time. Mrs. Thonen seconded the motion which carried unanimously. Mrs. Harris was not present for the vote. Chairman Smith was absent from the meeting.

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

Geri B. Bepko
Geri B. Bepko, Deputy Clerk
Board of Zoning Appeals

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

SUBMITTED: January 17, 1991

APPROVED: January 24, 1991