The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on October 27, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

001

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 1, October 27, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ANNA MARIE TRUONG, SP 91-M-068, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location, to allow accessory structure (shed/workshop) to remain 2.1 ft. from rear lot line and 0.9 ft. from side lot line (11.8 ft. min. rear yard and 12 ft. min. side yard required by Sects. 3-307 and 10-104), on approx. 10,537 s.f. located at 4205 Muir Pl., zoned R-3, Mason District, Tax Map 72-2((3))(Q)14. (DEF. FROM 2/4/92 TO ALLOW APPLICANT TO BE PRESENT. DEF. FROM 2/11/92 FOR APPLICANT AND BUILDER TO BE PRESENT AND FOR ADDITIONAL DOCUMENTATION FROM BUILDER. DEF. FROM 4/14/92 AND 6/30/93 FOR STAFF TO SUBPOENA BUILDER. DEF. FROM 7/30/92 TO ALLOW COURT TO ISSUE A SHOW CAUSE ORDER. DEF. FROM 10/13/92 TO ALLOW COURT TO ISSUE AN MANDATORY INJUNCTION))

Chairman DiGiulian stated that at the October 20, 1992 public hearing, the Board of Zoning Appeals (BZA) had issued an intent-to-defer SP 91-M-068.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and suggested a deferral date of January 19, 1993 at 8:00 p.m.

Mrs. Thonen made a motion to defer SP 91-M-068 to the suggested date and time. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Hammack not present for the vote.

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Page 1, October 27, 1992, (Tape 1), Scheduled case of:

9:00 A.M. KENNETH F. STRUNK, VC 92-B-057, appl. under Sect. 18-401 of the Zoning Ordinance to allow construction of addition 6.7 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 11,340 sq. ft., located at 7419 Chatham St., zoned R-3, Braddock District, Tax Map 80-1((2))(18)15. (DEF. FROM 8/4/92 TO AMEND APPLICATION)

Chairman DiGiulian noted that the case had been deferred from August 4, 1992, to allow the applicant time to amend the application.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Strunk replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicant had amended the application and was no longer requesting a second story room above the garage nor the sunroom. She said that the applicant was presently seeking approval of a variance to allow a 15 by 25.6 foot garage 6.7 feet from the side lot line. The Zoning Ordinance requires a minimum 12 foot side yard; therefore, the applicant was requesting a variance of 5.3 feet from the side lot line.

Ms. Anderson noted that should the BZA approve the application, Development Condition 1 should be revised to read, "revised September 8, 1992."

The applicant, Kenneth F. Strunk, 7419 Chatham Street, Springfield, Virginia, addressed the BZA. He stated that the topographic conditions and narrowness of the property precluded placing the garage on the site without a variance. He expressed his belief that the proposed site was the only practical location for the garage. He noted that because of his deteriorating health, the garage must also be wide enough to accommodate a wheel chair and wheel chair lift. In summary, Mr. Strunk asked the BZA to grant the request and to waive the eight-day waiting period.

Mr. Pammel made a motion to grant VC 92-B-057 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 23, 1992, with the modification to Development Condition 1 as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-057 by KENNETH F. STRUNK, under Section 18-401 of the Zoning Ordinance to allow construction of addition 6.7 feet from side lot line, on property located at 7419 Chatham Street, Tax Map Reference 80-1((2))(18)15, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

002

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 27, 1992; 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 11,340 square feet.
4. The applicant has presented testimony that the modified request meets the necessary standards.
5. The narrow lot precludes placing the garage on either side of the property without a variance.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat (prepared by Alexandria Surveys, Inc. dated April 1, 1992, revised September 8, 1992) submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction, and final inspections shall be approved.

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

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

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

003

Mr. Kelley made a motion to waive the eight-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 3, October 27. 1992, (Tape 1), Scheduled case of:

9:10 A.M. MARIO B. AND HELEN D. GINNETTI, VC 92-Y-087, under Sect. 18-401 of the Zoning Ordinance to allow addition 13.3 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 9,592 sq. ft., located at 4388 Poplar Tree Ct., zoned R-3, WS, Sully District, Tax Map 44-2((17))8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Ginnetti replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicants were requesting approval of a variance to allow an addition 13.3 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicants were requesting a variance of 11.7 feet from the rear lot line.

The applicant, Mario B. Ginnetti, 4388 Poplar Tree Court, Chantilly, Virginia, addressed the BZA. He used the viewgraph to point out the irregularly shaped lot and noted that the proposed location would allow the addition to take full advantage of the sun. Mr. Ginnetti stated that the variance would raise the quality of life and allow his family to enjoy the full benefit of their house and expressed his belief that the proposed site was the most practical location for the addition.

In response to Mrs. Harris' question as to why the sunroom addition could not be located on the northern side of the structure, Mr. Ginnetti said in that location it would receive a limited amount of sun. He explained that because of the layout of the house, the access to the sunroom would be limited.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Gladys Smith Soares, 13514 Poplar Tree Road, Chantilly, Virginia, addressed the BZA. She stated that she owned the adjoining lot and expressed her belief that if the applicants were allowed to construct the addition, it would have a detrimental impact on her undeveloped property and asked the BZA to deny the request.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Mr. Ginnetti expressed his belief that with the right architectural considerations when the adjoining property is developed, the addition would not have a negative impact. He noted the heavily treed area which afforded privacy to both lots.

In response to Mr. Kelley's question as to where the trees were located, Mr. Ginnetti stated that the trees were on Ms. Soares' property.

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

Mrs. Harris made a motion to deny VC 92-Y-087 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 92-Y-087 by MARIO B. AND HELEN D. GINNETTI, under Section 18-401 of the Zoning Ordinance to allow addition 13.3 feet from rear lot line, on property located at 4388 Poplar Tree Court, Tax Map Reference 44-2((17))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 27, 1992; 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 WS.
3. The area of the lot is 9,592 square feet.

004

4. Although the subject property has an unusual lot line, the topographical conditions are good.
5. The variance would be a convenience or special privilege.
6. The addition could be placed at another location on the property.
7. Many of the properties in the area have unusual lot configurations.
8. Strict application of the Zoning Ordinance would not produce an undue hardship.
9. The sunroom addition could be placed in another location where it would receive a reasonable amount of sun light.
10. The addition could be placed so that it would require a lesser variance.
11. The variance would cause a hardship to the contiguous neighbor.
12. The contiguous neighbor should not have the burden of placing a house on their property so that an existing variance would not have a detrimental affect.

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 6-0-1 with Mr. Hammack abstaining from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1992.

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Page 4, October 27, 1992, (Tape 1), Scheduled case of:

9:10 A.M. EXECUTIVE SESSION TO DISCUSS LEGAL MATTERS

Mrs. Thonen made a motion that the Board of Zoning Appeals go into executive session for consultation with legal counsel and briefing by staff members pertaining to probable litigation or other specific legal matters requiring provision of legal advice by counsel pursuant to Virginia Code 2.1-344(A)(7) notice of violation to DAR AL-HIJRAH Mosque for failure to comply with terms and conditions of Special Permit, SP 84-M-009, in consideration of potential revocation and appropriate procedures concerning this permit.

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

The BZA went into Executive Session at 9:30 a.m. and reconvened the public hearing at 10:15 a.m.

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Mrs. Harris made a motion that the members certify that to the best of their knowledge only public business matters lawfully exempted from the open meeting requirements prescribed by the Virginia Freedom of Information Act and only matters identified in the motion to convene Executive Session were heard, discussed, or considered by the BZA during executive session.

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

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Page 5, October 27, 1992, (Tape 1), Scheduled case of:

9:15 A.M. RUTH S. BAKER, TRUSTEE, AND EMMANUEL A. BAKER, JR., TRUSTEE, & FAIRFAX RADIOLOGY CONSULTANTS APPEAL, A 92-P-004, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the representation of the Deputy Zoning Administrator for Permit, Plan Review Branch, that appellant's first parking tabulation submitted in connection with a proposed medical office at 8318 Arlington Boulevard could not be approved by the Department of Environmental Management since the medical office use is an expansion or enlargement of an existing structure or use and parking for the entire structure must comply with current Zoning Ordinance requirements pursuant to Par. 2B of Sect. 11-101, on approx. 70,192 sq. ft., located at 8318 Arlington Blvd., zoned C-3, Providence District, Tax Map 49-3((22))1. (DEF. FROM 6/9/92 AT APPELLANT'S REQUEST. DEF. FROM 9/29/92 AT APPELLANT'S REQUEST)

9:15 A.M. RUTH S. BAKER, TRUSTEE, AND EMMANUEL A. BAKER, JR., TRUSTEE APPEAL, A 92-P-005, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Department of Environmental Management's approval of a second parking tabulation submission in connection with a proposed medical office at 8318 Arlington Boulevard which showed parking for the entire building under current requirements in accordance with Par. 2B of Sect. 11-101 of the Zoning Ordinance on approx. 70,192 sq. ft., located at 8318 Arlington Blvd., zoned C-3, Providence District, Tax Map 49-3((22))1. (DEF. FROM 6/9/92 AT APPELLANT'S REQUEST. DEF. FROM 9/29/92 AT APPELLANT'S.)

Mr. Pammel stated that the Board of Zoning Appeals (BZA) had received a letter dated October 26, 1992, requesting withdrawal of the applications. He noted that the letter indicated that the outstanding issues had been resolved. Mr. Pammel made a motion to allow the withdrawal of Appeals, A 92-P-004 and A 92-P-005. Mrs. Thonen and Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Hammack not present for the vote.

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Page 5, October 27, 1992, (Tape 1), Scheduled case of:

9:20 A.M. WILLIAM F. WALL, VC 92-Y-086, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21.0 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307) and deck 12.4 ft. from rear lot line (13 ft. allowed by Sect. 2-412), on approx. 11,641 sq. ft., located at 13952 Stonefield Dr., zoned R-3 (Cluster), WS, Sully District, Tax Map 65-4((2))337.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Wall replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a variance to allow an addition 21 feet from the rear lot line and a 4.5 foot high deck 12.4 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard and a minimum 13 foot rear yard respectively; therefore, the applicant was requesting a variance of 4 feet and a variance of 0.6 feet from the rear lot line, respectively.

The applicant, William F. Wall, 13952 Stonefield Drive, Clifton, Virginia, addressed the BZA. He stated that his property abutted a 200 foot sanitary sewer easement over which nothing can be built and noted that the placement of the house on the lot had caused the need for the variance. In summary, Mr. Wall stated that the request would not have a detrimental impact on the neighborhood and asked the BZA to grant the request.

Mr. Hammack made a motion to grant VC 92-Y-086 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 20, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-086 by WILLIAM F. WALL, under Section 18-401 of the Zoning Ordinance to allow addition 21.0 feet from rear lot line and deck 12.4 feet from rear lot line, on property located at 13952 Stonefield Drive, Tax Map Reference 65-4((2))337, 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 27, 1992; 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 (cluster) and WS.
3. The area of the lot is 11,641 square feet.
4. The application meets the standards necessary for the granting of a variance.
5. The property has an exceptional topographical condition.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Greenhorne & O'Mara, Inc., dated February 10, 1988, revised June 24, 1992, submitted with this application and not transferable to other land.

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

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for

additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 7, October 27, 1992, (Tape 1), Scheduled case of:

9:30 A.M. LUCIA B. HOFFMANN, SP 92-P-051, appl. under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow carport to remain 0.4 ft. from side lot line (5 ft. min. side yard required by Sect. 2-412) and to allow carport to remain 29 ft. from front lot line (30 ft. min. front yard required by Sect. 3-403), on approx. 8,400 sq. ft., located at 2928 Summerfield Rd., zoned R-4, Providence District, Tax Map 50-4((14))30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Pripeton replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which had been compiled by Greg Riegle, who was not present at the hearing. She stated that the applicant was requesting a Special Permit to allow a carport to remain 0.4 feet from the side lot line and 29 feet from the front lot line. The Zoning Ordinance requires a 5 foot minimum side yard and a 30 foot minimum front yard; therefore, the applicant was requesting a 4.6 modification to the minimum side yard 1 foot modification to the minimum front yard. She noted that 4.6 feet represented a 92 percent error. In conclusion, Ms. Kelsey stated that with the implementation of the development conditions contained in the staff report dated October 20, 1992, staff recommended approval.

The applicant's agent, Arlene Lyles Pripeton, P.C., 10195 Main Street, Suite B, Fairfax, Virginia, addressed the BZA. She stated that the elderly applicant, who had lived in the house for over 30 years, had attempted to obtain a building permit and was told that her lot did not exist. Ms. Pripeton explained that the applicant had been confused and had not known how to proceed.

The BZA asked what Fairfax County official had informed Ms. Hoffmann that the lot did not exist. Ms. Hoffmann stated that when she attempted to obtain the building permit, the Fairfax County offices were in the process of moving and the computers were not working. She noted that although she had been advised to return on another day, she did not. Ms. Pripeton apologized for her misunderstanding of the facts.

Ms. Pripeton stated that the applicant had merely constructed a carport on the existing driveway to protect her during inclement weather. She referred to the letter from the abutting neighbors, who had no objection to the special permit, but had asked for assurance that they would be able to construct a privacy fence. Ms. Pripeton explained that visiting family members, who were unaware of the Zoning Ordinance requirements, had built the open carport. She noted that the carport consisted of an awning and three posts. Ms. Pripeton said that the applicant would adhere to the development conditions and asked the BZA to grant the request. She stated that the location of the carport was dictated by the existence of the driveway and the entrance to the house.

In response to Mrs. Harris' question as to whether the awning extended onto the adjoining property, Ms. Pripeton stated that it did not.

The BZA had a brief discussion as to whether the carport extended onto the neighboring property. Ms. Kelsey stated that the BZA had the power to grant a modification of the yard requirement on the applicant's property, but not on the adjoining property. She expressed her belief based on a review of the plat that the concrete slab was within the applicant's property line, but the awning extended onto the neighbor's property.

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

Mrs. Harris made a motion to deny SP 92-P-051 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-P-051 by LUCIA B. HOFFMANN, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building

location to allow carport to remain 0.4 feet from side lot line and to allow carport to remain 29 feet from front lot line, on property located at 2928 Summerfield Road, Tax Map Reference 50-4((14))30, 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 27, 1992; 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 8,400 square feet.
4. The application does not comply with the general standards for the granting of a special permit.
5. Although the error exceeds 10 percent, it is a 92 percent error.
6. There has not been adequate testimony to indicate that the non-compliance was done in good faith.
7. The moving of the appropriate county offices may have caused some difficulty in obtaining a record of the plat and information on the setback requirements; but, the applicant should have pursued the matter.
8. The reduction would impair the purpose and intent of the Zoning Ordinance. The structure was built without a building permit, consists of a 92 percent error, and is located 0.4 feet inside the property line with the eves extending into the adjoining property.
9. To force compliance with the minimum yard requirement would not cause an undue hardship upon the owner.

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

THAT the applicant has 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.**

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

Mrs. Harris made a motion to waive the twelve month limitation. Mrs. Thonen and Mr. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1992.

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Page 8, October 27, 1992, (Tape 1), Scheduled case of:

9:45 A.M. NEAL AND KAY ROSENQUIST, SP 92-B-048, appl. under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling and addition to remain 16.3 ft. from side lot line (20 ft. min. side yard required by Sect. 3-107), on approx. 21,860 sq. ft., located at 8608 Norfolk Ave., zoned R-1, Braddock District, Tax Map 59-3((10))114.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Rosenquist replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicants were requesting approval of a special permit to allow a reduction to the minimum yard requirements based on error in building location to allow dwelling and addition to remain 16.3 feet from the side lot line. The Zoning Ordinance requires a minimum 20 foot side yard; therefore, the applicants were requesting a modification of 3.7 feet from the side lot line. Mr. Hunter said that staff recommended approval of SP 92-B-048 subject to the development conditions contained in the staff report dated October 20, 1992. He noted that there were mistakes on Page 1 of the staff report which should read, "Amount of Error - 5.7 ft.", and "Percent of Error - 18.5%".

The applicant, Neal A. Rosenquist, 8608 Norfolk Avenue, Annandale, Virginia, addressed the BZA. He stated that when he purchased the property in 1984, it was a Veteran's Administration repossession. Mr. Rosenquist explained that although a survey of the property had not been done, he had been led to believe that everything was in order. He said that it was only when he built the addition onto the house that he realized the setback requirements had not been met. Mr. Rosenquist noted that he, along with his friends, had constructed the addition. He admitted that because of his busy schedule, he had been lax in obtaining the required Building Permits. In summary, Mr. Rosenquist stated that the addition had been built to Code and asked the BZA to grant the request.

009

In response to Chairman DiGiulian's question as to whether the addition extended any farther into the side yard than the existing house, Mr. Rosenquist said it did not.

In response to Mrs. Harris' question as to whether the existing basement stairwell precluded the placement of the addition within the Zoning Ordinance requirements, Mr. Rosenquist stated that it did.

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

Mr. Ribble made a motion to grant SP 92-B-048 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 20, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-B-048 by NEAL AND KAY ROSENQUIST, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow dwelling and addition to remain 16.3 feet from side lot line, on property located at 8608 Norfolk Avenue, Tax Map Reference 59-3{{10}}114, 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 27, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined 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 addition shown on the plat 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 prepared by Dewberry & Davis, dated April 27, 1992, submitted with this application, as qualified by these development conditions.

3. A building permit and all required inspections shall be obtained.

010

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

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 10, October 27, 1992, (Tape 1), Scheduled case of:

10:00 A.M. NANCY P. PARNELL, VC 92-L-107, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 15.7 ft. from street line of a corner lot (20 ft. min. front yard required by Sect. 3-507), on approx. 4,761 sq. ft., located at 6529 Delia Dr., zoned R-5, Lee District, Tax Map 91-2((8))19. (OTH GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Parnell replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that the applicant was requesting approval of a variance to allow an addition 15.7 feet from the front lot line. The Zoning Ordinance requires a minimum 20 foot front yard; therefore, the applicant was requesting a variance of 4.3 feet to the front yard requirement. Ms. Anderson noted that the Building Permit, which had been issued in error on September 11, 1992, had been rescinded on September 14, 1992. She noted that a representative of the applicant's contractor, M&J Builder's, was present to answer any questions the BZA may have.

The applicant, Nancy P. Parnell, 6529 Delia Drive, Alexandria, Virginia, addressed the BZA. She stated that the subject property is exceptionally small. Ms. Parnell explained that because of the lots' sizes and shapes, many homes in the area were built within 6 to 13 feet from the property line; therefore, the proposed addition would be in harmony with the neighborhood. She expressed her belief that the addition would enhance the aesthetic value of the property. In summary, Ms. Parnell said that the neighbors supported the request, there would be no detrimental impact on the area, and the application would be in harmony with the intended spirit of the Zoning Ordinance.

In response to Mr. Hammack's question as to why the addition could not be constructed to the back of the house, Ms. Parnell stated that the architectural consideration precluded the addition being placed to the rear of the house.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

M&J Builders representative, Mike Snarley, 15000 Spring Road, Woodbridge, Virginia, addressed the BZA. He stated that the proposed addition would be aesthetically pleasing. Mr. Snarley explained that if an addition were placed to the back of the existing two story house, it would not be architecturally aesthetic and would detract from the appearance and value of the property. In summary he expressed his belief that if placed in the proposed location, the addition would be in harmony with the neighborhood.

In response to Mr. Pammel's question as to whether the architect had been aware of the setback requirement before the drawing had been completed, Mr. Snarley stated that he did not know.

In response to the questions from the BZA, Ms. Parnell explained that the lots in the area were extremely small or oddly shaped and noted that many houses are within 6 to 13 feet from the lot line. She stated that the neighbors supported the request and the addition was planned so that it would complement the existing structure.

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

011

Mrs. Thonen made a motion to grant VC 92-1-107 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 20, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

MOTION TO GRANT FAILED

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-107 by NANCY P. PARNELL, under Section 18-401 of the Zoning Ordinance to allow addition 15.7 feet from street line of a corner lot, on property located at 6529 Delia Drive, Tax Map Reference 91-2((8))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 October 27, 1992; and

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

1. The applicant is the owner of the lot.
2. The present zoning is R-5.
3. The area of the lot is 4,761 square feet.
4. The property was acquired in good faith.
5. The extraordinary situation is that the corner lot has two front yard requirements.
6. The lot has an exceptional size.
7. The condition or situation of the subject property for the intended use of the subject property is not of so general or recurring nature to change the Zoning Ordinance.
8. General regulation to be adopted by the Board of Supervisor and would not cause an amendment to the Zoning Ordinance.
9. The strict application of the Ordinance would produce an undue hardship, she had already paid the builder, the architectural drawings were approved by the County, and a Building Permit was issued
10. The work which was started on September 14, 1992, was halted when the County's representative, Frank Jones informed the applicant that the Building Permit had been issued in error.
11. Because of lot size limitation, there is no alternative design for the addition that would be acceptable.
12. A 3 month delay would mean construction during the December holiday season.
13. The interior of the house has been prepared for the construction for weeks--pictures removed from walls, furniture moved, etc.
14. The undue hardship is not shared generally by others.
15. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable us of the land.
16. The authorization of the variance will not be of substantial detriment to adjacent property.
17 The character of the Zoning District will not be changed by the granting of the variance.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specific structure shown on the plat prepared by Robert L. Franca, dated June 22, 1992 submitted with this application and is not transferable to other land.

2. A corrected Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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

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

Mr. Kelley seconded the motion which failed by a vote of 3-4 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley voting aye; Mrs. Harris, Mr. Hammack, Mr. Pammel, and Mr. Ribble voting nay.

Four affirmative votes are needed for the granting of a variance.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1992.

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The Board of Zoning Appeals recessed at 11:00 a.m. and reconvened at 11:12 a.m.

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Page 12, October 27, 1992, (Tape 1), Scheduled case of:

10:15 A.M. HANS J. SCHMIDT APPEAL, A 92-D-016, appl. under sect. 18-301 of the Zoning Ordinance to appeal the determination of the Director of Department of Environmental Management to disapprove a proposed resubdivision of Lots 10A and 10b, Section 1, Langley Forest because it exceeds the maximum density requirement set forth in Sect. 3-108 of the Zoning Ordinance, on approx. 1.8326 acs., located at 901 and 909 Whann Ave., zoned R-1, Dranesville District, Tax Map 21-4((6))10A, 10B. (DEF. FROM 9/29/92 FOR ADDITIONAL INFORMATION TO BE SUBMITTED BY APPELLANT TO DEM AND REPORT BACK TO BZA.)

Chairman DiGiulian stated that the case had been deferred so that the appellant could submit additional information to the Department of Environmental Management (DEM). In response to Chairman DiGiulian's question as to whether DEM had received the information, John Winfield, Deputy Director Plan Review, Design Review Division, DEM, stated that the information had been submitted earlier in the day but he had not had an opportunity to review it.

The appellant's agent, Gerald M. Ritzert, 4117 Chain Bridge Road, Fairfax, Virginia, addressed the BZA. He explained that he had misjudged the amount of work that was involved in revising the plat and apologized for the delay in submitting the information to DEM. Mr. Ritzert said that although DEM had not reviewed the plat, he believed that the density issue had been resolved. In conclusion, Mr. Ritzert asked for a deferral and noted that the issue may be resolved without a BZA hearing.

Mr. Winfield expressed his support for the deferral. He said that although the plat had just been received, he believed that the issues could be resolved.

Mr. Hammack made a motion to defer A 92-D-016 to December 8, 1992 at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 13, October 27, 1992, (Tapes 1 and 2), Scheduled case of:

10:25 A.M. RECONSIDERATION: MAURICE R. ST. GEORGE, VC 92-V-053, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached garage 2.0 ft. from side lot line and 2.0 ft. from rear lot line (12 ft. min. side yard required by Sect. 3-307, 14 ft. min. rear yard required by Sect. 10-104), on approx. 10,646 sq. ft., located at 8414 Crossley Pl., zoned R-3, Mount Vernon District, Tax Map 102-4((5))(15)8. (RECONSIDERATION GRANTED 7/23/92. RECONSIDERATION HEARING DEF. FROM 10/15/92)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. St. George replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She stated that on July 23, 1992, a public hearing was held for the applicant's request to construct a 26 by 20 foot garage, 2 feet from the rear and 2 feet from the side lot line. The application was denied, however, a reconsideration hearing had been granted to allow the applicant time to consult with his engineer and to amend the request. She stated that the revised application was a request for approval of a 22 by 23 foot, 12 foot high garage, 4 feet from the rear and 4 feet from the side lot lines. The Zoning Ordinance requires a minimum 12 foot side yard and a minimum 14 foot rear yard; therefore, the applicant was requesting variances of 8 feet and 10 feet, respectively.

Ms. Anderson noted that if the BZA granted the request, a revised certified plat would be required and the development conditions would have to be modified to reflect the date of the revised plat.

In response to Chairman DiGiulian's question as to the current plat, Ms. Anderson stated that the applicant had merely made a drawing on a plat. She noted that if approved, the applicant would be required to submit a certified plat. She explained that the applicant had been told to submit a drawing reflecting the minimum variance that would fulfill his needs.

The applicant, Maurice R. St. George, 8414 Crossley Place, Alexandria, Virginia, addressed the BZA. He stated that one of the plats submitted to the BZA reflected a request for a garage; and the second plat reflected a request for a carport.

In response to questions from the BZA, Ms. Anderson stated that the application had originally been heard on July 23, 1992. She noted that at the July meeting, the applicant had also been granted a reconsideration hearing date of October 15, 1992. She explained that Mr. St. George had subsequently submitted a revised plat for the October 15, 1992 hearing, but had been granted yet another reconsideration hearing date of October 27, 1992. Ms. Anderson explained the BZA had requested that Mr. St. George modify the request to reflect the least possible variance which would provide for his needs. She noted that the undated plat, along with the photographs and statement, reflected the current modified request. Again, Ms. Anderson stated that if approved, a certified dated revised plat would be required by staff within eight days. She explained that because the current request was for a lesser variance, the advertisement had been correct.

Mrs. Harris noted that three different locations were depicted on the revised plat and asked for a clarification regarding the request. Mr. St. George explained that he had attempted to show the BZA that no matter where he located the proposed garage, a variance would be required.

In response to Chairman DiGiulian's question, Ms. Anderson stated that an attached carport could be located 7 feet from the side lot line.

Mr. St. George noted that the BZA had been concerned with the density and location of the original structure and had requested an alternate location in the middle of the backyard. He said that when he had explained to the BZA that a large tree precluded the garage being located there, the BZA had requested that he provide another location for the garage. Again, Mr. St. George expressed his belief that in order to build a garage anywhere on his property, he would need a variance. In conclusion, he noted the variances that had previously been granted in the neighborhood, and asked the BZA to grant the request.

Mr. Ribble noted although variances had been granted in the area, each request was unique. He explained that two of the variances were granted because of extenuating circumstances.

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

Mr. Kelley made a motion to grant-in-part VC 92-V-053. He stated that the application had shown that there were other variances granted in the area and the strict application of the Zoning Ordinance would be an undue hardship. Mrs. Harris seconded the motion.

After a brief discussion, it was the consensus of the BZA that the proposed garage was too large and the BZA discussed alternatives.

In order to clarify the motion, Mr. Kelley stated that the variance would allow a 12 foot high, 22 by 20 foot garage, 7 feet from the rear lot line.

The motion failed by a vote of 2-5 with Chairman DiGiulian and Mr. Kelley voting aye; Mrs. Harris, Mrs. Thonen, Mr. Hammack, Mr. Pammel, and Mr. Ribble voting nay. (Four affirmative votes are need for granting of a variance.)

Mr. Hammack made a motion to deny VC 92-V-053 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 92-V-053 by MAURICE R. ST. GEORGE, under Section 18-401 of the Zoning Ordinance to allow detached garage 2.0 feet from side lot line and 2.0 feet from rear lot line, on property located at 8414 Crossley Place, Tax Map Reference 102-4((5))(15)8, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 27, 1992; 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 10,646 square feet.
4. The application does not meet the necessary standards for the granting of a variance.
5. The applicant's testimony has indicated that the garage could be constructed by-right.
6. The requested variance would be a convenience for the applicant or a self-imposed hardship.
7. Although the BZA sympathizes with the applicant, the evidence does not denote 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 and Mr. Ribble seconded the motion which carried by a vote of 5-2 with Chairman DiGiulian and Mr. Kelley voting nay.

Mrs. Harris made a motion to waive the twelve month waiting period. Mrs. Thonen and Mr. Kelley seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 4, 1992.

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Page 15, October 27, 1992, (Tape 2), Information Item:

Approval of Resolutions from October 20, 1992 Hearing

Mr. Pammel made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 15, October 27, 1992, (Tape 2), Information Item:

Approval of Minutes from August 4, 1992 Hearing.

Mr. Pammel made a motion to approve the Minutes as submitted. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 15, October 27, 1992, (Tape 2), Information Item:

Approval of 1993 Meeting Dates

Mr. Pammel noted that the October 19, 1993 hearing date, should be corrected to depict that the meeting would be held on a Tuesday.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and noted that both the 18th and 20th of January were legal holidays and the BZA had a scheduled night meeting on the 19th of January.

After a brief discussion, it was the consensus of the BZA to hold the scheduled meeting on January 19, 1993.

Mrs. Thonen made a motion to approve the 1993 Hearing Dates as corrected. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 15, October 13, 1992, (Tape 3), Information Item:

Request for Date and Time
Theodore B. Simpson Appeal

Mrs. Thonen made a motion to schedule the appeal on January 5, 1993 at 10:30 a.m. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 15, October 13, 1992, (Tape 3), Information Item:

Approval of Resolution and Revised Plats
Fairfax County Water Authority, SPR 90-L-076

Mrs. Thonen made a motion to approve the Resolution and Revised Plats for SPR 90-L-076. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Date for Public Meeting Regarding
Dar Al-Hijrah Mosque, SP 84-M-009

The Board of Zoning Appeals (BZA) had a brief discussion regarding a tentative date for a revocation hearing for SP 84-M-009, Dar Al-Hijrah Mosque.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She noted that a room would be available on December 2, 1992, at 7:30 p.m. She further noted that the Clerk had submitted a list of other available dates to the BZA.

Mr. Kelley made a motion to hold the revocation hearing on December 2, 1992, at 7:30 p.m.

Mrs. Harris seconded the motion.

It was the consensus of the BZA to have Zoning Enforcement investigate the alleged violations and have the Zoning Administrator brief the BZA on the situation.

In response to the BZA's question as to what type of notification would be required, Ms. Kelsey stated the legal required notifications would have to be done. She also said that the seven concerned homeowners associations, as well as the management of Ravensworth Towers, would also be notified.

The motion carried by a vote of 6-1 with Mr. Hammack voting nay.

Ms. Kelsey noted that although the December 2, 1992 date was tentative, the legal notification requirements would have to be met. The BZA assured Ms. Kelsey that after they reviewed the Zoning Administrator's report, the staff would be informed so the notification requirements could be met.

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Board of Supervisors and Planning Commission Hearings
Regarding Proposed Zoning Ordinance Amendments

The BZA briefly discussed attending the Board of Supervisors and Planning Commission Hearings regarding churches.

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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
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

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

SUBMITTED: December 15, 1992

APPROVED: January 5, 1993

017

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 5, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:04 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 17, November 5, 1992, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE E. GONZALEZ, VC 92-D-088, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 8 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 11,842 sq. ft., located at 1709 Monza Rd., zoned R-3, Dranesville District, Tax Map 31-3((21))41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George E. Gonzalez, 1709 Monza Road, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting a 4 foot variance in order to construct a one story addition 8 feet from the side lot line. Mr. Hunter said the dwelling on Lot 40 is 14 feet from the shared lot line.

Mr. Gonzalez said when he and his wife purchased the property in 1988 they were unaware that the garage on the left side of the property did not comply with the County requirements. He said when the flat roof of the garage developed major leaks they hired an architect to look at several alternatives to renovate the garage as well as update the entire house. Mr. Gonzalez said he had discussed the various plans with the neighbors and the one before the BZA was the one they preferred. He said the existing garage would be removed and a slightly wider one would be constructed with additional bedrooms on top. Mr. Gonzalez said the subject property is very wooded.

Mrs. Harris noted that the staff report and the original description indicated that the addition would be a one story addition. Mr. Hunter said the legal advertisement stated that the applicant was requesting approval in order to construct an addition.

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

Mr. Pammel made a motion to grant VC 92-D-088 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 27, 1992 being implemented.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-088 by GEORGE E. GONZALEZ, under Section 18-401 of the Zoning Ordinance to allow addition 8.0 feet from side lot line, on property located at 1709 Monza Road, Tax Map Reference 31-3((21))41, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 5, 1992; 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 11,842 square feet.
4. This is an irregularly shaped parcel with the width at the building line being somewhat less than the width at the rear of the property.
5. The side lot line on the south tapers from a narrow dimension at the front to a wider dimension at the rear making it extremely difficult to locate a house of normal size and additions thereto 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 specified addition shown on the variance plat prepared by Robert Dale Greenberg, Architect, dated July 28, 1992 submitted with this application and not transferable to other land.

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 4-2 with Mrs. Harris and Mr. Ribble voting nay. Mr. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 18, November 5, 1992, (Tape 1), Scheduled case of:

9:10 A.M. BARBARA L. DONALDSON, VC 92-M-083, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 20.1 ft. from front lot line (30 ft. min. front yard required by Sect.3-407), on approx. 8,295 sq. ft., located at 6724 Chestnut Ave., zoned R-4, Mason District, Tax Map 50-4((13))(7)5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Barbara L. Donaldson, 6724 Chestnut Avenue, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting a 9.9 foot variance in order to construct a covered porch addition 20.2 feet from the front lot line. Mr. Hunter pointed out that the dwellings on Chestnut Avenue range in setback distance from the front lot line from 31 to 43 feet.

The applicant's husband, Keith Donaldson, said in 1991 they removed the roof from their cape cod house and turned it into a two story, 3,000 square foot dwelling. He said they were only requesting a change from 24 feet to 20.1 feet since the front stoop, as existed on the old cape cod, protruded 6.02 feet into the setback requirements, as do all the houses on the street. Mr. Donaldson pointed out that the street access line for the road is 12 feet from the curb line into the front yards on Chestnut Street; therefore, the house actually sets back 42 feet from the street.

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

Mrs. Thonen made a motion to grant VC 92-M-083 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 27, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-083 by BARBARA L. DONALDSON, under Section 18-401 of the Zoning Ordinance to allow addition 20.1 feet from front lot line, on property located at 6724 Chestnut Avenue, Tax Map Reference 50-4((13))(7)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 5, 1992; 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 8,295 square feet.
4. The house sets back way beyond the required distance to the front lot line and it is a minimum variance.
5. There is so much room in the back of the house and the placement of the house on the lot makes it hard to construct a porch on the front of the house without a variance.
6. The design looks nice and in these economic times revitalizing is a good thing.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 (covered porch) shown on the plat prepared by Thomas B. Buford, Architect, dated May 21, 1992, revised July 15, 1992 submitted with this application and not transferable to other land.

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

3. The covered porch shall be architecturally compatible with the existing dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 20, November 5, 1992, (Tape 1), Scheduled case of:

9:20 A.M. THOMAS R. METZINGER, SP 92-M-049, appl. under Sect. 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain 2.8 ft. from side lot line and 2.1 ft. from rear lot line and dwelling to remain 10 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307 and 12 ft. min. rear yard required by Sect. 10-104), on approx. 11,200 sq. ft., located at 3102 Valley La., zoned R-3, Mason District, Tax Map 51-3{(11)}254.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Thomas R. Metzinger, 3102 Valley Lane, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting special permit approval to permit a reduction to the minimum yard requirements to allow a shed to remain 2.8 feet from the side lot line and 2.1 feet from the rear lot line and to allow the existing dwelling to remain 10 feet from the side lot line. Mr. Hunter said the applicant was requesting a reduction of 2 feet or 16.6 percent and 9.2 feet or 76.6 percent to the minimum side yard for the shed and the dwelling. He added that the applicant was also requesting a reduction of 9.9 feet or 82.5 percent to the minimum yard requirement for the shed. In closing, Mr. Hunter said staff had concluded that the special permit application satisfied all applicable standards as specified in the Zoning Ordinance, thus staff recommended approval of SP 92-M-049 subject to the development conditions contained in the staff report.

Mr. Metzinger said the storage shed was constructed in 1989 by Heartland Industries and he had been unaware of the Zoning Ordinance restrictions since there are other sheds in the neighborhood that are at least 10 feet or higher. He said the error was not discovered until June 10, 1992. Mr. Metzinger said he had measured other properties in the neighborhood which have carports that set only 10 feet from the lot line, one such structure is located on his next door neighbor's property.

There were no speakers to address the request and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 92-M-049 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 27, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-M-049 by THOMAS R. METZINGER, under Section 8-901 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow shed to remain 2.8 feet from side lot line 2.1 feet from rear lot line and dwelling to remain 10 feet from side lot line, on property located at 3102 Valley Lane, Tax Map Reference 51-3((11))254, 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 5, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined 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.

H. The dwelling location was done previously to the applicant's ownership of the property.

I. The shed location with the fences that surround it and the adequate vegetation that surrounds it does not form a visual problem for the neighbors.

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 addition shown on the plat 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 prepared by Alexandria Surveys Inc. dated July 13, 1992, submitted with this application, as qualified by these development conditions.

3. All required permits and inspections shall be obtained.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Page 22, November 5, 1992, (Tape 1), THOMAS R. METZINGER, SP 92-M-049, continued from Page 21)

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

Mrs. Thonen seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 22, November 5, 1992, (Tape 1), Action Item:

Memorandum From Barbara A. Byron, Director, ZED
RE: Proposed Zoning Ordinance Amendment

Mrs. Thonen said she believed that Ms. Byron was asking for the BZA's input regarding whether or not it would think it appropriate for her to make rulings on minor modifications to a special permit or special exception.

Marilyn Anderson, Assistant Branch Chief, said the memorandum was for information only.

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Page 22, November 5, 1992, (Tape 1), Action Item:

Approval of July 28, 1992 Minutes

Mrs. Thonen made a motion to approve the minutes as submitted. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 22, November 5, 1992, (Tape 1), Action Item:

Antioch Baptist Church, SP 90-S-057
Additional Time

Mrs. Harris made a motion to grant the applicant one year additional time. Mrs. Thonen seconded the motion which carried by a vote of 7-0. The new expiration date is November 16, 1993.

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Page 22, November 5, 1992, (Tape 1), Action Item:

Request for Intent to Defer
Brian and Susan Dion Appeal, A 92-M-008

Mrs. Harris said there were three intent to defers before the BZA and questioned the reason for the requests.

Chairman DiGiulian said staff had indicated that the staff report had not been prepared.

In response to a question from Mrs. Harris, Ms. Anderson replied that the BZA Clerk does not prepare notice packages for waiver requests; therefore, she could not respond.

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The BZA recessed at 9:30 a.m. and reconvened at 9:38 a.m.

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Page 22, November 5, 1992, (Tape 1), Scheduled case of:

9:35 A.M. SAMUEL F. UNUSCAVAGE AND SUSAN B. UNUSCAVAGE, VC 92-P-084, appl. under Sect. 18-401 of the Zoning Ordinance to allow 7 ft. high fence to remain in front yards of corner lot (4 ft. max. height allowed by Sect. 10-104) and to allow shed/workshop to remain 10.5 ft. from front lot line and 7.9 ft. from rear lot line (accessory structure not permitted in front yard and 13 ft. min. rear yard required by Sect. 10-104), on approx. 22,418 sq. ft., located at 8428 Hayden La., zoned R-1, Providence District, Tax Map 59-1((7))11.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Samuel F. Unuscavage and Susan B. Unuscavage, 8428 Hayden Lane, Annandale, Virginia, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He said the request was two part, the first request was for a 3 foot variance to allow a 7 foot high fence to remain in the front yard. The second request was for variance approval to allow an accessory structure to remain in the front yard of a lot containing less than 36,000 square feet and a 5.1 foot variance to allow the structure to remain 7.9 feet from the rear lot line.

Mr. Unuscavage submitted a letter in support of the request to the BZA. Mrs. Unuscavage said they had been unaware that their lot had two front yards and called the BZA's attention to the detailed statement of justification submitted with their application. She said the shed was built to provide storage space which the builder failed to construct. Mrs. Unuscavage said they were unaware of any problem with the shed until they tried to obtain a building permit. She said during the past two year period they have lost approximately $65,000 due to builder fraud, there are no objections from the neighbors, and the shed's present location is the least obtrusive. Mrs. Unuscavage said the fence was already constructed when they purchased the property.

In response to a question from Mrs. Harris, Mrs. Unuscavage replied they had hired a builder to construct a five bedroom attic addition with ample storage space. She said her family consists of five in addition to her grandmother and her uncle and they need a large shed in order to provide storage which the builder failed to provide.

The BZA and staff discussed alternative locations for the shed and the impact on the neighbors if the shed were relocated.

In response to a question from Mr. Hammack, Mrs. Unuscavage replied they purchased the property approximately 3 years ago.

Chairman DiGiulian called for speakers in support and hearing no reply called for speakers in opposition.

Sally J. DiGiovanni, 11479 Bronzedale Drive, Oakton, Virginia, represented the owner of Lot 5, and read a letter noting the owner's opposition as he believed the resale value of his property would be impacted. (She submitted photographs to the BZA depicting the subject property.) Ms. DiGiovanni said it had been suggested that the applicants either move the shed to bring it into compliance, reduce the size of the shed, remove the shed entirely, or file for a variance. She said she was familiar with the neighborhood and she did not recall the fence being on the property for 18 years.

A discussion took place between the BZA and the speaker as to when she became aware of the construction of the shed.

Mrs. Harris asked staff what the applicant would have to do to bring the shed into compliance. Mr. Riegle said due to the provisions of Section 10-104, which stipulates that no accessory structure be located in the front yard, the shed would have to be relocated. Mrs. Harris asked how much latitude the BZA had with respect to varying a standard and Mr. Riegle replied as much as the BZA deemed appropriate.

Mr. Kelley asked if the owner of Lot 5 had contacted the applicants and Ms. DiGiovanni said she did not know. The applicants said they were never contacted.

In rebuttal, the applicants said they began leveling the ground in February 1990 and it took approximately 2 1/2 months to complete the construction of the shed. Mrs. Unuscavage said she discussed the construction of the shed with the people occupying the dwelling on Lot 5 and they voiced no objections. She said she was in mortgage banking and had discussed the relocation of the shed with different appraisers and they had stated that it would be more detrimental to relocate the shed.

Mr. Pammel asked how much of the addition that would have been constructed by the builder would have been devoted to storage. Mr. Unuscavage said 1,000 square feet.

The BZA discussed with the applicants the materials used in the construction of the shed. Mr. Unuscavage said they had only repaired the fence and there was no sight distance problem.

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

Mr. Ribble made a motion to grant VC 92-P-084 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 27, 1992 with one addition as noted in the Resolution.

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024

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-084 by SAMUEL F. UNUSCAVAGE AND SUSAN B. UNUSCAVAGE, under Section 18-401 of the Zoning Ordinance to allow 7 foot high fence to remain in front yards of corner lot and to allow shed/workshop to remain 10.5 feet from front lot line and 7.9 feet from rear lot line, on property located at 8428 Hayden Lane, Tax Map Reference 59-1((7))11, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 5, 1992; 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-1.
3. The area of the lot is 22,418 square feet.
4. The lot has exceptional topographic conditions in the rear of the lot.
5. If the shed was relocated, it would be worse than where it is now.
6. The situation is not the best, but it would be hard for the applicants to relocate the shed because the difficulties they encountered with the contractor which affected the property.
7. The applicants testified that the fence has been on the property for almost two decades, therefore it should be allowed to remain.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 locations of the fence and shed/workshop shown on the plat prepared by Dove & Associates dated January 23, 1992, submitted with this application and not transferable to other land.

2. A Building Permit for the existing shed/workshop shall be obtained and final inspections shall be approved.

3. The applicants shall provide evergreen plantings on the northern and western sides of the shed in order to screen the use from adjoining properties as approved by the Urban Forestry Branch, DEM.

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

Mr. Kelley seconded the motion which carried by a vote of 6-1 with Mrs. Harris voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 25, November 5, 1991, (Tapes 1-2), Scheduled case of:

9:45 A.M. PARVIS AZARMI-POR, VC 92-S-090, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of one lot into three lots with Lots 15B and 15C having lot widths of 17.7 ft. (150 ft. min. lot width required by Sect. 3-106), on approx. 5.004 acs., located at 11118 Chapel Rd., zoned R-1, Springfield District, Tax Map 77-3((2))15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, R. J. Keller with R. C. Fields & Associates, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He said the applicant was requesting three variances of 132.3 feet in order to subdivide one lot into three with a density of .06 dwelling units per acre. Mr. Riegle said staff had several issues with the request and perhaps the most fundamental being the proposed density would be above the proposed density of the Plan, which states the property should be developed residentially at a density of .02 to .05. With respect to the environmental issues, he said the density was particularly important since the subject property is located in the Water Supply Protection Overlay District (WSPOD) and the Plan states that the controlling density is the primary means for protecting the water quality. Mr. Riegle said staff did not believe that the request complied with six of the nine required standards for the granting of a variance. He corrected the density to .6 dwelling units per acre.

Mr. Keller said the subject property is currently zoned R-1, which would allow one acre lots, and the applicant's request is well below the R-1 density requirements. He said the applicant was proposing a density of .6 and if the lot is subdivided it would still be within the density requirements for the area. Mr. Keller said there are other lots which have been similarily subdivided and in 1980 a variance was granted to construct a pipestem configuration.

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

Mrs. Harris made a motion to deny VC 92-S-090 for the reasons noted in the Resolution.

Mr. Pammel noted that other lots in the area have been subdivided.

Mrs. Harris said those subdivisions took place several years ago. Mr. Riegle said he could not give a precise date and noted that those subdivisions occurred before the WSPOD was established.

Mrs. Thonen said she supported the motion because she believed to grant the applicant's request would bring forth other requests that would change the zoning.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-090 by PARVIS AZARMI-POR, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into three lots with Lots 15B and 15C having lot widths of 17.7 feet, on property located at 11118 Chapel Road, Tax Map Reference 77-3((2))15, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

026

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 5, 1992; 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 5.004 acres.
4. The subject property is very similar to the majority of the lots that are off of Chapel Road.
5. It has no unusual topographic conditions nor extraordinary conditions from those of contiguous properties.
6. The variance would be for convenience as opposed to alleviating a clearly demonstrable hardship.
7. There is no dwelling on the property at present; therefore, it could be developed reasonably with one house on the property.
8. The density that is proposed is higher than the recommended density.
9. The area is very rural and the water quality issue is not to be taken lightly.
10. There has been no testimony to substantiate the granting of a variance.
11. The granting of the variance would change the Zoning Ordinance.
12. It would not comply with the spirit and intent of the Zoning Ordinance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992.

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027

10:00 A.M. GEORGE A. ZACHARIAS AND EUSTATHIA C. ZACHARIAS, VC 92-V-101, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 21 ft. from front lot line (35 ft. min. front yard required by Sect. 3-207), on approx. 20,028 sq. ft., located at 7736 Tauxemont Rd., zoned R-2, Mount Vernon, Tax Map 102-2((8))4. (OTH GRANTED 9/22/92)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George A. Zacharias, 7736 Tauxemont Road, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the dwellings on Tauxemont Road range in setback distance from the front lot line from 17 feet to 63.3 feet. Mr. Hunter said the applicants were requesting a 14 foot variance in order to construct a one story addition. He said the adjacent dwelling on Lot 2 is approximately 24 feet from the shared lot line.

Mr. Zacharias pointed out that the house was built in 1941 and at that time came within 25 feet of the front lot line and within 10.1 feet of the north lot line. He said he and his wife have lived on the property for 37 years and noted there are no street lights, no sidewalks, and the lots are very heavily wooded. Mr. Zacharias said when the houses were constructed they were built in such a way to save the maximum number of trees. He said the addition will not impact the neighborhood, there are no objections from the neighbors, and only a portion of the addition required a variance.

Mrs. Harris and the applicant discussed what type of use the proposed addition would provide and the feasibility of relocating the addition.

The applicant's architect, James Noel, President of the Tauxemont Community, explained the applicants' were proposing to add an entranceway and designed it in such a way that trees would not have to be removed. He said the proposed addition would be in line with the remainder of the neighborhood.

There were no speakers to address the request and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 92-V-101 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 27, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-101 by GEORGE A. ZACHARIAS AND EUSTATHIA C. ZACHARIAS, under Section 18-401 of the Zoning Ordinance to allow addition 21 feet from front lot line, on property located at 7736 Tauxemont Road, Tax Map Reference 102-2((8))4, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 5, 1992; 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-2.
3. The area of the lot is 20,028 square feet.
4. The location of the house on the property is such that it makes the variance necessary.
5. The addition will be 4 feet farther away from the lot line than the existing dwelling.
6. The neighborhood is very old and granting the request will not set a precedence.

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 House Location Survey prepared by Thomas G. Gilbert, Land Surveyor, dated August 29, 1991 and revised by Anthony Morse, dated September 13, 1992 submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 28, November 5, 1992, (Tape 2), Scheduled case of:

10:15 A.M. CHARLIE S. CHOE AND MOON CHOE, VC 92-D-035, appl. under Sect. 18-401 of the Zoning Ordinance to allow structure to remain 0.0 ft. from rear lot line (20 ft. min. rear yard required by Sect. 4-507), and to allow parking spaces 0.0 ft. from the front lot line adjacent to Old Dominion Dr. (10 ft. min. required by Sect. 11-102), on approx. 14,090 s.f., located at 6271 Old Dominion Dr., zoned C-5, Dranesville District, Tax Map 31-3((1))75. (CONCURRENT WITH SE 92-D-018. DEF. FROM 9/29/92 SO THE BOARD OF SUPERVISORS CAN TAKE ACTION ON SE 92-D-018))

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants' attorney, Stephen Fox, replied that it was.

Greg Chase, Staff Coordinator with the Zoning Evaluation Division, presented the staff report. He said the applicants were requesting two variances, one to the front lot line and one to the rear lot line. Mr. Chase said in 1960 the BZA granted approval of a quick service food store on the site and approved a variance to the rear yard on Old Dominion Drive frontage to permit a rear yard of 4 feet. He said recently the property was the subject of a Special Exception application to permit a quick service food store at the site, which was approved by the Board of Supervisors.

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Mr. Fox said an interpretation by the Zoning Administrator required the applicants to file a special exception and then it was determined that a variance was needed. He said the applicants were proposing to add a drop off laundry, which is a permitted use in the C-5 zoning district. Mr. Fox said at the time the structure was constructed he believed that it did meet the Zoning Ordinance, the lot is odd shaped, and the request is not of such a recurring nature that it would require an amendment to the Zoning Ordinance. He expressed concern that Development Condition Number 2 could be interpreted to limit the duration of the variance.

A discussion took place among the BZA as to how Development Condition Number 2 could be reworded or if it should be deleted.

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

Mr. Hammack made a motion to grant VC 92-D-035 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 22, 1992 with the deletion of Condition Number 2.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-035 by CHARLIE S. CHOE AND MOON CHOE, under Section 18-401 of the Zoning Ordinance to allow structure to remain 0.0 feet from rear lot line and to allow parking spaces 0.0 feet from the front lot line adjacent to Old Dominion Drive, on property located at 6271 Old Dominion Drive, Tax Map Reference 31-3((1))75, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 5, 1992; and

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

1. The applicants are the owners of the land.
2. The present zoning is C-5.
3. The area of the lot is 14,090 square feet.
4. The lot had exceptional size at the time of the effective date of the Ordinance.
5. It is an existing structure that has been used for various uses over the years and satisfies all the standards very well.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Schiller & Associates, P.C. dated March 9, 1990 and revised to May 27, 1992, submitted with this application and is not transferable to other land.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992. This date shall be deemed to be the final approval date of this variance.

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

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Page 30, November 5, 1992, (Tape 2), Scheduled case of:

10:30 A.M. STEVEN D. YODER AND BARBARA B. YODER APPEAL, A 92-Y-015, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the occupancy of a second dwelling unit on the appellant's property does not constitute a servants quarters use and is therefore in violation of the Zoning Ordinance provisions, on approx. 2.0 acs., located at 2431 Sunny Meadow La., zoned R-E, Sully District, Tax Map 37-2((3))8A. (DEF. FROM 9/29/92 TO ALLOW THE APPELLANT TO MEET THE NOTICE REQUIREMENT)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The appellant's attorney, Tom Cregger, 100 East Street, S.E., Vienna, Virginia, replied that it was.

Mr. Cregger said the appellants were unable to be present as they were working for the U.S. Government and presently living in Taiwan. He said he believed the appeal was simply an interpretation of the definition of servant. The property was built in 1986 and the appellants had proffered to the County that they would build an in-law apartment which would be strictly occupied by the elderly parents who would perform services such as grounds keeping, etc., on the property. Mr. Cregger explained that the senior Yoders come on an as needed basis and it is in the current lease that the parents will be hired to maintain the grounds.

The BZA discussed with the speaker the amount of time the senior Yoders spend on the subject property and if there were any tax receipts to substantiate that they were paid for their services.

William Shoup, Deputy Zoning Administrator, said staff's position was outlined in the October 28, 1992 memorandum. (He used the viewgraph to explain what structures are located on the property.) Mr. Shoup said that servants' quarters are permitted as an accessory use and must be in accordance with the accessory use criteria. It was staff's position that the manner in which this unit is used did not satisfy that criteria, therefore it did not satisfy the accessory use definition and was in violation of the Zoning Ordinance.

A discussion took place between the BZA and staff as to whether or not the use was supposed to be a temporary use.

Chairman DiGiulian called for speakers.

John Burke, 2420 Sunny Meadow Lane, Vienna, Virginia, said he purchased his residence in 1990 and the selection was primarily driven by the privacy that the large lots provide and the fact that there are single dwellings on the lots. He expressed concern with the appellants' being allowed to continue the use as he believed that it would set an undesirable precedent and the impact that it would potentially have on his property.

Fred Schoeneborn, 2433 Sunny Meadow Lane, Vienna, Virginia, said he bought his property in 1988 and the people he purchased his property from had failed in their attempt to prevent the second structure from being constructed on the appellants' property. (He discussed a display depicting the subject property with the BZA.) Mr. Schoeneborn said if the appellants' reasoning is accepted he should be allowed to build a second dwelling for his son to live in

as it appears that his son does the same type of maintenance as the senior Yoders. He said he believed that the use set an undesirable precedent in the neighborhood and expressed concern as to what happens to the second dwelling when the property is sold.

Benjamin Brown, 2429 Sunny Meadow Lane, Vienna, Virginia, said he had little to add to the previous speakers comments and that he believed that the appellants' have deceived the neighborhood. He said he grew up in a family who had domestic help, that he is aware of what constitutes a servant, and that he has not seen this type of relationship on the appellants' property. Mr. Brown said he bought his property in good faith and asked the BZA to resolve the issue.

In rebuttal, Mr. Cregger submitted receipts to the BZA showing that the senior Yoders had been reimbursed for their work. He said he believed that a servant was someone who performs service, work, or labor for a primary dwelling.

The BZA and the speaker discussed how the senior Yoders were reimbursed for the services they perform and for their travel expenses.

Mrs. Harris pointed out that although the receipts had different dates, the numbers were successive. Mr. Cregger said since it was a family arrangement it was not as strict as it perhaps should be.

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

Mr. Pammel made a motion to uphold the Zoning Administrator's determination with respect to her interpretation and decision as he believed the traditional and accepted use as servant is one where the person is occupied as a servant for a prescribed period year round.

Mrs. Thonen seconded the motion and stated that she did not believe that the use of the secondary dwelling met the definition of an accessory use and that it was being used as an extra dwelling.

Mr. Kelley said he agreed with the motion but that he disagreed with the reasons stated by the other members. He said he did not believe there was anything wrong with having seasonal servants, but that he did not believe that the employer/employee relationship had been established.

Mr. Pammel said some of his neighbors had a number of people at their homes frequently throughout the year doing work. He added that the workers do not live on the property and do not live in servants quarters, but they are under contract to perform a service.

Mrs. Harris said she agreed with Mr. Kelley's comments.

Mrs. Thonen called for the question.

The motion carried by a vote of 7-0. This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992.

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

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Page 31, November 5, 1992, (Tape 2-3), Scheduled case of:

10:45 A.M. THOMAS J. ROTHER APPEAL, A 92-M-010, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the appellant's retail sales operation occupies more than 40% of the above-ground gross floor area of the establishment in violation of Par. 4 of Sect. 5-505 of the Zoning Ordinance, on approx. 7.242 acres., located at 5576 General Washington Dr., zoned I-5, Mason District, Tax Map 81-1((9))27. (DEF. FROM 7/28/92 AT APPELLANT'S REQUEST. DEF. FROM 9/29/92 TO ALLOW THE APPELLANT TO MEET THE NOTICE REQUIREMENT)

Thomas J. Rother, co-owner of Lawn & Leisure, distributed handouts to the BZA and said he had been doing business in the Shell Industrial Park for more than eight years and this was the first time there has been a complaint filed. He said he believed the use was in compliance with the I-5 zoning and cited reasons as to why it was the best environment for the type of business that he operates. Mr. Rother called the BZA's attention to the list of clients and the brochures of the products he sells. He said it would be difficult to "peg" his business in one particular category as noted in the Zoning Ordinance since it is rather hybrid. Mr. Rother said he believed his business has very little impact on the industrial park and on a busy day there may be as many as four customer cars in the parking lot at any given time.

In response to a question from Mr. Hammack, Mr. Rother replied that he disagreed with staff that he did not meet the 60-40 ratio. He said if the business is divided up into the component parts, less than 40 percent of the floor space used in retail sales. Mr. Rother

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said it would be very difficult to pinpoint what products on the sales floor are used exclusively by commercial and industrial businesses and those that might be used by homeowners.

Mr. Kelley asked if the business was categorized as wholesale and retail sales on the financial statement. Mr. Rother said unfortunately not, but it was broken out by service, part sales, and wholesales sales.

Mrs. Harris discussed with Mr. Rother the Non Residential Use Permit issued to him on April 15, 1991, which clearly delineates the warehouse from the retail in a 60-40 break. They also discussed the type of items stored in the warehouse.

Mr. Hammack and William Shoup, Deputy Zoning Administrator, discussed if the appellant could proceed as he is now if he were not selling any retail out of the establishment and everything was sold from the catalog. A discussion took place between the BZA and staff as to the distinction of a retail/commercial sale and a retail/warehouse sale.

Mr. Rother quoted the Whoesale Trade Establishment definition from the Zoning Ordinance which states, "... this includes businesses that sell merchandise to institution, commercial, and industrial consumers", which he said is exactly what he sells.

Mr. Shoup said an important point of that provision is that it stipulates that those sales must be the primary occupation. He said staff did not believe that was how the appellant was operating his business. Chairman DiGiulian said the appellant had testified that was the vast majority of this business and Mr. Rother agreed.

In response to a question from Mr. Hammack, Mr. Rother replied that he was taxed only on gross receipts and the business was categorized as a nursery.

A discussion took place between Mrs. Harris and Mr. Rother as to who he would consider the immediate consumer.

Mr. Hammack asked staff where this type of business could legally operate in Fairfax County. Mr. Shoup said in a retail, commercial zoning district such as C-8.

Mr. Shoup pointed out there is a separate definition of wholesale sales, which is the sale of goods, merchandise, and commodities in gross for the purposes of resale and the appellant was not operating that way.

Chairman DiGiulian called for speakers.

Ellison Grimley, Jr., 12706 Mill Gwen Court, Clifton, Virginia, said he owned a building adjacent to the appellant's and that he did not believe the appellant is in violation of the Ordinance and it was always a good idea to display products.

Pat Reams said she worked for the appellant on a seasonal basis and that she believed the appellant tried to make the business profitable by offering the variety of products that would be attractive to the clients and the appellant should not be penalized for doing so. She said there is never more than three or four cars in the parking lot during the busiest times.

Mr. Rother asked if staff was considering an amendment that might correct this type of problem. Mr. Shoup said staff is addressing the whole issue of retail sales in industrial districts, which will not be immediately forthcoming and there are no guarantees that it would rectify the appellant's situation but it is going to be looked at. Mr. Rother said it might be appropriate to defer decision until the amendment has been researched.

Mr. Hammack asked where an item ordered from the catalog is shipped to and Mr. Rother said in many cases it comes directly from the manufacturer and sometimes it is assembled at another location and delivered to the consumer.

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

Mrs. Thonen made a motion to uphold the Zoning Administrator's determination as she believed that warehouses are for gross sales and that she could not agree to a deferral since staff could not tell the BZA when the amendment would be written and the appellant was under violation. She said she did not believe that it would create a hardship on the appellant to reorganize in order for his business to meet the 60-40 requirement.

Mrs. Harris seconded the motion and added that it did not appear that there was any possibility of meeting the 60-40 requirement and that she was not questioning how the appellant ran his business.

Mr. Kelley said he would not support the motion as he did not believe staff had proven its case.

Chairman DiGiulian agreed with Mr. Kelley and said it was belief that traditionally sales to commercial and industrial users has not been considered retail.

Mr. Pammel said there was no doubt in his mind that the appellant did not meet the wholesale sales criteria because of the two words, "in gross."

A discussion took place among the BZA as to what constitutes the 60-40 in the appellant's business.

The motion carried by a vote of 5-2 with Mrs. Harris, Mrs. Thonen, Mr. Hammack, Mr. Pammel, and Mr. Ribble voting aye; Chairman DiGiulian and Mr. Kelley voting nay. This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 13, 1992.

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Page 33, November 5, 1992, (Tape 3), Scheduled case of:

Scheduling of the Finn A. Jensen Appeal

William Shoup, Deputy Zoning Administrator, explained staff did not believe that the appeal was timely filed and that he had informed the appellant of staff's position. He said this was a longstanding violation and the appellant had received two notice of violations, and the second notice was the one he chose to appeal.

Mr. Pammel made a motion that the BZA not accept the appeal as it was not timely filed. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 33, November 5, 1992, (Tape 3), Scheduled case of:

Intent to Defer
Brian and Susan Dion Appeal, A 92-M-008

Mr. Pammel said he had discussed the appeal with William Shoup, Deputy Zoning Administrator, and had been told that the appeal was probably going to be resolved administratively in the near future. He made a motion that the BZA issue an intent to defer. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 33, November 5, 1992, (Tape 3), Scheduled case of:

Intent to Defer
American Mobile Satellite Corporation, SE 92-C-036 and VC 92-C-094

Mr. Hammack made a motion that the BZA issue an intent to defer. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 33, November 5, 1992, (Tape 3), Scheduled case of:

Intent to Defer
Golf Ventures, Inc., SP 92-C-032

Mr. Pammel said he would like the BZA to request the applicant be present at the November 19, 1992 public hearing to explain why the notice requirement was not met.

Mrs. Harris said in this case an attorney was involved and he most certainly was aware of the notice. She asked if there was a way staff could make certain that the applicants, who are not represented by attorneys, are aware of the notice process.

Mr. Kelley said he believed not meeting the notice requirement might be a ploy by an applicant to assure that their case is deferred.

Jane Kelsey, Chief, Special Permit and Variance Branch, said in this particular instance staff had major concerns with the application and had suggested that the applicant amend the request. She said the deferral was requested to allow time to resolve those issues. Ms. Kelsey suggested that perhaps the BZA could defer the application indefinitely since staff had not yet received revised plats and would need time to review the revised plats.

Mr. Kelley made a motion to issue an intent to defer and that he believed that it was logical that the attorney had not mailed the notices since staff had requested revisions. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Gold's Gym

Chairman DiGiulian said he had received a call from a gentlemen by the name of Mr. McKeever requesting an out of turn hearing for an application that had just recently been filed but had not yet been forwarded from the Applications Acceptance Branch to the Special Permit and Variance Branch. He said the applicant was requesting a public hearing date of December 1, 1992.

Jane Kelsey, Chief, Special Permit and Variance Branch, said she had talked with the applicant and had been told they wished to relocate the business and the negotiations for the new lease had taken longer then they had anticipated. She said the applicant's current landowner will not grant them an extension in order for them to continue negotiations for the new site.

Mrs. Thonen asked if staff could accommodate a December 1, 1992 public hearing. Ms. Kelsey said there were six cases currently on that date but if the BZA granted an out of turn hearing it would be the applicant's responsibility to meet the notice requirement.

Mrs. Thonen made a motion to grant the applicant's request for an out of turn hearing. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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

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

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

SUBMITTED: December 15, 1992

APPROVED: January 5, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 10, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

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Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 35, November 10, 1992, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL AND CHARLOTTE MASLOWSKI, VC 92-Y-093, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 9.3 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C07), on approx. 22,668 sq. ft., located at 5107 Firethorne Ct., zoned R-C, WS, Sully District, Tax Map 56-3((9))74.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Maslowski replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the applicant wished to enlarge an existing enclosed sunporch and was requesting a variance of 10.7 feet. He said that the property was previously zoned R-2 (Cluster), which accounts for the smaller-than-normal lot size and the location of the dwelling's existing additions. Mr. Riegle pointed out a minor error in the staff report, referring to an existing structure stating it to be a proposed addition, which he pointed out on the viewgraph.

Mrs. Harris asked if the structure referred to had been built without a variance and Mr. Riegle said that it had, under the previous zoning.

The applicant, Daniel Maslowski, 5107 Firethorne Court, Fairfax, Virginia, presented the statement of justification, stating that he wanted to extend a room 4 feet to the left and no further to the rear but, because of the unusual property line cut at the rear, it appears that it will be extended to the rear. He said that both of his neighbors had no problem with his proposed addition and that the rear of the lot was totally wooded.

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

Mr. Hammack made a motion to grant VC 92-Y-093 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-093 by DANIEL AND CHARLOTTE MASLOWSKI, under Section 18-401 of the Zoning Ordinance to allow addition 9.3 ft. from side lot line, on property located at 5107 Firethorne Ct., Tax Map Reference 56-3((9))74, 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 10, 1992; 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-C, WS.
3. The area of the lot is 22,668 square feet.
4. The applicant has satisfied the nine required standards for variance applications; in particular, an exceptional situation exists in the development of the property, which was prior to the requirements of the current zoning district, and changes have been made since it was originally constructed.
5. The variance would not be detrimental to any of the adjoining property owners.
6. The variance would be in harmony with the intended 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;

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E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the additions shown on the plat prepared by Bengtson, DeBell, & Elkin Ltd. dated November 18, 1981, revised August 20, 1992, submitted with this application and not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 36, November 10, 1992, (Tape 1), Scheduled case of:

9:10 A.M. TOLIVER J. BROWN, VC 92-Y-085, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 6.0 ft. from side lot line (8 ft. min. side yard, with a total min. of 20 ft. required by Sect. 3-307), on approx. 12,308 sq. ft., located at 13103 Melrae Ct., zoned R-3 (Cluster), Sully District, Tax Map 45-3((2))(51)23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Brown replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the applicant proposed construction of a garage addition to a distance of 6 feet from the side lot line, requiring a variance of 2 feet to the minimum side yard requirement. She said that adjacent Lot 24 to the east is located approximately 41.2 feet from the shared lot line.

The applicant, Toliver J. Brown, 13103 Melrae Court, Chantilly, Virginia, presented the statement of justification and stated that he was seeking to change a one-car garage into a

two-car garage. He said that the reason he required a variance was that the lot is unusually trapezoidal; further, the adjacent lot would not be crowded because it is one of the largest lots in the neighborhood and is 47 feet from his dwelling. Mr. Brown said that the Greenbriar Covenants prohibit establishing an attached storage shed and other houses in the area were built with two-car garages or have made the very common addition which he is proposing.

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

Mrs. Harris made a motion to grant VC 92-Y-085 for the reasons listed in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-085 by TOLIVER J. BROWN, under Section 18-401 of the Zoning Ordinance to allow addition 6.0 ft. from side lot line, on property located at 13103 Melrae Ct., Tax Map Reference 45-3{{2}}{51}23, 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 10, 1992; 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 (Cluster).
3. The area of the lot is 12,308 square feet.
4. The shape of the property is unusual.
5. The placement of the house on the lot is unusual.
6. The conditions on the property are not so general or recurring in nature to make it reasonable to formulate a new adoption of regulations by the Board of Supervisors.
7. The distance from the next house is 41.2 feet.
8. The applicant is requesting a minimum variance.
9. The width of the garage will be 24 feet, which is the usual approved size.
10. A hardship will be alleviated by granting the variance and the variance will be in harmony with the intended spirit and purpose of the Ordinance.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by William E. Ramsey, P.C., dated July 28, 1992, submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 38, November 10, 1992, (Tape 1), Scheduled case of:

9:30 A.M. JAMES J. MILLER AND LINDA J. MILLER, VC 92-Y-089, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 3.6 ft. from side lot line (8 ft. min. side yard required by Sect. 3-507), on approx. 5,772 sq. ft., located at 9104 Ashmeadow Ct., zoned R-5, Mount Vernon District, Tax Map 108-1((6))188.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Miller replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the applicant proposed construction of an 18-foot wide, two-car garage addition, 3.6 feet from the side lot line, requiring a variance of 4.4 feet. She said that the dwelling on adjacent Lot 187 to the southeast is approximately 10.1 feet from the shared side lot line.

The applicant, James J. Miller, presented the statement of justification, stating that the construction of the garage would provide parking for visitors and relatives who come to his home, as there is no available parking in the cul-de-sac on which his lot is located.

Mr. Ribble asked the applicant if there were other two-car garages in the neighborhood and he said that there were.

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

Mr. Ribble made a motion to grant VC 92-Y-089 for the reasons outlined in the Resolutions, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-089 by JAMES J. MILLER AND LINDA J. MILLER, under Section 18-401 of the Zoning Ordinance to allow addition 3.6 ft. from side lot line, on property located at 9104 Ashmeadow Ct., Tax Map Reference 108-1((6))188, 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 10, 1992; 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-5.
3. The area of the lot is 5,772 square feet.
4. The applicant has met the nine standards for a variance, in particular the property has exceptional narrowness.
5. The two-car garage is one of the smallest to come before the Board.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Vincent Anthony Carlin III, dated August 16, 1992, submitted with this application and not transferable to other land.

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 4-2. Mr. Hammack and Mr. Pammel voted nay. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 40, November 10, 1992, (Tape 1), JAMES J. MILLER AND LINDA J. MILLER, VC 92-V-089, continued from Page 39)

There was ten minutes before the next scheduled case and Chairman DiGiulian called for the Action Item agenda.

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Page 40, November 10, 1992, (Tape 1), Action Item:

Request for Date and Time
Appeal Application
Virginia Electric and Power Company

Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested a date of January 12, 1993 at 10:00 a.m. Mrs. Harris so moved. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 40, November 10, 1992, (Tape 1), Action Item:

Approval of Minutes from September 15, 22, and 24, 1992
and October 6, and 20, 1992 Hearings

Mr. Pammel moved to approve the minutes as submitted by the Clerk. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 40, November 10, 1992, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
George A. & Daphine Mihuc
VC 92-V-123

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the variance would not require staffing and that staff had no position on the request.

The Board considered the letter from the applicant, stating that the project was already under construction, and the fact that inclement weather might soon be approaching. Mr. Kelley made a motion to schedule the case for December 10, 1992. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 40, November 10, 1992, (Tape 1), Information Item:

Dar Al-Hijrah Mosque
SP 84-M-009

Chairman DiGiulian advised that James P. Zook, Director, Office of Comprehensive Planning, had informed him the previous day that the Zoning Administrator, Jane W. Gwinn, had given the Mosque until December 7, 1992, to submit a plan for alleviating the parking problem. He said that the Zoning Administrator was seeking a commitment from the Mosque for a time when they would be prepared to submit an application for shared parking or construction of additional parking facilities. Mrs. Harris asked when the BZA had tentatively set their meeting date and Chairman DiGiulian said it had been set for December 2; however, now that the Zoning Administrator had allowed the applicant until December 7 to submit a proposal, it might be January before the BZA would be able to take any steps. The consensus of the Board was to defer the decision until the following week, when Ms. Kelsey could provide the Board members with available Board Room dates which would allow for proper notification.

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The Board recessed at 9:35 a.m. and reconvened at 9:45 a.m.

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Page 40, November 10, 1992, (Tape 1), Scheduled case of:

9:40 A.M. LOUIS A. FERMO, VC 92-S-091, appl. under Sect. 18-401 of the Zoning Ordinance to allow extension of carport to 2.8 ft. from side lot line such that side yards total 14.3 ft. (8 ft. min. side yard, 24 ft. total side yard required by Sect. 3-207, 5 ft. extension permitted by Sect. 2-412) on approx. 11,915 sq. ft., located at 7000 Spaniel Rd., zoned R-2 (Cluster), Springfield District, Tax Map 88-2((6))130.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Fermo replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the applicant proposed to enlarge a single carport into a double carport. She said that the Ordinance does allow a carport to extend 5 feet into a side yard, but it cannot be located any closer than 5 feet from the property line; accordingly, the applicant was requesting a variance of 2.2 feet to the minimum side yard requirement, with total side yards of 14.3 feet. Ms. Langdon said that the dwelling on Lot 129 to the east is located approximately 14.9 feet from the shared side lot line.

The applicant, Louis A. Fermo, 7000 Spaniel Road, Springfield, Virginia, presented the statement of justification, stating that he was requesting the addition in order to shelter both vehicles and passengers from inclement weather and for convenience insofar as loading and unloading groceries, etc. He said that curbside parking causes problems with mail delivery and trash removal. Mr. Fermo pointed out that the lot is narrow in the front and, if the house had been sited differently, he would not be requesting a variance. He said that the topography was also problematic in that the lot drops off at the rear and then rises dramatically to the rear property line, giving the effect of having the house built into a hollow, which limits the location of any additions. The applicant said that he also has a 10 foot storm sewer easement along the left side of the property, which further restricts usable or buildable areas. Mr. Fermo said that the 2.2 foot variance would allow him to build a minimum 7 foot extension onto his existing 12 foot wide carport, which would make it 19 feet wide. He said he believed this to be the minimum variance possible.

Mr. Fermo said that, within a two-block radius of his home, there are some 18 other properties that have expanded their carports or added enclosed one- or two-car garages. He provided photographs to the Board. Mr. Kelley asked whether variances had been required for the additions in the photos and Mr. Fermo said that several had required variances. He said that four of the 18 additions were on his block. Mr. Fermo submitted a letter from an adjacent neighbor, supporting his application.

In answer to a question from Mrs. Harris, Mr. Fermo said that the existing shed at the rear of the carport would become an open space with a corner support and would not be extended. Jane C. Kelsey, Chief, Special Permit and Variance Branch, clarified by stating that it would have to be open under the current definition of "carport" in the Zoning Ordinance.

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

Mr. Kelley made a motion to grant VC 92-S-091 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-091 by LOUIS A. FERMO, under Section 18-401 of the Zoning Ordinance to allow extension of carport to 2.8 ft. from side lot line such that side yards total 14.3 ft., on property located at 7000 Spaniel Rd., Tax Map Reference 88-2((6))130, 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 10, 1992; 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 (Cluster).
3. The area of the lot is 11,915 square feet.
4. The applicant has met the required standards.
5. The lot has an exceptional trapezoidal shape.
6. The lot has exceptional topographical conditions.
7. There is an easement on the left side of the property.
8. If the house had been sited differently on the lot, a variance would not be required.
9. Not granting the variance would result in a hardship.

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

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

E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Dewberry & Davis, dated August 19, 1992, revised September 30, 1992, submitted with this application and not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-1. Mr. Pammel voted nay. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 42, November 10, 1992, (Tape 1), Scheduled case of:

9:50 A.M. PAMELA ANN MCALWEE, SP 92-B-053, appl. under Sect. 8-917 of the Zoning Ordinance to allow 3 dogs on approx. 10,701 sq. ft. (12,500 s.f. min. lot required by Sect. 2-512), located at 8804 Burbank Rd., zoned R-2(C), Braddock District, Tax Map 70-1((12))292.

Chairman DiGiulian acknowledged a note on the agenda stating that the notices were not in order for this application.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, explained that the applicant had sent the notices to the residents of the properties, rather than to the property owners, necessitating resending of notices. She said that staff suggested January 26, 1993 at 9:00 a.m.

Mrs. Harris so moved. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Mrs. Thonen was absent from the meeting.

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Approval of Resolutions from November 5, 1992

Mr. Pammel so moved. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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The Board recessed at 9:55 a.m. and reconvened at 10:15 a.m.

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10:00 A.M. BRIAN P. AND SUSAN H. DION APPEAL, A 92-M-008, appl. under Sect. 18-301 of the Zoning Ordinance to appeal the determination of the Director of the Department of Environmental Management that the appellants' proposed "Gift Lot" subdivision of Lot 35 of the Fairland Subdivision must comply with certain provisions of Chapter 101 of the County Code, the Subdivision Ordinance, and the Public Facilities Manual, on approx. 52,916 sq. ft., located at 5021 Grafton St., zoned R-2, Mason District, Tax Map 72-3((3))35. (DEF. FROM 7/28/92 AT APPELLANT'S REQUEST. NOTICES NEED TO BE DONE)

Chairman DiGiulian advised that the Board had issued an Intent to Defer the previous week. Jane C. Kelsey, Chief, Special Permit and Variance Branch, recommended that this appeal be deferred indefinitely because the appellant indicated that the appeal would probably be withdrawn. In this way, she said it would not interfere with the Board's agenda by creating blank periods of time.

Mrs. Harris so moved. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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10:15 A.M. ST. TIMOTHY CHURCH, SPR 81-S-049, appl. under Sect. 3-103 of the Zoning Ordinance to renew SP 81-S-049 for church and related facilities to allow extension of use of trailer, on approx. 18.16 acs., located at 13807 Poplar Tree Rd., zoned R-1, Sully District, Tax Map 44-4((1))8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Enderle replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the applicant was requesting renewal of a special permit to allow continued use of a temporary classroom double trailer on the site, which had been limited to five years by SPA 81-S-049-2. He said that the trailer is 50 feet by 40 feet and is located adjacent to and southwest of the existing classroom building. Mr. Hunter said that, while the staff report indicated that the request was for a two-year extension, the applicant was now requesting a five-year extension. He said that the statement of justification stated that the trailer housed a learning center and a small classroom for art, which are used by the St. Timothy school.

William F. Enderle, 200 N. Glebe Road, #904, Arlington, Virginia, the applicant's agent, presented the statement of justification, stating that he concurred with the staff report, which recommended approval. He said they were asking for an extension of five years for the trailer to be used while the facility is being expanded, after which the trailer would cease to exist.

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

Mr. Pammel made a motion to grant SPR 81-S-049 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1992, as amended by changing Condition 15 to extend the renewal from two years to five years and adding that, "The trailer shall be removed upon completion of the expansion of the school facilities."

Mr. Hunter advised that he was informed by the applicant that they were examining whether or not to split the congregation, in which case they may expand on the site or they may build a new church, rectory and school at another location.

Mr. Enderle said that they were in the process of trying to acquire additional land; however, the needs of St. Timothy Parish require expansion of the existing facilities on the present site. Mrs. Harris said that the plan appeared to defeat the temporary nature of the trailer which had been in place since 1984, and detracted from the beauty of the church. For this reason, she said she did not believe the renewal should be for five years. Mr. Kelley said that there was no way that the applicant could get approvals and permits in two years. Mr. Kelley interpreted Mr. Enderle's position to be that the church was exploring two options: (1) to acquire some property and split the parish; or (2) to expand St. Timothy. He said that a little of both was probably possible. Mr. Enderle said that Mr. Kelley was correct. Mr. Kelley said that he did not believe that could be accomplished in two years.

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Mr. Enderle deferred to The Reverend Father O'Brien, Pastor of the Parish, to speak to the BZA.

Fr. O'Brien said that there were two projects involved. He said that the normal size of a parish should not be in excess of 2,500 to 3,000 families. The present facility at St. Timothy is not capable of serving even that number; therefore, St. Timothy's facilities must be expanded. In order to bring that about, Fr. O'Brien said that the present area served by St. Timothy must be divided into three parishes and, when all the development has been done in the area, it will consist of three parishes of between 2,500 and 3,000 families each. Fr. O'Brien said it would take at least five years to implement their plans and meet County requirements, during which time they will require the use of the trailer.

Mrs. Harris asked Fr. O'Brien who owned Lot 9, surrounding St. Timothy. Fr. O'Brien said it is owned by an elderly lady who is very ill and it was his belief that her heirs would soon possess the property. He said that, as long as she is there, she wishes to keep the property for animals she tends. Mrs. Harris expressed concern to Fr. O'Brien about landscaping and buffering around the trailer.

Chairman DiGiulian reiterated the earlier motion and called for a vote which carried by 6-0. Mrs. Thonen 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 Renewal Application SPR 81-S-049 by ST. TIMOTHY CHURCH, under Section 3-103 of the Zoning Ordinance to renew SP 81-S-049 for church and related facilities to allow extension of use of trailer, on property located at 13807 Poplar Tree Rd., Tax Map Reference 44-4((1))8, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1992; 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 18.16 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 8-903 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. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat entitled Site Plan, St. Timothy's Church, **prepared by Dewberry and Davis dated January 1987** 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 Renewal plat and these development conditions.

5. Transitional screening 1 shall be provided along the rear and side lot lines and there shall be no clearing or grading performed within the 25 foot transitional screening area, except that clearing shall be permitted to accommodate necessary utility work as approved by the Urban Forestry Branch, DEM. The transitional screening shall consist primarily of the existing vegetation and shall be

supplemented with additional plantings, as determined by the UFB, DEM at the time of site plan review, to ensure that the intent of the Transitional Screening requirement is satisfied. The barrier requirement shall be waived.

6. A row of evergreens that adequately screen the parking lot from view shall be planted along the Poplar Tree Road frontage, west of the entrance drive. Plantings shall consist of one large evergreen tree with an ultimate height of 40 feet or greater for every 10 linear feet, plus one medium evergreen tree with an ultimate height of 20 to 40 feet planted every 5 linear feet. The type and layout of this planting shall be approved by the UFB, DEM.

7. The proposed support center shall be fenced with a wood fence that is both acoustically and visually solid. This fence shall be a minimum of eight (8) feet in height and shall be of board on board construction that is flush with the ground without gaps. Evergreen trees shall be planted on the north and west sides of the support center to create a dense visual screen as approves by the UFB, DEM.

8. The seating capacity in the main worship area shall not exceed seven-hundred and fifty (750).

9. A minimum of two-hundred and seventy five (275) parking spaces shall be provided.

10. All parking shall be provided on-site.

11. All development shall be subject to the provisions of the Water Supply Protection Overlay District.

12. A permit shall be obtained prior to the installation, removal, repair or abandonment of any tanks containing flammable combustible hazardous material in compliance with Article 29 of the BOCA Fire Code. Information shall be provided to the Fire Prevention Division of the Fire and Rescue Department, Suite 400, 4100 Chain Bridge Road, Fairfax, Virginia 22030, as to the condition of any removed storage tanks and a leak detection survey of the surrounding soil shall be conducted as required by Article 29 of the BOCA Fire Code.

13. The petroleum products stored at this location shall be transported in vehicles which meet all applicable local, state, and federal regulations. In the event any toxic and/or hazardous substances are used on the property, all pertinent state, local, and federal regulations shall be satisfied prior to their use, storage, treatment and/or disposal to include compliance with all provisions of Chapter 62 of the Fairfax County Code.

14. The construction materials to be used for the proposed maintenance and equipment storage shed may be a metal building with partial brick facade.

15. The temporary classroom trailer shall be limited to a term of five (5) years from the date of approval of this special permit renewal. The trailer shall be removed upon completion of the expansion of the facilities.

16. The bus maintenance on site shall be limited to routine repairs such as tire changing and oil changing.

17. If underground storage tanks (USTs) will be utilized for the storage of petroleum products or other hazardous materials, the regulations of the Environmental Protection Agency (EPA) shall be followed.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit renewal shall automatically expire, without notice, twelve (12) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted and new Non-Residential Use Permits issued. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit renewal. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1992. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Harris made a motion to adjourn and Mr. Ribble seconded the motion, which carried unanimously. Mrs. Thonen 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 10:30 a.m.

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

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

SUBMITTED: December 4, 1992

APPROVED: December 8, 1992

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on November 17, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:03 p.m. and Mr. Hammack gave the invocation. Chairman DiGiulian welcomed the members of Boy Scout Troop 1501 from Springfield, Virginia, who were observing the procedure in order to earn their Civic Badge. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 47, November 17, 1992, (Tape 1), Scheduled case of:

8:00 P.M. CALVARY ROAD BAPTIST CHURCH, SPA 84-L-071-3, appl. under Sects. 3-303 and 8-915 of the Zoning Ordinance to amend SP 84-L-071 for church and related facilities to allow extension of use of three trailers, waiver of dustless surface, and additional parking, on approx. 6.23 acs., located at 6811 Beulah St., zoned R-3, Lee District, Tax Map 91-1((1))61. (CONCURRENT WITH SEA 85-L-001 AND VC 92-L-108.

8:00 P.M. CALVARY ROAD BAPTIST CHURCH, VC 92-L-108, appl. under Sect. 18-401 of the Zoning Ordinance to allow garage to remain 20 feet from front lot line, on approx. 6.23 acs., located at 6811 Beulah St., zoned R-3, Lee District, Tax Map 91-1((1))61. (CONCURRENT WITH SPA 84-L-071-3 AND SEA 85-L-001)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Pripeton replied that it was.

Otis L. Robinson, Staff Coordinator, Zoning Evaluation Division, presented the staff report. He stated that the applicant was requesting an amendment to SP 84-L-071 for a church and related facility to allow a five year extension of the use of three temporary trailers, thirty-eight additional parking spaces, and a waiver of the dustless surface requirement. He noted that the Sunday School classroom trailers would be used on Sunday mornings from 9:30 a.m. to 12:30 p.m. and on Sunday evenings from 6:00 p.m. to 9:00 p.m.

Mr. Robinson said that the applicant was also requesting a variance to allow an existing garage to remain within the minimum required front yard for the portion of the site which fronts on Charles Arrington Drive. He explained that when the garage had been built, Charles Arrington Drive which had been constructed as a part of the Manchester Lakes subdivision, did not exist. Mr. Robinson noted that at the time of construction, the garage met the minimum yard requirements. He stated that staff believed that the applications would be in harmony with the Comprehensive Plan.

Mr. Robinson noted that on November 16, 1992, the Board of Supervisors approved SEA 85-L-001, subject to the BZA's approval of SPA 84-L-071-3. He further noted that on October 28, 1992, the Planning Commission voted to send the BZA its action pertinent to the improvements to Beulah Street, dedication of easements, and sidewalks on Beulah Street. Mr. Robinson said that the addendum, submitted to the BZA, contained both the approved Special Exception development conditions and the proposed Special Permit development conditions. He noted that a copy of the October 28, 1992, Planning Commission's minutes had also been submitted to the BZA.

In summary, Mr. Robinson stated that staff recommended approval of the special permit amendment, subject to the development conditions dated November 9, 1992.

The applicant's agent, Arlene Lyles Pripeton, 10195 Main Street, Suite B, Fairfax, Virginia, addressed the BZA. She stated that the construction of Charles Arrington Street had caused the need for the variance. She explained that the garage, which was developed under an approved site plan, preexisted the construction of the road. Ms. Pripeton noted that the existing garage had not caused a detrimental impact on the area and the neighbors have expressed their support for the request.

Ms. Pripeton stated that the applicant was also requesting a special permit amendment for an extension of the use of three existing trailers for an additional five year term. She noted that the trailers would only be used for Sunday School classes. Ms. Pripeton explained that because of financial considerations, the applicant has been unable to finish the building program, thereby causing the need for the continued use of the trailers. She explained the applicant was confident that the construction would take place within the five year period. She noted that the trailers would be removed once the building program had been completed. Ms. Pripeton said that the extensive landscaping would mitigate any detrimental impact on the adjoining properties. She explained that in response to a request by the neighbor most impacted by the use, the applicant had agreed to provide landscaping on the neighbor's property.

Ms. Pripeton explained that the landscaping, which was removed by a contractor who had been granted an easement on the northern section of the property, would be replaced. She noted that the contractor had declared bankruptcy.

In reference to the waiver of the dustless surface requirement request, she explained that when the applicant had filed for the special permit amendment, the church had been advised that additional parking spaces or a shared parking agreement would be needed. Ms. Pripeton

noted that since the cost of the shared parking study, which would need the Board of Supervisors' approval, would have amounted to approximately $4,000, the applicant decided to provided additional parking spaces.

In summary, Ms. Pripeton noted that when the original construction had taken place, the applicant had proffered a large amount of land to Fairfax County. She stated that the Lee District Land Use Committee, the Planning Commission, and the Board of Supervisors had agreed that it would not be necessary to proffer any additional land. She stated that because there would be no construction associated with the application, the development conditions pertaining to construction had also been deleted by the Planning Commission and the Board of Supervisors. Ms. Pripeton said that the applicant would comply with the proposed development conditions.

In response to Mrs. Harris' question as to whether the applicant would accept an additional development condition which would require removal of the trailers if the addition was completed before the five-year period, Ms. Pripeton stated that would be acceptable.

There being no speakers, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 84-L-071-3 for the reason reflected in the Resolution and subject to the revised development conditions dated November 9, 1992 with the modifications 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 84-L-071-3 by CALVARY ROAD BAPTIST CHURCH, under Sections 3-303 and 8-915 of the Zoning Ordinance to amend SP 84-L-071 for church and related facilities to allow extension of use of three trailers, waiver of dustless surface, and additional parking, on property located at 6811 Beulah Street, Tax Map Reference 91-1((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 November 17, 1992; 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 6.23 acres.
4. The application meets the necessary standards for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 Rinker-Detwiler & Associates dated May 23, 1985, as revised through September 17, 1992, and approved with this application, as qualified by these development conditions.

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

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

5. The maximum number of seats shall be 702.

6. Transitional Screening 1 shall be provided in all areas except as follows:

Along the parking area abutting the private street in Manchester Lakes subdivision where a six foot stockade fence has been erected, a ten (10) foot screening yard shall be provided in accordance with Transitional Screening 1.

Along the existing driveways and parking areas to the northeast and south of the church as shown on the plat. The existing plantings shall be supplemented with plants of a type and amount to be determined by the Urban Forestry Branch. A 25 foot screening area shall be provided to the north of the existing outlet easement as shown on the plat with plantings of a type and amount to be determined by the Urban Forestry Branch.

Along the lot line west of the existing garage there shall be Transitional Screening 1 of twenty (20) feet.

Along the entire frontage of Beulah Street from the southernmost lot line to the corner of the cemetery at least a ten (10) foot screening yard shall be provided. The type and amount of plantings within this yard shall be determined by the Fairfax County Landscape Architect and approved by the Urban Forestry Branch. This ten (10) foot screening yard shall be measured from the lot line formed after dedication and vacation and shall extend along the entire frontage of the site to the cemetery. If, after dedication and vacation, there is in excess of ten (10) feet between the parking area and the new lot line, this area shall be included in the landscape plan.

7. The barrier shall be waived provided the play area is fenced, as shown on the plat.

8. An entrance may be provided to Charles Arrington Drive provided approval is obtained from DEM and the Virginia Department of Transportation (VDOT).

9. The southernmost entrance shall be used for exiting traffic only and appropriate signs shall be installed in appropriate locations to advise parishioners of this limitation.

10. The three (3) temporary trailers may be replaced with three (3) trailers of identical size as the existing trailers in the same locations without a special permit amendment. If the existing landscaping around the trailers is disturbed, a row of conifer evergreens, six (6) feet original planted height, shall be planted around the perimeter of the trailers. A smaller variety of evergreen may be planted in front of the windows to screen the base of the trailers. The type and placement of these trees shall be coordinated with the Urban Forestry Branch.

11. The three (3) temporary trailers shall be removed by November 1, 1997. If the building addition is completed prior to the expiration date of the trailers (November 1, 1997), the trailers shall be removed within sixty (60) days of issuance of a Non-Residential Use Permit (Non-RUP) for the building addition.

12. The access to Charles Arrington Drive shall be constructed at such time as Beulah Street is reconstructed to a four (4) lane divided facility or upon construction of the church addition and prior to issuance of a Non-Residential Use Permit (Non-RUP) for the church, whichever occurs first. Upon consolidation of the Beulah Street entrances, the former entrance areas shall be closed and landscaped as determined by the Urban Forestry Branch.

13. Interior parking lot landscaping shall be provided as required by Sect. 13-201 of the Zoning Ordinance and as determined by the Department of Environmental Management.

14. 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 maintanance 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.

The entrance shall be paved to a point a minimum of twenty-five (25) feet into the site.

15. The Special Permit for a Waiver of the Dustless Surface Requirement shall be approved for a period specified in the Zoning Ordinance; provided however, that the waiver of the dustless surface requirement may be renewed in accordance with the provisions of Section 8-013 of the Fairfax County Zoning Ordinance.

The above conditions incorporate all applicable conditions of the previous approval.

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

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

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 25, 1992. 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 92-L-108 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 30, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-108 by CALVARY ROAD BAPTIST CHURCH, under Section 18-401 of the Zoning Ordinance to allow garage to remain 20 feet from front lot line, on property located at 6811 Beulah Street, Tax Map Reference 91-1((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 November 17, 1992; 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 6.23 acres.
4. The application meets the necessary standards for the granting of a variance.
5. The garage preexisted the road that necessitated the variance.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Rinker-Detwiler & Associates dated May 23, 1985, as revised through September 17, 1992, and is not transferable to other land.

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

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

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 25, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 51, November 17, 1992, (Tape 1), Information Item:

Approval of Resolutions from November 10, 1992 Hearing

Mr. Pammel made a motion to approve the Resolutions as submitted by the Clerk. Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Page 51, November 17, 1992, (Tape 1), Information Item:

Intent to Defer
St. Mark's Catholic Church Appeal, A 92-C-021

Mr. Pammel made a motion to issue an intent-to-defer indefinitely, Appeal Application A 92-C-021 which is scheduled for December 8, 1992. He noted that the appellant had indicated that the issues involved in the appeal were being resolved and the appeal may be withdrawn. Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the appellant's attorney, Thomas W. Smith, with the law firm of Hazel and Thomas, 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, had been at the hearing earlier.

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Intent to Defer
Electronic Data Systems Corporation, A 92-C-022

Mrs. Harris stated that the Board of Zoning Appeals (BZA) had received a letter requesting a deferral of approximately 120 days.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that because of administrative procedures, staff would recommend an indefinite deferral.

Mrs. Harris made a motion to issue an intent-to-defer indefinitely, Appeal Application A 92-C-022 which is scheduled for December 8, 1992.

In response to Mr. Hammack's question as to whether the appeal may be withdrawn, Ms. Kelsey stated that she believed if the site plan is approved, the appellant will withdraw the appeal.

Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Request for Additional Time
Chesterbrook-McLean Little League, SP 90-D-021

Mrs. Harris made a motion to grant the applicant an additional six months. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting. The new expiration date will be April 17, 1993.

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Request for Additional Time
Heritage Forest Associates, SP 90-S-081

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the original builder had declared bankruptcy; therefore, the property has a new owner.

Mr. Pammel made a motion to grant the applicant an additional 36 months. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting. The new expiration date is June 12, 1995.

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Request for an Out-of-Turn Hearing
Long H. Thai and Thuy N. Dinh, SP 92-M-059

Chairman DiGiulian noted that the case was currently scheduled for January 6, 1993.

Mr. Kelley asked if staff knew if construction had begun. He noted that the applicant's letter indicated that construction may have been started. Jane Kelsey, Chief, Special Permit and Variance Branch, said that because staff expedites the out-of-turn hearing requests, she could not answer the question.

Mr. Kelley made a motion to deny the out-of-turn hearing for SP 92-M-059. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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Discussion of the Letter from Mr. Roy Regarding
Robert L. Kerr and Sandy R. Kerr, SP 92-C-035 Reconsideration

Chairman DiGiulian stated he had received a letter, by express mail, from Mr. and Mrs. Roy. Jane Kelsey, Chief, Special Permit and Variance Branch, noted that staff had not received a copy of the letter.

After a brief discussion, it was the consensus of the BZA that each applicant should have an opportunity to respond to testimony presented to the BZA. The BZA noted that the applicant believed that they had not had an opportunity to respond to one of the letters in opposition. The BZA expressed its belief that the hearing for the reconsideration request had been legally correct.

Mr. Kelley made a motion that the BZA would not rescind its action to reconsider SP 92-C-035. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

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The BZA answered questions and explained its functions to the members of Boy Scout Troop 1501.

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As there was no other business to come before the Board, the meeting was adjourned at 8:50 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: December 15, 1992

APPROVED: January 5, 1993

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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 19, 1992. The following Board Members were present: Vice Chairman John Ribble; Paul Hammack; Robert Kelley; and, James Pammel. Chairman John DiGiulian; Martha Harris; and, Mary Thonen were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:19 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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9:00 A.M. CHARLES WESLEY UNITED METHODIST CHURCH/NORTHERN VIRGINIA CHRISTIAN CHILD CARE CENTER, INC., SPA 77-D-047-1, appl. under Sect. 3-303 of the Zoning Ordinance to amend S-47-77 for church and related facilities and amend SP 83-D-083 for child care center to allow additional parking, on approx. 3.0 acres located at 6817 Dean Dr., zoned R-3, Dranesville District, Tax Map 30-4((1))26. (DEF. FROM 3/3/92 FOR ADDITIONAL INFORMATION. DEF. FROM 6/9/92 FOR ADDITIONAL INFORMATION. DEF. FROM 9/15/92 AT APPLICANT'S REQUEST.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Paul Barkley, 6916 South Ridge Drive, McLean, Virginia, replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report. She said on March 3, 1992, the BZA deferred SPA 77-D-047-1 to allow the applicant time to resolve outstanding issues. She said all of the outstanding issues had been resolved as outlined in the Addendum. Ms. Anderson said it was staff's opinion that the request was in harmony with the Comprehensive Plan and satisfied all General Standards and all Standards for Group 3 uses; therefore, staff recommended approval subject to the Proposed Development Conditions contained in the Addendum.

Mr. Barkley apologized to the BZA for having caused them so much trouble and explained that the people who were initially involved in the application were simply unaware of the process. He said he was a Virginia State licensed contractor and did not know that the church was experiencing problems. Mr. Barkley agreed with all the development conditions.

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

Mr. Hammack made a motion to grant SPA 77-D-047-1 subject to the implementation of the Revised Development Conditions dated November 10, 1992 being implemented. He complimented staff on a very thorough staff report and for working with the applicant to help resolve all outstanding issues.

Vice Chairman Ribble complimented the applicant for working with the staff.

Mr. Kelley said this was a good example of what can be accomplished when a case is deferred and complimented both the applicant and staff for resolving the issues.

Mr. Pammel agreed with the other members comments.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 77-D-047-1 by CHARLES WESLEY UNITED METHODIST CHURCH/NORTHERN VIRGINIA CHRISTIAN CHILD CARE CENTER, under Section 3-303 of the Zoning Ordinance to amend S-47-77 for church and related facilities and amend SP 83-D-083 for child care center to allow additional parking, on property located at 6817 Dean Drive, Tax Map Reference 30-4((1))26, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 1992; 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 3.0 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.

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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 Amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit amendment plat (prepared by Fred T. Wilburn, Jr., dated September 18, 1991) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permits 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 uses.

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

5. The maximum number of church seats shall be limited to 255.

6. The maximum daily enrollment of the child care center shall not exceed seventy-five (75) children.

7. Hours of operation of the child care center shall be limited to 7:30 a.m. until 6:00 p.m.

8. There shall be no concurrent use of the existing facility by the church and the child care center; however, the church office may remain open during hours of operation of the child care center.

9. The number of parking spaces provided to serve the two (2) uses shall be 64 spaces in accordance with the parking reduction for Charles Wesley Church approved by the Board of Supervisors on March 8, 1992. All parking shall be on site as shown on the special permit plat and shall be designed according to the Public Facilities Manual (PFM) requirements.

10. In order to shield adjacent residential lots from glare and noise from potential nighttime use, no overhead lights shall illuminate the parking lot addition.

11. In order to provide visual relief from any potential adverse impacts of the parking lot addition on adjacent residential lots, supplemental evergreen plantings at least six (6) feet in height sufficient to totally screen the additional parking spaces shall be installed along the lot lines in common with adjacent Lots 28, 29 and 39 between the parking lot addition and the barrier fence that shall be located at the lot line to match the existing fence. The type and location of such evergreen plantings shall be reviewed and approved by the Urban Forester and shall be installed within six (6) months of the approval of this special permit.

12. A solid wood Barrier at least six (6) feet in height shall be installed along the lot lines in common with adjacent Lot 39 at the southern lot line and shall connect with and be of a similar design to the existing wood fences located along the rear lot lines of Lots 28 and 39 to provide the equivalent of the Barrier requirement and to provide visual relief from any potential adverse impacts of the parking lot addition on adjacent residential lots. The finished side of the wood fence shall face Lot 39.

13. In order to provide adjacent residential lots with visual relief from any potential adverse impacts from use of the driveway and parking lot, supplemental evergreen plantings shall be installed between the existing driveway/parking spaces and the lot line in common with adjacent Lots 23 through 27 sufficient to totally screen the parking lot and driveway. The type and location of such evergreen supplemental plantings shall be reviewed and approved by the Urban Forestry Branch, DEM, and shall be installed within six (6) months of the approval of this special permit.

14. Except as provided in Conditions 12, 13 and 14 above, Transitional Screening requirements shall be modified and Barrier requirements shall be waived along the remainder of the subject site in favor of the natural existing vegetation and supplemental evergreen plantings as shown on the approved special permit amendment plat, as reviewed and approved by the Urban Forester.

15. The play area for the child care center shall be in the area shown on the approved special permit plat. This play area shall be located outside the required transitional screening yard.

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

17. Stormwater management facilities shall be provided to the satisfaction of the Department of Environmental Management (DEM).

18. The existing church structure shall remain connected to the public water and sanitary sewage systems.

19. The fence that has been installed across the entrance to the parking lot addition shall remain and shall be locked during evening hours to prevent unsupervised use of the parking lot 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 established procedures, and this special permit shall not be legally established until this has been accomplished.

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

Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 57, November 19, 1992, (Tape 1), Scheduled case of:

9:15 A.M. GOLF VENTURES, INC., SP 92-S-032, appl. under Sect. 3-C03 of the Zoning Ordinance to allow golf driving range and commercial golf course, on approx. 47.72 acs., located on Braddock Rd., zoned R-C, WS, Springfield District, Tax Map 56-4((1))31. (DEF. FROM 9/24/92 - NOTICES NEED TO BE DONE)

Vice Chairman Ribble said the BZA had issued an intent to defer SP 92-S-032 at its November 5, 1992 meeting.

Mr. Pammel made a motion to defer the case to February 2, 1993, with this being the last deferral. He said the BZA would hear the application on that date or be dismissed for the applicant's failure to pursue the application, or be withdrawn.

Mr. Kelley said he believed Mr. Pammel's motion was too severe.

Mr. Hammack seconded the motion for purposes of discussion and asked staff the reason for the latest deferral. Marilyn Anderson, Assistant Branch Chief, said the applicant had submitted a revised plat to staff within the past week in addition to not having met the notice requirement.

Mr. Kelley said the issue of notices came up during the discussion of the intent to defer on November 5th and staff indicated at that time it had requested that the applicant revise the request. Mr. Hammack agreed that he would not like to penalize the applicant if he was merely addressing staff's concerns.

Mr. Kelley asked the maker of the motion if he would accept an amendment to his motion that the BZA would not issue another intent to defer and that the applicant had to appear on February 2nd fully prepared to proceed with the case. Mr. Pammel agreed. The motion carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen absent from the meeting.

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Page 57, November 19, 1992, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT H. E. AND FRANCES A. DAVIS, VC 92-D-095, appl. under Sect. 18-401 of the Zoning Ordinance to allow 6 ft. high fence to remain in front yard of corner lot (4 ft. max. height allowed by Sect. 10-104), on approx. 14,204 sq. ft., located at 1400 Bakers Creek Ct., zoned R-3 (Cluster), Dranesville District, Tax Map 11-1((5))24A1.

Mr. Kelley made a motion to pass over this case to allow time for the engineer to be present in the Board Room.

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The BZA recessed at 9:37 a.m. and reconvened at 9:44 a.m.

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9:40 A.M. MARBAR, INC., A VIRGINIA CORPORATION, SP 92-L-054, appl. under Sect. 4-803 of the Zoning Ordinance to allow billiard hall, on approx. 8,000 sq. ft., located at 8794 L, M, N, O, and P Sacramento Dr., zoned C-8, Lee District, Tax Map 109-2((1))21C.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Barbara Fried, 6551 Loisdale Court, Springfield, Virginia, replied that it was.

Marilyn Anderson, Assistant Branch Chief, presented the staff report. She said the applicant was proposing a billiard hall on 8,000 square feet within a 3.66 acre shopping center. The hours of operation were proposed to be 11:00 a.m. to 11:00 p.m. daily with 50 patrons, 2 employees, and 19 parking spaces. Ms. Anderson said staff recommended approval subject to the development conditions contained in the staff report.

Ms. Fried said members of the Board of Supervisors and the community approached the applicant about building something that would improve the Route 1 Corridor, which has been undergoing renewal. She said the result was the Sacramento Center which is similar to one that was built in Leesburg and features atriums and such architecture as standing seam metal roofs, similar to that seen in Old Town Alexandria. Ms. Fried said the demographics of the surrounding area show a median age of 32, with a median household income of $50,000, good hard working families with limited recreational opportunities. She said there will be billiard tables set off for the experienced players, an area to serve food and alcoholic/nonalcoholic beverages to patrons, and several elevated televisions for the patrons to watch the Washington Redskins games.

With respect to the development conditions, Ms. Fried asked that the hours of operation be amended to allow the billiard hall to remain open until 2:00 a.m. on Friday and Saturday. She said there is a restaurant/night club in the center which remains open until 2:00 a.m. every day.

She said the center would be the busiest during the period when it is not comfortable to be outside and that she believed the billiard hall would be a welcomed addition to the neighborhood. Ms. Fried distributed handouts to the BZA showing similar uses in Leesburg and Sterling.

The BZA discussed with Ms. Fried the adequacy of the parking during competitions and the layout of the hall to determine that the eating area will be separate from the playing area.

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

Mr. Pammel made a motion to grant SP 92-L-054 subject to the Development Conditions contained in the staff report dated November 10, 1992, with Condition Number 5 amended as reflected in the Resolution and one addition.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-L-054 by MARBAR, INC., A VIRGINIA CORPORATION, under Section 4-803 of the Zoning Ordinance to allow billiard hall, on property located at 8794 L, M, N, O, and P Sacramento Drive, Tax Map Reference 109-2((1))21C, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 1992; 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 C-8.
3. The area of the lot is 8,000 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 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 May 27, 1992 approved with this application, as qualified by these development conditions. This approval shall only govern the 8,000 square foot area to be occupied by the approved billiard parlor.

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 hours of operation shall not exceed 11:00 a.m. to 11:00 p.m., Sunday through Thursday, and 11:00 a.m. to 2:00 a.m., Friday and Saturday, and the maximum number of employees at any one time shall be two (2).

6. A minimum of 19 parking spaces shall be allocated for this use. At the time of site plan review, a parking tabulation shall be submitted to and approved by the Director, Department of Environmental Management (DEM) which shows that the required parking for all uses can be provided in the shopping center or this special permit shall be null and void.

7. The applicant will comply with all applicable provisions of the State Code and regulations of State agencies governing the use, especially the Alcoholic Beverages Control Board.

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

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

Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 59, November 19, 1992, (Tape 1), Scheduled case of:

9:55 A.M. LINDA A. FRITTS AND RICHARD D. KOMER, VC 92-M-098, appl. under Sect. 18-401 of the Zoning Ordinance to allow 7.5 ft. high deck to be located 0.5 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 16,000 sq. ft., located at 6432 Lakeview Dr., zoned R-2, Mason District, Tax Map 61-3((14))372.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard D. Komer, 6432 Lakeview Drive, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance of 14.5 feet in order to replace an existing 4.5 foot high deck and pointed out that there is no structure on adjacent Lot 371.

In response to a question from Mr. Hammack, Ms. Langdon replied the street files in the Zoning Administration Division did not contain a building permit for the original structure.

Mr. Komer said when he purchased the property the deck was there and it appeared to have been built by the original owner approximately 35 years ago. He said the contractor pointed out

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the violation during the preparation of the plans to repair the deck. Mr. Komer said the deck allowed access to the lower portion of the rear lot from the outside, which is very difficult since the lot is very steep. He said Lakeview Drive is approximately 30 feet above the level of the deck and the deck is approximately 20 to 30 feet above the lowest part of the yard, which contains the sanitary sewer easement. Mr. Komer said the lot to the right is undeveloped and will probably never be developed since it backs up to a public beach, the deck does not impact any neighbors and is almost invisible from the street level, and there will be no alterations to the style of the deck.

A discussion took place between the BZA and the speaker as to why Lot 371 would never be developed and if there were any objections from the homeowners association about the applicants' retaining wall being located on its property.

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

Mr. Kelley made a motion to grant VC 92-M-098 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 10, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-098 by LINDA A. FRITTS AND RICHARD D. KOMER, under Section 18-401 of the Zoning Ordinance to allow 7.5 foot high deck to be located 0.5 feet from side lot line, on property located at 6432 Lakeview Drive, Tax Map Reference 61-3((14))372, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 1992; 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-2.
3. The area of the lot is 16,000 square feet.
4. The applicant has met the required standards for the granting of a variance.
5. The lot has exceptional topographic conditions as the lot drops 30 feet from the front to the rear.
6. The applicant is only replacing an existing deck, although it does appear that the original deck was constructed without a building permit by the previous owner.
7. The adjacent property is unlikely to be developed as it appears that it serves as screening to the Lake Barcroft beach and is owned by the homeowners association.

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Rice Associates, dated August 18, 1992, revised September 1, 1992, submitted with this application and not transferable to other land.

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 61, November 19, 1992, (Tape 1), Scheduled case of:

10:05 A.M. DALE C. MILLER, VC 92-M-096, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 7.3 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407), on approx. 14,042 sq. ft., located at 3302 Brush Dr., zoned R-4, Mason District, Tax Map 60-1((11))4.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dale Miller, 3302 Brush Drive, Falls Church, Virginia, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He said the applicant was requesting a variance of 2.7 feet in order to construct an addition 7.3 feet from the side lot line. Mr. Riegle said the side lot line closest to the addition is shared with the church.

Mr. Miller said he would like to construct an addition on the north side of the dwelling, which is the only feasible location. He said to construct an addition on the front of the house would require the removal of the picture window, the removal of several mature azalea plants, and would probably still require a variance because of the rather large turnaround easement. Mr. Miller said the south side of the house is bounded by bedrooms and it would not be acceptable to pass through bedrooms to get to the recreational room and to construct on the south side would require a larger variance. He said he discussed the proposed addition with the church and submitted a letter of support from the church into the record.

In response to a question from Mr. Hammack, Mr. Miller replied that he would like to move the recreational area to the same floor as the other living space because of his age.

Mr. Hammack pointed out that the deck was not shown on the official plat. Mr. Miller said he would like to construct the deck. Mr. Riegle said the deck would not require a variance.

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

Mr. Hammack made a motion to grant VC 92-M-096 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 10, 1992, with one addition.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-M-096 by DALE C. MILLER, under Section 18-401 of the Zoning Ordinance to allow addition 7.3 feet from side lot line, on property located at 3302 Brush Drive, Tax Map Reference 60-1((11))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 November 19, 1992; 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 14,042 square feet.
4. There is a turnaround easement in front of the applicant's property.
5. If the addition is constructed on the other side of the house or on the rear of the house, the addition would not be accessible.
6. There is no opposition from the adjoining property owner.
7. The request is for a minimal variance of only 2.7 feet and might not have been required if the chimney was not in that location.
8. The lot is narrow and deep with a frontage of only 84 feet and tapers down to the rear lot line of only 75 feet.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys dated August 25, 1992, submitted with this application and not transferable to other land.

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

3. The addition shall be constructed out of materials which are architecturally compatible with the existing structure.

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

Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 63, November 19, 1992, (Tape 1), Scheduled case of:

ROBERT H. E. AND FRANCES A. DAVIS, VC 92-D-095

(The BZA had passed over this case earlier in the public hearing to allow the engineer to arrive at the Board Room.)

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Robert Davis, 1400 Bakers Creek Court, Herndon, Virginia, replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She said the applicants were requesting a 2 foot variance to allow a 6 foot high fence to remain in the front yard of a corner lot. Ms. Anderson noted that a representative from the fence company that installed the fence was invited to attend the public hearing and he was now present in the Board Room to respond to any questions the BZA might have.

Mr. Davis stated that it had not been his intent to be in violation of the Zoning Ordinance; the homeowners association had not objected to the fence, and the applicant pointed out that Blair Engineering had erected the fence. He said the location where the window well comes out from the house is the high point of the terrain of the lot and it is at such a point that a 4 foot fence would not afford any privacy. Mr. Davis said the original builder had recommended that they construct a 6 foot high fence to make maximum use of the rear yard. Since the builder had other houses to complete in the subdivision, he suggested that the applicants wait at least a year before installing the fence. Mr. Davis said he obtained bids from other contractors and no one pointed out that a 6 foot high fence would be in violation of the Ordinance. He said most of the other houses face Butter Churn Drive with their houses acting as a barrier to the rear yards and noted the heavy traffic on Butter Churn Drive.

In response to questions from the BZA, Mr. Davis replied no one voiced any objections to the fence during the construction process. He said the only thing the builder told him was to ensure that the corner line of the fence was 5 feet from the sidewalk and the angle to the front of the house was such that it would not block the driver's sight distance coming out of the cul-de-sac.

Since the BZA had no questions for the engineer and there were no speakers, Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to deny VC 92-D-095 as he believed that the applicant had not met the required standards for the granting of a variance as the shape of the lot is not unusual and the relocation of the fence is required by the Code.

Mr. Hammack seconded the motion for purposes of discussion. He said the applicant has two front yards which creates a hardship on the applicant, the way the house is cited on the lot does not give the applicant privacy while in the back yard, the applicant testified to the amount of traffic on Butter Churn Drive, and the fence does not impact the sight distance. Mr. Hammack suggested that the BZA defer the case until such time as a full Board could be present.

Vice Chairman Ribble said he would support a deferral because he did not believe there was a sight distance problem.

Mr. Kelley said he would not support the motion because the fence was constructed approximately about 7 years ago; the applicant discussed the location of the fence with the builder prior to construction; and, that he believed the applicant would have filed for a variance if he had been remotely aware that he needed to do so.

Mr. Hammack made a substitute motion to defer VC 92-D-095 to allow the applicant to come back to the BZA. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen absent from the meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested February 2, 1992, at 9:00 a.m. The applicant and engineer agreed to the date.

In response to a question from Mr. Hammack, Ms. Anderson replied that the same complainant made five complaints, three citizens reduced the height of their fences, and two chose to apply for variances, the applicant being one.

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The BZA recessed at 10:44 a.m. and reconvened at 10:50 a.m.

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Page 64, November 19, 1992, (Tape 2), Scheduled case of:

10:15 A.M. B'NAI SHALOM TEMPLE TRUSTEES, SP 92-S-055, appl. under Sect. 3-C03 of the Zoning Ordinance to allow temple/synagogue and related facilities, on approx. 9.0 acs., located at 7612 Old Ox Rd., zoned R-C, WS, Springfield District, Tax Map 96-2((1))29 and 6.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Lawrence D. Cook, AIA, 3424 Mansfield Road, Falls Church, Virginia, replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He said last year the BZA heard a similar application on 5.0 acres which staff recommended denial based on the grounds that the overall intensity and the proximity of the development to the lot lines was not in harmony with the Plan or the purpose and intent of the R-C zoning district. The applicant was now proposing development of 9.0 acres with the open space increased by 50 percent and the distance from the developed area of the site to the lot lines dramatically increased. Staff believed that the outstanding issues previously noted have been resolved from an intensity and environmental standpoint. Mr. Riegle said there were several transportation issues which were outlined in the staff report. He discussed the issues with the BZA while pointing out the problem areas on the viewgraph. Mr. Reigle said Chuck Almquist, with the Office of Transportation, was present to answer any specific questions the BZA might have. In closing, he said staff believed the request was in harmony with the Comprehensive Plan and meets the purpose and intent of the R-C zoning district; therefore, staff recommended approval subject to the revised development conditions distributed to the BZA at the beginning of the public hearing. He said the only change to the development conditions dealt with the relocation of the septic field.

Mr. Cook said the applicant took serious the objections raised by the BZA during the previous public hearing, have worked continuously with the staff, and have met regularly with the neighbors. He said the application has gone from a 5.0 acre site to a 9.0 acre site, the building has slightly increased but the setback distance have been drastically increased, and the amount of open space has more than doubled. Mr. Cook said the present entrance from Old Ox Road will be maintained, but it will be modified to ensure the proper construction of the storm water retention pond. The applicant has agreed to relocate the parking to the back of the site, to maintain a heavy tree border completely around the site, and additional plantings within the parking area and along the southern border, if required. Mr. Cook said one of the neighbors has questioned the location of the septic field and the applicant has requested that a development condition be added to reflect that other locations to the south and to the west will be tested to determine if there are other perkable locations. He said the applicant agreed with all the development conditions.

Mr. Kelley asked if Development Condition Number 6 reflected what the applicant was proposing regarding the septic field and Mr. Cook said that it did.

John Theilacker, with William H. Gordon & Associates, 4501 Daly Drive, Chantilly, Virginia, said his firm was responsible for preparing the plat for the applicant. He said Mr. Riegle said although he believed staff had thoroughly explained the transportation improvements he would like to elaborate on a few points. Mr. Theilacker said most importantly, with the extension of Community Lane and its intersection at Ox Road, the applicant would be proposing an alternative to an unsafe condition that currently exists at the southern intersection of Ox Road and Old Ox Road. The applicant will also be providing a left turn lane on Ox Road into Community Lane extended to allow for unimpeded through movements on the two lane Ox Road in the northbound direction. He said the applicant did not propose closing the existing intersections of Old Ox Road and Ox Road with the improvements, which differs from the previous application. The traffic impact will be generated in the evening hours and in the morning hours on Saturday.

In response to a question from Mr. Hammack as to how the church would ensure the existing northern entrance to Old West Ox Road would not be used, Mr. Theilacker replied that he hoped that the church would perceive the Community Lane extension entrance as the safest.

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

Alan B. Soschin, 7403 Dorothy Court, Springfield, Virginia, president of the congregation, came forward. He said the church had a congregation of approximately 210 families with only 6 living outside Fairfax County. Mr. Soschin said the church took seriously statements of both the BZA and staff and increased the lot size at a substantial cost. He said the church was currently holding services at the Abiding Presence Lutheran but it was now time for the congregation to worship in its own home. (He asked members of the congregation in attendance to stand and be recognized by the BZA.)

Rabbi Amy Perlin, 10301 Firefly Circle, Fairfax Station, Virginia, said there are only five Reformed Branches of Judaism in Northern Virginia and the applicant is the only one served by a full time Rabbi that does not have a temple. She said the children of the congregation desperately need a place of their own to worship and the congregation will be good neighbors.

Seth T. Shark, 10106 Community Lane, Fairfax Station, Virginia, said he believed his property will be more impacted by the proposed road improvements than any other and he was not opposed the applicant's request. He said after reading the minutes from the previous public hearing it appeared that the applicant has addressed the concerns of both the BZA and staff. Mr. Shark said there is already an parking impact on occasion from the Baptist Church but he believed that these are the things from which neighborhoods are made.

Thomas Bailey, 6304 Lee Chapel Road, Pastor of the Abiding Presence Lutheran Church, 6304 Lee Chapel Road, Burke, Virginia, said it had been his pleasure for the past four years for his church to have a relationship with the applicant. He assured the BZA and the neighbors that based upon his relationship with the leadership of the congregation there should be no problems with resolving any opposition there might be.

There were no additional speakers in support and Vice Chairman Ribble called for speakers in opposition.

James Franklin McCall, 7610 Old Ox Road, Fairfax Station, Virginia, said it was extremely difficult for him to speak against the request and added that the leadership of the congregation and the architect have been forthcoming and cordial and have kept him informed throughout the entire process. He said he believed he was the most affected homeowner and that he had four concerns which dealt with the access to his property, the possible impact on his property value, the affect on the water table, and the triple access was not necessary. Mr. McCall asked the BZA to deny the request.

In response to questions from Mr. Hammack, Mr. McCall replied that he owned 7.6 acres and used the viewgraph to show the location of his dwelling on the lot and noted that there is no other access to his property.

Mr. Pammel asked staff how far the subject property was from public water. Mr. Riegle said he was not aware of a water main in the area, but perhaps the applicant's agent could respond.

Jeffrey A. Parobek, with William H. Gordon & Associates, 4501 Daly Drive, Chantilly, Virginia, said there is currently a 8 inch water main down Old Ox Road in addition to a 16 inch under the current Ox Road. He said the applicant planned to extend the water main and utilize public water.

Fannie Whitley, 7614 Old Ox Road, Fairfax Station, Virginia, said her major concern was the septic and the applicant had indicated that they would be moving the septic if the Health Department approves a perk in another area. Ms. Whitley said she had no qualms with the temple being constructed, but she did understand the neighbors' concerns with respect to the increased traffic. She asked Mr. Cook to use the viewgraph to show the alternate locations for the septic as she could not see from where she had been sitting. Mr. Cook did so.

Ms. Whitley said she had been unable to determine the setback distance for a septic field from a well for commercial sites. Mr. Riegle noted that he believed there is a 100 foot setback requirement and that he was not aware of any designation between commercial and residential sites. He added that the BZA might want to allow the applicant some flexibility with respect to parking since the septic field might possibly be relocated.

Roger Martz, 10101 Community Lane, Fairfax Station, Virginia, said he was never informed of the project and he believed the proposed extension of Community Lane would have a great impact on his family. He said he had serious concerns with the safety of his two year old child and his 78 year old father-in-law who is confined to a wheel chair. Mr. Martz added that he did not believe that the removal of the trees to add a third entrance was necessary.

John Townes, 7610 Old Ox Road, Fairfax Station, Virginia, said he was the owner of Lot 5, which will be directly behind the proposed temple, and planned to build a house on the lot. He said he was concerned with the construction of the temple affecting the access to his property, the traffic congestion, the impact on the water table, and the location of the septic field.

In response to questions from the BZA, Mr. Townes replied that he purchased the property approximately one month ago based on his understanding that the applicant's request for the temple had been denied. He used the viewgraph to show how he would access Lot 5.

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Mr. McCall said the speaker would not have an access problem since he was Mr. Townes' father-in-law and he had granted an easement to the speaker.

In rebuttal, Mr. Cook said the access to Mr. McCall's property will be provided during construction, the proposed road will be an upgrade from the existing road, the temple will be on public water, the septic field will be relocated away from Mr. Whitley's well, and the temple has agreed to give Mr. Townes access to his property.

Mr. Theilacker said he believed the extension of Community Lane to Old Ox Road with turn lanes will actually help smooth traffic movements and improve the safety factor.

Mr. Soschin said he believed that 77 parking spaces was more than adequate since a typical service on a Friday night or Saturday morning draws between 80 and 125 people which equals out to approximately 40 cars. He added there are only two holy days which might possibly cause overflow parking and that he believed the congregation will be responsive to the neighbors' concerns.

Vice Chairman Ribble asked staff to comment on the widening of West Ox Road. Mr. Almquist said West Ox Road is on the Comprehensive Plan to be widened to a six lane divided facility; however, it is unlikely that it will occur in the near future. He said one of staff's major concerns was the turning movement from the northbound Ox and Old Ox and by providing the connection through at Community Lane will provide a right angle intersection and sufficient width to add a left turn lane, which is a major safety concern.

Mr. Riegle suggested that perhaps the BZA might wish to add a stipulation to the development conditions which prohibited parking on the access road.

Mr. Kelley made a motion to grant SP 92-S-055 for the reason noted in the Resolution and subject to the Revised Development Conditions dated November 18, 1992 with modifications to Conditions 5 and 6 as reflected in the Resolution.

Mr. Pammel said he believed all the presentations were professional which helped the BZA immensely.

Mr. Hammack asked that Condition 14 be modified to assure that the neighbors' access on Lot 3A and 5 would not be impacted. Mr. Kelley agreed.

Vice Chairman Ribble said he believed the congregation had worked very diligently to meet the neighbors' concerns and that he was aware of how difficult it was to find suitable sites for this type of use.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-S-055 by B'NAI SHALOM TEMPLE TRUSTEES, under Section 3-C03 of the Zoning Ordinance to allow temple/synagogue and related facilities, on property located at 7612 Old Ox Road, Tax Map Reference 96-2((1))29 and 6, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 1992; 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, WS.
3. The area of the lot is 9.0 acres.
4. This is a far superior application to that presented to the BZA a year ago. The applicant, staff, and neighbors should be complimented on the way they worked together to bring the application to a satisfactory conclusion.

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 all Group Uses 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 Gordon and Associates revised through October 14, 1992 approved with this application, as qualified by these development conditions.

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

4. The seating capacity of the temple shall not exceed 300.

5. Parking shall be provided to fulfill the Zoning Ordinance requirement for this use. A maximum of 77 parking spaces shall be provided as shown on the approved special permit plat. All parking shall be on site. No parking shall be permitted on the access road.

6. The septic field shall be relocated from the eastern side of the site to the western side or center of the site if the ground percolation rate is satisfactory to the Department of Health. In the event the septic field is relocated, the area of the septic field shown on the plat in the eastern portion of the site shall be remain undisturbed. The parking configuration on the service road may be altered by the Zoning Administrator to accommodate the site of the septic field.

7. With the exception of the potential relocation of the septic field addressed by Condition 6, to preserve natural vegetation as a means for stormwater management, the limits of clearing and grading shall be as shown on the special permit plat.

8. Stormwater Best Management Practices (BMPs) to WSPOD standards shall be provided for the entire site. Emphasis shall be placed on using open space as a means to meet BMP requirements. If soil conditions on the site preclude the use of the infiltration trenches shown in the parking area, equivalent BMP measures shall be provided as determined by the Department of Environmental Management (DEM).

9. Existing vegetation and supplemental plantings shown on the plat shall be deemed to fulfill the applicable requirement for Transitional Screening provided that the screening shown along the southern lot shall be increased to provide a minimum of 35 feet of planted area with a density of plantings equivalent to that required by Transitional Screening 2. Existing vegetation may be used to fulfill this requirement as may be acceptable to the Urban Forestry Branch, DEM. Supplemental plantings shown along the northern lot line shall be provided at the density generally shown on the plat. Species and specific placement of the supplemental plantings shall be subject to approval by the Urban Forestry Branch and may differ from that depicted on the special permit plat to ensure species compatibility and adequacy of screening.

10. To further reduce visual impacts attributable to the parking area, additional parking lot landscaping to include a minimum of seven (7) trees shall be provided in the proposed island shown in the parking area. To ensure survivability and compatibility, the exact number and species of trees shall be subject to approval by the Urban Forestry Branch, DEM.

11. Right-of-way dedication to 25 feet from the existing centerline of Old Ox Road shall be conveyed to the Board of Supervisors in fee simple on demand, or at the time of site plan approval whichever comes first.

12. To provide proper access from the site to Ox Road, an new entrance, designed and constructed in accordance with VDOT standards, shall be provided from Old Ox Road to Ox Road at a point directly aligned with Community Lane. Ox Road shall be restriped to provide a left turn lane into this new entrance. In the event this new entrance is not provided this special permit shall be null and void.

13. All light standards serving the parking area shall not exceed 12 feet in height, shall be equipped with shields, and all lighting shall be directed downward to attempt to minimize glare impacts on adjoining property.

14. The access easement located along the northern lot line shall be vacated. To ensure availability of access to property west of the site, an easement in the area of the church driveway shown on the plat to provide access to land to the north and west of the site shall be recorded in the Land Records of Fairfax County in a form approved by the County Attorney at the time of site plan approval. Ingress/egress to adjacent Lots 3A and 5 shall be provided during construction and relocation of driveway and 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 ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1992. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 11:58 a.m. and reconvened at 12:05 a.m.

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Page 68, November 19, 1992, (Tape 2), Scheduled case of:

10:30 A.M. ESTATE OF ALBERT D. EMURIAN, VC 92-P-114, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot 2 having a lot width of 12 ft. (80 ft. min. lot width required by Sect. 3-306), on approx. 44,187 sq. ft., located at 7809 Shreve Rd., zoned R-3, Providence District, Tax Map 49-2((1))145.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frederick R. Taylor, 8134 Old Keene Mill Road, Springfield, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was proposing to subdivide one lot into two lots with Proposed Lot 1 having a width of 80 feet and Proposed Lot 2 having a width of 12 feet; therefore, the applicant was requesting a variance of 68 feet for Proposed Lot 2. Ms. Langdon said the subject property is currently developed with a single family detached dwelling and is part of an older, residential neighborhood zoned R-3 with lots ranging in size from 11,000 to 54,000 square feet. She said it was staff's opinion that the application does not meet seven of the nine standards.

Mr. Taylor said the applicant acquired the property 30 years ago and since that time other lots have been subdivided, which did not have a frontage problem, are served by outlots or by pipestems. He said much of staff's comments was based upon how the application would affect the area and noted that he believed the precedent had already been established. Mr. Taylor said he believed the subject property would in fact conform to and exceed the requirements for the R-3 zoning district, with the exception of frontage. He added that the property is long and narrow, it is an interior lot which makes it unique, it is reasonable use of the property, and it would not be detrimental to the landowners.

In response to questions from Mr. Hammack, Mr. Taylor replied that the application property could not be consolidated with Lots 146, 147, or 144 because there are single family dwellings on each of those lots.

Vice Chairman Ribble called for speakers in support and hearing no reply called for opposition.

Jonathan Fickter, 7805 Shreve Road, Falls Church, Virginia, said he lived on one of the lots mentioned by Mr. Hammack. He said he opposed the application because the lot is already narrow and to make it more so would damage the aesthetics of the property and that he would not like to see the trees removed. Mr. Fickter expressed concern that the runoff problem he now experiences will be affected by the development.

Ralph Catham, 2631 Kirklyn Street, Falls Church, Virginia, owner of Lot 147 used the viewgraph to depict the existing draining problem areas and said that he would not like to see the trees removed.

In rebuttal, Mr. Taylor said he believed the proposed subdivision would help to alleviate the drainage problems that the neighbors now experience and the applicant would work with the County Arborist to save as many trees as possible.

In response to questions from Mr. Hammack, Mr. Taylor replied the access could be relocated to the other side if the BZA made that stipulation.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that if it was the BZA's inclination to approve the application and relocate the access that it might impact the neighbors on the other side of the property. Since the plat submitted with the application did not reflect that change,they would not be aware of the change in the application.

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Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to deny the request for the reasons set forth in the staff report.

Mr. Kelley seconded the motion and added that he believed the application was a workable application and encouraged the applicant to request a waiver of the 12-month time for refiling a new application. The motion carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen were absent from the meeting.

Mr. Taylor requested a waiver of the 12-month time limitation for refiling a new application.

Mr. Kelley so moved. Mr. Pammel seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen 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 92-P-114 by ESTATE OF ALBERT D. EMURIAN, under Section 18-401 of the Zoning Ordinance to allow subdivision of 1 lot into 2 lots with proposed Lot 2 having a lot width of 12 feet, on property located at 7809 Shreve Road, Tax Map Reference 49-2((1))145, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 19, 1992; 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 44,187 square feet.
4. The applicant has not satisfied a number of the standards for approval of a variance as set forth in the staff report.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

Page 70, November 19, 1992, (Tape 2), ESTATE OF ALBERT D. EMURIAN, VC 92-P-114, continued from Page 69)

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

Mr. Kelley seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mrs. Thonen were absent from the meeting. The BZA waived the 12-month time limitation for filing a new application.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 27, 1992.

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Page 70, November 19, 1992, (Tape 2), Information Item:

Possible Dates for Special Meeting
Mosque

Jane Kelsey, Chief, Special Permit and Variance Branch, said Chairman DiGiulian had requested that staff obtain possible dates to hold a special meeting for the Mosque discussion. She said several BZA members had expressed concern with holding a meeting Thursday and pointed out that it appeared both Wednesdays and Thursdays were available in January.

Vice Chairman Ribble said he did not believe it would be appropriate to schedule a date with three members absent.

Following a discussion between the BZA and staff, it was determined to reserve January 28, 1993.

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Page 70, November 19, 1992, (Tape 2), Information Item:

1993 BZA Meeting Dates

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the BZA to review the 1993 Meeting Dates to determine if the Thursday meetings should be eliminated.

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Page 70, November 19, 1992, (Tape 2), Information Item:

Relocation to the Government Center

The BZA asked staff for an update with regard to moving the meetings to the Government Center. Jane Kelsey, Chief, Special Permit and Variance Branch, agreed to do so. She said the Board of Supervisors has voted to continue its meetings on Monday.

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As there was no other business to come before the Board, the meeting was adjourned at 12:32 p.m.

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

John R. Ribble III
John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: December 15, 1992 APPROVED: January 5, 1995

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on December 1, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Robert Kelley; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

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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 Chairman DiGiulian called for the first scheduled case.

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Page 71, December 1, 1992, (Tape 1), Scheduled case of:

9:00 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 thru 3657 Ransom Pl., zoned R-8, Lee District, Tax Map 92-2((31))Parcel C and Lots 1 thru 86. (DEF. FROM 10/30/90 AT APPLICANT'S REQUEST. DEF. FROM 2/12/91 AT APPLICANT'S REQUEST. DEF. ON 6/25/91 AT APPLICANT'S REQUEST - BOARD ISSUED INTENT TO DEFER ON 10/1/91. DEF. FROM 10/8/91 AT APPLICANT'S REQUEST. DEF. FROM 1/7/92 AT APPLICANT'S REQUEST. DEF. FROM 5/5/92 - NOTICES NEED TO BE DONE. DEF. FROM 6/23/92 - NOTICES NEED TO BE DONE)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that staff had been told by the appellant's agent that the appeal application would be withdrawn; however, no letter had yet been received formalizing the withdrawal request. Ms. Kelsey commented on the length of deferral time which had been granted to this appellant. Mrs. Thonen said she believed that this issue had already been worked out between the appellant and the Department of Environmental Management, and she moved to dismiss A 90-L-014 for lack of interest. Mr. Pammel seconded the motion. Mrs. Harris said she would prefer to have a letter from the appellant and asked if the appellant could be contacted before the end of the meeting. Ms. Kelsey said that staff had continuously called the appellant in an effort to have them send a letter expressing their wishes. Ms. Kelsey offered to try to reach the appellant if the BZA deferred the appeal until the end of the meeting. Mr. DiGiulian suggested that the appellant be given thirty days in which to submit a letter to the BZA.

Mrs. Thonen withdrew her motion and Mr. Pammel withdrew his second.

Mrs. Harris moved to notify the appellant that appeal A 90-L-014 would be deferred for thirty days to allow them sufficient time to submit a letter requesting that the appeal be heard or formally withdrawn. She said that the BZA would grant no further deferrals on this appeal. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

(Please see continuation of this issue at the end of the meeting.)

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Page 71, December 1, 1992, (Tape 1), Scheduled case of:

9:00 A.M. MARKEY BUSINESS CENTER APPEAL, A 91-S-002, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that ingress/egress and public access easements for interparcel access must be provided on appellant's property before December 1, 1990 on approx. 4.34 acres located at 14522 and 14524 Lee Road, zoned I-4 & I-5, Sully District (formerly Springfield) Tax Map 34-3((8))4522 A-J and 4524 A-J. (DEF. FROM 6/4/91 AT APPLICANT'S REQUEST. DEF. FROM 10/1/91 AT APPLICANT'S REQUEST. DEF. FROM 1/14/92 AT APPLICANT'S REQUEST. DEF. FROM 4/9/92 AT APPLICANT'S REQUEST. DEF. FROM 6/30/92 AT APPLICANT'S REQUEST - NOTICES NEED TO BE DONE.)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the applicant's agent had that morning requested a sixty day deferral; however, after discussing the issue, he and staff had agreed that the appeal should be deferred indefinitely. If the appellant is able to work out a solution, the appeal would be withdrawn.

Mrs. Harris moved that A 91-S-002 be deferred for an indefinite period of time. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 72, December 1, 1992, (Tape 1), Scheduled case of:

9:25 A.M. AMSC SUBSIDIARY CORPORATION, VC 92-C-094, appl. under Sect. 18-401 of the Zoning Ordinance to permit construction of 35 ft. high wall (8 ft. max. height allowed by Sect. 10-104), on approx. 0.57 acs., located at 10800 and 10801 Parkridge Blvd., zoned I-3, Centreville District, Tax Map 27-1((1))pt. 1B. (CONCURRENT WITH SE 92-C-036). (DEF. FROM 12/1/92 AT APPLICANT'S REQUEST.)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the Board of Zoning Appeals had previously issued an Intent to Defer the application until December 8, 1992, and it had been readvertized and renoticed for the new date.

Mrs. Harris moved to defer VC 92-C-094 until December 8, 1992, at 10:20 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 72, December 1, 1992, (Tape 1), Scheduled case of:

9:35 A.M. ROBERT L. AND CAROLYN G. ARNOLD, SP 92-V-030, under Sect. 8-915 of the Zoning Ordinance to allow waiver of dustless surface, on approx. 4.1072 acs., located 10017 Richmond Highway, zoned I-5, Mount Vernon District, Tax Map 113-2((1))68. (CONCURRENT WITH PCA 85-V-004).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. White replied that it was.

Regina Murray, Staff Coordinator, presented the staff report, stating that the property was being used as a building material storage and distribution yard. She said that a waiver of the dustless surface requirement was being requested in favor of a semi-porous all-weather surface, consisting of crushed stone under a sand and stone mix. Ms. Murray said that, with the revised Proposed Development Conditions dated November 30, 1992, there were no outstanding issues with the proposed request. Ms. Murray noted, for the BZA's information, that on November 23, 1992, the Board of Supervisors (BOS) approved PCA 85-V-004, with proffers dated October 13, 1992. The PCA application had been filed concurrently with the special permit to allow building additions to the previously approved GDP. She said the BOS also approved modification of the transitional screening adjacent to Parcel 69 and modification of the barrier requirements along the northern and eastern peripheries adjacent to Parcel 69, 57 and 53, in favor of that shown on the GDP and special permit plat.

B. Blair White, 6465 33rd Street, Falls Church, Virginia, represented the applicant, stating that the applicant had leased the property to a company that employs the use of heavy construction equipment and large trucks which are used off site to mix Gunite for swimming pool construction; at the present time it would be economically prohibitive and would create extensive dust if the site were completely paved. He said that was the reason for the applicant's request to waive the dustless surface requirement in favor of the material previously described by Ms. Murray. Mr. White said that the surface proposed is presently in place at the site, inasmuch as the site had been previously approved under a GDP several years ago and this represents a modification as a result of a change in the tenant and a minor change in the nature of the use.

Mrs. Harris asked Mr. White if this applied to the parking area as well. Mr. White said that the employees' parking area is paved with concrete, as is the entry drive into the site. Mrs. Harris asked if the trucks are ever there overnight and Mr. White said yes, they are parked in and around the building shown and west of the building. In answer to a question from Mrs. Harris as to whether he believed the material he was proposing was superior to just gravel, Mr. White said yes. He said that, at the present time, there is a trickle ditch running along the southern border of the site that picks up most of the runoff.

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

Mr. Pammel made a motion to approve SP 92-V-030 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions dated November 30, 1992, also found 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 92-V-030 by ROBERT L AND CAROLYN G. ARNOLD, under Section 8-915 of the Zoning Ordinance to allow waiver of dustless surface, on property located at 10017 Richmond Highway, Tax Map Reference 113-2((1))68, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 1992; 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 I-5.
3. The area of the lot is 4.1072 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 8-915 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. <u>The gravel surface shall be a semi-porous all-weather surface consisting of 4 inches of 21-A crushed stone under 1-2 inches of a sand and stone mix.</u> The gravel surfaces shall be maintained in accordance with the Public Facilities Manual standards and the following guidelines:

   Travel speeds shall be limited to 10 mph or less.

   Routine maintenance should be performed to prevent surface unevenness, wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

   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.

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, thirty (30) 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. 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. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1992. This date shall be deemed to be the final approval date of this special permit.

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Chairman DiGiulian called for the Action Items at this time.

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Page 74, December 1, 1992, (Tape 1), Action Item:

Approval of Minutes
September 29, 1992, and October 15, 1992

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

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Page 74, December 1, 1992, (Tape 1), Action Item:

Request for a Date and Time
Appeal Application
Albert H. Haracz, Jr.

Mrs. Harris moved to schedule this appeal application for February 2, 1993, at 10:00 a.m. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 74, December 1, 1992, (Tape 1), Action Item:

Request for Additional Time
Chamin Puri, SPA 87-S-012-1

Mrs. Harris moved to grant the additional time with a new expiration date of February 6, 1994. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 74, December 1, 1992, (Tape 1), Action Item:

BZA 1993 Meeting Schedule

Jane C. Kelsey, Chief, Special Permit and Variance Branch, noted that Chairman DiGiulian had broached the subject with her and that he had indicated he would prefer to change the pattern of scheduling the meetings on Thursdays. Copies of the 1993 schedule were distributed to the BZA for their review. Ms. Kelsey pointed out that the schedule indicated no Thursday meetings for 1993 until July, during which there were three Thursday meetings scheduled, two of which would be scheduled only if needed.

A discussion ensued concerning various options and contingencies, resulting in Mrs. Harris making a motion to delete Tuesday, February 16, 1993, which would have been a night meeting, and Tuesday, March 2, 1993, which would have been a day meeting. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Hammack was absent from the meeting.

Chairman DiGiulian requested that Ms. Kelsey research the availability of alternate days of the week in an effort to reschedule the meetings which were scheduled for Thursdays. It was decided that Ms. Kelsey would concentrate on the availability of Wednesday as a meeting date in addition to the regular Tuesday meetings.

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Page 74, December 1, 1992, (Tape 1), Scheduled case of:

9:45 A.M. KENNETH S. RHOLL, VC 92-V-102, appl. under Sect. 18-401 of the Zoning Ordinance to allow detached structure 5.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 25,186 sq. ft., located at 1134 Cameron Rd., zoned R-2, Mount Vernon District, Tax Map 102-2((11))1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Rholl replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the applicant wished to construct a 16 foot high detached garage, resulting in a request for a variance of 10 feet. He said that the proposed structure would be approximately 49.1 feet away from the existing detached garage on adjacent Lot 2 to the west.

The applicant, Kenneth S. Rholl, 1134 Cameron Road, Alexandria, Virginia, presented the statement of justification, stating that the reason the particular site was selected for the proposed detached structure was that it would allow him to avoid taking down any trees or having to alter the existing terrain. He said he believed that the proposed location of the structure was the only feasible place for the addition.

Mrs. Harris questioned the proposed 26-foot depth and Mr. Rholl said that, because they had downsized the width of the garage, they needed the extra depth for storage. Mrs. Harris said she believed that the proposed garage could be reconfigured and moved over to the left and to the south in order to minimize the requested side variance. Mr. Rholl said that would interfere with a car being able to go straight into the garage; it would need to go around

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the oak tree and take a skewed route into the garage, causing it to not sit squarely in the garage.

Mr. Ribble asked the applicant if there were other two-car detached garages in the neighborhood and Mr. Rholl said there were none on that street; there are tract houses to the east which are newer, with garages or carports built in; to the south and the east the lots are smaller with mostly carports.

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

Mrs. Harris made a motion to deny VC 92-V-102 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 92-V-102 by KENNETH S. RHOLL, under Section 18-401 of the Zoning Ordinance to allow detached structure 5.0 ft. from side lot line, on property located at 1134 Cameron Rd., Tax Map Reference 102-2{{11}}1, 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 1, 1992; 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 25,186 square feet.
4. From looking at photographs and the plat, the property does not appear unusual; it is rectangular and does not have any extraordinary conditions on or around it.
5. The applicant's effort to save the trees on the property is acknowledged, but the proposed construction does not meet the Ordinance.
6. The proposed construction could be reconfigured or moved to another location.
7. The proposed location is merely a convenience for the applicant and could be changed to cause less of an impact on adjacent property owners.
8. Strict application of the Ordinance does not clearly alleviate a hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1992.

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Page 76, December 1, 1992, (Tape 1), Scheduled case of:

9:55 A.M. NEIL A. DARLING, SP 92-Y-056, appl. under Sect. 8-901 of the Zoning Ordinance to allow modification to minimum yard requirements to allow deck 11 ft. from side lot line (20 ft. min. side yard required by Sect. 3-C03), on approx. 10,560 sq. ft., located at 4519 Cub Run Rd., zoned R-C, AN, WS, Sully District, Tax Map 33-4((2))341.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Darling replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots are also zoned R-C and developed with single family detached dwellings. He said that the dwelling on adjacent Lot 340 is approximately 20 feet from the shared lot line. Mr. Hunter said that staff recommended approval of the request, subject to the Proposed Development Conditions.

The applicant, Neil A. Darling, 4519 Cub Run Road, Chantilly, Virginia, presented the statement of justification.

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

Mrs. Thonen made a motion to grant SP 92-Y-056 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 24, 1992.

Mrs. Harris noted that the only exit door from the back of the dwelling is located in the southeast corner, which is where the deck was proposed to be located, so it could not feasibly be moved to a different location and still have access to the deck. Mrs. Thonen asked the Clerk to make Mrs. Harris' statement part of the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-056 by NEIL A. DARLING, under Section 8-901 of the Zoning Ordinance for certain R-C lots to allow modification of minimum yard requirements to allow deck 11.0 ft. from side lot line, on property located at 4519 Cub Run Rd., Tax Map Reference 33-4((2))341, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 1992; 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, AN, WS.
3. The area of the lot is 10,560 square feet.
4. The dwelling and the proposed addition are located on a lot which was the subject of a rezoning to the R-C District in 1982.
5. The deck will not be any closer to the lot line than the existing house.
6. At the time the house was built, this addition could have been done by right.

7. The only exit door from the back of the house is located in the southeast corner, which is where the proposed deck will be located, so it could not feasibly be moved to a different location and still have access to the deck.

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 special permit is approved for the location of the specified deck shown on the plat 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 prepared by Dewberry & Davis, revised by Neil A. Darling, August 31, 1992 submitted with this application and not transferable to other land.

3. A building permit and all required inspections shall be obtained.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 77, December 1, 1992, (Tape 1), Scheduled case of:

10:15 A.M. LUCK STONE CORPORATION, SPA 81-S-064-5, appl. under Sect. 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, processing, sales and accessory uses to permit increase in land area, on approx. 212.47512 acs., located at 15950 Lee Hwy., zoned R-C, NR, WS, Sully District, Tax Map 64-1((1))1, 4, 13, 14, 15, pt. 17, pt. 39, pt. 33, pt. 38; 64-1((4))7A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Spence replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the applicant was making this request to expand the operation; the area was recently rezoned to the Natural Resources overlay district by the Board of Supervisors (BOS) on November 23, 1992. He said that there are no structures or equipment additions proposed in conjunction with this application. Mr. Riegle said that, in recognition of the natural resources existing on the site, the Comprehensive Plan contains an option for the site to be used as a quarry. As abutting land is zoned and planned for residential use, exercising this option is contingent upon providing adequate screening and buffering. In response to the recommendation of the Plan, the special permit plat provides a landscape berm 50 feet to 100 feet in width and 18 feet to 30 feet in height along the periphery of the expansion area. Mr. Riegle noted that the proposed berms and landscaping are consistent with the existing berms on the existing quarry site along Bull Run Post Office Road which historically, in staff's judgment, have provided effective mitigation of noise and visual impacts. Accordingly, staff was of the belief that the application was in harmony with the recommendations of the Comprehensive Plan.

Mr. Riegle commented on potential issues related to the gasline easement located along the southeastern boundary of the expansion area. To ensure safety from a regulatory perspective, he said that staff had worked directly with Trans Continental, who operates the pipeline.

Mr. Riegle said that Trans Continental had raised no objections to the application and the language in the revised Development Conditions distributed that morning, came directly from Trans Continental. The applicant had agreed to abide by the restrictions recommended by Trans Continental and the applicable language contained in Condition 17. Mr. Riegle referred to the language of the right-of-way dedication referenced in Condition 7 which was designed by the Office of Transportation to provide the flexibility necessary to allow the operation of the quarry to be compatible with public improvements which the Office of Transportation is addressing on sites to the west. Mr. Riegle said that the applicant had reviewed the language and had indicated agreement. He said that staff recommended approval of this application, subject to the revised Proposed Development Conditions submitted that morning.

Royce A. Spence, 7297-A Lee Highway, Falls Church, Virginia, attorney and agent for the applicant, presented the statement of justification, stating that they were in complete agreement with all of the Development Conditions dated November 24, 1992. Mr. Spence said that they were adding approximately 29 acres to the operation: approximately 16 acres to be excavated and approximately 12 acres to be berms and buffers, without exception. He said that they were contractually obligated to the landowner to have the berms in place within six months of the settlement date. Mr. Spence said that they had taken great care to meet with the residents of Virginia Run, Bull Run Estates, Western Fairfax Civic Associations, and the National Park Service in the form of the Superintendent of Bull Run Park, all of which supported the application. Mr. Spence said that the plan was well-thought-out and would protect all the adjacent areas, while maintaining the rural character of the area.

William H. Turley, 6705 Bull Run Post Office Road, Fairfax, Virginia, spoke in opposition to the application, stating that his property was located about half a mile from the existing quarry. Mr. Turley's said that the quarry was not an asset to the area and his concern was that he currently could hear the blasting and did not look forward to also feeling it. He referred to dropping water tables, stating that he did not know if the quarry was causing them to drop.

In his rebuttal, Mr. Spence stated that the quarry was a valuable and useful resource which naturally had to be extracted from wherever it was located. He said that he had worked with the staff to ameliorate any difficulties with the surrounding properties. Mr. Spence noted that the 29 acres in question were a considerable distance from Mr. Turley's property, while the property owners closest to the 29 acres in question were not present in opposition. Regarding the water tables, Mr. Spence said that he knew of no relationship between the quarry and the water tables.

In answer to a question from Mrs. Harris, Mr. Spence acknowledged that the land in question was recommended by the Comprehensive Plan for quarry activity.

Mr. Ribble made a motion to grant SPA 81-S-064-5 for the reasons outlined in the Resolution, subject to the revised Proposed Development Conditions dated November 24, 1991.

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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-064-5 by LUCK STONE CORPORATION, under Section 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, processing, sales and accessory uses to permit increase in land area, on property located at 15950 Lee Hwy, Tax Map Reference 64-1((1))1, 4, 13, 14, 15, pt. 17, pt. 39, pt. 33, pt. 38; 64-1((4))7A, 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 1, 1992; 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, WR, WS.
3. The area of the lot is 212.47512 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 8-915 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 Patton Harris Rust and Associates and dated April 1992, 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 grading plan for the 28.97 acre expansion area shall be submitted to DEM for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 2-603 of the Zoning Ordinance.

5. A landscape plan shall be submitted to the Urban Forestry Branch, DEM for review and approval for the 28.97 acre expansion area. This landscape plan shall provide for the following screening and landscaping on the berm located along the periphery of the expansion area.

   For the 400 foot long portion of the berm which directly abuts Bull Run Post Office Road, two (2) rows of staggered deciduous and evergreen trees planted ten feet on center shall be provided. Evergreen trees used to fulfill this requirement shall have a planted height of six (6) feet, and deciduous trees used to fulfill this requirement shall have a minimum caliper of two (2) inches at the time of planting. Specific species and location of plantings shall be as determined by the Urban Forestry Branch, DEM and shall reflect attempts to ensure continuity with the plantings on the existing berms north of the expansion area.

   The remainder of the berm shall be landscaped with natural grasses and with seedlings of a species and density to be determined by the Urban Forestry Branch, DEM. To ensure compatibility with surrounding low density development, emphasis shall be placed on using native species to fulfill this requirement.

6. If not yet accomplished, pursuant to the approval of SPA 81-S-064-4, a Public Improvement Plan shall be submitted to the Department of Environmental Management for review and approval. This Plan shall accomplish the following:

   Re-stripe existing pavement to provide for interim right and left turn lanes for access from Lee Highway and an acceleration lane from the site entrance to eastbound Lee Highway.

   Ensure that the existing siltation pond located adjacent to the stockpiling operation on the south side of Lee Highway is designed to release runoff from the site in accordance with Best Management Practice (BMP) standards as determined by the Director of the Department of Environmental Management. The agreements reflected in the attached letter of September 25, 1992 may be used to fulfill this requirement as may be acceptable to DEM.

7. To accommodate the planned widening of Lee Highway, right-of-way shall be conveyed to the Board of Supervisors in a manner which provides a minimum uniform width of 112 feet along the site's entire frontage Lee Highway. This right-of-way shall be dedicated in fee simple at such time as a road project requiring the right-of-way is designed and funded by the Virginia Department of Transportation (VDOT) or Fairfax County. Based on final design of future improvements to Lee Highway, or the design and or implementation of public improvements on adjoining property to the west, the required right-of-way dedication may be increased as may be shown to be necessary by the Office of Transportation in an amount not to exceed 158 feet. If shown to be necessary, the amount of any additional right-of-way over 112 feet shall be determined by the BZA in conjunction with the annual review of this use required by Sect. 8-104 of the Zoning Ordinance. Notwithstanding any notes on page 2 of the approved special permit plat, in order to screen the quarry from Lee Highway all existing vegetation which lies north of the ultimate right-of-way line and associated improvements to Lee Highway shall be preserved to the maximum extent possible.

8. This permit is granted for a period of five (5) years from the approval date of SPA 81-S-064-5 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.

9. All landscaping and screening required in previous approvals of this use shall be maintained as follows:

Landscaping and screening shall be maintained in accordance with the landscape plan submitted to the Urban Forestry Branch 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 maintained at the level of Transitional Screening 3.

To ensure quarry operations on the north side of Lee Highway are adequately screened all existing vegetation south of the existing quarry pit shall be preserved and limits of clearing and grading shall not extend south of the existing quarry pit.

10. The total cost of enforcement services shall be absorbed by the applicant. As monitoring equipment is shared between Luckstone Quarry and Vulcan Quarry, the applicant shall be responsible for 50% of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.

11. In order to ensure protection of the EQC, in the north pit, the limits of excavation shall not extend beyond the boundary of the EQC as delineated in accordance with the criteria contained in the Comprehensive Plan. Further, there shall be no clearing and grading and no structures located within the area designated as an EQC.

12. Berms on the portions of the site governed by the previous approval of SPA 81-S-064-4, 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 the landscape plan submitted and approved by the Urban Forestry Branch in SPA 82-Y-064-2.

13. The design of the berm along the northern lot line on the north side of Rt. 29 shall be maintained so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site.

14. There will be no excavation access to and from the north excavation other than by the tunnel under Route 29-211.

15. In accordance with the provisions of Sect. 8-103 of the Zoning Ordinance, a bond of $2,000 for the 134 unrestored acres shall be continued for the duration of this mining operation. Upon amendment or renewal of this application any agreements or performance guarantees shall be subject to review and approval by the Bonds and Agreements Branch, DEM.

16. 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.

17. Blasting in the existing quarry and in the expansion area shall be regulated as follows:

In the existing quarry millisecond delay caps or the 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. Blasts not exceeding 15,000 pounds with a single millisecond delay charge of 1,500 pounds may be permitted in specific areas of the site when in compliance with the standard operating procedure approved under SPA 81-S-064-4.

The above referenced blasting procedures, followed in the existing quarry, shall be followed in the expansion area subject to the following additional provisions:

Trans Continental shall be notified prior to any blast occurring at a point 200 feet or closer to the pipeline.

Each such notice shall be given at least 24 hours prior to the blase and shall be provided to individual(s) as designated by Trans Continental

Any blast within 200 feet of the pipeline shall adhere to the following minimum delays:

17 milliseconds between decks in a hole
25 milliseconds between holes

The following information shall be forwarded to Trans Continental following each blast that occurs within 200 feet of the pipeline:

A diagram or pattern of the shot
Maximum pounds per delay of explosives in the shot
Depth of the holes in the shot
Type of explosives used
Type of delays used
Seismography reading and location

Blasting records for the entire site shall be made available to County staff.

18. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.

19. 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.

20. 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.

21. 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.

22. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.

23. All present dust control equipment including the wet suppression system shall continue to be maintained and operated.

24. 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.

25. 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.

26. All blasting material shall be handled and stored in accordance with standards and regulations established by the State Mining Safety and Health Administration or other appropriate agencies.

27. 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.

28. 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.

29. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.

30. 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.

31. 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.

32. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing and that shown on the special permit plat may be used to fulfill this requirement.

33. Water quality monitoring reports shall be provided by the applicant on an annual basis to the Office of Comprehensive Planning (OCP), Environment and Heritage Resources Branch. Parameters to monitor shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients, and alkalinity.

34. The existing entrance and exit shall be labeled as one-way to ensure safe circulation on the site.

35. Notwithstanding the approved special permit plat, the structure proposed to be constructed south of the existing shop building shall be located a minimum of 100 feet from the right-of-way line of Lee Highway.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1992. This date shall be deemed to be the final approval date of this special permit.
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Page 82, December 1, 1992, (Tape 1), Scheduled case of:

10:30 A.M. BEULAH STREET VETERINARY SERVICE, P.C., SPR 87-L-043, appl. under Sect. 3-103 and 8-915 of the Zoning Ordinance to renew SP 87-L-043 for veterinary hospital as a home professional office and waiver of the dustless surface, on approx. 2.24 acs., located at 7434 Beulah St., zoned R-1, Lee District, Tax Map 91-3{{1}}25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Arnold replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the requested use is for a veterinary clinic in the applicant's home. The area south of the property is open space for a townhouse community and the parcel is surrounded by other residential development zoned R-1, R-4 and R-5. Mrs. Anderson said that the previously approved special permit had been granted for five years at staff's request, due to future transportation improvements in the area which may necessitate the consolidation and/or relocation of the entrance to Beulah Street. The only changes requested by the applicant with the present application are some minor changes in the hours of operation. Ms. Anderson said that the applicant had pointed out three concerns with the Proposed Development Conditions: The first one had to do with the previous application allowing two employees in addition to the applicant. The Conditions and the staff report recommended one employee. Ms. Anderson said that staff had no problem with the change and would recommend that Condition 6 be changed to read: "There shall be no more than two (2) employees on the premises at any one time, in addition to the applicant." Ms. Anderson said that, concurrently, Condition 7 would need to be changed in order to provide a parking space for the additional employee, changing the number of parking spaces to six instead of five. Another concern involved the temporary right turn deceleration lane requested in Condition 16. Ms. Anderson said the applicant had requested that the Condition be deleted because it would necessitate moving several Virginia Power poles; this Condition had been stricken with the previous application and staff had no problem with striking it again.

In answer to a question from Mrs. Harris concerning Condition 17 and its meaning, Mrs. Anderson said that staff preferred that the applicant not have lights in the parking area and that was a Condition that had been carried over from the previous request. She advised that the applicant would not be required to seek and amendment to install lighting under that Condition.

Mrs. Anderson said that the final concern of the applicant was the fact that staff was still recommending a five-year term. She said that the reason for the five-year term was that improvements to Beulah Street as proposed at this time did not include a median break; by having a five-year term, staff believed that they could review the use at a later date in order to consolidate or relocate the entrance. Mrs. Harris asked if that could not be done administratively and Mrs. Anderson said that it could not because the special permit plat showed the entrance at a specific location. A discussion ensued between Mrs. Harris and Mrs. Anderson regarding the term and Mrs. Anderson reiterated that this request was for a home professional office. Mrs. Anderson said it was staff's recommendation that SPR 87-L-043 be approved, subject to the Proposed Development Conditions, with the changes noted.

Mrs. Harris asked if Condition 13 did not take care of the concern of the widening and right-of-way on Beulah Street. Mrs. Anderson said that Condition 13 referenced the dedication for the right-of-way and the construction easements, but did not permit the relocation of the entrance. She said that the Office of Transportation advised that the entrance may not be allowed onto Beulah Street and may have to go off to the rear at some future time, citing the residential nature of the area as a reason.

W. McCauley Arnold, of the law firm of Cowles, Rinaldi & Arnold, Ltd., 10521 Judicial Drive, Fairfax, Virginia, presented the statement of justification, stating that they were agreeable to all of the Conditions, except for the condition limiting the term to five years. He gave reasons why they would prefer not to come back before the BZA in five years. They had agreed to the dedication, if requested, for up to 56 feet from the center line of Beulah Street. The improvements for Beulah Street had been designed by Virginia Department of Transportation (VDOT), and he said it is a design that would require dedication of approximately 35 feet from center line; however, the applicant had agreed to additional dedication, if requested. Mr. Arnold said their position was that, in that way, the future transportation issues would be resolved. He said that the problem of returning after five years was that it does involve another $1,800 application fee, the preparation of the application by Dr. Hart, conferring with staff, coming before the BZA, or having to pay someone like himself to do it for him. Returning to the BZA would also involve the expense of another survey or renewing the existing survey, and going through the site plan process again. Mr. Arnold said that it was an expensive and time-consuming process. It was Mr. Arnold's belief that the concerns about the use, which might arise in the future, had been resolved in the staff report. Mr. Arnold noted that the special permit had experienced a five-year trial period and there was no one present to oppose it. He said that Dr. Hart had made an effort to make sure that the use was compatible with the neighbors and the use gave the appearance of being residential. He said that the use provided a needed service in an area suited to the use.

In answer to a question from Mrs. Thonen, Mr. Arnold said that he agreed with Condition 16. Mrs. Harris pursued the potential of parking lot lighting and Mr. Arnold said there were no such plans now or in the future. Dr. Roger Hart, 7434 Beulah Street, Alexandria, Virginia, said that there were flood lights on the house, about 8 feet high, which flooded the front yard and some of the parking area, no higher than the eaves, casting light only about as far as the parking lot. Dr. Hart said he would like to install a Viginia Power security light on a pole.

Mrs. Anderson said that the erection of a Virginia Power security light on a pole would not be in compliance with staff's recommended conditions. In answer to a question from Mrs. Thonen, Mrs. Anderson said that the security flood lights were fine, but the pole light was not. Mrs. Thonen said that if Condition 17 were left in, it would take care of the problem.

Mrs. Anderson said that, because the use had already been established, Condition 4, referencing site plan approval, could be deleted.

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

A discussion ensued regarding the five-year term. Chairman DiGiulian stated that, if the use had been in place for five years with no complaints, the request could be granted without term and, if a problem develops in the design of the road later, whoever designs the road would be responsible for taking care of it. Mr. Pammel suggested, in the very unlikely event of a problem occurring later, that the applicant could come before the BZA to request an amendment to the application.

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

Mrs. Thonen made a motion to grant SPR 87-L-043 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 24, 1992, as revised: Condition 4 shall be deleted; Condition 6 shall be changed to read, in part, "...in addition to the applicant...."; Condition 7 shall be changed to require a minimum of six (6) parking spaces for the veterinary use; Condition 16 shall be deleted; Condition 21 shall be deleted; the Conditions shall be renumbered.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 87-L-043 by BEULAH STREET VETERINARY SERVICE, P.C., under Section 3-103 and 8-915 of the Zoning Ordinance to renew SP 87-L-043 for veterinary hospital and waiver of the dustless surface, on property located at 7434 Beulah St., Tax Map Reference 91-3((1))25, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 1992; and

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

1. The applicant is the owner of the land.
2. The present zoning is R-1.

3. The area of the lot is 2.24 acres.
4. The special permit has been in operation for five years without 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 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 Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Alexandria Surveys, Inc., dated April 27, 1992, revised through October 21, 1992 approved with this application, as qualified by these development conditions.

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

4. The hours of operation shall not exceed 8:00 a.m. to 8:00 p.m. Monday through Thursday, 8:00 a.m. to 6:00 p.m. Friday, 8:00 a.m. to 4:00 p.m. Saturday and for emergencies only on Sundays.

5. There shall be no more than two (2) employees on the premises at any one time, in addition to the applicant.

6. A minimum of six (6) parking spaces for the veterinary use and two (2) parking spaces for the residential use shall be provided. All parking shall be provided on the property and shall not encroach into the thirty (30) foot wide access easement located along the northern lot line.

7. The gravel surfaces on the property 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. The approval of the dustless surface shall be for the time period specified in Sect. 8-915 of the Zoning Ordinance.

   Speed limits shall be limited to ten (10) mph.

   During dry periods, application of water shall be made in order 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.

   Routine maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

   There shall be pavement to a point twenty-five (25) feet into the entrance drive from the edge of pavement of Beulah Street to inhibit the transfer of gravel off-site.

8. The waiver of the dustless surface requirement is approved for the time period specified in the Zoning Ordinance.

9. A modification to Transitional Screening 2 shall be approved along all lot lines to allow the existing vegetation to satisfy this requirement without supplementation. Additional landscaping shall be provided around the parking areas to screen the view of this use; the size, type and location of the plantings shall be approved by the Urban Forestry Branch of the Department of Environmental Management.

10. This veterinary practice shall be confined to small animals only, i.e., commonly accepted pets, as defined in the Zoning Ordinance. Animals may be kept overnight for medical reasons only.

11. The applicant shall comply with all Health Department regulations pursuant to Sect. 8-911, Additional Standards for Veterinary Hospitals.

12. Right-of-way dedication and appropriate ancillary easements shall be provided along the site's frontage to Beulah Street to 56 feet from centerline in accordance with VDOT Project #0613-029-309. The right-of-way and ancillary easements shall be dedicated to the Board of Supervisors in fee simple upon sixty (60) days notice. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.

13. A trail shall be provided in accordance with the Countywide Trails Plan. Construction may be deferred, if deemed appropriate by the Director, DEM, at the time of site plan review.

14. The site's entrance shall be a minimum of thirty (30) feet to comply with VDOT commercial entrance standards.

15. Parking lot lighting, if installed, shall be on standards not to exceed twelve (12) feet in height and shall be shielded in a manner that would prevent light or glare from projecting onto adjacent properties in accordance with the Glare Standards of the Zoning Ordinance.

16. All signs shall conform with Article 12 of the Zoning Ordinance.

17. Alterations and improvements to the property of a strictly residential nature, not affecting the veterinary hospital, are permitted without amendment to this Special Permit.

18. The veterinary hospital shall be located entirely within the dwelling and shall encompass no more than 950 square 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval unless the use has been legally established by obtaining a Non-Residential Use Permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 86, December 1, 1992, (Tape 1), Scheduled case of:

10:45 A.M. FIMAT, INC. DBA GOLD'S GYM AND FITNESS CENTER, SP 92-Y-064 appl. under Sect. 5-503 of the Zoning Ordinance to allow health club, on approx. 4.18 acres, located at 14101 Sullyfield Circle, zoned I-5, AN, WS, Sully District, Tax Map 34-4((11))F1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. McMahon replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the health club will occupy 16,485 square feet of a 4.13 acre lot. The applicant is currently operating the health club under a special permit approved by the BZA in 1988 at another location. She said that the applicant's desire was to move to the new, larger location. All aspects of the operation will remain the same. Staff had no concerns with the application and recommended approval, subject to the Development Conditions contained in the staff report. Ms. Greenlief said that the present Conditions are the same as those previously imposed, except that the number of patrons permitted on site at any one time had been increased by five because more parking is available at the new location.

Mrs. Harris welcomed Ms. Greenlief back from maternity leave.

Toni L. McMahon, President, McKeever Associates, Inc., 10306 Eaton Place, Fairfax, Virginia, presented the statement of justification, stating that staff effort had been extraordinary. She said that the information furnished by Ms. Greenlief had been comprehensive and the Conditions imposed were acceptable.

Mrs. Harris asked Ms. McMahon if all of the problems had been worked out with the landlord and Ms. McMahon said that they had.

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

Mr. Pammel made a motion to grant SP 92-Y-064 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 24 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-064 by FIMAT, INC., DBA GOLD'S GYM AND FITNESS CENTER, under Section 5-503 of the Zoning Ordinance to allow health club, on property located at 14101 Sullyfield Circle, Tax Map Reference 34-4((11))F1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 1, 1992; 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-5, AN, WS.
3. The area of the lot is 4.18 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 8-915 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 October, 1992 approved with this application, as qualified by these development conditions. This approval shall only govern the 16,485 square foot area to be occupied by the approved health club which is the eastern-most portion of the building.

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

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

5. The maximum number of employees on site at any one time shall be eight (8).

6. There shall be a minimum of thirty-five (35) parking spaces provided for this use. At the time of site plan review, a parking tabulation shall be submitted to and approved by the Director, Department of Environmental Management (DEM) which shows that the required parking for all uses can be provided for the building on Lot F1 as shown on the special permit plat or this special permit shall be null and void. All parking for this use shall be on site.

7. There shall be a maximum of 80 patrons on site at any one time.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 9, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 87, December 1, 1992, (Tape 1), Scheduled case of:

(Continued from page 1)

9:00 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 thru 3657 Ransom Pl., zoned R-8, Lee District, Tax Map 92-2((31))Parcel C and Lots 1 thru 86. (DEF. FROM 10/30/90 AT APPLICANT'S REQUEST. DEF. FROM 2/12/91 AT APPLICANT'S REQUEST. DEF. ON 6/25/91 AT APPLICANT'S REQUEST - BOARD ISSUED INTENT TO DEFER ON 10/1/91. DEF. FROM 10/8/91 AT APPLICANT'S REQUEST. DEF. FROM 1/7/92 AT APPLICANT'S REQUEST. DEF. FROM 5/5/92 - NOTICES NEED TO BE DONE. DEF. FROM 6/23/92 - NOTICES NEED TO BE DONE)

Chairman DiGiulian advised that he had received a letter from Charles P. Johnson & Associates, requesting withdrawal of this case which had been discussed at the beginning of the meeting.

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Geri B. Bepko

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 12, 1993

APPROVED: January 19, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on December 8, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammell; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:35 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 89, December 8, 1992, (Tape 1), Scheduled case of:

9:00 A.M. HANS J. SCHMIDT APPEAL, A 92-D-016, appl. under sect. 18-301 of the Zoning Ordinance to appeal the determination of the Director of Department of Environmental Management to disapprove a proposed resubdivision of Lots 10A and 10b, Section 1, Langley Forest because it exceeds the maximum density requirement set forth in Sect. 3-108 of the Zoning Ordinance, on approx. 1.8326 acs., located at 901 and 909 Whann Ave., zoned R-1, Dranesville District, Tax Map 21-4((6))10A, 10B. (DEF. FROM 9/29/92 FOR ADDITIONAL INFORMATION TO BE SUBMITTED BY APPELLANT TO DEM AND REPORT BACK TO BZA. DEF. FROM 10/27/92 TO RESOLVE OUTSTANDING ISSUE.)

Chairman DiGiulian noted that because the Department of Environmental Management had approved the plat, the appellant had requested that the appeal be withdrawn.

Mrs. Thonen made a motion to allow the withdrawal of Appeal A 92-D-016. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Ribble not present for the vote.

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Page 89, December 8, 1992, (Tape 1), Scheduled case of:

9:00 A.M. ELECTRONIC DATA SYSTEMS APPEAL, A 91-C-022, appeal of the Director of the Department of Environmental Management's denial of Site Plan #7809-SP-03 for the extension of Lawyer's Road across property located within a floodplain on the grounds that special exception approval is required under Section 2-903 of the Zoning Ordinance on property located on Tax Map 25-3((9))pt. I and pt. O containing approx. 136,500 sq. ft. of land, zoned R-3; Tax Map 25-3((9))pt. I, pt. L, pt. P containing approx. 224,200 sq. ft. of land, zoned R-3; Tax Map 25-3((4))pt. B1, pt. T; Tax Map 25-3((10))pt. C, pt. C1 containing approx. 181,500 sq. ft. of land, zoned R-3, PDH-3, Centreville District. (DEF. FROM 1/21/92 and 4/23/92 AT APPLICANT'S REQUEST. DEF. FROM 9/15/92 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the appellant had requested a deferral and recommended that an indefinite deferral be granted. She explained that John Winfield, Deputy Director, Plan Review, Design Review Division, Department of Environmental Management, had expressed his belief that the issues had been resolved and the case would be withdrawn.

Mrs. Thonen made a motion to indefinitely defer Appeal A 91-C-022. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 89, December 8, 1992, (Tape 1), Scheduled case of:

9:15 A.M. ST. MARK'S APPEAL, A-91-C-021, appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that the proposed termination of Gerken Avenue with a cul-de-sac on the appellant's property is not in conformance with the development conditions imposed by the BZA in the approval of SPA 81-C-081-3, on approx. 19.5154 acres located at 9970 Vale road, zoned R-1, Centreville District, Tax Map 37-4((1))42. (DEF. FROM 4/14/92 AT APPLICANT'S REQUEST. NOTICES NEED TO BE DONE. DEF. FROM 9/15/92 AT APPLICANT'S REQUEST)

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board of Zoning Appeals had issued an intent to indefinitely defer Appeal A 91-C-021 on November 17, 1992.

Mr. Kelley made a motion to indefinitely defer Appeal A 91-C-021. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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9:30 A.M. J. DOUGLAS HERTEL AND CAROL HERTEL, VC 92-B-100, appl. under Sect. 18-401 of the Zoning Ordinance to allow dwelling 105 ft. from interstate highway (I-495) (200 ft. min. setback required by Sect. 2-414), on approx. 36,705 sq. ft., located at 5603 Heming Ave., zoned R-3, Braddock District, Tax Map 80-1((2))(72)A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Hertel replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report and noted that the application centered on the property's relationship to the Capital Beltway. He stated that the applicant was requesting approval to construct a dwelling 105 feet from the right-of-way of the interstate highway. Mr. Riegle said that the Zoning Ordinance requires a minimum distance of 200 feet from a residential dwelling to the right-of-way of principle arterials such as an interstate highway; therefore, the applicant was requesting a variance of 95 feet to the minimum interstate highway requirement.

Mr. Riegle stated that there was also a proposal to subdivide the property. He explained that although the proposal had not been reviewed by the Department of Environmental Management (DEM), staff believed that with the proposed variance, it could be subdivided under the confines of the R-3 zoning requirements.

In response to Mrs. Harris' question as to whether the property had been subdivided, Mr. Riegle said that it had not been subdivided and the property had not been legally recorded as two lots. He explained that the application before the BZA would allow the construction of a building at a specific location.

Chairman DiGiulian noted that a structure already existed on the property and the subdivision would be necessary in order to construct another house on the site.

The applicant, J. Douglas Hertel, 5603 Heming Avenue, Springfield, Virginia, addressed the BZA. He explained that he had been advised by the appropriate DEM official, that approval of the variance would be necessary before he could apply for a subdivision. Mr. Hertel used the viewgraph to depict the existing house and noted that the lot had been originally plated in the subdivision. He explained that the stream provided a natural boundary, both lots had been tested, and the floodplain had been defined. Mr. Hertel stated that the County required proof that a subdivision could meet the subdivision Zoning Ordinance requirements before approval could be granted.

Mr. Riegle noted that staff could add a condition which would null and void the variance if the subdivision was not approved by DEM. He explained that staff believed DEM could not approve a subdivision unless the BZA granted a variance for the construction of the house.

Chairman DiGiulian stated that DEM took the approach that if its or if it is not a buildable lot, it cannot be created.

In response to questions from the BZA, Mr. Riegle stated that the approval would be for the location of the building as shown on the plat.

Mr. Hertel stated that the lot had originally been plated with the subdivision, therefore a variance was not required when the existing house was built. He noted that both lots, which exceed the minimum subdivision size requirement, were approved as building sites. Mr. Hertel expressed his belief that the application met the necessary standards for a variance, there has been no opposition to the request, the variance would allow the best possible use of the land, and the application was in harmony with the neighborhood. In summary, he asked the BZA to grant the request.

Chairman DiGiulian asked whether a structure could be constructed on the proposed lot without a variance. Mr. Hertel said that without the variance, it would not be a buildable lot.

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

Mrs. Thonen stated that most of the houses in the area had been constructed prior to the 200 foot Zoning Ordinance setback requirement. She noted that the existing structure fell into this category. Mrs. Thonen expressed her belief that it would be an undue hardship to impose the strict application of the Zoning Ordinance.

Mr. Hammack made a motion to grant VC 92-B-100 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 1, 1992 with the addition of the following condition:

> "This variance is subject to the Department of Environmental Management (DEM) approving a subdivision of Parcel A, Block 72, Section 20, North Springfield, into Lots A1 and A2, as described on the special permit plats submitted with this application and is null and void in the event that such subdivision is denied."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-100 by J. DOUGLAS HERTEL AND CAROL HERTEL, under Section 18-401 of the Zoning Ordinance to allow dwelling 105 feet from interstate highway (I-495), on property located at 5603 Heming Avenue, Tax Map Reference 80-1((2))(72)A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1992; 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 36,705 square feet.
4. Most of the houses in the area were built before the present Zoning Ordinance setback requirements.
5. The strict application of the Zoning Ordinance would cause an undue hardship on the applicant.
6. The application meets the necessary standards for the granting of a variance.
7. The 200 foot setback requirement precludes the construction of a house on the property without a variance.
8. The denial would cause an unreasonable restriction or confiscation of property.
9. There has been no opposition to the proposed variance.
10. The property meets the other minimum requirements for a buildable 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 addition shown on the plat prepared by Matthews, Wheatley, and Allison dated August 12, 1992, revised through September 11, 1992 submitted with this application and not transferable to other land.

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

3. This variance is subject to the Department of Environmental Management (DEM) approving a subdivision of Parcel A, Block 72, Section 20, North Springfield, into Lots A1 and A2, as described on the special permit plats submitted with this application and is null and void in the event that such subdivision is denied.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 92, December 8, 1992, (Tape 1), Scheduled case of:

9:40 A.M. DAVIS B. CASSELL AND MINERVA R. CASSELL, SP 92-M-057, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow workshop/shed to remain 2.8 ft. from rear lot line (12 ft. min. rear yard required by Sect. 10-104), on approx. 31,652 sq. ft., located at 4121, 4123 Thornton St., zoned R-4, Mason District, Tax Map 60-3((15))7B1, 7B2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Cassell replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit to allow a 12 foot high shed/workshop to remain 2.8 feet from the rear lot line. The Zoning Ordinance requires a minimum 12 foot rear yard; therefore, the applicant was requesting a modification of 9.2 feet to the minimum rear yard requirement. Mr. Riegle noted that the Zoning Administration's records indicated that a building permit was not issued for the construction of the structure.

In response to Chairman DiGiulian's question as to whether the structure was over the lot line, Mr. Riegle stated that the structure straddles the two lots that comprise the subject property.

The applicant, Davis B. Cassell, 4123 Thornton Street, addressed the BZA. He stated that when he built the shed six years ago, he made an error in the placement of the structure on the lot which resulted in a violation of the Zoning Ordinance. He explained that he chose the location because it was the most logical site. Mr. Cassell stated that although he owned Lot 7B2, he had been advised that he could not place an accessory structure on the lot because it was unimproved property.

Mrs. Harris noted that part of the shed was located on Lot 7B2 and asked why the entire structure could not be placed on that lot. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the applicant had the choice to either incorporate the lots into one building lot, or to have two separate building lots. She explained that had he combined the two lots and constructed the accessory structure on Lot 7B2, it would preclude the future use of the lot.

In response to Mrs. Harris' question as to whether the shed could adhere to the Zoning Ordinance if it were placed elsewhere on the property, Mr. Riegle stated that it could.

Mr. Cassell used the viewgraph to depict the layout of his property and explained that the existing shed was screened by the woods. He noted that it would be aesthetically disastrous to place the shed in the designated side yard because it was architecturally the front yard. He also noted that the easement also constricted the placement of the shed.

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

In response to Mrs. Harris' question as to whether a complaint had been filed, Mr. Riegle stated there was no record of a complaint in the files. He explained that a Zoning Enforcement Inspector might have noticed the violation.

Mr. Pammel made a motion to grant SP 92-M-057 subject to the development conditions contained in the staff report dated December 1, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-M-057 by DAVIS B. CASSELL AND MINERVA R. CASSELL, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow workshop/shed to remain 2.8 feet from rear lot line, on property located at 4123 Thornton Street, Tax Map Reference 60)3((15))7B1, 7B2, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined 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 addition shown on the plat 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 prepared by Dewberry and Davis, dated October 30, 1990, submitted with this application, as qualified by these development conditions.

3. A building permit reflecting the location of the shed/workshop shall be obtained within 90 days from the final approval date of this special permit and all required inspections shall be obtained. The applicant shall be responsible for the submission of building/construction plans or other submissions deemed appropriate by the County, if these are required.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mrs. Thonen seconded the motion which carried by a vote of 4-2 with Mrs. Harris and Mr. Hammack voting nay. Mr. Ribble was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 1992. This date shall be deemed to be the final approval date of this special permit.

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9:50 A.M. PAUL W. D'ADDARIO AND DEBORAH K. D'ADDARIO, VC 92-P-103, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 23.1 ft. from front lot line (30 ft. min. front yard required by Sect. 3-407), on approx. 7,200 sq. ft., located at 3009 Westcott St., zoned R-4, Providence District, Tax Map 50-4((16))120.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. D'Addario replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a variance to allow a covered front porch 23.1 feet from the front lot line. The Zoning Ordinance requires a 30 foot minimum front yard; therefore, the applicant was requesting a variance of 6.9 feet from the front lot line.

The applicant, Deborah K. D'Addario, 3009 Westcott Street, Falls Church, Virginia, addressed the BZA. She stated that they had made many improvements on the house which was purchased approximately six years ago. Ms. D'Addario explained that when they were informed that a new roof was needed they decided to improve the front entrance by adding a porch. She expressed her belief that the porch would not only add aesthetic value to the property, but would also help alleviate a water problem. In summary, Ms. D'Addario said that the neighbors supported the request and asked the BZA to grant the request.

In response to Mrs. Harris' question as to whether the porch would be open, Ms. D'Addario stated that it would be an open porch with four posts and one step.

In response to Mr. Hammack's question as to whether any houses in the neighborhood have porches which violate the 30 foot setback requirement, Ms. D'Addario stated the one house with a front porch does not violate the Zoning Ordinance.

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

Mrs. Thonen made a motion to grant VC 92-P-103 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 1, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-103 by PAUL W. D'ADDARIO AND DEBORAH K. D'ADDARIO, under Section 18-401 of the Zoning Ordinance to allow addition 23.1 feet from front lot line, on property located at 3009 Westcott Street, Tax Map Reference 50-4((16))120, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 8, 1992; 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 7,200 square feet.
4. Many times when an older house is renovated, there are problems with the Zoning Ordinance.
5. The neighbors support the request.
6. The porch will provide a buffer between the house and the sidewalk.
7. The character of the zoning district will not be changed by the granting of the variance.
8. The request is for a minimum variance.
8. The strict application of the Zoning Ordinance would create 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.

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 prepared by Alexandria Surveys, Inc., dated September 14, 1992, submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 95, December 8, 1992, (Tape 1), Scheduled case of:

10:00 A.M. HAMID REZA OSSAREH, VC 92-M-104, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 12,000 sq. ft., located at 6343 Crosswoods Dr., zoned R-2, Mason District, Tax Map 61-1((11))562.

Marilyn Anderson, Assistant Chief, Special Permit and Variance Branch, addressed the BZA. She stated that she had been advised the applicant was in transit and would be arriving soon.

Mr. Kelley made a motion to pass over the case until the end of the scheduled agenda. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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10:10 A.M. THOMAS M. AND LAURA J. LAWLER, VC 92-V-105, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.6 ft. from rear lot line and 8.0 ft. from side lot line on a corner lot (10 ft. min. side and rear yard required by Sect. 3-407), on approx. 6,992 sq. ft., located at 6125 Woodmont Rd., zoned R-4, Mount Vernon District, Tax Map 83-3((14))(10)26.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Lawler replied that it was.

Marilyn Anderson, Assistant Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the applicant was requesting approval of a variance to allow a two story addition 8 feet from the side lot line and 5.6 feet from the rear lot line. Ms. Anderson noted that the existing garage would be removed and replaced by the proposed addition. The Zoning Ordinance requires a 10 foot minimum side yard and a 10 foot rear yard; therefore, the applicant was requesting a modification of 2 feet from the side yard and 4.4 feet from the rear yard.

The applicant, Thomas M. Lawler, 6125 Woodmont Road, Alexandria, Virginia, addressed the BZA. He stated the irregular shape and size of the lot had caused the need for the variance. He explained that he would like to replace the existing garage and back porch with an addition which would include a kitchen, bedroom, and bath. Mr. Lawler noted that the addition would not encroach any further into the side yard than the existing garage, nor would it encroach any further into the back yard than the existing porch. Mr. Lawler stated that the original structure had been constructed under the previous Zoning Ordinance; therefore, the garage and porch had been constructed by-right. In summary, he said there was no other site for the addition, the addition would be in harmony with the area, and the most impacted neighbor supported the request.

In response to Mr. Hammack's question as to the architecture of the addition, Mr. Lawler used the viewgraph to depict the layout of the proposed addition. He explained that in order to gain access to the second story, the existing porch would be replaced by steps. Mr. Lawler stated that a garage occupied the abutting lot. He noted that because the property was comprised of a double lot, the house was on one lot and the garage was on the other lot.

In response to Chairman DiGiulian's question as to whether the proposed addition would intrude any further into the side and rear yards than the existing structures, Mr. Lawler stated it would not.

Mr. Kelley expressed his support of the request. He noted that most of the properties were developed under the previous Zoning Ordinance and could not meet the current standards.

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

Mrs. Harris made a motion to grant VC 92-V-105 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 1, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-105 by THOMAS M. AND LAURA J. LAWLER, under Section 18-401 of the Zoning Ordinance to allow addition 5.6 feet from rear lot line and 8.0 feet from side lot line on a corner lot, on property located at 6125 Woodmont Road, Tax Map Reference 83-3((14))(10)26, 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 8, 1992; 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 6,992 square feet.
4. The subject property has an unusual shape.
5. The subject property has two front yards which restricts the area in which the applicants could expand the house.
6. The request is for a minimal variance and the footprint of the house will not change.
7. Because of the configuration of the house and the garage on the adjacent lots, the variance will not be of substantial detriment to the adjacent property.
8. The variance would be in conformance with the intended spirit of the Zoning Ordinance.
9. The structure would conform with most of the houses in the subdivision.

10. The existing vegetation and the placement of the addition mitigate any visually detrimental impact from either Woodmont Road or Fort Willard Circle.
11. The applicants have planned the addition to be within the footprint of the existing structure and to be architecturally compatible with the neighborhood.

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

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

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

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

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

1. This variance is approved for the location of the 2-story addition shown on the plat prepared by Barbara K. Ball, Architect, dated September 14, 1992, submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 1992. This date shall be deemed to be the final approval date of this variance.

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10:20 A.M. AMSC SUBSIDIARY CORPORATION, VC 92-C-094, appl. under Sect. 18-401 of the Zoning Ordinance to permit construction of 35 ft. high wall (8 ft. max. height allowed by Sect. 10-104), on approx. 0.57 acs., located at 10800 and 10801 Parkridge Blvd., zoned I-3, Centreville District, Tax Map 27-1((1))pt. 1B. (CONCURRENT WITH SE 92-C-036). (DEF. FROM 12/1/92 AT APPLICANT'S REQUEST.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Calabrese replied that it was.

Lorrie Kirst, Staff Coordinator with the Zoning Evaluation Division, presented the staff report. She stated that the applicant was requesting approval of a variance to allow a 35 foot high wall to be located on the north side and a portion of the east and west sides of a satellite earth station facility. The Zoning Ordinance permits a maximum 8 foot fence height; therefore, the applicant was requesting a variance of 27 feet to the maximum fence height.

Ms. Kirst said that the Special Exception, SE 92-C-036, for satellite earth station facilities had been approved by the Board of Supervisors on December 7, 1992. She submitted the approved special exception development conditions to the BZA.

In conclusion, Ms. Kirst noted that the BZA had also received the revised proposed development conditions dated December 8, 1992. She noted that the revised development conditions reflected the date of the latest plat submission.

The applicant's attorney, Tony Calabrese, with the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, addressed the BZA. He stated that various professionals, who represent the applicant, were present to answer any questions the BZA may have.

Mr. Calabrese submitted material relevant to the case. He called the BZA's attention to the first exhibit which depicted the 46 acre Parkridge Master Plan and included the applicant's site. He explained that the applicant would like to construct two satellite earth stations which necessitated the special exception which was approved by the Board of Supervisors. He noted that the surrounding protective wall necessitated the approval of a variance.

Mr. Calabrese stated that the wall would serve three functions, a visual mitigation measure, a security wall, and would simultaneously protect the integrity of the telecommunication system and act as a radio frequency screening wall around the satellite earth stations. He explained that the Federal Communication Commission (FCC) strictly adheres to a "first in time rule", that any new FCC licensees cannot interfere with any existing licensees. Mr. Calabrese stated that the proposed wall would ensure that there would be no interference with the applicant's telecommunication system and would also prevent the applicant's system from interfering with any other systems in the area.

In response to Mrs. Harris' question as to whether the applicant was requesting the minimum variance, Mr. Calabrese said that the maximum wall height would be 35 feet and expressed his belief that the minimum wall height would be 30 feet. He explained that the projected intricate engineering details would decide the issue. Mr. Calabrese stated that the applicant had conferred with the Reston Architectural Board of Review, the Board of Supervisors, as well as concerned citizens, and had guaranteed that while the height of the wall would not exceed 35 feet, it would be lowered, if feasible. Mr. Calabrese stated that because of technical considerations, the wall had to be higher than the 26 foot high satellite earth stations. He said that the Reston Architectural Board had granted initial and conceptual approval for the facility.

Mr. Calabrese stated that various articles in the local newspapers have noted that AMSC is a high caliber, high technology, research and development firm which will afford many new employment opportunities to Fairfax County residents. He explained that AMSC is a consortium of three leaders in the telecommunication industry, including Hughes Communications, Inc., McCaw Cellular Communications, Inc., and MTEL Space Technologies. He stated that after an extensive search throughout the area, the applicant selected the proposed site. He said that the FCC had granted AMSC exclusive license to launch three geosynchronous satellites which will form the backbone of its communication network. Mr. Calabrese explained that the function would be similar to that of cellular car phones. He noted that the satellite would provide coverage of the continental United States, Canada, Alaska, Hawaii, Puerto Rico, the Virgin Islands, and 200 miles off the coastal waters. He explained that AMSC's service would provide the service for calls from a car, boat, plane, etc., to anywhere within the coverage area. Mr. Calabrese expressed his belief that the service would provide a valuable public safety network during disasters because it would continue to function. He explained that when disasters such as earthquakes occur, the existing communication systems are usually rendered useless.

Mr. Calabrese stated there had been a great deal of planning in order to ensure that the facility would not only acquiesce to the various government regulations, but would be aesthetically compatible with the community. He expressed his belief that the proposal before the BZA was the best possible plan. Again, he explained that the applicant and the community were working together on the project. Mr. Calabrese stated that the applicant had met all the necessary standards and asked the BZA to grant the request.

In response to Mr. Hammack's question as to whether the 35 foot high wall would go around the entire facility, Mr. Calabrese said it would encompass 65 to 70 percent of the facility. He

explained that while technical considerations preclude a 35 foot high wall from being constructed around the entire site, there would be a 7 foot high wall as well as extensive landscaping located around the portions of the facility not enclosed by the 35 foot wall. He explained that the satellites are directed so as not to interfere with any other FCC licensees. Mr. Calabrese noted that the earth stations would be 7 feet below grade so that the apex would be 26 feet high. He explained that the system would not be able to operate if placed lower than the proposed height.

Mr. Kelley noted it appeared that the flat topographic conditions had caused the need for the variance. Mr. Calabrese stated that financial consideration, as well as technical reasons, precluded the applicant from excavating the land. He explained that the applicant had considered various locations before deciding on the proposed site. Mr. Calabrese stated that it was very important to co-locate both the corporate headquarters and the telecommunications facilities. He noted that the unique character of the Reston area played a large part in the applicant's decision to base the facility there.

Mrs. Harris noted that although the Reston Community Association had voted unanimously to recommend the approval of both the special exception and the variance, they had requested that a maximum effort be made to reduce the height of the wall. Mr. Calabrese stated that the Reston Community Association was cognizant that the maximum height of the wall would be 35 feet and the minimum would be 30 feet. He said it was critical that AMSC receive approval of the variance before they sign the lease and move their corporate headquarters. He explained that the proposed wall would cost approximately $300,000 and noted that if the applicant could reduce the height of the wall, it would also reduce the cost. Mr. Calabrese stated that due to technical considerations, the applicant must receive a variance for a 35 foot high wall or the project would have to be abandoned.

In response to Mrs. Harris' question as to the possibility of granting a lesser variance and having the applicant obtain administrative approval for additional height if needed, Jane Kelsey, Chief, Special Permit and Variance Branch, stated the applicant would have to return to the BZA for approval.

Mr. Calabrese again expressed his belief that the applicant would construct the least obtrusive wall possible and asked the BZA to grant the request.

There being no speakers to the case, Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 92-C-094 for the reasons reflected in the Resolution and subject to the development conditions dated December 8, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-C-094 by AMSC SUBSIDIARY CORPORATION, under Section 18-401 of the Zoning Ordinance to allow construction of 35 foot high wall, on property located at 10800 and 10801 Parkridge Boulevard, Tax Map Reference 27-1((1))pt. 1B, 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 8, 1992; 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 I-3.
3. The area of the lot is 0.57 acres.
4. Because of the nature of the applicant's use, the property has an exceptional topographical condition.
5. There is only a 16 percent difference between a 30 foot and 35 foot high wall.
6. The strict application of the Zoning Ordinance would produce a hardship because the applicant would be unable to meet the Federal Communications' regulations.

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

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

E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 wall shown on the plat prepared by William H. Gordon Associates Inc., dated August 12, 1992, revised through November 23, 1992, and submitted with this application and not transferable to other land.

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

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

Mrs. Thomas seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 100, December 8, 1992, (Tapes 1 and 2), Scheduled case of:

10:00 A.M. HAMID REZA OSSAREH, VC 92-M-104, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 5.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 12,000 sq. ft., located at 6343 Crosswoods Dr., zoned R-2, Mason District, Tax Map 61-1((11))562.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Ossareh replied that it was.

Marilyn Anderson, Assistant Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the applicant was requesting approval of a variance to allow a garage 5 feet from the side lot line. She noted that the existing carport would be replaced by the garage. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicant was requesting a modification of 10 feet to the minimum side yard.

In response to Mr. Ribble's question as to whether the applicant had received the letters in opposition, Ms. Anderson said that the applicant had just received the letters.

The applicant, Hamid Reza Ossareh, 6343 Crosswoods Drive, Falls Church, Virginia, addressed the BZA. He stated that he would like the two-car garage for safety reasons. He noted that in order to be aesthetically and architecturally compatible with the existing house, a two-car garage was necessary.

In response to Mr. Ribble's question as to whether approval of a one-car garage would be acceptable to the applicant, Mr. Ossareh said it would not be compatible.

In response to questions from the BZA, Mr. Ossareh stated that he does not have a garage. He explained that when he renovated the existing structure, he had removed the carport. Mr. Ossareh stated that when he refurbished the structure, the garage was so deteriorated that it was torn down.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Richard Ryan, 6341 Crosswoods Drive, Falls Church, Virginia, addressed the BZA. He stated that the garage would have a detrimental impact on his property. He addressed the necessary requirements for the granting of a variance and expressed his belief that the application did not meet the nine requirements.

In response to Mr. Hammack's question as to whether the applicant's car disturbed him, Mr. Ryan stated that he was especially disturbed by the applicant's Porsche. He said that he believed that because the garage would be closer to his property, the impact would be greater.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Mr. Ossareh said that for practical reasons as well as aesthetic considerations, a two-car garage would be superior to a carport. He noted that the garage would also alleviate the noise problem.

In response to Mrs. Harris' question as to the topographic conditions of the backyard, Mr. Ossareh stated that the backyard had a steep slope which precluded placing the garage to the rear of the house. He said there was no other place on the lot where he could locate the garage.

In response to Mr. Hammack's question as to whether a one-car garage would be acceptable, Mr. Ossareh said that a one-car garage would have to be at least 15 feet wide in order to be in harmony with the existing structure. Mr. Hammack noted that the dimensions on the plat did not match.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to deny VC 92-M-104 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 92-M-104 by HAMID REZA OSSAREH, under Section 18-401 of the Zoning Ordinance to allow addition 5.0 feet from side lot line, on property located at 6343 Crosswoods Drive, Tax Map Reference 61-1((11))562, 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 8, 1992; 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 12,000 square feet.
4. The application does not meet the necessary standards for the granting of a variance.
5. Testimony by the adjoining neighbor has indicated that there are potential drainage problems.
6. The applicant has stated that a one-car garage would not be architecturally compatible with the existing structure.
7. Testimony has indicated that the granting of the variance may set a precedent.
8. The proposed garage would not be in harmony with the area because there are not very many two-car garages in the area, in fact, there may be only one.
9. Any hardship that may exist is self-created.
10. The applicant is an architect and, at a future date, may be able to modify the request.

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 and Mr. Kelley seconded the motion which carried by a vote of 6-1 with Mr. Hammack voting nay.

Mr. Pammel made a motion to waive the twelve-month waiting period for the refiling of an application. Mr. Hammack seconded the motion which carried by a vote of 6-1 with Mr. Kelley voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 16, 1992.

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Page 102, December 8, 1992, (Tape 2), Information Item:

Approval of Resolutions from December 1, 1992 Hearing

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 7-0.

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Page 102, December 8, 1992, (Tape 2), Information Item:

Request for Additional Time
Parkwood Baptist Church and Weekday Early Education Center, SPA 84-A-048-2

Mrs. Harris made a motion to grant the additional time. Mrs. Thonen seconded the motion which carried by a vote of 7-0. The new expiration date will be December 10, 1993.

Mrs. Thonen expressed her concern regarding the Department of Environmental's (DEM) processing of the case. She noted that the applicant had expressed their belief that DEM had made excessive demands.

Mrs. Thonen made a motion to request that DEM expedite the plans for the above-referenced application. The BZA also requested a detail explanation from DEM as to the reasons the applicant had experienced delays in receiving approval of the site plan. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 103, December 8, 1992, (Tape 2), Information Item:

Request for Additional Time
LaPetite Academy, SP 89-V-042

Mrs. Harris made a motion to grant the additional time. Mrs. Thonen seconded the motion which carried by a vote of 7-0. The new expiration date will be July 24, 1993.

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Page 103, December 8, 1992, (Tape 2), Information Item:

Request for Additional Time
Northern Virginia Primitive Baptist Church, SP 88-P-088

Mrs. Thonen had originally discussed the alleged mishandling of Northern Virginia Primitive Baptist Church, SP 88-P-088 by DEM, but subsequently realized the Parkwood Baptist Church and Weekday Early Education Center, SPA 84-A-048-2 was the subject of the issue.

Mrs. Thonen made a motion to grant the additional time. Mrs. Harris seconded the motion which carried by a vote of 7-0. The new expiration date will be June 7, 1993.

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Page 103, December 8, 1992, (Tape 2), Information Item:

Approval of Minutes for November 10, 1992 Meeting

Mrs. Thonen made a motion to approve the minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 103, December 8, 1992, (Tape 2), Scheduled case of:

Intent-to-Defer
Montessori School of Alexandria, Inc. SPA 90-L-033-3

Mr. Pammel expressed his concern regarding the deferral.

Mr. Kelley stated that the applicant had just retained legal counsel.

After a brief discussion, it was the consensus of the BZA to issue an intent-to-defer.

Mrs. Thonen made a motion to issue an intent-to-defer SPA 90-L-033-3 to March 16, 1993. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 103, December 8, 1992, (Tape 2), Scheduled case of:

Mr. Pammel made a motion to transfer the Board of Zoning Appeals (BZA) meeting place to the Board Room of the Governmental Center.

Mr. Hammack seconded the motion.

The BZA had a brief discussion regarding the advantages and disadvantages of holding the hearings at the Governmental Center.

The motion carried by a vote of 6-1 with Mrs. Thonen voting nay.

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Page 103, December 8, 1992, (Tape 2), Scheduled case of:

Mr. Pammel noted that a letter dated December 4, 1992 had been received regarding an out-of-turn hearing for Gold's Gym.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and noted that staff had not received the application. She explained that the case would have to not only be staffed but would have to meet the advertisement requirements.

After a brief discussion, it was the consensus of the BZA to discuss the issue at the December 15, 1992 public hearing.

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

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: January 12, 1993

APPROVED: January 19, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on December 10, 1992. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:52 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 105, December 10, 1992, (Tape 1), Scheduled case of:

9:00 A.M. L. DARLENE AND ROSS KAPLAN, VC 92-L-106, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 28.1 ft. from street line of a corner lot (30 ft. min. front yard required by Sect. 3-307), on approx. 12,543 sq. ft., located at 4609 Franconia Rd., zoned R-3, Lee District, Tax Map 82-3((17))(A)9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, William James Quigley, Jr., 2831 Cameron Road, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicants were requesting a 1.9 foot variance in order to construct a one story addition 28.1 feet from the front lot line.

Mr. Quigley referenced the statement of justification submitted with the application and said the applicants had tried to design the addition so that it would keep the house symmetrical and balanced, which would be in character with the neighborhood. He said the roof line of the proposed addition will be similar to the roof line over the living room where the bay window is so the front of the house will come forward, and both the addition and the living room will be basically the same dimension.

Charlotte Quigley came forward and said that adding the addition will balance out the lot and only a portion of the addition did not meet the setback requirements.

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

Mr. Hammack made a motion to grant VC 92-L-106 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 1, 1992 being implemented.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-106 by L. DARLENE AND ROSS KAPLAN, under Section 18-401 of the Zoning Ordinance to allow addition 28.1 feet from street line of a corner lot, on property located at 4609 Franconia Road, Tax Map Reference 82-3((17))(A)9, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1992; 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 12,543 square feet.
4. The applicant has satisfied the nine required standards for variance applications.
5. The lot has double front yards.
6. The variance is minimal since it is only one corner of the addition that does not meet the setback requirement.
7. There will be no change in the zoning district or in the character of the neighborhood.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the variance plat prepared by Dove Associates, dated August 31, 1992 submitted with this application and not transferable to other land.

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

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

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

Mrs. Harris and Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 106, December 10, 1992, (Tape 1-2), Scheduled case of:

9:10 A.M. GHAZALA IQBAL CHUGHTAI, SP 92-D-043, appl. under Sect. 3-403 of the Zoning Ordinance to allow a home child care facility, on approx. 8,401 sq. ft., located at 7411 Tillman Dr., zoned R-4, Dranesville District, Tax Map 30-3((16))41. (DEF. FROM 10/6/92 AT APPLICANT'S REQUEST TO ALLOW AMENDMENT TO APPLICATION - NOTICES NEEDED.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marie Travesky, with the firm of Travesky & Associates, Ltd., 3900 Jermantown Road, Suite 300, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant is co-owner of Lot 41 and is the operator of the child care center located on the premises and currently cares for nine children without an approved special permit. Mr. Hunter said the staff report published on September 29, 1992 recommended denial of the applicant's request to operate a child care center at the location with a maximum of 20 children per day. That recommendation was based on the intensity of the proposed use which, in staff's opinion, could change the character of the area. Due to the limited size of the property, staff was

of the opinion that the site could not support a child care center for 20 children.

He said the applicant had amended the application to request approval of a special permit to establish a home child center facility for a total of 10 children with two employees, in addition to the applicant. Mr. Hunter said the applicant has also amended the plat which now depicts a five car parking area with all parking accommodated in the existing driveway and the preservation of the mature tree in the front yard. A modification of the transitional screening requirement was not necessary, since the provisions of Article 13 does not apply to home child care facilities. He said the revised plat shows that the existing 6 foot high board on board fence surrounding the back yard will remain. Mr. Hunter said staff had reviewed the revised application and believes that the use would be appropriate in this residential area with a maximum of nine children, one employee, and four parking spaces. He said a maximum of nine children will not require the applicant to meet the State Building Codes and noted that four parking spaces is the maximum that can be accommodated on site, two for the residents, one for one employee, and one for child delivery and pickup. The fifth parking space shown on the plat would require awkward turning movements in order for an automobile to maneuver on and off site. Staff concluded that the use with a maximum of nine children would be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions; therefore, staff recommended approval subject to the Proposed Development Conditions contained in the staff report.

In response to questions from the BZA, Mr. Hunter replied that the Zoning Enforcement Branch, Office of Comprehensive Planning, and the State Health Department had informed staff that the applicant did live on the property. He used the viewgraph to show how the site would have been altered under the original request.

Ms. Travesky said the original application was a request for 20 children and the applicant asked for that number based on a letter from the Health Department saying that she could actually care for 41 children on the site. She said the applicant took a three month lease with the Westgate Apartments during the summer because she was expecting guests from England and the guests were the ones who occupied the apartment. Ms. Travesky said the applicant believed that she was operating with a license and has operated a child care center on the site for two years with a State License for a family day care home from the Department of Social Services. (She submitted a copy of the license to the Chairman.) She said she believed the applicant has been harassed due to the numerous calls placed to the Zoning Enforcement Branch, Office of Comprehensive Planning. Ms. Travesky said she has visited the home several times and it is completely outfitted with clothes, food, household goods, etc., as noted in the Zoning Inspector's report, which indicates the applicant resides on the property. She said the applicant is an experienced child care professional who ran a large child care facility in Pakistan with a large number of her clients being from the American Embassy. Ms. Travesky said she had personally talked to the Office of Children and was told that office did not make decisions regarding special permits and suggested that she talk to the State. When she contacted the State, she was told that the State would issue a license for up to nine children but they could not advise her with regard to the County requirements. She said it appeared that the applicant was being penalized. Ms. Travesky asked the BZA to approve the use as it has been a legally operated home day care facility at the subject property in the eyes of the State. The applicant believes the two additional employees are needed in order to provide appropriate care for small children.

Mr. Ribble asked if the restrictive covenants had been addressed. Ms. Travesky said they had not because it was not an issue before the BZA and pointed out that virtually every house on the street was in violation in one way or another.

In response to a question from Mr. Pammel, Ms. Travesky said virtually all of the children attending the center live in the area. She pointed out that there are providers caring for children who exceed the maximum number allowed and that she believed there were issues other than zoning issues involved in this case.

Mrs. Harris said she applauded the applicant for coming to the BZA and said this was the proper way to proceed and said that she did not believe the speaker meant to infer that the BZA was taking anything out on the applicant. Ms. Travesky said it had not been her intent to infer any such thing. Mrs. Harris and Ms. Travesky discussed the traffic generated by the center and what would happen in an emergency if the applicant had only one vehicle. The applicant spoke from the audience and said she has a van especially for the day care.

In response to a question from Mr. Kelley, Ms. Travesky said the applicant was not affiliated with any other day care center.

Chairman DiGiulian called for speakers in support.

Della Caldewood, 7409 Tillman Drive, Falls Church, Virginia, said she lives in the house immediately to the north of the applicant on the corner and has lived there since 1984. She said her children did not attend the day care, but she was aware there is a desperate need for good day care in the neighborhood and she has never seen a better run day care. Ms. Caldewood said when she was first approached by the neighbors, she was planning to move and told the neighbors that she would not interfere in the process. Since that time, her plans have changed and she will be staying in the neighborhood. Ms. Caldewood added that she had no objections to the use.

Mrs. Harris and the speaker discussed the parking situation at the applicant's property. Ms. Caldewood said she did not believe there is a parking problem.

Laura Melvin, 2043 Cherri Terrace, said she takes three children to the day care center, two daughters and one nephew. She said she has never experienced a parking problem at the center and pointed out there are probably only two or three cars that come to the site.

In response to questions from Mrs. Harris, Ms. Melvin reiterated that she had not experienced a parking problem and said that she had stopped by on weekends and the applicant was always there.

There were no further speakers in support and Chairman DiGiulian called for opposition and the following citizens came forward: Carl Zimmer, Director of the Pimmit Hills Citizens Association, 2023 Maynard Drive, Falls Church, Virginia; Adeline Absalon, 7417 Tillman Drive, Falls Church, Virginia; Jolette Bailey, 7439 Tillman Drive, Falls Church, Virginia; Kathy Ritchie, Secretary of St. Luke's United Methodist Church, 7628 Leesburg Pike, Falls Church, Virginia; Martha Bagrowski, 7437 Tillman Drive, Falls Church; Debra Todd, 7432 Tillman Drive, Falls Church, Virginia; and, Raymond Rygiel, 7422 Tillman Drive, Falls Church, Virginia.

The speakers were concerned with the precedent that would be set by a commercial venture being located in the residential neighborhood, the safety issues involved with the increased traffic, and the inadequate parking. They also expressed their belief that the applicant does not live at the property. Mr. Zimmer submitted a petition with approximately 192 signatures in opposition to the request into the record. (A copy of his prepared statement and the petition is contained in the file.)

In rebuttal, Ms. Travesky said she had contacted Debra Swansberg, President of the Pimmit Hills Citizens Association, and discussed the application with her and was told there was no need to meet with the Association since the use was so minor. She said following an Association meeting, Ms. Swansberg informed her that the Association was opposed to the application. Ms. Travesky said there had been no complaints filed against the applicant until the neighbors became aware of the center and, since that time, she believed the applicant has been harassed. She explained that the applicant had discussed the possibility of purchasing the neighbor's property in order to relocate the center and had been given a letter of "first refusal". Ms. Travesky said after looking at the property she advised the applicant that she believed the present location was more appropriate for the center. She added that they had proceeded with the application under the belief that all concerns had been addressed.

In response to a question from Mr. Kelley, Ms. Travesky replied that she had personally visited the property and the house is equipped for every day living. (The applicant's husband showed the BZA a copy of his Virginia driver's license and his son's school identification noting the subject property as their place of residence.)

Mr. Hammack discussed the shed depicted on the plat with Ms. Travesky. She said the shed existed when they purchased the property.

Linda Coe came forward and said she was President of the Pimmit Hills Association and had been since September. She said she had not been contacted by the applicant or Ms. Swansberg with respect to the application. Mrs. Harris asked if she believed the homeowners, who had signed the petition, would change their position based on the number of children who would attend the center being reduced. Ms. Coe said she did not. In response to a question from Mr. Kelley, Ms. Coe replied that at the time she purchased her house she was given a copy of the covenants.

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

Mr. Pammel said there were some aspects of the case that concerned him and pointed out that the neighbors would probably be surprised at the number of residents who were participating in some sort of business activity within their places of residence. He said this type of facility is desperately needed to meet the need of a large number of families in the community and that he believed the smaller facilities do a better job. Mr. Pammel then made a motion to grant SP 92-D-043 subject to the Development Conditions contained in the staff report with one addition: "The applicant shall reside on site and in the event that the applicant changes her residence, this permit shall become null and void."

The motion died for the lack of a second.

Mrs. Harris made a motion to deny SP 92-D-043 for the reasons noted in the Resolution.

Mr. Hammack said he would support the motion to deny because he believed the request was too intense a use in a residential neighborhood and noted how close the houses were built together.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-D-043 by GHAZALA IQBAL CHUGHTAI, under Section 3-403 of the Zoning Ordinance to allow a home child care facility, on property located at 7411 Tillman Drive, Tax Map Reference 30-3{(16)}41, 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 10, 1992; 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 8,401 square feet.
4. This is an unusual case that unfortunately involved a great deal of miscommunication that is not the fault of the applicant.
5. The applicant's agent attempted to communicate with the citizens association, reduced the amount of children on site, attempted to mitigate the situation and circumstances and made a very good effort to do that.
6. The problem lies in that the general feeling of the neighborhood is that the degree of intensity is not harmonious with the subdivision.
7. All the General Standards in Section 8-006 of the Zoning Ordinance must be met for the approval of a special permit.
8. The use must be in conformance with the Comprehensive Plan.
9. It is an older neighborhood that has throughout the last 15 years been bombarded by commercial ventures and Pimmit Hills Association has the reputation of protecting its boundaries to keep it residential and maintain low vehicular traffic.
10. It is a beautiful neighborhood and they want to maintain it as such.
11. The use must be in harmony with the general purpose and intended spirit of the zoning district.
12. Home professional child care centers are a needed thing, but the intensity proposed by the applicant does not meet General Standard 3.
13. The testimony and petitions submitted to the BZA state that the use would not be in harmony with the neighborhood.
14. The parking configuration and the amount of traffic that is generated by the use has caused problems and hopefully the applicant will be able to mitigate the problem in the future, if she chooses to continue the venture.
15. The proposed amount of children is too intense for the site.
16. There is no meaning in the motion that the applicant does not provide a wonderful service to the community in providing child care, nor that she does it improperly, but the BZA must go by the General Standards.

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 8-303 and 8-305 of the Zoning Ordinance.

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

Mr. Ribble seconded the motion which carried by a vote of 5-1 with Mr. Pammel voting nay. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1992.

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The BZA recessed at 11:22 a.m. and reconvened at 11:40 a.m.

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Page 109, December 10, 1992, (Tape 2), Scheduled case of:

9:20 A.M. DANIEL J. MATT, VC 92-Y-075, appl. under Sect. 18-401 of the Zoning Ordinance to allow deck 0.7 ft. from rear lot line (5 ft. min. rear yard required by Sect. 2-412), on approx. 2,100 s.f., located at 5714 Belcher Farm Dr., zoned PDH-4, Sully District, Tax Map 54-1{(17)}(3)16. (DEF. FROM 10/6/92 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Daniel J. Matt, 5714 Belcher Farm Drive, Centreville, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting a 4.3 foot variance in order to construct a 6 foot high 10' x 18' deck less than one foot from the lot line.

In response to questions from Mrs. Harris, Mr. Hunter replied that he believed the decks on the two adjacent townhouses were built at the time of construction. He said he did not know how far they intruded into the back yard.

Mr. Matt said that out of the eight townhouses in the same row as his property, four have decks similar to the one that he was proposing. He said it was unfortunate the way his townhouse was set back on the lot and the fact that it is a little larger than the others prevents him from constructing an average size deck without a variance.

Mrs. Harris asked if the other decks were 10' x 18' and Mr. Matt said some are 12' x 18'.

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

Mr. Hunter corrected the height of the deck to 9.5 feet.

Mrs. Harris made a motion to grant VC 92-Y-075 for the reasons noted in the Resolution.

(Mrs. Harris amended her motion later in the public hearing to include the Development Conditions contained in the staff report dated December 1, 1992.)

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-075 by DANIEL J. MATT, under Section 18-401 of the Zoning Ordinance to allow deck 0.7 feet from rear lot line, on property located at 5714 Belcher Farm Drive, Tax Map Reference 54-1((17))(3)16, 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 10, 1992; 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 PDH-4.
3. The area of the lot is 2,100 square feet.
4. Most of the properties in the subdivision have some kind of unusual characteristic since the lots are very narrow and long.
5. The proposed location is the only place allowable to put a deck.
6. The photographs submitted to the BZA by staff show other decks in similar configurations on adjacent townhouses.
7. The deck is only 10 feet in length and is not going to change the zoning district and will be in harmony with the intended spirit and purpose of the Ordinance.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified deck shown on the plat prepared by Dewberry and Davis, dated June 16, 1992, submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 111, December 10, 1992, (Tape 2), Scheduled case of:

9:30 A.M. ANDREW J. AND JANET S. BUTTON, VC 92-S-111, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 20.1 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307), on approx. 8,880 sq. ft., located at 9515 Sloop Ct., zoned R-3 (Cluster), Springfield District, Tax Map 88-3((3))378.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants, Andrew and Janet Button, 9515 Sloop Court, Burke, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicants were requesting a 4.9 foot variance in order to construct a one story sunroom addition. Ms. Langdon added that the dwelling on adjacent Lot 371 is located approximately 23 feet from the shared rear lot line and the dwelling on adjacent Lot 372 is located approximately 30 feet.

Mr. Button pointed out the irregular shape of the property and noted that the house sets back 36 feet from the front lot line, and only 27 feet from the rear lot line. He said due to the pie shape of the lot, there is no other place to construct the sunroom without some type of variance, with the exception of possibly the left corner of the house which would require cutting into the dining room and removing the window box. Mr. Button said the proposed location would utilize both an existing brick patio and the main exit from the rear of the house. He added that it would provide additional living space and would brighten up the house.

In response to a question from Mr. Pammel, he replied that the brick patio would not be expanded.

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

Mr. Ribble made a motion to grant VC 92-S-111 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 1, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-111 by ANDREW J. AND JANET S. BUTTON, under Section 18-401 of the Zoning Ordinance to allow addition 20.1 feet from rear lot line, on property located at 9515 Sloop Court, Tax Map Reference 88-3((3))378, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1992; 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 8,880 square feet.
4. The applicant has met the nine standards required for a variance, in particular the lot has an irregular shape and if the house had been cited differently on the lot a variance might not have been needed.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated August 1, 1989, revised September 18, 1992, submitted with this application and not transferable to other land.

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

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction

has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 113, December 10, 1992, (Tape 2), Scheduled case of:

DANIEL J. MATT, VC 92-Y-075

Mrs. Harris amended her previous motion in VC 92-Y-075 to include the Development Conditions contained in the staff report dated December 1, 1992. Mr. Ribble accepted the amendment which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 113, December 10, 1992, (Tape 2), Scheduled case of:

9:40 A.M. YU SUN PAK AND SIN JA PAK, SP 92-L-058, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 14.5 ft. from side lot line (20 ft. min. side yard required by Sect. 3-103), on approx. 21,804 sq. ft., located at 6321 Colette Dr., zoned R-1, Lee District, Tax Map 91-3((6))(3)13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Martin B. Jarvis, Jr., 10808 Harley Road, Lorton, Virginia replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the request results from an error in the building location to allow a garage addition to remain 14.5 feet from the side lot line. The dwelling on Lot 14 is approximately 16.2 feet from the shared side lot line. Ms. Langdon said staff recommended approval of SP 92-L-058 subject to the Development Conditions contained in Appendix 1 being implemented.

Mr. Jarvis said he was representing the applicants as they were Korean descent and speak broken English, they were uncomfortable making a presentation. He added that Mr. Pak was present to respond to any questions the BZA might have. Mr. Jarvis said he is a licensed contractor in the State of Virginia and became involved with the case through an open bidding system when the applicants were obtaining estimates for repairing an existing garage. He explained that the applicants purchased the property in February 1992 with the intention of replacing the damaged garage roof framing and replacing the roof and shingles that had deteriorated over the years. The applicants retained his company and when he tried to obtain a building permit, he was told that a portion of the garage was in violation of the setback requirements. Mr. Jarvis said the applicants received no negative responses to the certified letters mailed to the surrounding neighbors, the applicants were unaware of the violation when they purchased the property, the location does not have any adverse impact on the abutting neighbor, and the garage will not be expanded. He said the applicants agree with the development conditions.

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

Mr. Kelley made a motion to grant SP 92-L-058 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 1, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-L-058 by YU SUN PAK AND SIN JA PAK, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 14.5 feet from side lot line, on property located at 6321 Colette Drive, Tax Map Reference 91-3((6))(3)13, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1992; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined 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.

H. The addition was constructed by a previous owner and the applicants only want to repair the existing structure.

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 addition shown on the plat 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 prepared by Alexandria Surveys, Inc., dated July 15, 1992, submitted with this application, as qualified by these development conditions.

3. A building permit reflecting the location of the garage addition shall be obtained within 90 days from the final approval date of this special permit. The applicant shall be responsible for the submission of building/construction plans or other submissions deemed appropriate by the County, if these are required.

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 114, December 10, 1992, (Tape 2), Scheduled case of:

9:50 A.M. RICHARD T. WEIL, VC 92-D-112, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 10.4 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307), on approx. 10,516 sq. ft., located at 6515 El Nido Dr., zoned R-3, Dranesville District, Tax Map 30-4((30))57.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard T. Weil, 6515 El Nido Drive, McLean, Virginia, replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, introduced the Don Heine, the newest member of the Special Permit and Variance Branch, Zoning Evaluation Division, Office of Comprehensive Planning. She said Mr. Heine had come to the Branch from the Environmental Heritage Branch, Office of Comprehensive Planning. The BZA welcomed Mr. Heine.

Don Heine, Staff Coordinator, presented the staff report. He said the applicants were requesting a variance in order to construct a one story addition to the rear of the existing carport, a new carport to be situated in front of the existing carport, enclosure of the existing carport, and a second story addition to the rear of the existing dwelling. Mr. Heine said the addition was proposed to be constructed 10.4 feet from the eastern lot line, thus a variance of 1.6 feet was requested. The dwelling on Lot 56 is approximately 18 feet from the shared lot line.

Mr. Weil said he and his wife purchased the property approximately 6 years ago and since that time have had three children and have now outgrown the house. He said they like the neighborhood and would like to stay at the location, but there is not enough room without expanding the existing living quarters.

The applicant's architect, Susan Notkins, 1179 Crest Lane, McLean, Virginia, explained that the existing dwelling is one story with a full basement, is nonconforming in location in that the carport sits 10.4 feet from the lot line. She said the house was built in the 1950's prior to the current Zoning Ordinance and added that the applicants did not plan any other encroachment on the side lot line. Ms. Notkins said that because of the location of the existing house, the proposed addition does present an extraordinary condition. She explained that the addition would be one story, 17 feet would be added behind the existing carport, and 9.8 feet in front of the carport. The carport will be a little short and trunkated, but will not move any closer to the lot line. Ms. Notkins said the proposed addition will help to alleviate the drainage problem on the neighbor's property as well as the applicant's property.

A discussion took place between Mrs. Harris and Ms. Notkins with respect to how the addition would be tied into the existing dwelling. Ms. Notkins explained the design to the BZA.

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

Mr. Hammack made a motion to grant VC 92-D-112 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 1, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-112 by RICHARD T. WEIL, under Section 18-401 of the Zoning Ordinance to allow addition 10.4 feet from side lot line, on property located at 6515 El Nido Drive, Tax Map Reference 30-4((30))57, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1992; 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 10,516 square feet.
4. The applicant has satisfied the nine required standards for a variance application, in particular the lot is very narrow as it is only 86.2 feet.
5. The architect testified that it would be extremely difficult to reconfigure the kitchen in a different area.
6. This is only an extension of an existing building line and the granting of the variance will not change that line.
7. The zoning district will not be changed.
8. The variance is minimal since it is just one foot.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by William E. Ramsey P.C., dated April 11, 1992 submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 116, December 10, 1992, (Tape 2), Scheduled case of:

10:00 A.M. JANET B. AND ARTHUR R. KOENIG, VC 92-B-113, appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 9.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 15,771 sq. ft., located at 8923 Maurice La., zoned R-2, Braddock District, Tax Map 69-2((8))143.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Arthur R. Koenig, 8923 Maurice Lane, Annandale, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicants were requesting a 6 foot variance in order to construct a two story addition with a family room on the second floor and a two car garage on the first. The dwelling on Lot 144 is 20.1 feet from the shared lot line.

Mr. Koenig said only a portion of the addition will not meet the setback requirements, the materials used in the construction of the addition will match those on the existing dwelling, and the existing ridge of the roof line will be extended to be in keeping with the look of the dwelling. He added there are no objections from the neighbors.

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

Mr. Pammel said he was concerned since the size of the proposed addition was almost equal to the size of the existing dwelling, that he did not believe the applicants had met the hardship requirements, and the size of the addition could be reduced.

Mr. Kelley pointed out that only one corner of the addition did not meet the setback requirements and if the house was located a little bit differently on the property, the applicants would not need a variance.

Mr. Pammel said he was sympathetic and noted that the lot does have an unusual configuration, but that he believed the addition could be reduced and moved back to avoid the need for a variance altogether. He said he could make a motion to deny the request or make a motion to defer action to allow the applicant to review some alternatives.

Chairman DiGiulian asked the applicant if he would agree to a deferral. Mr. Koenig said he had been working on the variance for approximately a year and a half and would like some type of resolution.

In response to questions from Mr. Hammack, Mr. Koenig replied that he was interested in old automobiles and woodworking and there are still four adults living at home. The co-applicant, Janet Koenig, said they had consulted an architect and in order to maintain the look of the area the addition had been set back from the lot line.

Following a discussion among the BZA with respect to the size of the addition, Mr. Koenig explained the design of the addition.

Mr. Pammel made a motion to grant the request in part based on the testimony presented that the criteria for the granting of a variance had been met, specifically the exceptional shape of the parcel involved making it difficult to provide an addition to the property. He said his motion would allow the applicant a 3 foot variance with a side yard dimension of 12 feet.

Mr. Kelley seconded the motion for purposes for discussion and said he was willing to grant the request as submitted. He added that if the house were sited differently on the lot, the applicant would not need a variance.

The BZA discussed with the applicant the feasibility of moving the addition back approximately 2 feet. Mr. Koenig said they had tried to keep the addition architecturally in line with the existing dwelling.

Mr. Kelley said he would like to amend the motion to grant the applicant's request in full. Mr. Ribble seconded the motion. Mr. Hammack said he would support the motion since the lot does have converging lot lines and it is only a corner of the addition that needs the variance. Mr. Pammel added that he would support the motion. The motion carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mrs. Thonen 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 92-B-113 by JANET B. AND ARTHUR R. KOENIG, under Section 18-401 of the Zoning Ordinance to allow addition 9.0 feet from side lot line, on property located at 8923 Maurice Lane, Tax Map Reference 69-2((8))143, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1992; 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-2.
3. The area of the lot is 15,771 square feet.
4. Only a small corner of the garage is in violation of the setback requirements.
5. If the house was located a little bit differently on the property, in order words pushed back a little bit further on the lot, the variance would not be needed.

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

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

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

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

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

1. This variance is approved for the location and the specific structures shown on the plat prepared by Stephan T. Palmer, L.S., dated September 12, 1992, submitted with this application and is not transferable to other land.

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 18, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 118, December 10, 1992, (Tape 2), Scheduled case of:

10:25 A.M. GEORGE A. AND DAPHNE MIHUC, VC 92-V-123, appl. under Sect. 18-401 of the Zoning Ordinance to allow enclosure of carport 11.5 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207), on approx. 11,500 sq. ft., located at 1117 Cameron Rd., zoned R-2, Mount Vernon District, Tax Map 102-2((12))50.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Bill Reames, with Patio Enclosures, 6826 Hill Park Drive, Lorton, Virginia, replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report. She said the applicants were requesting a 3.5 foot variance in order to enclose the rear portion of an existing carport. Ms. Anderson said according to the applicant's statement of justification submitted with the application a screened porch existed in the area and the framework is shown in the photographs. She pointed out that the screened porch was partially demolished to allow for repairs to be made to the carport concrete. Ms. Anderson said the applicants now want to build a more substantial enclosure and noted that staff could not find a building permit in the Zoning Administration Division files. She noted that staff was able to find a house location survey plat dated 1956, which shows some type of structure which is not clearly identified.

Mr. Reames said the screened walls were removed from the rear of the carport in order to repair the concrete. He said the applicants, due to their failing health, would like to replace the screen with glass.

In response to a question from Mr. Ribble, Mr. Reames said the structure would not be moved any closer to the lot line.

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

Mr. Ribble made a motion to grant VC 92-V-123 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated December 1, 1992.

The BZA also waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-123 by GEORGE A. AND DAPHNE MIHUC, under Section 18-401 of the Zoning Ordinance to allow enclosure of carport 11.5 feet from side lot line, on property located at 1117 Cameron Road, Tax Map Reference 102-2((12))50, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 10, 1992; 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-2.
3. The area of the lot is 11,500 square feet.
4. The applicant has met the nine required standards for a variance, in particular this is an enclosure of an existing carport.
5. It will not be any closer to the side lot line.
6. The structure has obviously been on the property since 1956 and no one knows how long before that date it might have been constructed.
7. The subject property is one of the oldest subdivisions in Fairfax County.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 20, 1992, submitted with this application and not transferable to other land.

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mrs. Harris not present for the vote. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 10, 1992. This date shall be deemed to be the final approval date of this variance.

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Page 120, December 10, 1992, (Tape 2), Information Item:

Parkwood Baptist Church, SPA 84-A-048-2

Chairman DiGiulian said they would defer discussion on this item until Mrs. Thonen could be present.

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Mr. Hammack made a motion that Mrs. Harris be made the honorary chaplain for the BZA. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mrs. Harris was not present for the vote. Mrs. Thonen was absent from the meeting.

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Zoning Ordinance Amendment Relating to
Churches Becoming Special Exception Uses

Mr. Ribble said, in Chairman DiGiulian's absence, he had attended the Task Force meeting, which was held to discuss church applications being filed as a Special Exception use as opposed to a Special Permit use. He said the BZA had "some bricks" thrown at them, but that he had not believed it would have served any purpose to argue in support of the BZA. Mr. Ribble said he had asked a staff member to pull a few of the cases that were brought up as he believed the records would show that the BZA was justified in their decisions on these cases.

Mr. Kelley commended Mr. Ribble for not entering into the "fray" and said that it reminded him of a saying that you don't get into a wrestling match with a hog because the hog likes it.

Chairman DiGiulian agreed.

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

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

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

SUBMITTED: January 19, 1993

APPROVED: January 26, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on December 15, 1992. The following Board Members were present: Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Chairman John DiGiulian was absent from the meeting.

Vice Chairman John Ribble called the meeting to order at 8:00 p.m. Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman Ribble called for the first scheduled case.

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Page 123, December 15, 1992, (Tape 1), Scheduled case of:

8:00 P.M. MONTESSORI SCHOOL OF ALEXANDRIA, INCORPORATED, SPA 80-L-033-3, appl. under Sect. 3-403 of the Zoning Ordinance to amend SP 80-L-033 for child care center and private school of general education to increase enrollment to 99 children, on approx. 3.6293 acs., located at 6300 Florence La., zoned R-4, Lee District, Tax Map 82-4((1))17A, 17B; 82-4((36))A. (DEF. FROM 9/24/92 FOR TRAFFIC ANALYSIS)

In answer to a question from Vice Chairman Ribble, Jane C. Kelsey, Chief, Special Permit and Variance Branch, confirmed that the BZA had previously issued an Intent to Defer until the night meeting of March 16, 1993, at 8:00 p.m. Mrs. Thonen moved to defer this case until March 16, 1993, at 8:00 p.m. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 123, December 15, 1992, (Tape 1), Scheduled case of:

8:00 P.M. IMMANUEL BIBLE CHURCH, SPA 80-A-058-2, appl. under Sect. 3-203 of the Zoning Ordinance to amend SP 80-A-058 for church and related facilities to allow temporary use of 3 trailers on site and allow construction of previously approved addition in phases, on approx. 12.9 acs., located at 5211 Backlick Rd., zoned R-2, Lee District, Tax Map 71-4((1))35, 36A; 71-4((2))1, 2, 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Anderson replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the subject property is located on both Braddock and Backlick Roads and is surrounded by a mixture of residential development, commercial development in the form of a shopping center, and some parkland. He said that the application before the BZA did not involve any construction or changes to the previously approved development, but actually was a request to permit the previously approved development to be phased over a six-year period, and to permit the term of the three temporary trailers to be extended for five more years. Mr. Riegle said that there are no land use impacts associated with the request to extend the use of the trailers. In terms of potential issues arising out of the phasing of the development, Mr. Riegle pointed out that the Proposed Development Conditions stipulate that all required screening be installed prior to any Non-Residential Use Permits for any of the building additions; therefore, it was staff's belief that the phasing would not impair the screening and buffering which are important to the approval of the use. He pointed out that the Proposed Development Conditions incorporate all of the Conditions previously imposed. Mr. Riegle said that staff recommended approval of the application, subject to the Conditions contained in the staff report.

Mrs. Harris asked if the applicant had agreed to the Conditions proposed and Mr. Riegle said that was his understanding.

Robert Anderson, Esquire, with the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, McLean, Virginia, represented the applicant, stating that this was merely an administrative item, there had been no changes from the previous approval, and this was being done to allow the church to be able to financially construct the improvements and to retain the trailers presently being used for educational purposes. He said that Allen Fisher, Administrator of the church, was present and willing to answer any questions.

Mr. Hammack asked Mr. Anderson if the applicant was in agreement with the Proposed Development Conditions and he answered yes.

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

Mr. Hammack made a motion to grant SPA 80-A-058-2 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 8, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 80-A-058-2 by IMMANUEL BIBLE CHURCH, under Section 3-203 of the Zoning Ordinance to amend SP 80-A-058 for church and related facilities to allow temporary use of 3 trailers on site and allow construction of previously approved addition in phases, on property located at 5211 Backlick Road, Tax Map Reference 71-4((1))35, 36A; 71-4((2))1, 2, 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 December 15, 1992; 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 12.9 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 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 under SPA 81-A-058-1 dated April 24, 1989 as amended by the site plan prepared by Monaco and Strickhouser, P.C. dated August 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. Construction of the development approved under SPA 81-A-058-1 may be phased provided that all construction shall commence within six years from the approval date of this special permit amendment.

5. If the vacation request for Matthew Place has not been approved, Matthew Place shall be improved to public street standards as determined by the Virginia Department of Transportation (VDOT) and the special permit plat shall be revised to delete the parking currently around Matthew Place. If the vacation is approved as shown on the special permit plat approved in conjunction with the approval of SPA 80-A-058-1, the applicant shall improve that portion of Matthew Place not vacated to public street standards and provide a turn-around as determined by the Virginia Department of Transportation.

6. At such time as Matthew Place is either vacated or improved, or enrollment at the private school of general education reaches 281, the existing entrance on Backlick Road shall be closed as shown on the special permit plat dated April 24, 1989.

7. Between January 1, 1991 and March 21, 1991, the applicant shall submit a transportation study to the Fairfax County Office of Transportation and the Zoning Evaluation Division which assesses the safe operation of the existing entrance on Braddock road to determine if the entrance should be shifted to align with a median break. This study shall include current traffic counts for Braddock Road, accident information and existing trip generation rates for the church/ school use. Fairfax County may require additional information as needed. The study shall be subject to approval by the Office of Transportation. Should the Office of Transportation determine that the entrance should be shifted to align with a median break, the entrance shall be relocated. The applicant shall abide by the agreements attached to these conditions (Appendix 1A) approved as part of the site plan approval which followed the approval of SPA 80-A-058-1 and these agreements may be used to fulfill this requirement as may be acceptable to VDOT, DEM and the Fairfax County Office of Transportation.

8. A public access easement along the Braddock Road frontage of the site shall be recorded at the time of site plan review. The purpose of this pubic access easement shall be to facilitate the provision of interparcel access to Lot 34 should that be deemed necessary in the future in accordance with Condition 6 above.

9. Any attached sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.

10. Transitional Screening 1 shall be provided in the following areas:

    Along the portion of the eastern lot line adjacent to Lot 34

    Along the southern lot line

    Along the side and rear lot lines of Lot 1

    Existing vegetation shall be retained with additional plantings added to the southern and eastern lot lines to satisfy the intent of Transitional Screening 1 as determined by the Urban Forestry Branch, DEM. The type, quality, size, and location of these plantings shall be reviewed and approved by the Urban Forestry Branch, DEM. Plantings along the western lot line shall be implemented as shown on the approved special permit plat dated April 24, 1989. The purpose of the plantings adjacent to the western lot line shall be primarily to screen the parking lot and also provide visual relief to the building addition. A fifteen foot wide strip of plantings shall be provided along the western side of the L-shaped addition as shown on the same special permit plat. The purpose of these plantings shall be to screen the building addition. The Urban Forestry Branch shall determine the type, quality, size and location for the plantings in these areas. All required screening along the periphery of the site shall be installed prior to the issuance of Non-Residential Use Permits for any of the building additions approved under SPA 80-A-058-1.

11. A six foot high solid wood fence shall be provided along the southern lot line as shown on the special permit plat dated April 24, 1989. A split rail fence shall be provided around Lot 1 as shown on the special permit plat. The barrier requirement shall be waived along all other lot lines.

12. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

13. There shall be a maximum of 1000 seats in the main area of worship and a corresponding minimum of 250 parking spaces. The maximum number of parking spaces shall be 420. All parking for this use shall be on site.

14. Foundation plantings shall be provided around the proposed additions which soften and screen the visual impact of all the additions. The type, size, and placement of these plantings shall be reviewed and approved by the Urban Forestry Branch, DEM.

15. A geotechnical review shall be provided for approval by the Department of Environmental Management if determined necessary by the Director, DEM. Recommendations made by DEM shall be implemented.

16. A trail shall be provided along the site's frontage on Braddock Road and Backlick Road in accordance with the Countywide Trails Plan. The exact location and type of trail and a determination as to whether the existing sidewalk satisfies this trail requirement shall be made at the time of site plan review.

17. The temporary use of the three (3) trailers is approved for a period of five years from the approval date of this special permit amendment provided that, irrespective of this five year term, the trailers shall be removed within 30 days of the issuance of a Non-Rup for Phase III of the previously approved building additions.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, if the use has been legally established or construction has started and been diligently prosecuted in accordance with the terms of these development conditions. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Page 126, December 15, 1992, (Tape 1), IMMANUEL BIBLE CHURCH, SPA 80-A-058-2, continued from Page 125)

Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 23, 1992. This date shall be deemed to be the final approval date of this special permit.

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Page 126, December 15, 1992, (Tape 1), Scheduled case of:

8:00 P.M. ROBERT L. KERR AND SANDY R. KERR, SP 92-C-035, appl. under Sect. 3-203 of the Zoning Ordinance to allow home professional office, on approx. 15,448 sq. ft., located at 2634 Wild Cherry Place, zoned R-2 (Cluster), Centreville District, Tax Map 26-3((10))160. (RECONSIDERATION GRANTED 10/6/92)

Vice Chairman Ribble asked if the applicant was ready to be heard. Mrs. Thonen said she remembered that the Board had stated at the last hearing that a specific amount of time would be allocated for each side to be heard.

Jane Kelsey, Chief, Special Permit and Variance Branch, referred to the minutes of the meeting on which the reconsideration had been granted and advised that each side had been allocated five minutes to use as they wished.

Bill Baskin, attorney for the applicant, 301 Park Avenue, Falls Church, Virginia, stated that, because this case had stirred so much controversy, he would prefer to have it heard by a full Board.

Mr. Ribble advised Mr. Baskin that they could never be sure of a full Board and, another time, there might be less members present than today.

Ms. Kelsey advised that, to her knowledge, Mr. Pammel would be attending and only Chairman DiGiulian would be absent.

It was agreed by the Board to hear some Action Items until Mr. Pammel arrived.

Continued to Page 127.

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Page 126, December 15, 1992, (Tape 1), Action Item:

Approval of Resolutions from December 8, 1992 Hearing

Mrs. Thonen moved to approve the Resolutions. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 126, December 15, 1992, (Tape 1), Action Item:

Request for Additional Time
Korean Evangelical Church of Washington
SP 89-P-023

Mrs. Harris moved to grant the request for additional time and asked if a new date of November 24, 1993, would allow the applicant enough time as it appeared from the letter of request that the applicant would struggle to meet that deadline. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that, to her knowledge, the applicant still had not solved the sewer easement problem and she doubted seriously that the applicant had requested enough time. Mrs. Harris moved to grant a new expiration date of November 24, 1994, because she believed that the applicant had a significant problem to correct. She said that she would rather grant more time now than have the applicant come before the BZA again. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 126, December 15, 1992, (Tape 1), Action Item:

Approval of Minutes from October 13, 1992, Hearing

Mrs. Thonen so moved. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 121, December 15, 1992, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Gold's Gym
SPA 87-S-088

Mrs. Thonen noted that the request was for a date in January 1993. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the ads had already been done by the Clerk for January 26, 1992. She said that this applicant just a few weeks ago had an application approved by the BZA for another location; an amendment to the original special permit was being requested for the original site and would have to be advertised and posted and notices would have to go out. Ms. Kelsey said that staff had previously been able to assist the applicant in gaining an early hearing, only because of unusual circumstances; however, because of the Christmas Holidays and requested leave time by staff, she would request that the case be heard no sooner than February. She said that the normal hearing date would be in March, without an out-of-turn hearing.

In answer to a question from Mrs. Harris, Ms. Kelsey confirmed that the request was for an amendment to expand the location of the original special permit; she did not know what the applicant planned to do with the recently approved special permit for another location.

Carson Lee Fifer, Jr., Esquire, with the law firm of McGuire, Woods, Battle and Boothe, 8280 Greensboro Drive, McLean, Virginia, represented the applicant, stating that the application approved in early December would not be used if this amendment to the original application were to be approved. He said there had been a letter of intent to relocate the facility, but it had expired without a lease being signed; they are now at the signature stage of a lease to simply expand at the original location, occupying a vacant bay on each side of the present location. He said that all the elements are identical in terms of size, the number of people, the number of cars, with no outside changes; all the alterations would be inside.

At the BZA's request for an early February date, Ms. Kelsey suggested a hearing date of February 9, 1993. Mrs. Thonen so moved. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 121, December 15, 1992, (Tape 1), Action Item:

Approval of Revised Plats
A & K
SP 92-M-040 and VC 92-M-068
Heard on September 29, 1992

The Board had not had sufficient time to review the revised plats, so it moved back to the regular agenda and deferred this item until later in the meeting.

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Continued from page 126.

Page 121, December 15, 1992, (Tape 1), Scheduled case of:

8:00 P.M. ROBERT L. KERR AND SANDY R. KERR, SP 92-C-035, appl. under Sect. 3-203 of the Zoning Ordinance to allow home professional office, on approx. 15,448 sq. ft., located at 2634 Wild Cherry Place, zoned R-2 (Cluster), Centreville District, Tax Map 26-3((10))160. (RECONSIDERATION GRANTED 10/6/92)

Vice Chairman Ribble called for the location of the staff report.

Mary Ann Godfrey, Staff Coordinator, presented the staff report, stating that the request for reconsideration was for a home professional office which had been denied on October 15, 1992. A memo containing the Resolution and Minutes from that hearing had been distributed on December 8, 1992. The applicant had requested approval of a home professional office to continue the operation of his consulting business, which he had been operating since 1984. One part-time secretary works on the premises; nine employees work in their own homes and have been provided with computers, modems and fax machines by Mr. Kerr. No clients come to the home. Mr. Kerr has rented office space in Herndon which is used for meeting with employees. Staff is of the opinion that, with the Proposed Development Conditions, the proposed use is in harmony with the Comprehensive Plan and meets all applicable Zoning Ordinance requirements. Ms. Godfrey said that staff continued to recommend approval of SP 92-C-035, subject to adoption of the Proposed Development Conditions attached to Appendix 1 of the staff report.

Mr. Baskin distributed photographs to the Board to review while he made his presentation. He said he intended to address the allegations contained in Vincent Roy's letter of December 8, 1992. Mr. Baskin said that the issues Mr. Roy raised had not been borne out in investigation by staff and testimony by the Kerrs, and had been contradicted by numerous letters from surrounding neighbors. Mr. Baskin referenced the statement by Mr. Roy that the Kerrs have 9 employees, stating that they do not now have, and never have had, 9 employees operating in or coming to the residence. Their intention is to have only one part-time employee coming to the house, which can be enforced by stipulating the limitation in the Proposed Development

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Conditions. In resonse to the suggestion by Mr. Boy that the Conditions were not enforceable, Mr. Baskin stated that, if such were the case, the Kerrs would not have had to appear before the BZA as they were doing, because the necessity for them to have a special permit would be unenforceable. Mr. Baskin addressed the suggestion by Mr. Roy that, because Mr. Kerr had a meeting room in Herndon, he did not need a home professional office in his home, stating that the purpose of the Herndon meeting room was for meeting with employees or clients; it is not set up to be an office and, even it were, there is nothing wrong with him wanting to run his business from his home as long as he meets the zoning requirements and satisfies any conditions that may be imposed to insure that the character of the neighborhood remains residential. Mr. Baskin addressed the suggestion in Mr. Roy's letter that the activity of the business generates significant non-residential activity which disrupts the character of the nighborhood. He said that, by having one part-time employee, there presumably would be one daily vehicle trip into the property and one daily vehicle trip out of the property, which is identical to the trips which would be generated by Mr. Kerr if he had to go to an office and return to his home.

In answer to the suggestion by Mr. Roy that there was insufficient parking, Mr. Baskin referenced staff's findings to the contrary: There is a garage and a driveway available for parking, and one of the Development Conditions requires that all parking be on-site.

Vincent Roy, next-door neighbor of the Kerrs, whose pool abuts their property, stated that one of his concerns was that Wild Cherry Place had now become a major thoughfare for the children going to and from the Crossfield School and, since the previous hearing, there had been four alleged incidents of children almost being hit by vehicles. The incidents were ultimately brought to the attention of the Virginia Department of Transportation, resulting in a crosswalk being relocated and repainted. Mr. Roy contended that the applicant had insuffient parking and said that owners of the three houses abutting the subject property are concerned. Other concerns of Mr. Roy were alleged noise, traffic, and littering by people coming to and going from the applicant's residence; he said the applicant ran a full-fledged business, which he objected to.

Mr. Roy said he would like to expand on complaints by the homeowners who live in Fox Mill Woods. Mr. Pammel said he wanted to hear only Mr. Roy's concerns from him and not those of other people who could speak for themselves.

Mr. Roy said that, once or twice a week, he and his wife had to contend with people going to the applicants' residence and looking over their fence, when they had guests engaging in pool activities. He said that his wife does not work and is in the yard constantly being annoyed by the Kerrs' visitors looking over their fence. Mr. Roy was convinced that the visitors were employees of the applicant.

Mrs. Harris referenced a photograph of the Roy property, showing the fence and the wooded lot, and doubted that anyone could see over the fence into the back yard and pool, through the 20-foot trees.

Mrs. Harris referenced the petition which the Roys had circulated and said she had contacted many of the people on the list who had been led to believe that the home professional office would entail nine prople coming to and going from the house daily. When those people read the staff report and learned that was not true, they did not want their names to appear on the petition. Furthermore, one of the people mentioned that they had been contacted on December 6, which was after the reconsideration decision and the Conditions were known to allow for only one part-time employee. Mrs. Harris questioned the validity of the petition, since the signers had been misinformed about the activities anticipated at the applicant's residence. She said she was wondering if the signers should be contacted again to find out what information had pursuaded them to sign the petition.

Mr. Roy questioned the ability of the County to enforce the Proposed Development Conditions and Mrs. Harris advised Mr Roy that the Zoning Enforcement Branch monitored compliance with Conditions.

Carol Stock, 11926 Riders Lane, said that she had signed the petition and had also circulated it. She said that some of the nieghbors to whom she had spoken were shocked because they had not known that Mr. Kerr had a business in his home. She denied having told anyone that Mr. Kerr would have a secretary and nine employees in the residence, Monday through Friday. Mrs. Stock objected to anyone conducting a business from their home in her neighborhood.

Mrs. Harris asked Mrs. Stock if she had spoken with Chris McKechnie, with whom Mrs. Harris had spoken. Mrs. Stock said she could not remember if she had.

Mrs. Roy said that she had spoken with Mrs. McKechnie at her home, per her mother's request; her mother lives across the street from her. She said that she did not tell anyone that there would be nine employees up and down the road; she told them she had seen several employees. She said that Mrs. McKechnie had not signed the petition.

Catherine Lynns, 2617 Mountain Laurel Place, came to the podium and said that she had spoken with Mrs. McKechnie, was familiar with the case, had been before the Board previously, and had the staff report. She said that Mrs. McKechnie had called her to say that Mrs. Roy had

been to her home with the petition and a whole new story and that she was confused. Mrs. Lynns offered to show Mrs. McKechnie the staff report to help her make up her mind. Mrs. McKechnie told Mrs. Lynns that her parents were very upset about the nine employees in Mr. Kerr's house and the cars going up and down the street all the time. Mrs. Lynns told Mrs. McKechnie that she had spoken with the traffic engineer and offered to tell her what he had said: that the intersection was not seriously dangerous, among other things. Mrs. Lynns said that she showed the staff report to 13 people in the neighborhood, 12 of whom took their names off the petition based on the staff report. She said many of the neighbors had mistakenly been under the impression that granting this request would open flood gates and set a precedent for anyone to operate a business from their home without having to go before the BZA.

Chairman DiGiulian closed the public hearing.

A discussion between the Board members ensued about who could or could not make a motion, based upon how they previously had voted. It was determined that any Board member could make a motion at this time.

Mr. Hammack made a motion to grant SP 92-C-035 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions dated October 15, 1992, as amended. Number 5 was revised to read: "The number of employees on site shall be limited to one part-time employee." Number 6 was modified to restrict the maximum number of hours of operation from 8:00 a.m. to 5:00 p.m., Monday through Friday. A sentence was added to number 7: "All parking by the employees shall be in the driveway." Number 11 was modified to limit the special permit for a period of 3 years. At the request of Mrs. Harris, number 9 was modified to read: "There shall be no business meetings on site between the applicants/residents and clients or more than one (1) employee at any one time."

Mr. Hammack pointed out that, if there was a part-time employee already on site, the applicants could not meet with another employee. Mr. Kelley wanted to have the term "business meetings" specifically included in order not to preclude social gatherings such as picnics or Christmas parties for the employees.

Mrs. Thonen said that she still was having a problem with granting this request for a business within a neighborhood.

Mr. Kelley said tht he had received phone calls from people who opposed this application and found out that they had deliberately misrepresented the facts. He said that, partly due to the misrepresentations, he had voted against the application the first time. Now that he was aware of the true facts, he said he was not convinced that granting the application would cause any intrusion at all. He said that he would support the motion.

Mrs. Harris stated that she believed the Proposed Development Conditions should ameliorate any concerns by neighbors about traffic and parking.

In the case of a violation, Vice Chairman Ribble encouraged neighbors to call the Zoning Enforcement Branch. In the event that results are not forthcoming from the Zoning Enforcement Branch, he suggested that they call one of the Board members.

Vice Chairman Ribble said that the reservations he had about granting this request had been ameliorated by reduction of the time limitation and the other conditions which had been set forth. He said he would support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-C-035 by ROBERT L. KERR AND SANDY R. KERR, under Section 3-203 of the Zoning Ordinance to allow home professional office, on property located at 2634 Wild Cherry Place, Tax Map Reference 26-3((10))160, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 15, 1992; 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-2 (Cluster).
3. The area of the lot is 15,448 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903, 8-907 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 as the special permit area within the existing dwelling located at 2634 Wild Cherry Place, 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 De Lashmutt Associates dated May, 1978**, 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 Since no building permit is necessary for the continued operation of this use, no site plan approval is required. However a Non-Residential Use Permit shall be obtained within 60 days of the approval of this application.

5. The number of employees on-site shall, in addition to the owners/applicants, be limited to one (1) part-time employee.

6. The maximum number of hours of operation shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday.

7. A minimum of three (3) parking spaces shall be provided on-site. Two (2) of these spaces are required for the residential use and shall be accommodated in the garage. Employee parking shall be in the driveway.

8. There shall be no exterior alterations to the residence which would change the residential appearance of the property and there shall be no signs associated with the home professional office use.

9. There shall be no business meetings on site between the applicants/residents and clients or more than one (1) employee at any one time.

10. This special permit is granted for a period of three (3) years from the date of approval of this special permit.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, two (2) months after the date* of approval unless the use has been legally established and been diligently prosecuted.

Mr. Pammel seconded the motion which carried by a vote of 5-1. Mrs. Thonen voted nay. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 23, 1992. This date shall be deemed to be the final approval date of this special permit.

Continued on Page 131.

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Continued from Page 127.

Page 130, December 15, 1992, (Tape 1), Action Item:

Approval of Revised Plats
A & K, SP 92-M-040 and VC 92-M-068
Heard on September 29, 1992

Vice Chairman Ribble asked the Board if they had a chance to review the revised plats on this item which had been deferred earlier in the meeting. After a short discussion, Mrs. Thonen moved to approve the revised plats. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 131, December 15, 1992, (Tape 1), Action Item:

Request for Intent to Defer
Theodore Simpson Appeal
Scheduled for January 5, 1993

Vice Chairman Ribble noted this request for an Intent to Defer.

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The meeting was interrupted by comments from Mr. Roy, speaking from the audience.

Continued from Page 127.

Page 131, December 15, 1992, (Tape 1), Scheduled case of:

8:00 P.M. ROBERT L. KERR AND SANDY R. KERR, SP 92-C-035, appl. under Sect. 3-203 of the Zoning Ordinance to allow home professional office, on approx. 15,448 sq. ft., located at 2634 Wild Cherry Place, zoned R-2 (Cluster), Centreville District, Tax Map 26-3((10))160. (RECONSIDERATION GRANTED 10/6/92)

Mr. Kelley and Mr. Roy exchanged words. Several other Board members concurred with Mr. Kelley's understanding of Mr. Roy's comments, and the Board returned to the Action Items.

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Page 131, December 15, 1992, (Tape 1), Action Item:

Request for Intent to Defer
Theodore Simpson Appeal
Scheduled for January 5, 1993

Vice Chairman Ribble again advised of the request to do an Intent to Defer on this case.

Mrs. Thonen moved to issue the Intent to Defer. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the Deputy Zoning Administrator had been in contact with Mr. Simpson and they had agreed to defer the hearing until March 9, 1993, to allow time to resolve some issues. Mrs. Harris seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 131, December 15, 1992, (Tape 1), Action Item:

Parkwood Baptist Church

Mrs. Thonen asked if she understood correctly that Chairman DiGiulian said that the Parkwood Church issue had been deferred to that evening. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the additional time for Parkwood Baptist Church and the Primitive Baptist Church had both been approved the previous week. Mrs. Thonen said that she had intended for a letter to go forward to the Department of Environmental Management on Parkwood Baptist Church, rather than Primitive Baptist Church. Ms. Kelsey asked Mrs. Thonen if she wanted the minutes from the previous meeting to reflect that information and she said yes.

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Continued from Page _____.

Page 131, December 15, 1992, (Tape 1), Scheduled case of:

8:00 P.M. ROBERT L. KERR AND SANDY R. KERR, SP 92-C-035, appl. under Sect. 3-203 of the Zoning Ordinance to allow home professional office, on approx. 15,448 sq. ft., located at 2634 Wild Cherry Place, zoned R-2 (Cluster), Centreville District, Tax Map 26-3((10))160. (RECONSIDERATION GRANTED 10/6/92)

Vice Chairman Ribble took this opportunity to state that he concurred with Mr. Kelley in his understanding of Mr. Roy's comments.

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Page 131, December 15, 1992, (Tape 1), Action Item:

Board of Zoning Appeals
Move to New Government Center

Jane C. Kelsey, Chief, Special Permit and Variance Branch, noted the Board had requested that she research moving their meetings to the New Government Center. She said she had confirmed that the Board could begin meeting in the New Government Center the first of February. In answer to the question of whether or not the BZA might be bumped, she advised that it probably would and could be bumped, depending upon the Board of Supervisors' schedule. If they were bumped, there are other conference rooms within the facility; however, those are

scheduled in the same manner as the Board Room is scheduled, and the possibility of a problem in securing a conference room does exist, and another location would have to be found, which would require readvertising. Ms. Kelsey noted that she had been asked to find out if the BZA members could use the Board of Supervisors' parking spaces as was previously done at the Massey Building, and she said the answer to that was no; the reason being that the Board of Supervisors has their subcommittee meetings on many Tuesdays and some, if not all, of the members may also require their parking spaces on Tuesdays. Ms. Kelsey went on to say that there is ample above-ground parking available within the New Government Center complex; however, the availability of underground might be questionable. Mrs. Harris questioned whether the meetings would be televized and Ms. Kelsey said that the Budget did not provide for televising BZA meetings.

In answer to a question from Vice Chairman Ribble, Ms. Kelsey advised that there are numerous parking spaces underground; however, the unreserved spaces were filled very early in the morning.

Vice Chairman Ribble said that he did not see why parking spaces could not be reserved for the BZA members on Tuesdays and asked Ms. Kelsey to look into why this could not be done. Ms. Kelsey said that she already asked and had been told it could not be done.

Vice Chairman Ribble said that he had never had a problem parking underground at the Center and a discussion ensued concerning this issue.

The Board members asked questions about the various functions inside the new Board Room. Ms. Kelsey said that she was not familiar with the system, but it was her understanding that each Board Member had a microphone which could be turned off and on at will. She was planning to attend a walk-through of the new Board Room, at which time she would be better-prepared to answer questions.

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As there was no other business to come before the Board, the meeting was adjourned at 9:10 p.m.

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

John Ribble
John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: March 2, 1993

APPROVED: March 9, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 5, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation. Chairman DiGiulian stated the first order of business would be the election of officers for the coming year. He called for nominations for Chairman.

Mrs. Thonen made a motion to nominate John DiGiulian to continue to Chair the Board of Zoning Appeals in 1993. Mr. Hammack seconded the motion. There were no other nominations and the motion carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Mrs. Thonen made a motion to nominate Paul Hammack and John Ribble to again serve as Vice Chairmen. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Mrs. Thonen made a motion to nominate Betsy S. Hurtt as Clerk. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Chairman DiGiulian called for the first scheduled case.

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Page 133, January 5, 1993, (Tape 1), Scheduled case of:

9:00 A.M. BUCHANAN STREET PARTNERSHIP, LTD., VC 92-D-109, Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow dwelling 9.0 ft. from side lot line, allow detached garage 5.0 ft. from side lot line, and allow sunroom addition 11.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207). Located at 1206 Dolly Madison Blvd., on approx. 9,451 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2((20))(B)1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Baken replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting variances to allow a dwelling 9 feet from the side lot line, a detached garage 5 feet from the side lot line, and a sunroom addition 11 feet from the side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicant was requesting variances of 6 feet, 4 feet, and 10 feet, respectively.

The applicant's agent, Allan Baken, with the firm of Charles P. Johnson and Associates, 3959 Pender Drive, Suite 210, Fairfax, Virginia, addressed the BZA and submitted a written, "findings of fact." He stated that the applicant was the contract/purchaser of the property and would like to develop the lot with a single family structure and detached garage. Mr. Baken stated that the current Zoning Ordinance had not been adopted when the subdivision was created in the 1920's. He explained that the subject lot, which is only 50 feet wide and approximately 180 feet deep, has an unusual configuration which restricts the design and location of the proposed structure. He noted that another unusual characteristic was the lot could not have access the existing street frontage on Route 123. He explained that the existing ingress/egress easement to the rear of the property also dictated the location of the garage. Mr. Baken stated that, although many of the houses in the community were built on larger lots, the subject lot was created as a buildable lot. He further stated that the applicant was the contract/purchaser of abutting Lot 7B, which is the subject of a similar request, and the variances would be internal to both lots and therefore would not have a detrimental impact on other adjacent properties. Mr. Baken noted that since the Zoning Ordinance requires a minimum 15 foot side yard and the subject lot has a 50 foot width, there is only a 20 foot building envelope for a single family house. He further noted that the subdivision had been established for many years and the granting of the variance would not create a precedent or a reoccurring situation. In conclusion, Mr. Baken stated the strict application of the Zoning Ordinance would effectively prohibit reasonable use of the property; the structure would be comparable in size to other houses in the neighborhood; the request meets the necessary standards for the granting of a variance; and he asked the BZA to grant the request.

In response to a question from the BZA, Mr. Baken stated that the owners of four abutting lots which have legal access to the easement would have to sign vacating documents. He said that these neighbors had expressed their willingness to vacate the easement and their lots ingress/egress onto Marian Street and Buchanan Street. Mr. Baken noted that although the lot would be developed for sale to a third party, he did not believe the applicant had created their own hardship. He stated that the houses on Lots 2 and 3 face Route 123 and their driveways face Buchanan Street, and the house on proposed Lot 1 would appear to also face Route 123. He explained that although the drawings depict a sunroom, the sunroom should be considered an option.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA in order to clarify the issue and noted that the applicant was the contract/purchaser of the property.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Katrina Merrigan, 1207 Buchanan Street, McLean, Virginia; Karen Holzberg, 1213 Buchanan Street, McLean, Virginia; William H. Dempsey, 1213 Buchanan Street, McLean, Virginia; and Andrew Hinton, 204 Marion Street, McLean, Virginia, addressed the BZA and submitted a petition of opposition. They expressed their belief that the Zoning Ordinance should be enforced. The citizens noted that they were not concerned with the easement issue. They said that while the applicant had proposed to construct a structure that was similar in size to other houses in the community, the lot was far smaller than other lots in the area. They explained that all other residents had combined the small lots in order to build the larger homes within the Zoning Ordinance guidelines. They expressed their belief that the applicant, too, should be compelled to adhere to the Zoning Ordinance requirements.

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

Mr. Baken stated the applicant had verified that the documents vacating the portion of the easement relevant to the application had been signed. He explained that the easement, which is also the location of the sanitary sewer and utilities, has never been constructed. Mr. Baken expressed his belief that no precedent would be set by the granting of the variance.

In response to questions from Mrs. Harris as to why it would be impractical to combine the two lots into one buildable lot, Mr. Baken stated that each lot is a separate buildable lot and to require the applicant to combine the lots would demonstrate a hardship approaching confiscation.

Chairman DiGiulian asked who owned Lots 2 and 3 at the time the structure was built. Mr. Baken stated that he did not have that information.

Chairman DiGiulian asked the current owners of Lots 2 and 3 to return to the podium. William Dempsey stated that he had his wife, Karen Holzberg, were the current owners of the 65 year old house. He said that he had purchased the property from Merry Hill Joint Venture. Ms. Holzberg noted that although the applicant would be within their legal rights to construct a 20 foot wide house, which would not conform to the neighborhood, she believed that to construct the proposed structure on the small lot would have a very detrimental impact on her property. She explained that at the time they had agreed to vacating the easement, they did not realize that the proposed structure would be so immense.

Ms. Langdon, in an effort to clarify the issue of whether a precedent would be set, stated that many of the subdivision's parcels consist of multiple lots. She explained that although one person may own four buildable lots, the house could be situated on one or two of the lots; therefore, the other lots would be considered legal separate buildable lots.

Mr. Baken stated that the applicant would be willing to meet with the neighbors and address their concerns. He again noted that the lots were buildable lots.

Mr. Kelley expressed his concern regarding the precedent issue as well as the size and location of the proposed structure. He noted that over 20 percent of the property would be covered. Mr. Baken stated that although the amount of area to be covered was unusual, the applicant would like to build a structure that was compatible with other structures in the area. Mr. Kelley noted that the neighbors' structures were built on consolidated lots.

Mr. Baken stated that he would like a deferal so that the neighbors' concerns could be resolved.

Chairman DiGiulian closed the public hearing.

Mr. Hammack make a motion to defer VC 92-D-109. The motion died for a lack of a second.

Mrs. Thonen made a motion to deny VC 92-D-109 for the reasons stated in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-109 by BUCHANAN STREET PARTNERSHIP, LTD., under Section 18-401 of the Zoning Ordinance to allow dwelling 9.0 feet from side lot line, allow detached garage 5.0 feet from side lot line and allow sunroom addition 11.0 feet from side lot line, on property located at 1206 Dolly Madison Boulevard, Tax Map Reference 30-2((20))(B)1, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1992; and

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

1. The applicant is the contract/purchaser of the land.
2. The present zoning is R-2.
3. The area of the lot is 9,451 square feet.
4. It would not be fair to allow a developer to create a detrimental impact on the neighborhood.
5. The BZA's job is to protect the character of the neighborhood.
6. The proposal would allow the property to be grossly over-built.
7. The contract/purchaser should be aware of the Zoning Ordinance requirements.
8. The neighbor has testified that the garage would create a solid wall, thereby causing a visual impact on her property.
9. The neighbor should not be subject to such a situation.
10. The footprint is much too large.
11. The applicant should decide if the sunroom will definitely be built so that the BZA will know exactly what the application involves.
12. The property is no different from the other lots in the neighborhood.
13. Even though the lot is under single ownership, it is no more narrow, shallow, or topographically different than many of the other properties in the neighborhood that could be developed.
14. The strict application of the Zoning Ordinance would not put an undue hardship on the applicant.
15. The contract/purchaser of the property knew what the conditions were on the property when he was the contract/purchaser for the property.
16. If a hardship did exist, it was well known when the applicant bought the property.
17. The character of the neighborhood would be substantially hurt if the property was to be built as proposed.
18. The BZA must find that the variance would be in harmony with the surrounding neighborhood and the testimony indicated that the properties that abut the application on the north, east, and west are larger properties.
19. The variance would allow a structure which conforms to the size of other structures in the neighborhood to be built on a lot which does not conform to the size of the other lots in the neighborhood.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

Mrs. Harris seconded the motion which carried by a vote of 4-2 with Mr. Hammack and Mr. Pammel voting nay. Mr. Ribble was not present for the vote.

Mrs. Harris made a motion to waive the twelve-month waiting period for the refiling of an application. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1993.

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Page 136, January 5, 1993, (Tape 1), Scheduled case of:

9:10 A.M. BUCHANAN STREET PARTNERSHIP, LTD., VC 92-D-110, Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow dwelling 9.0 ft.from side lot line, allow detached garage 5.0 ft. from side lot line, and allow sunroom addition 11.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207). Located at 1204 Dolly Madison Blvd., on approx. 9,153 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2((20))(A)7B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Baken replied that it was and requested withdrawal of the application.

Mr. Hammack made a motion to allow the withdrawal of VC 92-D-110. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

Mrs. Harris made a motion to waive the twelve-month waiting period for the refiling of an application. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 136, January 5, 1993, (Tape 1), Scheduled case of:

9:30 A.M. STEVEN H. OR SUSAN S. YANG, VC 92-S-118, Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow addition 12.4 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-207), and allow 4.5 ft. high fence to remain in front yard (4 ft. max. hgt. allowed by Sect. 10-104). Located at 7759 Tara Height Pl. on approx. 8,678 sq. ft. of land zoned R-3 (C). Springfield District. Tax Map 98-1((10))24.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Foster replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of variances to allow construction of a one-story addition 12.4 feet from the rear lot line and to allow a 4.5 foot high fence to remain in the front yard. The Zoning Ordinance requires a minimum rear yard of 25 feet and a maximum height of 4 feet for a fence in a front yard; therefore, the applicant was requesting variances of 12.6 feet and 0.5 feet, respectively.

Mrs. Harris ask whether the Zoning Ordinance had been in effect when the existing structure was built. Ms. Langdon stated that structures on cluster lots can be built closer to the lot line than the Zoning Ordinance requirements.

David Foster, 8616 Lagrange Street, Lorton, Virginia, addressed the BZA. He stated that there is no place on the lot where the addition could be built without a variance. Mr. Foster said that the applicant would like the addition in order to add a small den, and to enlarge the family room and kitchen space. He noted that when the applicants realized the fence was in violation, they expressed their desire to rectify the situation by adding the fence to the application. He explained that the mistakes was made because the applicants did not realize they had two front yards. In conclusion, Mr. Foster said the placement of the house on the lot, as well as the unusual configuration of the lot, had caused the need for a variance and asked the BZA to grant the request.

In response to Mrs. Harris' question as to relocating the proposed addition further to the south, Mr. Foster stated that the layout of the house precluded the relocation of the addition. He explained that if relocated, the kitchen would have to be redesigned and there would be access problems. He expressed his belief that the addition would have no detrimental impact on the neighbors. He stated that if the Board was reluctant to grant the requested variance, the applicant would appreciate a lesser variance.

In response to Mrs. Thonen's question regarding the existing deck, Mr. Foster stated that the addition would replace the deck.

In response to Mr. Hammack's question regarding the owners of Lots 23 and 26, Mr. Foster said that the applicants had met with their neighbors and found that there was no opposition to the request. He explained that the material used on the addition would be similar to that of the material on the existing house.

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

Mr. Hammack made a motion to grant VC 92-S-118 for the reasons stated in the Resolution and subject to the development conditions contained in the staff report dated December 29, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-118 by STEVEN H. OR SUSAN S. YANG, under Section 18-401 of the Zoning Ordinance to allow addition 12.4 feet from rear lot line and allow 4.5 foot high fence to remain in front yard, on property located at 7759 Tara Height Place, Tax Map Reference 98-1((10))24, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1993; 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 (cluster).
3. The area of the lot is 8,678 square feet.
4. The County has allowed developers to place houses in almost any location on these lots.
5. The main dwelling is only 9 feet from the side lot line and the proposed addition would be 13 feet from the side lot line and 12.4 feet from the rear lot line.
6. The house on Lot 26 is 25 feet away from the shared lot line and the garage part of the dwelling on Lot 25 is 11.7 feet away from the shared lot line.
7. The variance will not change any of the basic setbacks of the cluster subdivision or impact on the way houses are presently configured in the community.
8. There is no opposition to the request.
9. The photographs show that the fence has no detrimental impact on the neighbors.
10. The applicant has satisfied the necessary standards for the granting of a variance.
11. The exceptional shape and condition of the property has caused the need for the variance.
12. The character of the zoning district will not be changed.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Larry N. Scartz, Certified Land Surveyor, dated April 28, 1992, revised May 15, 1992, submitted with this application and is not transferable to other land.

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 6-1 with Mrs. Harris voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13 1993. This date shall be deemed to be the final approval date of this variance.

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Page 138, January 5, 1993, (Tape 1), Scheduled case of:

9:40 A.M. MICHAEL C. AND BARBARA J. RUDLOFF, VC 92-B-115, Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow addition (garage) 7.0 ft. from side lot line such that side yards total 15.2 ft. (8 ft. min. side lot line and 20 ft. total min. side yards required by Sect. 3-307). Located at 5603 Mt. Burnside Way on approx. 9,644 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 78-2((14))150.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Rudloff replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to allow the enclosure of a carport 7 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 8 feet with a minimum total side yard of 20 feet; therefore, the applicants were requesting variances of 1 feet and 4.8 feet, respectively.

The applicant, Barbara J. Rudloff, 5603 Mt. Burnside Way, Burke, Virginia, addressed the BZA. She stated that she would like to enclose the existing carport which would not extend any further into the side yard than the existing structure. She said they had purchased the property in 1984 with the intention of enclosing the carport when financially feasible. Ms. Rudloff explained it was only after they had consulted with contractors, that they realized that a variance would be needed. She noted that approximately 84 percent of the neighbors had added a garage or an addition. She also noted that three similar variances had been granted in the area. In conclusion, Ms. Rudloff said that the proposed addition would be harmonious with the area and asked the BZA to grant the request.

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

Mr. Pammel made a motion to grant VC 92-B-115 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 29, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-115 by MICHAEL C. AND BARBARA J. RUDLOFF, under Section 18-401 of the Zoning Ordinance to allow addition (garage) 7.0 feet from side lot line such that side yards total 15.2 feet, on property located at 5603 Mt. Burnside Way, Tax Map Reference 78-2((14))150, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1993; 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 (cluster).
3. The area of the lot is 9,644 square feet.
4. The application meets the standards necessary for the granting of a variance.
5. The unusual configuration of the lot has 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** with the following limitations:

1. This variance is approved for the location and the specific structures shown on the plat prepared by Coldwell, Sikes & Almirall, Engineering, Planning & Surveying, dated August 25, 1992, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1993. This date shall be deemed to be the final approval date of this variance.

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9:50 A.M. LONG HOANG THAI AND THUY NGOC DINH, SP 92-M-059, Appl. under Sect(s). 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 15 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-207). Located at 3911 Winterset Dr. on approx. 10,545 sq. ft. of land zoned R-2. Mason District. Tax Map 59-3((15))13.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Dinh replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit to allow the completion of a two story addition which would remain 15 feet from the rear lot line. He noted that the structure consists of a 40 percent error. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, the applicant was requesting a modification of 10 feet to the minimum rear yard requirement.

In response to Mrs. Harris' question as to whether a building permit had been obtained, Mr. Heine stated that no building permit had been issued.

The applicant, Thuy Ngoc Dinh, 3911 Winterset Drive, Annandale, Virginia, addressed the BZA. She stated that they did not realize that a building permit would be necessary in order to convert the existing deck into an addition. She explained that when the "Notice of Violation" was received, the construction was immediately halted. Ms. Dinh stated that the owners of abutting Lots 4, 5, 12, and 14 expressed their support for the request. She expressed her belief that the error would not have a detrimental impact on the neighborhood, to force compliance to the minimum yard requirement would cause an undue hardship, and asked the BZA to grant the request.

In response to Mr. Pammel's question as to whether the applicant had hired a builder, Ms. Dinh stated that no outside contractor was involved. She explained that when they and their friends were building the addition, they thought they were in compliance with the Zoning Ordinance because, as the photographs submitted show, Lot 8 has a similar addition.

In response to Mrs. Harris' question as to whether the addition would be a screened porch, Ms. Dinh stated that it would be an enclosed family room.

In response to Mrs. Harris' question regarding the addition on Lot 8, Mr. Heine explained that research of the Zoning Administration files found that many years ago a variance had been granted for the garage addition.

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

Mr. Pammel made a motion to have staff request that Zoning Enforcement investigate the structure on Lot 8 to ensure that it is built within the variance's specifications. The motion died for a lack of a second.

Mrs. Thonen made a motion to deny SP 92-M-059 for the reasons reflected in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-M-059 by LONG HOANG THAI AND THUY NGOC DINH, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow addition to remain 15 feet from rear lot line, on property located at 3911 Winterset Drive, Tax Map Reference 59-3((15))13, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1992; 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-2.
3. The area of the lot is 10,545 square feet.
4. The addition covers too much ground and is too high.
5. The addition would have a detrimental impact on the neighborhood.
6. The application does not meet the necessary standards for the granting of a special permit.
7. The addition is too large a structure.
8. There is no way the visual impact could be mitigated.

9. The addition would not be in harmony with the surrounding neighborhood.
10. The addition could have been smaller and located elsewhere on the property.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 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 5-1-1 with Mr. Pammel voting nay and Mr. Hammack abstaining from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1993.

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Page 141, January 5, 1992, (Tape 1), Scheduled case of:

10:00 A.M. THEODORE SIMPSON APPEAL, A 92-D-018, Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the parking lot lights at the McLean Bible Church are in compliance with Condition #11 of SPA 73-D-151-3. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3((1))56A.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board of Zoning Appeals had issued an intent-to-defer A 92-D-018 on December 8, 1993. She noted that the appellant and the Zoning Administrator had both requested the deferral.

Mrs. Harris made a motion to defer A 92-D-018 to March 9, 1993 at 10:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 141, January 5, 1993, (Tape 1 and 2), Scheduled case of:

10:15 A.M. NITIN M. CHITTAL AND REBECCA B. FRANK, VC 92-V-117, Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow addition 8.2 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207). Located at 7601 Admiral Dr. on approx. 22,972 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 93-4((7))(4)2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Chittal replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow an addition 8.2 feet from the side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicant was requesting a modification of 6.8 feet to the minimum side yard requirement.

The applicant, Nitin M. Chittal, addressed the BZA and stated that he was requesting an addition for a master bedroom. He said that the proposed ranch style addition would be harmonious with the neighborhood, the mature landscaping would not be disturbed, and the material used for the addition would be similar to that of the existing structure.

In response to Mrs. Harris' question as to why the addition could not be placed to the rear of the existing structure, Mr. Chittal stated that two 25 to 30 year old oak trees would have to be removed. He also noted that the existing floor plan would have to reconfigured. He noted that the proposed addition would be in keeping with the continuity of the flow of the existing houses.

In response to Mr. Hammack's question as to whether he had checked the Zoning Ordinance before purchasing the property, Mr. Chittal stated that he did not. He explained that the previous owner had verbally assured him that the Zoning Ordinance would allow the proposed addition.

Mrs. Thonen noted that the existing structure was located far back from the lot line. Mr. Chittal stated that because of the placement of the house on the lot, an addition in the rear yard would virtually eliminate a usable backyard. He further stated that a neighbor had constructed a similar addition which did not require a variance.

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

Mr. Ribble made a motion to grant VC 92-V-117 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 29, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-117 by NITIN M. CHITTAL AND REBECCA B. FRANK, under Section 18-401 of the Zoning Ordinance to allow addition 8.2 feet from side lot line, on property located at 7601 Admiral Drive, Tax Map Reference 93-4((7))(4)2, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1993; 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-2.
3. The area of the lot is 22,972 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The placement of the house on the lot has caused the need for the variance.
6. The large trees in the backyard would be damaged if the addition were placed to the rear of the property.
7. The addition would be architecturally compatible with the neighborhood.
8. The addition would be compatible with flow of the dwelling.
9. The structure would be disjointed if the addition were to be placed elsewhere.
10. The placement of the house on the lot has caused the need for the variance.
11. The location of the lot on the corner of Morningside Drive and Admiral Drive necessitated the placement of the house so close to the southern lot line.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the variance plat prepared by Alexandria Surveys, Inc., dated June 26, 1992, revised September 10, 1992, submitted with this application and not transferable to other land.

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-2 with Mr. Hammack and Mrs. Harris voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 143, January 5, 1993, (Tape 2), Scheduled case of:

10:25 A.M. THOMAS BURNHAM, SP 92-B-060, Appl. under Sect(s). 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow workshop to remain 3.1 ft. from side lot line and shed to remain 1.2 ft. from rear lot line (12 ft. min. side yard required, 11.6 ft. min. rear yard required by Sect. 3-307). Located at 7523 Axton St. on approx. 12,150 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-2((2))(45)9C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Burnham replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit to allow two reductions to the minimum yard requirements based on error in building locations. One would allow a workshop to remain 3.1 feet from the side lot line and the other would allow a shed to remain 1.2 feet from the rear lot line. He noted that the workshop represented a 74.1 percent error and the shed represented a 89.6 percent error. Mr. Hunter said that the Zoning Ordinance requires a minimum 12 foot side yard and a 11.6 foot minimum rear yard; therefore, the applicant was requesting modifications of 8.9 feet to the side yard and 10.4 feet to the rear yard requirements.

The applicant, Thomas Burnham, 7523 Axton Street, Springfield, Virginia, addressed the BZA. He stated that the storage shed had been in existence when he purchased the property approximately 10 years ago. Mr. Burnham stated that because the backyard had a steep slope, the storage shed would not have a visual impact on the neighbors. He explained that he constructed the workshop below the existing shed so that it too, would have no visual impact on the neighbors. Mr. Burnham said that the trees precluded his placing the workshop anywhere else on the lot. He explained that a County school, which also had a tree buffer, abutted the rear of his property. Mr. Burnham expressed his belief that if he were to place the workshop and shed in the middle of his yard it would be in compliance with the Zoning Ordinance, but it would have a detrimental visual impact on the neighborhood.

In response to Mrs. Harris' question as to when the workshop was constructed, Mr. Burnham stated it was built, over a period of time, approximately 2 years ago. He said the County officials had informed him of the violation. Mr. Burnham related that he had advised the contiguous neighbor of his intention to build the workshop before he even started construction. He noted that after the violation had been issued, the neighbor said that the workshop was larger than she had realized, but she did not have a problem with it.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

The Springfield Civic Association's representative, James Adams, 5405 Denison Place, North Springfield, Virginia, addressed the BZA. He stated that the Civic Association opposed the request because of the size of the structures. He expressed his belief that the shed and the workshop had a visual detrimental impact on the neighbors.

Chairman DiGiulian asked whether the opposition was an action taken by the Civic Association's Board. Mr. Adams said that he, in his capacity as the Planning and Zoning Chairman, had spoken to the President of the Civic Association who supported his opposition to the request. He noted that the issue had not been presented to the Civic Association for a vote.

Mrs. Harris stated that she too had been a Planning and Zoning Chairman for a Civic Association and expressed her concern regarding the representation without a formal vote. Mr. Adams said that the current Planning and Zoning Chairman, Lou Wagner, has been ill and explained that because he was asked to fill-in for Mr. Wagner, he was not familiar with the procedures. He apologized and noted that he did not mean to misrepresent the Civic

Association's position on the issue. Mrs. Harris stated that while she sympathized with Mr. Adams situation, the BZA could not consider the testimony as being representative of the Civic Association when the case had not been presented to the members.

At the request of Mr. Kelley, Chairman DiGiulian called Mr. Burnham back to the podium.

In response to Mr. Kelley's question as to whether the Homeowners Association had contacted him when he was building the workshop, Mr. Burnham stated that they had not. He noted that it had taken approximately four months to build the workshop. He said that until he had received the "Notice of Violation", he had received no complaints regarding the shed or the workshop.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 92-B-060 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated December 29, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-B-060 by THOMAS BURNHAM, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow workshop to remain 3.1 feet from side lot line and shed to remain 1.2 feet from rear lot line, on property located at 7523 Axton Street, Tax Map Reference 79-2{(2)}{45}9C, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 5, 1993; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. The complaints should have been raised during the lengthy construction period.

I. The Homeowners Association should have been aware of the structure when it was being built and if they were not, they lost some of their rights.

J. The shed and the workshop are very well screened and do not impose on the neighbors.

K. To force compliance to the minimum yard requirements would cause an unreasonable hardship on the applicant.

L. There was plenty of time for anyone in opposition to stop construction before the structure was finished.

M. There is an unusual situation in that the property abuts a school and the shed will not have a detrimental impact on the neighbors.

N. There is a shed of comparable size and location on the abutting property.

O. The photograph shows that the shed and the workshop are low and the wall is high; therefore, the roofs are the only visible part of the structures.

P. The shed and workshop were placed so that it has the least impact on the neighborhood.

Q. The shed and workshop conform with the size and location of other sheds in the area.

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 accessory structures shown on the plat 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 prepared by Alexandria Surveys Inc. dated September 2, 1992, submitted with this application, as qualified by these development conditions.

3. All required permits and inspections shall be obtained.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mrs. Harris seconded the motion which carried by a vote of 4-2-1 with Mrs. Thonen and Mr. Pammel voting nay and Mr. Hammack abstaining from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 13, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 146, January 5, 1993, (Tape 2), Information Item:

Request for Additional Time
Rebecca Ann Crump, SP 84-S-079
Ox Road
Tax Map Reference 87-1((1))11

Mrs. Harris made a motion to grant the additional time. Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date is December 16, 1993.

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Page 146, January 5, 1993, (Tape 2), Information Item:

Request for Additional Time
Juliana Campagna T/A Sunrise Day School, SP 89-D-048
1616 Hunter Mill Road
Tax Map Reference 18-3((3))1

Mr. Pammel made a motion to grant the additional time. Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date is December 15, 1993.

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Page 146, January 5, 1993, (Tape 2), Information Item:

Approval of Minutes for October 27, 1992,
November 5, November 17, and November 19, 1992

Mr. Pammel stated that the October 27, 1992 minutes, incorrectly indicate that Mr. Hammack voted against his own motion to deny VC 92-V-053, Maurice R. St. George. He further stated that on Page 29 of the November 5, 1992 minutes, it was indicated that Mr. Rother was the owner of a plant nursery; yet, he was selling outdoor furniture. Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that she would investigate the matter and assure that the necessary corrections were made.

Mr. Pammel made a motion to approve the minutes subject to the above mentioned corrections. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 146, January 5, 1993, (Tape 2), Information Item:

Discussion Regarding the Revocation Hearing
DAR AL-HIJRAH, SP 84-M-009

Chairman DiGiulian stated that he and Mr. Kelley had met with staff and the representatives of the Mosque in an attempt to resolve outstanding problems. He noted that another such meeting would be held on January 11, 1993. Chairman DiGiulian stated that, although he hoped the situation could be resolved without a revocation hearing, he believed that a tentative date should be set.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested a date of February 16, 1993 at 8:00 p.m.

Mrs. Thonen made a motion to schedule the revocation hearing for SP 84-M-009 at the suggested date and time. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 146, January 5, 1993, (Tape 2), Information Item:

Action Regarding Change in the By-Laws
Concerning Eight-Day Final Approval Date for Decisions

After a brief discussion, it was the consensus of the BZA to defer action on any change to the eight-day waiting period for final approval of an application until the next public hearing on January 12, 1993.

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Page 146, January 5, 1993, (Tape 2), Information Item:

Request for Additional Time
Juliana Campagna T/A Sunrise Day School, SP 89-D-048
1616 Hunter Mill Road
Tax Map Reference 18-3((3))1

Mr. Hammack said that the applicant had stated, in her letter requesting additional time, that a site plan had not been submitted to the Department of Environmental Management. He expressed his concerns regarding the issue.

After a brief discussion, it was the consensus of the Board of Zoning Appeals, that the applicant had submitted justification for the additional time that had been granted earlier in the public hearing.

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Page 146, January 5, 1993, (Tape 3), Information Item:

Robert L. Kerr and Sandy R. Kerr, SP 92-C-035
Discussion of the Letter to Judge Jamborsky from Mr. Roy
Regarding the Reconsideration Hearing on December 15, 1992

Chairman DiGiulian noted that Vincent P. Roy, 11933 Riders Lane, Reston, Virginia, had written to Judge Jamborsky to request the removal of Mr. Kelley from the Board of Zoning Appeals. Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that staff had not received a copy of the letter. In explanation, Chairman DiGiulian said that Mr. Roy had expressed his displeasure with both Mr. Kelley and Mr. Ribble for changing their votes at the reconsideration hearing; therefore, Mr. Roy wanted Judge Jamborsky to remove Mr. Kelley from the BZA.

After a brief discussion, it was the consensus of the BZA that its action regarding reconsideration of the application had been correct.

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Page 147, January 5, 1993, (Tape 3), INFORMATION ITEM:

Action Regarding Change in the By-Laws
Concerning Eight-Day Final Approval Date for Decisions

Mrs. Thonen noted that the Robert L. Kerr and Sandy R. Kerr, SP 92-C-035 application, again, demonstrated the problem with the eight-day waiting period expiring before another Board of Zoning Appeals (BZA) public hearing was scheduled. She expressed her concern regarding the procedure. After a brief discussion, it was the consensus of the BZA that the procedure should be modified so that the issue could be resolved.

Chairman DiGiulian requested that Mr. Hammack write a modification to the By-Laws. Mr. Hammack stated that he would have a motion ready for the BZA's action at the next public hearing.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that she would add the item to the action item list on January 12, 1993.

The BZA had a lengthy discussion regarding its concerns and beliefs on the issue.

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Page 147, January 5, 1993, (Tape 3), Information Item:

Robert L. Kerr and Sandy R. Kerr, SP 92-C-035
Discussion of the Letter to Judge Jamborsky from Mr. Roy
Regarding the Reconsideration Hearing on December 15, 1992

Mr. Kelley noted that although he had made some intemperate remarks at the December 15, 1992 public hearing, he had attempted to apologize to Vincent P. Roy, 11933 Riders Lane, Reston, Virginia. He noted this apology had taken place after the meeting and was witnessed by Mr. Ribble. Mr. Kelley expressed his apology for any embarrassment his action might have caused the BZA. He explained that his remarks were in reply to some intemperate remarks made by Mr. Roy.

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Page 147, January 5, 1993, (Tape 3), Information Item:

Letter of Condition Interpretation
SP 92-V-003 Saint Aidan's Episcopal Church
Tap Map Reference 102-3((1))33

Mr. Pammel expressed his concurrence with Barbara Byron, Director, Zoning Evaluation Division, OCP, letter of December 10, 1992, to John B. Kelso, Kelso and Easter Inc., 6911 Richmond Highway, Suite 325, Alexandria, Virginia.

Mr. Ribble noted that the letter was in regards to Saint Aidan's Episcopal Church, SP 92-V-003. He expressed his concerns regarding the church's failure to comply with the development conditions mandated by the Board of Zoning Appeals. Mr. Ribble noted that although they been granted a special permit for an addition, they had been in violation of their original special permit. He noted that many of the community's concerns, such as the teenagers using the parking lot for late night parties, had been discussed at the BZA hearing and the applicant had promised to take immediate action in order resolve the problems, but to date no such action has been taken.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that staff would investigate the matter.

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

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

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

SUBMITTED: February 9, 1993

APPROVED: February 23, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 12, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; James Pammel; and John Ribble. Robert Kelley was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 149, January 12, 1993, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL AND VIRGINIA W. MAROWITZ, VC 92-M-013, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 3 lots with proposed Lot 3 having lot width of 12 ft. (80 ft. min. lot width required by Sect. 3-306). Located at 3109 Sleepy Hollow Rd. on approx. 1.56 ac. of land zoned R-3. Mason District. Tax Map 51-3 ((1)) 15. (RECONSIDERATION HEARING GRANTED)

William Baskin, appeared on behalf of William Hansbarger, the attorney of record for the applicants. He said Mr. Hansbarger could not be present because of illness and requested that the case be deferred. Mr. Baskin said he believed the applicants would be at a severe disadvantage if he had to proceed since he had not had an opportunity to read the materials relating to the case.

Chairman DiGiulian polled the audience and asked if a citizen representative could come forward to address the deferral request.

George Chuzi, First Vice President of the Sleepy Hollow Citizens Association, said there were many citizens present who opposed the request. He said it would be a terrible imposition to the citizens to postpone the public hearing.

Mr. Hammack said he understood the citizens' concerns but that he did not believe it would be appropriate to proceed. He suggested that the case be deferred to a night meeting.

Kenneth Longmyer, 3108 Sleepy Hollow Road, Falls Church, Virginia, strongly opposed the deferral since this was the third time the case had come before the BZA. He pointed out that Mr. Hansbarger had tried last week to get the citizens to agree to a deferral and believed the circumstances were somewhat suspicious.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted for the record that this was a reconsideration hearing which would require an entire public hearing. She said the Clerk was checking on a possible date of April 20th since the night meetings for February and March had already been scheduled.

Mr. Hammack made a motion to defer the case to April 20, 1993, at 8:00 p.m. Mrs. Harris seconded the motion for purposes of discussion.

Following a discussion among the BZA regarding the deferral, the motion to defer the case passed by a vote of 4-1 with Mrs. Thonen voting nay. Mr. Ribble was not present for the vote. Mr. Kelley was absent from the meeting.

Jane Kelsey, Chief Special Permit and Variance, pointed out that the case would have to be renoticed and readvertised.

Mr. Baskin apologized to the BZA and to the citizens.

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Page 149, January 12, 1993, (Tape 1), Scheduled case of:

9:10 A.M. DANIEL M. CURTIS, VC 92-D-099, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition of 21.5 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-307). Located at 12302 Cliveden St. on approx. 9,832 sq. ft. of land zoned R-3. Dranesville District. Tax Map 11-1 ((8)) (4) 119.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Daniel M. Curtis, 12302 Cliveden Street, Herndon, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Greg Riegle, Staff Coordinator with the Zoning Evaluation Division. She said the applicant was requesting a 3.5 foot variance in order to construct an addition 21.5 feet from the rear lot line.

Mr. Curtis said he purchased his property in good faith from the Pulte Corporation and it was graded and sited according to a contour map which showed a sloping back yard. He said after he had been living in the house for approximately three weeks a flat gravel area was constructed behind his property for a detention pond. Mr. Curtis said consequently his lot is now steep and then flattens out with his rear lot line being located in the detention pond area. He added that he would like to construct a covered deck in order to make the yard a usable part of the property, the rear of his lot backs up to common ground, and it will not adversely impact the neighbors.

In response to questions from the BZA, Mr. Curtis replied he had used the rope in the photographs to show the slope of his back yard. He said he had not seen the letter from Carol Taylor stating her opposition and staff supplied him with a copy.

Mr. Curtis said the deck would only be coming out 12 feet and it would not impact the flat area. In response to a question from Mr. Hammack, Mr. Curtis used the viewgraph to show the location of the road. He said the porch would be open underneath.

Mrs. Harris said it appeared from the photographs that most of the neighbors have open decks. He said his next door neighbors, the Taylor's, have an enclosed deck.

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

Mr. Pammel made a motion to grant VC 92-D-099 for the reasons outlined in the Resolution and subject to the development conditions contained in the staff report dated November 24, 1992.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-099 by DANIEL M. CURTIS, under Section 18-401 of the Zoning Ordinance to permit addition 21.5 feet from rear lot line, on property located at 12302 Cliveden Street, Tax Map Reference 11-1{{8}}{4}119, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 1993; 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 9,832 square feet.
4. The applicant has presented testimony showing that the standards required for the granting of a variance have been met, specifically the unusual shape of the lot in question and the location of the dwelling to the rear portion of the lot. It is set back 43.8 feet from the front lot line and that is deeper than normally found with most single family residential lots, thus leaving a minimal area to the rear for any additions.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Greenhorne and O'Mara dated October 3, 1987, recertified on June 26, 1992 submitted with this application and not transferable to other land.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 20, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 161, January 12, 1993, (Tape 1), Scheduled case of:

9:20 A.M. JAMES A. KELLEY AND SHARON B. KELLEY, VC 92-V-116, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6 ft. high fence to remain in the front yard of a corner lot (4 ft. maximum hgt. allowed by Sect. 10-104). Located at 1905 Belle Haven Rd. on approx. 17,837 sq. ft. of land zoned R-4. Mount Vernon District. Tax Map 83-3 ((14)) (13) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James A. Kelley, 1905 Belle Haven Road, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicants were requesting a 2 foot variance in order to allow a 6 foot high fence to remain in the front yard of a corner lot where a maximum of 4 feet is allowed.

Mr. Kelley asked the BZA to grant his request and allow the fence to remain in the back portion of his property that is deemed as a front yard of the corner lot. He said the fence is behind his lot line and does not abut the intersection of Windsor and Belle Haven Roads. Mr. Kelley said at the time the fence was constructed he was not aware of any restrictions. He said his family has resided at the property since August 1990 and that he believed the property has an unique feature since it is located at the intersection of two sloping roads. Mr. Kelley said in the Spring of 1992 he and his wife decided to replace the 3 and 1/2 foot chain link fence that had been on the property for approximately 20 years. He said although Windsor Road is not classified as a major thoroughfare by the County it should be due to the high volume of vehicular traffic. The 6 foot high fence was selected because of people cutting through his property and the debris being thrown out of passing cars into their yard. Mr. Kelley said when he received the Notice of Violation he filed an appeal and then asked for a stay of the appeal until he could file the variance application. He said the fence provides safety for his son and his friends while playing in the yard. Mr. Kelley then addressed each of the nine standards.

In response to a question from Mr. Hammack, Mr. Kelley said he did not know if the other fences in the neighborhood over 6 feet high in front yards were constructed under variances.

Mrs. Thonen asked if he was aware of the neighbors' opposition. Mr. Kelley said he had discussed the construction of the fence with the neighbor during the early stages of construction and had offered to add landscaping on the neighbors' property. He said the neighbors declined and filed a complaint citing a safety issue with entering and exiting their property. Mr. Kelley added that the Zoning Inspector who visited the site did not believe there was a sight distance problem from the neighbors' property.

Mrs. Thonen said there was nothing in the Zoning Ordinance to allow 6 foot high fences in front yards to protect children. Mr. Kelley said if Windsor Road was designated as a major

thoroughfare, as it should be, he could put up a 8 or 10 foot fence under the County Ordinance.

Chairman DiGiulian called for speakers in support of the request and hearing no reply called for speakers in opposition.

Richard Becker, 1912 Windsor Road, Alexandria, Virginia, said he had pointed out to the applicants that the covenants prohibited erecting a fence more than 4 feet in height. He said since both the applicants are attorneys they should have been aware of the covenants although they may have been unaware of the County regulations. Mr. Becker said he did not believe the applicants met the nine standards for a variance and noted that the fence blocked his view when entering and exiting his property. He added that to grant the applicants' variance would set a bad precedent in the neighborhood and pointed out the fence could be moved back and still leave a large play area for the children.

The owner of the Accotink Fence Company said he had not brought a copy of the contract with him as he did not believe it was necessary. He said he had not been aware of the County restrictions and when he contacted the County prior to constructing the fence he was told there were no restrictions.

A discussion took place between the BZA and the contractor regarding the County restrictions with respect to fences. He said the regulations in Fairfax County were quite different from the adjoining counties.

In rebuttal, Mr. Kelley said the covenants that the speaker addressed were 50 years old and were not enforced. He pointed out that there were other fences similar to his on corner lots in the neighborhood.

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

Mrs. Harris made a motion to deny VC 92-V-116 for the reasons outlined in the Resolution.

Mr. Ribble said the fence contractor had made a mistake in erecting the fence and assured the applicant that the covenants in the Belle Haven Subdivision were still enforced.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-116 by JAMES A. KELLEY AND SHARON B. KELLEY, under Section 18-401 of the Zoning Ordinance to permit 6 foot high fence to remain in the front yard of a corner lot, on property located at 1905 Belle Haven Road, Tax Map Reference 83-3((14))(13)1, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 1993; 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 17,837 square feet.
4. It is an unusual situation since the subject property is a corner lot, but it is not exceptional because there are many corner lots in the area of the subject property.
5. It is a very rolling subdivision, therefore the topography of the subject property is not exceptional to the area.
6. The applicant did not clearly demonstrate a hardship.
7. A 4 foot high fence would not effectively prohibit or unreasonably restrict all reasonable use of the subject property.
8. When driving through the area, it does not appear that the other 6 foot high fences referenced by the applicant exists within front yards.
9. The character of the neighborhood has been effectively maintained by the citizens in keeping the open character and using the rollingness of the area to make it well landscaped and make it an open area.
10. A 6 foot high fence in a front yard would set a bad precedent.
11. The next door neighbor has testified that there is a sight distance problem when he is exiting from his property and a 6 foot high fence on the applicant's property could prohibit safe egress/ingress by the neighbor.
12. Cutting the fence back to 4 feet in height would not be a burden on the applicant.
13. The fault also lies with the fence contractor since he should be aware of the restrictions and should advise citizens of the restrictions with respect to 6 foot high fences in front yards.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 20, 1993.

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Page 153, January 12, 1993, (Tape 1), Scheduled case of:

9:30 A.M. MOUNT VERNON ON THE POTOMAC CITIZENS ASSOCIATION, SPA 76-V-277, Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend S 277-76 for marina to permit community tennis courts, and reduction in parking. Located at 9527 Mount Vernon Landing on approx. 10.3 ac. of land zoned R-2 Cluster. Mount Vernon District. Tax Map 110-3 ((1)) D and pt. E.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert E. Plett, 9370 Mount Vernon Circle, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the subject property is currently developed with a 36 slip marina, a brick restroom facility, a 26 bay parking area, and a concrete boat ramp. The applicant was requesting an amendment to an existing special permit to permit community tennis courts and a reduction in parking. Ms. Langdon said a condition of the previously approved special permit required a minimum of 40 parking spaces on site. She said staff had concluded with the implementation of the proposed development conditions the applicant's request would be in harmony with the Comprehensive Plan and would satisfy all of the General Standards and the Standards for all Group 4 Uses; therefore, staff recommended approval. Ms. Langdon added that the development conditions dated January 12, 1993, incorporated and superseded all applicable conditions of the previously approved special permit.

In response to a question from Mrs. Harris, Ms. Langdon said the conditions were written to address the runoff that might be generated by the addition of the tennis courts.

Mr. Platt, President of the Board of the Mount Vernon on the Potomac Citizens Association, said in response to questions raised at the Association's 1991 meeting the Board of Directors developed a comprehensive plan for the beautification of the common areas. He said the beautification plan was submitted to every household and the response was overwhelmingly positive. At its September 30, 1992 Annual Meeting, the Association presented a detailed briefing on the status of the proposal and the permit application, and once again the Association members were highly supportive. Mr. Platt said the proposed tennis courts, together with the planned landscaping, will offer many benefits to the community as well as the County. He said the proposal will enhance the community, will be for the exclusive use of the residents and their guests, and will not be lighted. Mr. Platt introduced Mrs. Manaport who explained the landscaping plan.

Mrs. Manaport said many of the surrounding areas offer play areas, tennis courts, and swimming pools which enable the families to get together and enjoy a sense of community. She said the biggest concern expressed by the neighbors was the possible obstruction of water view; therefore, the tennis courts were proposed to be located as close to the corner of the driveway and parking lot as possible. Mrs. Manaport said the fencing would be black vinyl to minimize the visual impact and the landscaping plan will utilize low barrier plantings and will concentrate most of the trees around the parking area and along the sides common to the neighboring yacht club. There will be no plantings in the 100 Year Floodplain and the native plantings will be utilized.

Chairman DiGiulian called for speakers in support of the request.

David Howell, 9519 Mount Vernon Landing, Alexandria, Virginia, said the Association has been very cooperative in addressing his concerns and believed that the proposed use will be a tremendous improvement to the neighborhood.

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

Mr. Ribble made a motion to grant SPA 76-V-277 for the reasons noted in the Resolution and subject to the development conditions contained in the staff report dated January 12, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 76-V-277 by MOUNT VERNON ON THE POTOMAC CITIZENS ASSOCIATION, under Section 3-203 of the Zoning Ordinance to amend S 277-76 for marina to permit community tennis courts, and reduction in parking, on property located at 9527 Mount Vernon Landing, Tax Map Reference 110-3((11))D and pt. E, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 1993; 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 (Cluster).
3. The area of the lot is 10.3 acres.
4. The area of the subject property is a beautiful area.
5. It is impressive the approach that the applicant took to inform the homeowners and obtain their approval.

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 standards for all Group 4 Uses 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 prepared by Holland Engineering dated April 24, 1992, and the landscape plan prepared by SRA dated December 15, 1992 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit SHALL BE provided to all members of the Mount Vernon on the Potomac Citizens Association.

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. Twenty (20) parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.

6. Storage of boats and/or trailers shall be prohibited on site.

7. The hours of operation for the tennis court shall be limited to dawn to dusk. There shall be no lights provided for the tennis courts.

8. The maximum number of memberships shall be 115.

9. The maximum number of boat slips shall be 36.

10. Transitional screening shall be modified along the northern and western lot lines as shown on the approved landscape plan. Additional landscaping shall also be provided as shown on the approved landscape plan.

11. The barrier requirement shall be waived along all lot lines, provided the tennis courts are fenced with a ten (10) feet high chain link fence.

12. Accessible parking spaces shall be provided in accordance with the PFM standards, per review and approval of DEM at the time of site plan review.

13. Infiltration type BMPs or other BMPs acceptable to DEM shall be provided along the southern and/or southeastern sides of the tennis courts to minimize the effects of the increased stormwater runoff on the Dogue Creek Resource Protection Area (RPA) and the 100 year floodplain. These BMPs and the clearing and grading associated with them shall be located outside of the RPA.

14. The private dock which is adjacent to Lot 45 shall not be part of this special permit approval.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 20, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 155, January 12, 1993, (Tape 1), Scheduled case of:

9:45 A.M. BILLY D. LITTLE, SP 92-L-061, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow dwelling to remain 8.4 ft. from side lot line (10 ft. min. side yard required by Sect. 3-407). Located at 3617 Elmwood Dr. on approx. 11,266 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((3)) (A) 7. (Concurrent with VC 92-L-119).

9:45 A.M. BILLY D. LITTLE, VC 92-L-119, Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.8 ft. from street line of a corner lot and allow construction of carport 16 ft. from street line of a corner lot (30 ft. min. front yard required by Sect. 3-407) and allow workshop to remain in front yard of lot containing less than 36,000 sq. ft. (accessory structure not permitted in front yard by Sect. 10-104). Located at 3617 Elmwood Dr. on approx. 11,266 sq. ft. of land zoned R-4. Lee District. Tax Map 82-2 ((3)) (A) 7. (Concurrent with SP 92-L-061).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's wife, Janice D. Little, 3617 Elmwood Drive, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the request involved concurrent special permit and variance applications. The request for a special permit resulted from an error in building location to allow an existing laundryroom addition to remain 8.4 feet from the side lot. Ms. Langdon said a minimum side yard of 10 feet is required by the Zoning Ordinance on a R-4 lot.

With respect to the variance request, Ms. Langdon said this resulted from the applicants' proposal to construct a kitchen addition to be located 15.8 feet from one lot line of a corner lot, to construct a double carport to be located 16.0 feet from the other lot line of a corner lot, and to allow a workshop to remain in the front yard of a lot containing less than 36,000 square feet. She said the applicant was requesting a variance of 14.2 feet for the kitchen addition and a variance of 14.0 for the carport addition. Ms. Langdon said the dwelling on adjacent Lot 6 to the east is located approximately 14 feet from the shared side lot line.

Ms. Little said she and her husband have lived on the property for almost 12 years and the addition was there when they purchased the property. She said they would like to expand the existing kitchen and it would not be economically feasible to relocate the kitchen to the rear of the house to avoid having to request a variance. The side street adjacent to their property has never been developed and probably never will be although it is considered a street. Ms. Little said the shed/workshop was constructed in its present location because of a drainage problem that makes the back yard very wet.

In response to questions from the BZA, Ms. Little replied that citizens access Burgundy Farm School from Burgundy Road, which is off Norton Road. She said she could not think of any other houses on Elmwood Drive that have structures that extend into the front yards.

Mr. Ribble asked the width of the undeveloped street adjacent to the subject property. Ms. Little said it was approximately 30 feet.

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

Mrs. Thonen made a motion to grant SP 92-L-061 for the reasons outlined in the Resolution and subject to the development conditions contained in the staff report dated January 5, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-L-061 by BILLY D. LITTLE, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow dwelling to remain 8.4 feet from side lot line, on property located at 3617 Elmwood Drive, Tax Map Reference 82-2((3))(A)7, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 1993; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. The structure was not constructed by the applicant and has been on the property for several years and the variance is only 1.6 feet.

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 addition shown on the plat 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 prepared by Javier A. Arencibia, Architect, dated May 1992, revised September 1992, submitted with this application, as qualified by these development conditions.

3. A building permit reflecting the location of the addition shall be obtained within 90 days from the final approval date of this special permit. The applicant shall be responsible for the submission of building/construction plans or other submissions deemed appropriate by the County, if these are required.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 20, 1993. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Thonen said although she understood the applicant not wanting to relocate the kitchen to the rear of the house she could not support an addition in the front yard. She said she also had concerns with the 22 foot wide carport and the workshop.

In response to a question from the BZA, Jane Kelsey, Chief, Special Permit and Variance Branch, replied that the front yard is defined as that area between the front of a house and the front lot line, regardless of where the building restriction line is, which is different from "a required front yard."

Mrs. Harris said she believed to allow the addition in the front yard would change the character of the neighborhood, the size of the carport could be cut down, and that planting should be added around the workshop in the back to mitigate visual impact. Chairman DiGiulian and Mr. Hammack did not agree with the suggestion of plantings.

Mrs. Thonen asked if there were plans to develop Route 169 and Ms. Langdon said not at this time. She said based on staff's input she did not have a problem with the carport or the workshop. The other members agreed.

Mrs. Thonen made a motion to grant-in-part VC 92-L-119 as noted in the Resolution subject to the development conditions contained in the staff report dated January 5, 1993.

Mr. Hammack agreed that the requested addition was too large to be constructed in the front yard.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-119 by BILLY D. LITTLE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.8 feet from street line of a corner lot **(THE BZA DID NOT GRANT THE ADDITION)** and allow construction of carport 16 feet from street line of a corner lot and allow workshop to remain in front yard of lot containing less than 36,000 square feet **(THE BZA DID GRANT CONSTRUCTION OF THE CARPORT AND ALLOWED THE WORKSHOP TO REMAIN)**, on property located at 3617 Elmwood Drive, Tax Map Reference 82-2((3))(A)7, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 12, 1993; 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 11,266 square feet.

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

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

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

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

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

1. This variance is approved for the location and the specified structures and additions shown on the plat prepared by Javier A. Arencibia, Architect, dated May 1992, revised September 1992, submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 20, 1993. This date shall be deemed to be the final approval date of this variance.

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The BZA recessed at 10:40 a.m. and reconvened at 10:46 a.m.

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Page 159, January 12, 1993, (Tape 2), Scheduled case of:

10:15 A.M. KETTLER & SCOTT, INC., SP 89-Y-035, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit community recreational facilities. Located 6119 Pleasant Valley Rd. on approx. 5.13 ac. of land zoned R-C, AN, WS. Sully District. Tax Map 53-1 ((1)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Richard Hausler, agent for Kettler & Scott, and Jack Spring, attorney for Virginia Run, appeared jointly on behalf of the application.

Mr. Hausler said in essence they concurred with the staff report with two modifications to the development conditions as requested by the citizens and the association.

Jane Kelsey, Chief, Special Permit and Variance Branch, said the Clerk had informed her that Mr. Hausler had not reaffirmed the affidavit. Mr. Hausler did so and proceeded to discuss the plat with the BZA.

Mrs. Harris said it was her understanding that changes had been made to both the plat and the development conditions within the past hour. Mr. Hausler explained that no changes had been made to the plat only to the development conditions. Mrs. Harris said she would not feel comfortable proceeding with the public hearing until she had reviewed the revisions and that she also believed the citizens should have an opportunity to review the revisions.

Chairman DiGiulian asked for staff's input. Lori Greenlief, Staff Coordinator, explained that the plat showed visually what the development conditions contained in the staff report stated.

Mrs. Harris asked what changes had been discussed just prior to the public hearing. Ms. Greenlief said the changes included additional parking, additional possible stormwater management area, and a possible play field and these were not shown on the plat. She said it was her understanding these were things that the community wished to see on the plat and as part of the approval and suggested that the case be deferred.

Jack Spring said the homeowners association had seen the development conditions referred to by staff and agreed with them. He said the association's first preference was for the BZA to have a revised plat so it would know exactly what it was acting on. Mr. Spring said there were some homeowners who had not seen the development conditions and added that he would not object to a deferral.

Ms. Kelsey said staff was not prepared to comment on the applicant's revisions to the development conditions at this time.

Chairman DiGiulian asked staff for a deferral date. Ms. Kelsey said the applicant had indicated that the new plats could be submitted to staff within three or four days and if that was the case staff could have comments back to the BZA by January 26th. She pointed out that the BZA's caseload was not quite as heavy on February 2nd.

Mr. Hausler said the applicant was prepared to proceed with construction on March 1st and believed that the February 2nd date would not impact that date. He deferred to the BZA.

Mr. Spring suggested that perhaps the BZA would like to hear from some of the citizens who were present. Chairman DiGiulian said the BZA would only hear comments with regard to the deferral.

Joy Higgbee said she had small children and may not be able to come back on February 2nd and asked the BZA to hear from the citizens.

Mrs. Harris explained to the speaker that the BZA believed that the citizens should review the revised plat since it might address some of their concerns prior to the BZA holding the public hearing. She added that the speaker could submit her testimony in writing if she could not be present.

Mrs. Thonen made a motion to defer SP 89-Y-035 to February 2, 1993. Ms. Kelsey suggested 10:30 a.m. and Mrs. Thonen so moved. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 160, January 12, 1993, (Tape 2), Scheduled case of:

10:30 A.M. MCLEAN CHILDREN'S ACADEMY, INC., SPR 82-D-083-2, Appl. under Sect(s). 3-303 of the Zoning Ordinance to renew SP 82-D-083 for nursery school and child care center. Located at 6900 Elm St. on approx. 10,390 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((5)) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Touchton replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the use was originally approved in 1981 and had been amended and renewed since that time. The request before the BZA was to renew the existing special permit with no changes in the operation. Ms. Greenlief said the maximum daily enrollment is 60 children with 4 employees on site at any one time and the hours of operation are from 8:00 a.m. to 6:00 p.m. She said it has been staff's position each time the application comes before the BZA that the use as proposed is too intense for the substandard lot on which it is located. Ms. Greenlief said there is no room to provide the screening nor the minimum number of parking spaces that is required by the Zoning Ordinance. She added that on site circulation is cumbersome and because of the inadequate parking vehicles line up on Elm Street to enter the site which staff believes is an adverse traffic impact on the neighborhood. Ms. Greenlief said staff recommended denial of the application for the reasons outlined in the staff report.

In response to a question from Mr. Hammack, Ms. Greenlief replied there had been no complaints filed against the school since the last time the applicant appeared before the BZA.

The founder and director of the school, Barbara Touchton, said she was requesting a renewal of the special permit which was originally approved in 1981 and was renewed in 1987 by an unanimous vote of the BZA and at that time the staff report was essentially the same. Ms. Touchton said one of the goals for establishing the school was to be able to provide a homelike environment for the children. She said the school is located on the periphery of the neighborhood adjacent to the McLean Central Business District, the McLean Library, and the Community Center. The school has always gotten high marks from the licensing division for the quality of the staff and the care and education the children receive. Ms. Touchton said neighbors support the application, there are no objections from local associations, and Supervisor Berger also supports the school. She said the school has been in existence for 11 years and has been sensitive to the neighbors, the neighbors believe the screening and fencing is sufficient, and pointed out that the teachers use the tandem parking. Ms. Touchton said many parents carpool, some students walk to the center, and the arrival time for students has been staggered to alleviate the impact.

Ms. Touchton addressed Development Condition Number 8 and agreed that perhaps staggering the end of sessions by half an hour would be beneficial and said she would be willing to stagger the beginning of the sessions, making the hours of operation 7:30 a.m. to 6:30 p.m. She asked that Development Condition Number 12 be amended to allow the Zoning Administrator the authority to grant three one year extensions.

Mrs. Harris pointed out that Development Condition 9 requires that all parking and pick up/delivery of children shall be on site. She and the applicant discussed how this could be accommodated since the transportation analysis indicates that the site cannot accommodate 11 additional parking spaces. Ms. Touchton said there are presently 3 parking spaces on site.

Mr. Hammack said that he basically agreed with Mrs. Harris' comments, but that he would have no problem with the center continuing the use. He pointed out that he did not believe the applicant would be able to continue the center on the site indefinitely.

Mrs. Harris noted that the October 9, 1990 transcript indicated that the applicant had indicated that following discussions with the Dranesville Supervisor at that time, Lilla Richards, that 6 parking spaces could be approved. Jane Kelsey, Chief, Special Permit and Variance Branch, said that the application that came before the BZA in 1990 was denied. Ms. Touchton said the 1990 application had been for special permit renewal only.

Ms. Touchton said it would be a hardship to relocate the school and added that she would be willing to provide 3 additional parking spaces. She added that the parents are aware of staff's concerns and are careful to avoid doing anything adverse.

Chairman DiGiulian called for speakers in support of the request.

Karen Owen, 6324 Halsey Road, McLean Virginia testified that parking has not been a problem for her since she has been using this facility for her child. She follows the guidelines that the center gives to all the parents and had never seen more than one car queing in front of her on Elm Street. She said that when she must go to the site to pick up her child, if the child is sick, that she parks in one of the two tandem spaces. Ms. Owen said that during parent teacher meetings, she parks across route 123 or at the library.

Mrs. Harris asked Ms. Owen if she was aware that they are breaking the conditions set by the BZA and agreed to by the applicant. The speaker did not comment.

Mr. Pammel stated that he, too, was concerned about the parking since just recently the BZA had denied a similar request near Tysons Corner where the applicant had requested only nine children because the applicant could not meet the standards. He added that he had problems with the application.

Sue Gordon, 1653 Lozane Road, Vienna, Virginia, stated that her children have been at the center for five years and she adheres to the MCA guidelines. She confirmed that for larger events, she parks at the library.

Tad Work, 1105 Carper Street, McLean, Virginia said that sometimes she is able to walk to the facility, but when she drives she never has a problem since there is never more than one or two cars waiting to back in and around. She submitted a letter from one of the other parents, Clotildi Vidoni, 7121 Warbler Lane, McLean, Virginia, who stated there have been no problems since 1987 and it is a homelike setting.

There was no speakers in opposition to the request and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPR 82-D-083-2 subject to the development conditions contained in the staff report dated January 5, 1993. He said the center was an ongoing use that had been approved by the BZA before and added that he believed the applicant should come back to the BZA in 5 years for renewal and the applicant should also begin searching for a new site.

Mrs. Harris said she did not believe the application met the standards set forth in the Zoning Ordinance as the use was too intense for the site.

Chairman DiGiulian said he would support the motion because there were no changes and there have been no complaints filed.

Mrs. Thonen suggested that the applicant approach the owner of the adjacent vacant lot in order to purchase the lot for additional parking or look into a shared parking agreement.

Mr. Pammel made a substitute motion to defer the application to allow the applicant an opportunity to look into alternatives with regard to the parking.

Mrs. Harris seconded the motion.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested April 6, 1993, at 9:00 a.m.

Chairman DiGiulian asked the applicant if the date and time was agreeable.

Ms. Touchton came forward and said that 2 of the 3 parking spaces are used by the teachers. (She used the viewgraph to show the location.) She said she would do whatever was necessary.

The BZA discussed several alternatives with the applicant with respect to the parking situation such as a shared parking agreement and leasing the vacant adjacent lot.

Ms. Kelsey pointed out the application may have to be readvertised if the applicant decides to increase the land area.

The motion to defer the application carried by a vote of 6-0 with Mr. Kelly absent from the meeting.

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Page 162, January 12, 1993, (Tape 2), Information Item:

Approval of January 5, 1993 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 6-0 with Mr. Kelley absent from the meeting.

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Page 162, January 12, 1993, (Tape 2), Information Item:

Intent to Allow Withdrawal of Moienamin Appeal, A 92-P-011

Mr. Hammack made a motion to issue an intent to allow the withdrawal of A 92-P-011. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Kelley absent from the meeting.

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Page 162, January 12, 1993, (Tape 2), Information Item:

Change of Name for SP 84-P-049, Gilbert Security Systems, Inc.

Mrs. Thonen made a motion to allow the applicant in SP 84-P-049, Gilbert Security Systems, Inc., to change its name to Gilbert Small Arms Range, Inc. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

BOARD OF ZONING APPEALS RESOLUTION

The Fairfax County Board of Zoning Appeal's (BZA) does hereby on this the 12th day of January 1993, allow a change in name of the applicant for SP 84-V-049, from **GILBERT SECURITY SYSTEMS, INC.** to **GILBERT SMALL ARMS RANGE, INC.** All conditions of this special shall remain in effect. The Non-Residential Use Permit shall be amended to reflect this change.

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Page 162, January 12, 1993, (Tape 2), Information Item:

Robert L. Kerr and Sandy R. Kerr, SP 92-C-035

Mr. Hammack said that he believed the case had been discussed indepth during the reconsideration hearing. He gave the reasons why he had made the motion to approve and said he saw no useful purpose in holding another public hearing. He said he would make a motion to deny Mr. Roy's request, if the BZA deemed it necessary.

Chairman DiGiulian said he believed that the request was denied due to the fact that the BZA had not taken action since it was received during its holiday recess. He said the letter did not address land use issues and appeared to be a fight between neighbors.

It was the consensus of the BZA that no further action was necessary.

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Page 162, January 12, 1993, (Tape 2), Information Item:

Conflict of Interest Statement

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the BZA to return their Conflict of Interest Statements to the Board of Supervisors Clerk by January 15, 1993.

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Relocating to the New Government Center

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the BZA to check their schedules to determine when it would be convenient for them to meet with staff to go over the equipment at the New Government Center.

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McLean Bible Church

Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to a letter from Lee Fifer, attorney for McLean Bible Church.

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UVA Intern

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Paul Godin, an intern attending the University of Virginia, who was in attendance to see how the BZA worked. The BZA welcomed Mr. Godin.

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Mosque Revocation Hearing

Mr. Pammel asked for an update on the hearing. Chairman DiGiulian said he would be meeting with the Mosque representatives on January 13, 1993.

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As there was no other business to come before the Board, the meeting was adjourned at 11:53 a.m.

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

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

SUBMITTED: March 2, 1993

APPROVED: March 9, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 19, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. John Ribble was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:00 p.m. and Mrs. Thonen gave the invocation.

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Page 166, January 19, 1993, (Tape 1), Executive Session:

Mr. Hammack made a motion for the Board of Zoning Appeals to move their meeting into the Conference Room and hold an Executive Session to discuss legal matters involving the alleged violations of the special permit conditions on the Al Hijrah Mosque. Mr. Kelley seconded the motion, which carried by a vote of 5-0. Mr. Pammel was not present for the vote. Mr. Ribble was absent from the meeting.

After the Executive Session, the Board reconvened.

MRS. THONEN THEN MOVED THAT THE MEMBERS OF THE BOARD OF ZONING APPEALS CERTIFY THAT TO THE BEST OF THEIR KNOWLEDGE, ONLY PUBLIC BUSINESS MATTERS LAWFULLY EXEMPTED FROM THE OPEN MEETING REQUIREMENTS PRESCRIBED BY THE VIRGINIA FREEDOM OF INFORMATION ACT, AND ONLY MATTERS IDENTIFIED IN THE MOTION TO CONVENE EXECUTIVE SESSION WERE HEARD, DISCUSSED, OR CONSIDERED BY THE BOARD OF ZONING APPEALS DURING THE EXECUTIVE SESSION.

Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mr. Ribble was absent from the meeting.

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Page 165, January 19, 1993, (Tape 1), Scheduled case of:

8:00 P.M. ANNA MARIE TRUONG, SP 91-M-068, appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location, to allow accessory structure (shed/workshop) to remain 2.1 ft. from rear lot line and 0.9 ft. from side lot line (11.8 ft. min. rear yard and 12 ft. min. side yard required by Sects. 3-307 and 10-104), on approx. 10,537 s.f. located at 4205 Muir Pl., zoned R-3, Mason District, Tax Map 72-2((3))(Q)14. (DEF. FROM 2/4/92 TO ALLOW APPLICANT TO BE PRESENT. DEF. FROM 2/11/92 FOR APPLICANT AND BUILDER TO BE PRESENT AND FOR ADDITIONAL DOCUMENTATION FROM BUILDER. DEF. FROM 4/14/92 AND 6/30/93 FOR STAFF TO SUBPOENA BUILDER. DEF. FROM 7/30/92 TO ALLOW COURT TO ISSUE A SHOW CAUSE ORDER. DEF. FROM 10/13/92 TO ALLOW COURT TO ISSUE AN MANDATORY INJUNCTION))

Chairman DiGiulian asked if the applicant was present and Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the applicant was not present, nor was the applicant's representative present.

A discussion ensued to review the history of the application and the previously scheduled hearings, which the applicant had been compelled to attend. It was stated that the last action was a deferral to allow the Court to issue a mandatory injunction for the appearance of the builder. Past attempts to subpoena the builder had not been successful.

Greg Riegle, Staff Coordinator, said that he had spoken to the County Attorney's Office the previous day and had been informed that repeated attempts to subpoena the builder had been unsuccessful. He has either moved out of the area or out of the State. He said that the applicant and agent had been contacted to find out if they had any knowledge of the builders current address and found that the address used by the process servers was the correct address, to the best of the applicant's knowledge. The County Attorney's Office advised that further pursuit of the subpoena and subsequent legal actions would involve significant cost and time.

Mrs. Harris questioned whether the case had been heard and deferred for decision only. Mr. Riegle checked to see if this was the case. The ensuing conversation by Board members concluded that the only testimony required was that of the builder. The applicant had been told that this was the last time the case would be scheduled and the applicant had to be present.

Ms. Kelsey reviewed the history of attempts to subpoena the builder: The first attempt was successful but had been made by a private process service and the builder did not appear. Service would have to be done by the Sheriff's Office in order for the builder to be found in contempt of court if he did not appear. This action was attempted unsuccessfully by the Sheriff's Office. The County Attorney's Office now recommends that no further action be taken.

In answer to a question from Mrs. Thonen as to what the County Attorney recommended, Ms. Kelsey said that the advice was to dispose of the case by granting or denying the application.

Mr. Pammel said that he was not pleased that the Board was unable to get the builder to appear. Mr. Kelley said that he believed it was unfair to the applicant who had appeared five or six times before the Board; the Board had left the applicant with the impression that they would keep her informed about the status of the subpoena. Mr. Pammel advised that he would move for approval because he frankly did not believe that Ms. Truong was the culprit in the situation; she had difficulty in understanding what was being done and the contractor did what he wanted to do.

Mrs. Harris said that, regardless of what direction the motion took, she recalled that this was the last time the case would appear on the agenda.

In answer to a question from Chairman DiGiulian, Ms. Kelsey said that she recalled advising the applicant that staff would make contact prior to the public hearing, which staff had done through the applicant's agent, Mr. Lau. Mr. Riegle had also advised the agent of the status of the subpoena and asked if he knew of a better address which could be provided to the Sheriff's Office. Mr. Lau said neither he nor the applicant had such information. Mr. Lau was reminded of the hearing date. Mr. Riegle pointed out the fact that communication with the applicant and the agent was difficult because of no English spoken and very little English spoken, respectively.

Mr. Pammel made a motion to grant SP 91-M-068 which was first heard on February 4, 1992, which failed for lack of a second.

Mrs. Harris made a motion to deny SP 91-M-068 for the reasons outlined in the Resolution.

Mr. Kelley said that he never doubted the applicant's statement that the builder said the he would obtain the permits. He said that he wanted the builder to appear because, under threat of the loss of his license and/or not being able to do any further business in the County, he might be induced to move the addition at no expense to the applicant.

Mrs. Thonen said that she could not see any place else on the lot where the addition could be placed and not be in violation. Mr. Kelley and Mrs. Harris both voiced the opinion that the addition could be moved to a more appropriate place within the building restriction line and/or possibly require less of a variance.

Mrs. Harris asked the Clerk to incorporate Mr. Kelley's finding's of fact into her motion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 91-M-068 by ANNA MARIE TRUONG, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location, to allow accessory structure (shed/workshop) to remain 2.1 ft. from rear lot line and 0.9 ft. from side lot line, on property located at 4205 Muir Pl., Tax Map Reference 72-2((3))(Q)14, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 19, 1993; 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 10,537 square feet.
4. The case is very unusual because, when it was first heard, the applicant stated that she had conveyed to the contractor that he was to obtain all the permits and meet the zoning requirements. An extraordinary attempt has been made to locate the builder/contractor to appear before the Board. There was never any doubt of the applicant's credibility in stating that the agent had promised to do the necessary work and obtain the permits. It was hoped that, under threat of loss of license or failure to do any further business within the County, the builder would move the addition at no expense to the applicant.
5. The size of the addition visually impacts surrounding properties because it is much larger than other properly placed sheds in the area which do not seriously impact surrounding properties because of their smaller size and proper location.
6. The existing shed could be placed on another concrete pad and fit within the zoning requirements of this lot without interfering with contiguous property owners.

7. The granting of this special permit would cause an unsafe condition to the properties and public streets, and to force compliance with the setback requirements would not cause undue hardship upon the owner.
8. The granting of this special permit would impair the intent and purpose of the Zoning Ordinance and would be detrimental to the use and enjoyment of other properties in the immediate vicinity as evidenced by photographs of residences in the area; they certainly can see the structure, which visually impairs the enjoyment of their properties.
9. It is possible that a lesser variance might be required if the addition were moved.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

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

Mr. Kelley seconded the motion which carried by a vote of 5-1. Mr. Pammel voted nay. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 27, 1993.

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Page 167, January 19, 1993, (Tape 1), Scheduled case of:

8:00 P.M. ROSS F. ROGERS, VC 92-D-039, appl. under Sect. 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 6 lots, proposed Lot 1 having lot width of 168.0 ft. (225 ft. min. lot width for corner lot required by Sect. 3-E06) and proposed Lots 2, 3, 5, and 6, having lot width of 5.0 ft. (200 ft. min. lot width required by Sect. 3-E06) on approx. 12.47 acres located on Utterback Store Rd., zoned R-E, Dranesville District, Tax Map 7-1((9))A, B. (DEF. FROM 7/7/92 AND 10/6/92)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Mahaffee replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, referencing the Comprehensive Plan's statement that development in this area of the County should reflect and support the established pattern. He said that the surrounding lots average 3.8 acres in size, in contrast to the applicant's request for approval of 2-acre lots, 48% smaller. For those reasons, staff believed that the size of the lots was not in compliance with the Comprehensive Plan nor the character of the surrounding area. Also, for the reasons noted in the staff report, staff was unable to conclude that the standards for variances had been satisfied; specifically, the physical constraints referenced in Standards 2 and 3, and the hardship referenced in Standards 4, 5, and 6. The applicant enjoys certain by-rights of division options which would also provide greater yield than that which presently exists. Mr. Riegle said that, absent any extraordinary situation or condition of the property, it is staff's belief that the arguments presented in support of this application can also be applied to other properties in the area. The resulting precedent, of course, would be further detrimental to the Ordinance and character of the area, which staff believes has been established.

Mr. Manning B. Mahaffee, 3rd, Senior Director of Planning and Landscape Architecture, Greenhorne & O'Mara, Inc., 11211 Waples Mill Road, Fairfax, Virginia, represented the applicant, reminding the Board that the application originally had been scheduled for hearing on July 7, 1992, and was deferred twice, to allow for continued discussions between the applicant and adjacent neighbors to see if any alternative layout could be developed that was satisfactory to both parties.

Mr. Mahaffee said that, after six months of discussion, the applicant and the neighbors were no closer to a resolution of the differences than they were in July 1992.

Mr. Mahaffee noted that Mrs. Thonen had stated at the end of the July 1992 meeting that, if a negotiated alternative plan were submitted, there was no guarantee that the substitute plan would be approved. In light of the existing impasse and the possible futility of the substitute plan, they saw no reason to continue to defer the application. He said that the application covered the remaining unsubdivided portion of the Rogers' subdivision and Lot B, a lot created before the effective date of the subdivision ordinance. Mr. Rogers had been advised by the Department of Environmental Management (DEM), when seeking to subdivide the property that, in order to subdivide both parcels A and B without the intrusion of a public street, a variance would be required. He said that was the reason the contract for the sale of Lot B had been worded as it was.

Mr. Mahaffee presented his argument against the issues raised in the staff report, contending that the site is unique in shape and does exhibit hardships. He said the disposition and location of the property pose distinct problems if developed in a by-right configuration. He contended that clearing and grading for the anticipated deceleration lane and internal public right-of-way, and the parallel accessway to maintain and continue access to the rear lots while constructing the public road, would require much greater removal of trees, causing a much greater impact on the surrounding area than the present layout. Mr. Mahaffee argued that subdivision using pipestems would comply with both the Zoning Ordinance and the subdivision ordinance in the Public Facilities Manual, and expanded on this. He argued that the proposed layout was in compliance with the character of the area surrounding the subject property and that the density of the new lots was in keeping with the density of the surrounding properties. When totalling the Rogers subdivision with the five new lots combined into its density. the result was one unit on 3.54 acres, which he said compared favorably with the 3.8 average density on the surrounding properties.

Mrs. Harris asked Mr. Mahaffee if houses could be built on the two lots in question, without any variances and he replied that they could.

There was no one to speak in support of the application. The following people spoke in opposition to the application: Richard Peters, President of the Great Falls Citizens Association; Greg Streeter, 605 Utterback Store Road, owner of Lot B; Harriet Kiser, 607 Utterback Store Road; David Tuttle, 10823 Fawn Drive; Louis C. Delisio, 10815 Fawn Drive; and William C. Thomas, Jr., FAGELSON, SCHONBERGER, PAYNE & DEICHMEISTER, 1733 King Street, Alexandria, Virginia, who represented Carl Eugene and Anna Hay Mergele, 629 Utterback Store Road, and submitted their letter for entry into the record.

The speakers concurred with the staff report and expressed concerns about the fact that a property owner named Streeter had been named as an applicant when, in fact, he was not an applicant and had been unaware of the application until recently; that the application was for six lots, including Streeter, Lot B, whereas there were only five lots if the Streeter lot were not included; that the applicant was seeking a subdivision and a density which were not consistent with covenants which the Rogers, themselves, had imposed and had sought vigorously to enforce in the old subdivision served by the same private road; while expressing strong distaste with the idea of the intrusion of an ugly public road into the beautiful rustic setting, the applicant indicated an intention to build a public street if necessary to achieve the desired density; the application does not meet the required standards; there is nothing unusual in the size, shape or terrain of the subject land; all of the lots and the private road were created in their present location, size and boundaries by the applicant; no hardship would be created by denial as the subject property has substantial by-right uses both with and without a public road, without the variances requested; it is well-established that financial return is not an allowed consideration when considering hardship; the density sought with the variances is excessive and is not in harmony with existing development in the area and not in harmony with the Comprehensive Plan; the granting of the variances allowing long pipestems of only 5 feet each in width and public road frontages of only 5 feet where 200 feet are required would set a dangerous precedent which could seriously erode the Comprehensive Plan density and the character of the community in future development; that Mr. Streeter's agreement with the applicant would be null and void if the application were granted; that the application entailed property which had not been released by Mr. Streeter for the purpose of the application; that the beautiful rustic character of the area would be diminished; the quiet and abundant wild life population would be diminished and a huge number of mature trees would have to be cleared out to make room for six additional houses, septic fields and wells; a higher density precedent would create an additional burden on the already distressed water table; the Delisio property was shown to be vacant, whereas they have had a house on it for 11 years.

In answer to a question from Mrs. Harris, it was explained that Mr. Rogers had initially sold all the parcels in the vicinity to the present property owners and had imposed covenants restricting the subdivision of the parcels.

A petition containing 25 signatures was submitted in opposition and was entered into the record. A letter from Alaska was faxed to one of the people present from an original property owner who is renting out the property, and it was entered into the record. Mr. Delisio presented a petition on behalf of the Fawn Drive Association.

Mr. Thomas advised the Board that the subject subdivision was always called the Rogers Subdivision and the character of the subdivision had been established by Mr. Rogers when he subdivided the 57 acres. Over the years, Mr. Rogers had diligently pursued adherence to the restrictive covenants which he had imposed upon the parcels. Mr. Thomas noted a letter from Mr. Rogers referencing the limitation on any subdivision development below 2 acres. He referenced past occasions when Mr. Rogers fought any attempt to subdivide without adherence to the covenants established by him; one such time having been before this Board

Chairman DiGiulian called Mr. Mahaffee to the podium for rebuttal testimony. Mr. Mahaffee referenced the contract between the applicant and Mr. Street and said that Mr. Langston, the attorney who drafted the contact was present to render any legal opinion regarding the

wording of the contract. He said that Mr. Rogers had put covenants on the property as the lots were conveyed for sale and that parcel Parcel A, subject to subdivision at this time, is not subject to the covenants; Lot B is subject to the covenants and is in conformance with the covenants. Regarding the issue of combining the historic and the proposed subdivisions for density, he said that has been a common practice when analyzing the final density of a subdivision. Mr. Mahaffee said that they had never threatened to build a public road in the subdivision and had been trying to avoid doing that. Having been asked if they had attempted to analyze the process to find out if a public road could be placed in that area, Mr. Mahaffee indicated that they had. He said they were trying to minimize any disturbance to existing trees; the water table issue is always present in Great Falls because of development occurring upstream and intercepting the water. Mr. Mahaffee said that owners of lots in close proximity to existing wells drill to depths below the existing wells and should not have any impact as long as they are not at the same strata. In response to Mr. Tuttle's complaint that he had no contact from the applicant, Mr. Mahaffee said that it was their intention to first work out the issues within the subdivision, after which they would go on to adjacent subdivisions and work with property owners such as Mr. Tuttle.

Mrs. Harris asked Mr. Mahaffee to very briefly describe what he believed the hardship would be if the variance were not granted. Mr. Mahaffee said they had a single piece of property that is bifurcated by an existing easement which has to provide access to the properties to the rear; it has unusual depth and shape. He said that there is a paradox between the Zoning Ordinance and the subdivision ordinance in the Public Facilities Manual which dictates that, if an attempt is made to develop the property and utilize the existing easement as the central point of access, frontages on a publicly maintained road must be provided. Mr. Mahaffee said that the site is heavily wooded with a character of development behind and adjacent to the subject property with lots being accessed by the internal ingress/egress easements on 50 foot, more or less, rights-of-way gravel roads. They are trying to develop a subdivision and proposed a layout in conformance with that character, utilizing the easement.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny VC 92-D-039 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 92-D-039 by ROSS F. ROGERS, under Section 18-401 of the Zoning Ordinance to allow subdivision of 2 lots into 6 lots, proposed Lot 1 having lot width of 168.0 ft. and proposed Lots 2, 3, 5, and 6, having lot width of 5.0 ft., on property located on Utterback Store Rd., Tax Map Reference 7-1{{9}}A, B, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 19, 1993; 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-E.
3. The area of the lot is 12.47 acres.
4. The applicant has not met all of the required standards for variances in Section 18-404 of the Zoning Ordinance for the reasons set forth in the staff report.
5. It is not necessary to consider the agreement between the applicant and a contiguous property owner to come to a conclusion.
6. Granting the variance will not alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a privilege or convenience.
7. The property was developed by the applicant with the access road through the middle of the property, he has retained those lots, and any hardship would be self-inflicted.
8. The Ordinance has changed since the applicant made the original conveyances.

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. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 27, 1993.

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Page 170, January 19, 1993, (Tape 1), Action Item:

Approval of Resolutions from January 12, 1993 Hearing

Mrs. Harris so moved. Mr. Pammel seconded the motion, which carried by a 6-0 Mr. Ribble was absent from the meeting.

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Page 170, January 19, 1993, (Tape 1), Action Item:

Approval of Minutes from December 1 and December 8, 1992 Hearings

Mr. Pammel so moved. Mrs. Harris seconded the motion, which carried by a 6-0 Mr. Ribble was absent from the meeting.

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Page 170, January 19, 1993, (Tape 1), Action Item:

Request for Intent to Defer
Kenneth J. Patterson, VC 92-V-120

Mrs. Harris so moved. Mr. Hammack seconded the motion, which carried by a 6-0 Mr. Ribble was absent from the meeting.

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Page 170, January 19, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Rudolph & Paulette Tyson, VC 92-L-132

Mrs. Thonen said that, from the applicants' letter, it was not clear to her why they were requesting an out-of-turn hearing. The Board had a short discussion. Jane C. Kelsey, Chief,

Page 171, January 19, 1993, (Tape 1), Rudolph & Paulette Tyson, VC 92-L-132, continued from Page 170)

Special Permit and Variance Branch, said that this was the first time she saw the letter from the applicants and did not know when the case was scheduled. It was the consensus of the Board that the item be deferred until the following week.

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Page 171, January 19, 1993, (Tape 1), Action Item:

Request for Withdrawal
Virginia Electric and Power Company Appeal, A 92-C-019

Mrs. Thonen so moved. Mrs. Harris seconded the motion, which carried by a 6-0 Mr. Ribble was absent from the meeting.

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Page 171, January 19, 1993, (Tape 1), Action Item:

Action Regarding Change in the By-Laws
Concerning Eight (8) Day Final Approval Date for Decisions

Mr. Hammack had drafted the following wording: "...the day following the next official meeting date of the Board, but not less than eight (8) days, whichever is less." A discussion between the Board members ensued.

Mrs. Harris said that she would like to think about the change until the following week. The other members concurred.

(Another issue about the By-Laws was raised later in the meeting.)

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Page 171, January 19, 1993, (Tape 1), Information Item:

Memo from McGuire, Woods, Battle & Boothe
McLean Bible Church, SPA 73-D-151-3

Mrs. Harris referenced the letter from Lee Fifer and said she would like everyone to read it and consider the issues involved. She said she had gone out to the site and looked at the situation; she also read the letter from Mr. Dennis. Mrs. Harris stated that there were significant problems and she suggested that, perhaps, Zoning Enforcement should look into it.

Chairman DiGiulian expressed concern that the letter in question had been received in the middle of December, but had just been brought to the Board's attention. Ms. Kelsey had been under the impression that the normal procedure for transmitting letters of this nature to the Board had been observed. She did not know why this had proved to be an exception. Ms. Kelsey said that Deputy Zoning Administrator, William E. Shoup, had met with the permittee on two occasions and had met with the citizens and Supervisor Berger on two occasions concerning this issue. She stated that a zoning violation notice had been issued on January 1, 1993.

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Page 171, January 19, 1993, (Tape 1), Action Item:

Discussion of By-Laws continued

Mr. Pammel said that he was confused about the By-Laws stating that the Meetings of the Board would be held on the second, third and fourth Tuesdays of the month. He wanted to know what had happened to the first Tuesday. Chairman DiGiulian said that Mr. Hammack was also working on that portion of the By-Laws. This issue was also deferred until the following week.

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As there was no other business to come before the Board, the meeting was adjourned at 10:00 p.m.

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

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

SUBMITTED: February 16, 1993

APPROVED: February 23, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on January 26, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 173, January 26, 1993, (Tape 1), Scheduled case of:

9:00 A.M. PAMELA ANN MCALWEE, SP 92-B-053, Appl. under Sect. 8-917 of the Zoning Ordinance to permit 3 dogs. Located at 8804 Burbank Rd.,on approx. 10,701 sq. ft. (12,000 s.f. min. lot required by Sect. 2-512) of land zoned R-2 (C). Braddock District. Tax Map 70-1 ((12)) 292.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. McAlwee replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit to allow 3 dogs to remain on the property. He noted that the three dogs are Patrick Ross, a 60-pound golden retriever mix; Basil, a 45-pound shepherd-hound mix; and Razbo, a 20-pound wired-hair fox terrier. Mr. Hunter said that the dogs were left alone four days per week, while the applicant works, between 10 a.m. and 6 p.m. During the hours in which the dogs are left alone they are confined to the back yard by a three-and-a-half foot high wood fence and an invisible fencing system. He stated that while the applicant is at work the dogs have access into the house.

Mr. Hunter noted that a review of the files in the Zoning Administration Division indicated that two notices of violation were issued to the applicant; the first on March 16, 1992, and the second on July 24, 1992. The initial notice of violation was issued as a result of a complaint about the number of dogs kept on the subject property.

In conclusion, Mr. Hunter stated it was staff belief that the application would be in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance. Therefore, staff recommended approval of SP 92-B-053 subject to the development conditions contained in the staff report dated November 3, 1992.

The applicant, Pamela McAlwee, 8804 Burbank Road, Annandale, Virginia, addressed the BZA. She stated that the dogs were very special to her. She stated that, although one of the dogs had been accused of biting a lady on or about July 24, 1992, no skin was broken nor was a charge filed. She explained that when her fiancé was walking the dog, he stopped to talk to a woman who was visiting a neighbor. He had asked that she not approach the dog because it is almost blind and was easily frightened. Ms. McAlwee said that the woman ignored his plea and when she put her hand out to pet the dog, the dog snapped at her. She stated that although since her application was filed, the dogs have been accused of stalking a child, nobody has ever informed her of any problem. She expressed her belief that if a child had been bitten, Fairfax County animal control would have been informed.

Ms. McAlwee said that in another incident, when she was contacted by the animal control about a loose dog, it was established that the dog was not hers. She expressed her belief that when other dogs in the neighborhood are loose or barking, they are presumed to be hers.

She submitted a letter from her veterinarian, Jana Froeling, D.V.M., Town and Country Animal Hospital, 9780 Lee Highway, Fairfax, Virginia, which stated that the dogs shots were up-to-date and all the dogs had excellent temperaments.

Ms. McAlwee noted that staff had visited her house and found the dogs to be friendly. She acknowledged that while the dogs do bark, she has taken steps to resolve any nuisance the dogs may cause. She stated that she now employs pet sitters; the dogs are never let out alone; and the dogs are not let out between the hours of 4:30 p.m. and 9:30 a.m.

She stated that she understood the restrictions imposed by the special permit and that she would adhere to all development conditions. Ms. McAlwee said that while she had foster dogs for the SPA, she would not board them in her house. In conclusion, Ms. McAlwee stated that she would cooperate with the neighbors and asked the BZA to grant the request.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Norman L. Kaufman, 8707 Chippendale Court, Annandale, Virginia, addressed the BZA. He stated that his property abuts the applicant's property.and expressed his opposition to the request. Mr. Kaufman noted that he, as well as 22 other neighbors, had signed a petition in opposition to the request. He submitted a copy of his statement which included an allegation that a U.S. Postal Service mail carrier and a seven year old boy had been chased by the applicant's dog. He noted that animal control had been called to the scene. He also alleged that Dennis Reed, Chief of Animal Control, had informed a neighbor, Dr. J. Rumsey, that there was a record of other incidents involving the dogs. He noted that Mr. Reed would not release

the record to the neighbors, but had expressed his intentions of sending the record to the BZA. In conclusion, Mr. Kaufman said the Truro Homes Association and the neighbors were opposed to the request, and asked the BZA to deny the special permit.

In response to questions from the BZA, Mr. Kaufman stated that he had no objection to the applicant keeping two dogs, but noted housing three dogs was in violation of the Zoning Ordinance. He said that the applicant had also kept transient dogs for the SPA. He stated that the applicant had attempted to sell her house but had taken the house off the market since it could not sell because of the dogs. Mr. Kaufman said that, although the BZA had not received a letter from Animal Control, he had been led to believe that a letter would be forthcoming. He explained that Dr. Rumsey had said that Mr. Reed had indicated that there were a number of reports regarding the dogs.

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

In rebuttal, Ms. McAlwee stated that she is friendly with the mail carrier and had not been informed of the alleged incident involving her dog. She also noted that animal control had not contacted her or issued a complaint regarding the mail carrier or the seven year old boy. Ms. McAlwee noted that the house was taken off the market because it had only been purchased three years ago and she could not recoup her investment. She explained that although she has bought a house on a three acre parcel, the house needed to be renovated before it could be occupied. In conclusion, Ms. AcAlwee expressed her willingness to cooperate and asked the BZA to grant the request.

In response to Mrs. Harris' question as to whether the applicant could send one of the dogs to a kennel, Ms. McAlwee said that she would be hesitant about parting with one of the dogs. She asked the BZA to grant a six month variance. She noted all the steps she had taken to alleviate any impact on the neighbors and stated that she would be willing to take more stringent measures, if needed.

Mrs. Thonen said that she was concerned because of the opposition expressed by the Truro Homes Association and the neighbor. She explained that she could understand if one or two neighbors were in opposition, but to have most of the community express their opposition was unusual. Ms. McAlwee admitted that there had been problems with the dogs, but expressed her belief that she had resolved the outstanding issues.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to deny SP 92-B-053 for the reasons reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-B-053 by PAMELA ANN MCALWEE, under Section 8-917 of the Zoning Ordinance to allow 3 dogs, on property located at 8804 Burbank Road, Tax Map Reference 70-1((12))292, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 26, 1993; 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 (cluster).
3. The area of the lot is 10,701 square feet.
4. The application does not meet the necessary standards for the granting of a special permit.
5. While the BZA is sympathetic to the applicant's position, there are other alternatives such as having a relative care for one of the animals.
6. The housing of 3 dogs on the relatively small lot would have a detrimental impact on the neighborhood.
7. The testimony has indicated that all other members of the community are complying with the standards as set forth in the Zoning Ordinance.
8. The applicant will have to find alternative methods and keep a maximum of 2 dogs on the property.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-917 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 5-1 with Mr. Kelley voting nay and Mr. Hammack not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1992.

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Page 175, January 26, 1993, (Tape 1), Scheduled case of:

9:15 A.M. RONALD AND SANDRA USCHER, VC 92-Y-121, Appl. under Sect. 18-401 of the Zoning Ordinance to permit addition 16.6 ft. from rear lot line (25 ft. min. rear yard required by Sect. 3-107). Located at 3091 Cobb Hill La. on approx. 20,001 sq. ft. of land zoned R-1 (C). Sully District. Tax Map 36-3 ((11)) 45.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Uscher replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow an addition to be constructed 16.6 feet from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, the applicant was requesting a modification of 8.6 feet to the minimum rear yard requirement.

The applicant, Ronald Uscher, 3091 Cobb Hill Lane, Oakton, Virginia, addressed the BZA. He stated that he would like to screen-in and extend an existing deck. He said that the house was placed in an extreme corner of the lot, and this as well as the exceptional size and shape of the lot, had caused the need for the variance. He expressed his belief that the strict application of the Zoning Ordinance would produce an undue hardship because it would deny him the opportunity to improve the property. In conclusion, he stated that the addition would raise property values, the residential charter of the area would not change, it would be harmony with the area, and it would not be contrary to public interest.

In response to Mrs. Thonen's question as to whether just the existing deck would be enclosed, Mr. Uscher said that the addition would include the existing deck as well as an additional 8 feet extension.

Mrs. Harris stated that an 18 by 24 foot addition was extensive and asked Mr. Uscher if he could explain the hardship involved. Mr. Uscher noted that his backyard abuts parkland and the addition would allow his family to enjoy the scenery without having a detrimental impact on the neighbors. He said that many of the neighbors had similar additions.

In response to Mrs. Harris' question as to whether any neighbors had received variances, Mr. Hunter stated that two other lots had deck variances.

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

Mr. Pammel made a motion to grant VC 92-L-121 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 19, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-121 by RONALD AND SANDRA USCHER, under Section 18-401 of the Zoning Ordinance to allow addition 16.6 feet from rear lot line, on property located at 3091 Cobb Hill Lane, Tax Map Reference 36-3((11))45, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 26, 1993; 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 (Cluster).

3. The area of the lot is 20,001 square feet.
4. The location of the house on the property precludes the addition being placed to the rear of the structure without a variance.
5. The screened porch will allow the owners to enjoy their property.
6. The placement of the structure so far back on the lot has created a very unusual situation and the large front yard is basically useless for outdoor living.
7. The applicant has presented a reasonable request.
8. There have been other variances granted for nearby lots.
9. The subject lot abuts parkland 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 specified addition shown on the plat prepared by Rice Associates, dated July 15, 1992, submitted with this application and not transferable to other land.

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

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

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

Mrs. Thonen seconded the motion which carried by a vote of 6-1 with Mrs. Harris voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 177, January 26, 1993, (Tape 1), Scheduled case of:

9:40 A.M. KENNETH J. PATTERSON, VC 92-V-120, Appl. under Sect. 18-401 of the Zoning Ordinance to permit accessory structure 2.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207). Located at 1105 Woodcliff Dr. on approx. 24,748 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 93-4 ((7)) (6) 7.

Chairman DiGiulian noted that the Board of Zoning Appeals (BZA) had issued an intent-to-defer on January 19, 1993.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She explained that the applicant had amended the application; therefore, it would have to be readvertised.

Mrs. Thonen made a motion to defer VC 92-V-120 to March 9, 1993 at 9:00 a.m. Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 177, January 26, 1993, (Tape 1), Information Item:

Approval of Resolutions from January 19, 1993 Hearing

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 7-0.

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Page 177, January 26, 1993, (Tape 1), Information Item:

Approval of Minutes for December 10, 1992 Meeting

Mrs. Thonen made a motion to approve the minutes as submitted by the Clerk. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 177, January 26, 1993, (Tape 1), Information Item:

Request for Date and Time
Hilltop Sand and Gravel Company, Inc. Appeal

Mrs. Thonen made a motion to schedule the appeal for April 6, 1993 at 10:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 177, January 26, 1993, (Tape 1), Information Item:

Action Regarding Change in the By-Laws
Concerning Eight-Day Final Approval Date for Decisions

Mrs. Thonen stated that the amendment to the By-Laws would read as follows: "No decision shall be officially filed in the Office of the Board until the day following the next official meeting day of the Board, but not less than eight days, whichever is less".

Mr. Hammack made a motion to adopt the amendment to the By-Laws. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 177, January 26, 1993, (Tape 1), Information Item:

Discussion Regarding the Revocation Hearing
DAR AL-HIJRAH, SP 84-M-009

Chairman DiGiulian stated that Jane W. Gwinn, the Zoning Administrator, had requested that the Board of Zoning Appeals (BZA) hold the revocation hearing.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that a tentative date of February 16, 1993, at 8:00 p.m. had been previously set by the BZA. She submitted the revocation letter for Chairman DiGiulian's approval and a memorandum outlining suggested revocation procedures.

Mrs. Thonen suggested that the BZA hold the matter over until later in the public hearing. The Chairman so ordered.

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Page 178, January 26, 1993, (Tape 1), Information Item:

Expiration of Term of Mary Thonen
Member of the Board of Zoning Appeals

Mr. Kelley made a motion to send a letter to the Circuit Court recommending that she be reappointed. Mr. Pammel seconded the motion which carried unanimously.

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Page 178, January 26, 1993, (Tape 1), Information Item:

Status Report on Zoning Ordinance Violations
McLean Bible Church, SP 73-D-151

Mrs. Thonen noted that staff has continued to inform the Board of Zoning Appeals regarding the status of the church.

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Page 178, January 26, 1993, (Tape 1), Scheduled case of:

9:50 A.M. ABID N. HASAN, VC 92-V-122, Appl. under Sect. 18-401 of the Zoning Ordinance to permit enclosure of carport 6.2 ft. from side lot line (12 ft. min. side yard required by Sect. 3-307). Located at 2309 Pennsylvania Bv. on approx. 12,500 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 102-3 ((3)) (35) 6.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Hasan replied that it was.

Susan Langdan stated the applicant was requesting a variance to allow the construction of a 12.1 foot by 29 foot garage addition 6.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the applicant was requesting a modification of 5.8 feet to the minimum side yard requirement.

The applicant, Abid N. Hasan, 2309 Pennsylvania Boulevard, Alexandria, Virginia, addressed the BZA and stated that he would like to enclose the carport so that his cars can be protected from vandalism. He said that the garage would also help protect his asthmatic child.

Mr. Hasan noted that the placement of the house on the extreme western side of the lot caused the need for the variance. He expressed his belief that the builder had chosen the location because of Navarre Avenue which has since been vacated. He explained that he constructed the carport on the western side of the lot because the Navarre Avenue had precluded the carport from being built on the eastern side of the lot. Mr. Hasan stated that while he could now locate the garage on the eastern side of the house within the Zoning Ordinance requirements, it would constitute a hardship. He explained that in addition to the expense of constructing a garage, he would also have the expense of removing the existing carport and driveway.

In response to Mr. DiGiulian's question as to whether just the carport would be enclosed, Mr. Hasan said that the garage would not be any larger or extend any further into the side yard than the existing carport. He expressed his belief that the garage would be aesthetically pleasing and increase the neighbors' property values. He noted that material similar to the existing structure would be used on the garage addition.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Vincent Ditchkus, 2311 Pennsylvania Boulevard, Alexandria, Virginia, addressed the BZA. He read a written statement which he submitted to the BZA. Mr. Ditchkus expressed his belief that the garage enclosure would be used as living quarters for the applicant's domestic employee. He expressed his reasons for his opposition to the variance and asked the BZA to deny the request.

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

In rebuttal, Mr. Hasan stated the live in domestic employee has her own room and asserted that the addition would be used as a garage. He explained that the garage addition would not be a finished room.

In reply to Mrs. Harris' question as to why the garage should be constructed on the proposed location, Mr. Hasan used the viewgraph to depict the interior of the house and noted that the configuration precluded placing the addition on the eastern side of the lot. He confirmed that he also owned Lots 9, 10, and the vacated portion of Navarre Street. He explained that prior to the vacating of Navarre Street, a variance would have been needed in order to build the carport on the eastern side of the lot.

Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 92-V-122 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 19, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-122 by ABID N. HASAN, under Section 18-401 of the Zoning Ordinance to allow enclosure of carport 6.2 feet from side lot line, on property located at 2309 Pennsylvania Boulevard, Tax Map Reference 102-3((3))(35)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 January 26, 1993; 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 12,500 square feet.
4. The location of the structure on the property is such that enclosing the carport with material similar to that of the existing structure will not have a detrimental impact on the neighbors.
5. The enclosure will be used as a garage and will not be used for living quarters.
6. To require the applicant to relocate the driveway and garage to the other side of the house, when the carport could be enclosed, would create an undue hardship.
7. An extraordinary situation exists in that the structure was built very close to the setback requirement on the exceptionally narrow and unusually shaped lot.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by J. Monaco & Associates, P.C., dated September 1992, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1993. This date shall be deemed to be the final approval date of this variance.

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The Board of Zoning Appeals recessed at 10:07 a.m. and reconvened at 10:22 a.m.

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Page 180, January 26, 1993, (Tape 2), Scheduled case of:

Discussion Regarding the Revocation Hearing
DAR AL-HIJRAH, SP 84-M-009

Mrs. Harris stated that the information submitted by staff regarding the procedure involved with a revocation hearing was very thorough.

After a brief discussion, it was the consensus of the Board of Zoning Appeals (BZA) to schedule the revocation hearing.

Mr. Kelley made a motion to schedule a revocation hearing for DAR AL-HIJRAH, SP 84-M-009, on February 16, 1993 at 7:30 p.m. Mrs. Harris and Mr. Ribble seconded the motion which carried by a vote of 7-0.

Chairman DiGiulian asked that the County Attorney give the BZA guidance regarding revocation hearings. He requested that the advice be submitted in writing a week prior to the hearing.

The BZA had a brief discussion regarding what options the BZA would be permitted to implement under the revocation procedure. The BZA also expressed its belief that the information received from the County Attorney regarding the revocation procedure should be given to the applicant.

Mr. Pammel asked that staff request that the County Attorney be present at the revocation hearing.

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Page 180, January 26, 1993, (Tape 2), Scheduled case of:

10:00 A.M. M.A. MOIENAMIN AND AHMAD MOIENAMIN, Appeal 92-P-011, Appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that before an office use can be established on appellant's property, the conditions imposed in the approval of Special Exception SE 91-P-007 must be met, which includes site plan approval. Located at 2923, 2925, 2927 and 2929 Gallows Rd. on approx. 1.33 ac. of land zoned I-5. Providence District. Tax Map 49-4 ((3)) 2, 3, 4, 5.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA). She stated that the applicant had requested withdrawal of the appeal.

Mrs. Thonen made a motion to allow the withdrawal of A 92-P-011. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 181, January 26, 1993, (Tape 2), Scheduled case of:

10:15 A.M. KELLEY APPEAL (DEFERRED INDEFINITELY)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals. She noted that the BZA had issued an intent-to-defer indefinitely on July 14, 1992.

Mrs. Thonen made a motion to indefinitely defer the Kelley Appeal. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 181, January 26, 1993, (Tape 2), Scheduled case of:

10:30 A.M. SEWASEW KIFLE, SP 92-L-062, Appl. under Sect(s). 3-803 of the Zoning Ordinance to permit home child care facility. Located at 6022 Crocus Ct. on approx. 2,342 sq. ft. of land zoned R-8. Lee District. Tax Map 81-4 ((34)) 290A.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals. She noted that the applicant had not fulfilled the notification requirements.

Mrs. Thonen made a motion to defer SP 92-L-062 to April 27, 1993 at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 7-0.

In response to Mr. Pammel's question as to whether the home care facility was in operation, Ms. Kelsey stated that Lori Greenlief, Staff Coordinator, had indicated that it was not.

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Page 181, January 26, 1993, (Tape 2), Information Item:

Board of Supervisors
vs.
Board of Zoning Appeals
In Chancery No. 122492

The Board of Zoning Appeals (BZA) was in receipt of a copy of an Order entered in the case which reversed the BZA's decision in its approval of a variance to permit the subdivision of property.

Mrs. Harris noted that the case, Carl E. and Iola M. Burk, VC 91-D-051, was in regards to a subdivision variance and said the letter dated January 12, 1993 from Judge Rosemarie Annunziata, Nineteenth Judicial Circuit of Virginia, was very interesting.

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Page 181, January 26, 1993, (Tape 2), Information Item:

Status Report
McLean Bible Church, SP 73-D-151

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals. She stated that both William E. Shoup, Deputy, Zoning Administrator, and Claude F. Kennedy, Supervising Field Inspector, Zoning Enforcement Branch, Office of Comprehensive Planning, had advised that a written notice had been hand-delivered to the representative of McLean Bible Church on January 25, 1993. She explained that the notice instructed the applicant they had 30 days to comply with the condition that all parking would be on site.

Ms. Kelsey said that the attorney for the McLean Bible Church had verbally indicated that they would file an appeal to the BZA regarding the Notice of Violation because they disagreed with the interpretation of the condition.

In response to Mrs. Harris' question as to whether a copy of the Notice of Violation had been sent to the applicant's attorney, William Hansbarger, 301 Park Avenue, Falls Church, Virginia, Ms. Kelsey stated that while she felt sure that one had been sent to Mr. Hansbarger, she could not confirm it. She said that she did not know if the neighbor's attorney Carson Lee Fifer, Jr., McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, Suite 900, McLean, Virginia, had been advised of the Notice of Violation, but noted that staff would advised Mr. Fifer of any action taken regarding the church.

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The Board of Zoning Appeals recessed at 10:38 a.m. and reconvened at 10:50 a.m.

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10:45 A.M. SANDRA WILLWERTH, SP 92-P-015, Appl. under Sect. 3-103 of the Zoning Ordinance to permit kennel with ancillary veterinary hospital. Located at 8801 Lee Hwy. on approx. 1.01261 ac. of land zoned R-1 and HC. Providence District. Tax Map 49-3 ((1)) 5. (DEF. FROM 6/9/92 FOR NOTICES) (DEF. FROM 9/15/92 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Willwerth replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit to allow a kennel with an ancillary veterinary hospital and 20 parking spaces. She explained that the existing dwelling and garage on the property would be removed and a 6,533 square foot structure would be built. Ms. Langdon said that the kennel would also provide grooming, a veterinary hospital and an indoor boarding facilities for a maximum of 200 animals. She stated that the hours of operation for the kennel and veterinary hospital would be from 7:00 a.m. to 7:30 p.m., Monday through Friday; 7:00 a.m. to 1:00 p.m., Saturday; and 10:00 a.m. to 12 noon, Sundays. The maximum number of employees would be 10 including a veterinarian. Ms. Langdon noted that this proposal represented an increase in the original hours of operation and number of employees as stated in the staff report dated June 2, 1992.

Ms. Langdon stated that the applicant has requested a modification of the transitional screening requirements along the southern and northern lot lines and a waiver of the barrier requirement along the northern and western lot lines.

In summary, Ms. Langdon stated that staff believed that the application was not in harmony with the Comprehensive Plan and did not meet the standards for special permit approval specified in the Zoning Ordinance. She noted that the Comprehensive Plan recommends that the application property and the surrounding area be consolidated in order to achieve well-planned residential development so as to prevent cut-through traffic and to provide areas for recreational amenities. She said that the general and additional standards regarding noise, lighting parking and screening were not met. Therefore, staff believed that the nature and extent of the proposed uses were not compatible with the surrounding residential area. Ms. Langdon stated that the negative impacts associated with the proposed use on such a small site have not been adequately mitigated, thus the application did not meet the Standards for Special Permit uses in residential districts. Therefore, staff did not support the request and recommended denial.

The applicant, Sandra Willwerth, 2300 Hunter Mill Road, Vienna, Virginia, addressed the BZA and submitted pictures of a similar facility that she had built in Ocala, Florida. She stated that the proposed facility would be enclosed, soundproofed, and well designed.

Ms. Willwerth stated that the facility has for its immediate neighbors, a crab restaurant, a fire house, an automobile body shop, a 7-11 fast food store, and a gas station. She expressed her belief that the facility would provide a good transitional use for the property and noted that two abutting neighbors supported the request. Ms. Willwerth said that she had been asked by the Virginia Department of Transportation (VDOT) to dedicate approximately one-third of the subject property so that, some time in the future, the four lane road could be converted into a six lane road with a service road. She noted that although she did agree to dedicate a portion of land, it was not the amount requested by VDOT. She stated that she had also been asked to provide curbs and gutters on Chichester Road even though the County was not required to provide them when the fire house facility was constructed. Addressing the screening issue, Ms. Willwerth explained that although she would acquiesce to the 35 foot screening requirement, she considered it to be excessive. In addition, she explained that the proposed parking would have to be relocated so that it would be 50 feet from the adjacent residential property which is a fire house. She noted that the relocation would be expensive and because the fire house parking lot abuts her property, she had been reluctant to do so. Again, Ms. Willwerth stated that because of the commercial enterprises in the immediate vicinity, she believed that the use would be harmonious with the neighborhood.

Ms. Willwerth stated that one of the letters in opposition was from the Blue Cross Animal Hospital, Inc., 8429 Lee Highway, Fairfax, Virginia, which had offered to sell her their hospital. She explained that because the building was old and the dog runs were outside, and she wanted an up-to-date facility, she refused. She again referred to the veterinary hospital in Ocala, Florida, which is an odor controlled, soundproofed facility, and said that the proposed facility would be similar.

She again noted that although the area is zoned residential, the uses along Route 29, consisted of commercial enterprises. She said that the million dollar enterprise would be a good use and expressed her belief that it would be difficult to entice a citizen to construct a single family home on the lot. In summary, she expressed her belief that the operation would be an asset to the community, the structure and landscaping would be aesthetically pleasing, there would be no detrimental impact on the neighbors, and asked the BZA to grant the request.

Mrs. Harris stated that the intention of the Comprehensive Plan is to restabilize the area and to consolidate property so that the unusual shaped lots can be configured for residential

zoning. She expressed her belief that the application is totally contrary to the Comprehensive Plan. Mrs. Harris explained that because one of the BZA's criteria is that an application must be in harmony with the Comprehensive Plan, she could not support the request. Ms. Willwerth, again, expressed her belief that because of the surrounding uses, the amount of land available for consolidation was limited and the kennel would be the best possible use for the area. Ms. Willwerth noted that the use is allowed in a residential area.

In response to Mr. Pammel's question as to whether she was a veterinarian, she stated that she is a veterinarian. She stated that because the use would involve a 24 hour day, she would employ another veterinarian.

Mr. Kelley asked whether Development Condition Number 7 would allow the applicant to employ another veterinarian. Ms. Langdon stated that it would not.

In order to clarify the issue, Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and noted that the primary use would be for a kennel and the veterinarian hospital would be an ancillary use.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Robert Frerking, 2909 Cedarest Road, Fairfax, Virginia; Ione Stephens, 2832 Maple Lane, Fairfax, Virginia; Kevin Willis, representing the Blue Cross Animal Hospital, Inc., 8429 Lee Highway, Fairfax, Virginia; Kenneth C. Anderson, 2853 Maple Lane, Fairfax, Virginia; Fred J. Ayoub, 2905 Cedarest Road, Fairfax, Virginia; Denise S. Wood, 8806 Lee Highway, Fairfax, Virginia; Flo Williams, 2826 Maple Lane, Fairfax, Virginia; and Joseph Malone 2904 Cedarest Lane, Fairfax, Virginia, addressed the BZA. The speakers expressed their opposition to the request and noted that the area was zoned residential, that the Briarwood Community was against the request, the dogs would create a noise and odor impact on the area, the traffic generated by the use would create a hazard, the property values would be diminished, and the use would not be in harmony with the Comprehensive Plan.

Mrs. Harris used the viewgraph to depict the area which has recently been developed for single family residences. She noted that they were readily bought and residential, by availability, still exist on the Route 29 corridor. Mr. Hammack noted that the Highway Department's dedication had caused problems for property owners in the area.

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

Ms. Willwerth stated that the kennel would be completely soundproof, therefore would not have a detrimental noise impact on the neighborhood. She said that she intended to have a clean, well-run establishment which would be beneficial to the community. Ms. Willwerth expressed her belief that because the lot was neighbored by a fire station and a crab house restaurant, no one would build a residence on the property. She noted that although the streets intersecting Route 29 were residential, she could provide the best use for the orphan property. Ms. Willwerth said that because the kennel would only be filled to capacity on holidays, there would be no detrimental traffic impact on the community.

Mrs. Thonen expressed her concern regarding the intentions of the Comprehensive Plan. She noted because of the stringent standards, it would be very hard for the applicant to meet all the restrictions. Mrs. Thonen stated that the applicant could petition the Board of Supervisors to amend the Comprehensive Plan.

Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion deny SP 92-P-015. She stated that although the case was very interesting, she did not think the application would be in conformance with the Comprehensive Plan. She noted that although Route 29 is heavily trafficked and a fire station abuts the property, the citizens had worked very hard to keep Cedar Lane as a boundary line for mixed and commercial uses. Mrs. Harris said that the citizens' activity is vital in order to keep commercialism from expanding along Route 29 and into Vienna. Although in the applicant's opinion, the granting of the special permit would not set a precedent, granting one special permit would open the door for another special permit and this may be why the citizens are adamant about keeping it at a definable boundary. She noted that Number 3 of the General Standards says, "The proposed use shall be such that it will be harmonious with and will not adversely affect the use or development of neighboring properties in accordance the applicable zoning district regulations and the adopted comprehensive plan". Mrs. Harris stated that the facility may be well-built and the animals kept inside, but the use could possibly affect the future development of the area. She explained that there are many large tracts of land, that if consolidated, could be brought under a well-managed residential nature, which would be compatible with the Comprehensive Plan and the community's desires.

Mr. Hammack seconded the motion. He stated that he supported the motion because of the efforts the citizens have made to halt commercial development at Cedar Lane and to protect the encroachment of commercial uses into the residential area. Mr. Hammack stated that it was a very sensitive area and although the kennel would be enclosed, the site would be

substandard for the use especially after the dedication requirements were met. He expressed his belief that the construction of the fire station would have met opposition if Fairfax County had abided by it own standards when the location was selected. He also noted that the curb and gutter standards were not imposed on the fire station.

Mr. Pammel stated although he considered it to be a dilemma, he did not believe the Comprehensive Plan had adequately addressed the area. He mentioned the auto body paint shop and noted the strip was characterized by a group of incompatible uses. Mr. Pammel stated that the proposal to retain the residential zoning and to allow a special permit use for a kennel. He said that although there had been many such proposals that he could not support, he believed that with the restaurant on one side and the fire house on the other, the use would be acceptable.

Mr. Hammack noted that while the diversified uses have been in existence for many years, due to the areas proximity to the Vienna Metro Station, the Comprehensive Plan calls for high density residential use in the area. He expressed his belief that the grandfathered commercial properties could, sometime in the future, be consolidated. He noted that if allowed, the special permit would help establish additional commercial development in the area.

Mr. Pammel stated that the Comprehensive Plan, which allows for single family residential, does not adequately address the area.

Mr. Kelley stated that a single family dwelling would not be compatible with the surrounding uses. He expressed his belief that if the application were for a day care center, it would be considered acceptable.

Mrs. Thonen expressed her belief that if the Comprehensive Plan did not adequately address the site, then a Plan amendment should be filed.

Chairman DiGiulian expressed his belief that when the fire station had been introduced into the area, it established the character of the vicinity. He said that he could not support the motion to deny the request and noted that the fire station had significantly impacted the proposed site.

Mr. Hammack stated that many properties in the area had been developed as single family residential dwellings and have commanded prices in the neighborhood of $300,000.

The motion failed by a vote of 3-4 with Mrs. Harris, Mrs. Thonen, and Mr. Hammack voting aye; and Chairman DiGiulian, Mr. Kelley, Mr. Pammel, and Mr. Ribble voting nay.

Mr. Pammel made a motion to grant SP 92-P-015 subject to the revised development conditions contained in the staff report addendum dated January 19, 1993 with the modification to Condition Number 7 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 92-P-015 by SANDRA WILLWERTH, under Section 3-103 of the Zoning Ordinance to allow kennel with ancillary veterinary hospital, on property located at 8801 Lee Highway, Tax Map Reference 49-3((1))5, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 26, 1993; and

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

1. The applicant is the contract/purchaser of the land
2. The present zoning is R-1 and HC.
3. The area of the lot is 1.01261 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 8-603 and 8-608 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 The BC Consultants and dated January 16, 1992 and revised through May 20, 1992 and approved with this application, as qualified by these development conditions.

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

4. This Special Permit is subject to the provisions of Article 17, Site Plans. 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 hours of operation of the kennel and veterinary hospital shall be limited to 7:00 a.m. until 7:30 p.m. Monday through Friday, 7:00 a.m. until 1:00 p.m. on Saturday, and 10:00 a.m. until 12:00 noon on Sundays. All grooming activities shall be associated with the kennel use. Overnight use of the facility by employees caring for sick or boarded animals shall be permitted. The facility shall be subject to periodic inspections by the Zoning Enforcement Branch of the Office of Comprehensive Planning.

6. All grooming and veterinary hospital activities shall be ancillary to the kennel use. A maximum of twenty (20) percent of the gross square feet of the structure shall be devoted to these uses. The number of examining rooms for the veterinary use shall be limited to a maximum of two (2) rooms. The kennel and ancillary veterinary hospital shall be located entirely within the structure and there shall be provisions to board a maximum of 200 animals.

7. The maximum number of employees shall be ten (10) to include one full-time veterinarian employee.

8. A minimum of ten parking spaces shall be provided. All parking shall be on-site and shall be located within the front and eastern side yards, but outside of areas proposed for right-of-way dedication and 50 feet from the residential lot across Chichester Lane. If these spaces cannot be provided in these areas, the square footage of the building may be reduced and the parking may be reduced accordingly. Accessible parking spaces shall be provided and located as close as possible to the building entrance.

9. Right-of-way dedication and ancillary easements shall be provided in accordance with the Virginia Department of Transportation's Project No. 0029-029-119, PE 101, RW-202, (along Lee Highway and Chichester Lane). The service drive shall be provided in accordance with the Public Facilities Manual (PFM), as determined by the Director of the Department of Environmental Management (DEM) along Lee Highway and Chichester Lane. These improvements are reflected on the attached sketch. The right-of-way shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, whichever occurs first. The final determination of the amount of right-of-way shall be made by the Virginia Department of Transportation (VDOT) at the time of site plan review. Construction of frontage improvements, consisting of curb and gutter set at 19.0 feet from the centerline, shall be provided along the site's Chichester Road frontage from Lee Highway to the entrance.

10. Transitional Screening 2 (35 feet) shall be provided along the southern and northern lot lines to buffer the adjacent residential properties. A landscape plan shall be submitted to and approved by the Urban Forestry Branch of the Department of Environmental Management as part of the site plan approval process. This plan shall reflect the 35 feet of transitional screening on the south and east, indicate the unhealthy trees which should be removed, reflect the provision of landscape plantings around the foundation of the building and along the western lot line, and show the peripheral parking lot landscaping between the parking lot and the eastern lot line. The nature, type, and amount of these plantings shall be as determined by the Urban Forestry Branch. These plantings shall be provided for the aesthetic enhancement of the site and to provide a transition between the proposed non-residential use and the abutting residential uses in order to retain a residential compatibility which will further the planned residential development of the area. The landscape plan submitted with this application shall only be used as a guideline and the final decision on amount and type of landscape material shall be determined at time of site plan review by the Urban Forestry Office.

11. A six (6) foot board on board fence shall be provided as a barrier along the southern side of the site. The required transitional screening shall be planted between the barrier and the southern lot line. If approved by the Urban Forestry Office, the rear wall of the building may be used to meet part of this barrier requirement. The barrier along the remaining lot lines shall be waived.

12. The proposed parking lot lights shall be of a height, type and direction that prevent light, glare and nuisance light from negatively impacting adjacent properties. The height of the light standards shall be a maximum of twelve (12) feet. No flood lights shall be use to illuminate the property.

13. The structure shall be soundproofed and constructed so that there will be no emission of odor or noise detrimental to other property in the area. Noise levels shall conform to the provisions of Chapter 108 of the Code. The kennel use and the ancillary veterinary and grooming uses shall comply with all County Ordinances, State Codes and County Health Department regulations governing these uses.

14. If a waiver of stormwater management if not approved by DEM, a ground-level stormwater detention facility shall be provided on site. Final determination of the location and design of the stormwater detention facility shall be made by the Department of Environmental Management (DEM).

15. The cages used for all animals shall be designed to ensure the secure confinement of animals and shall comply with all State and County regulations.

This approval, contingent on the above noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the kennel and veterinary hospital use has been established by compliance with these development conditions. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-3 with Chairman DiGiulian, Mr. Kelley, Mr. Pammel and Mr. Ribble voting aye; and Mrs. Harris, Mrs. Thonen and Mr. Hammack voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 186, January 26, 1993, (Tape 2), Information Item:

Out-of-Turn Hearing
Rudolph and Paulette Tyson, VC 92-L-132

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA). She stated that the BZA had deferred the out-of-turn hearing request for VC 92-L-132 from the January 19, 1993, public hearing. Ms. Kelsey noted that the case was presently scheduled for March 9, 1993.

Mrs. Thonen made a motion to deny an out-of-turn hearing for VC 92-L-132. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:55 a.m.

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

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

SUBMITTED: March 2, 1993

APPROVED: March 9, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 2, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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 Chairman DiGiulian called for the first scheduled case.

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Page 187, February 2, 1993, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT H. E. AND FRANCES A. DAVIS, VC 92-D-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6 ft. high fence to remain in front yard of corner lot (4 ft. max. height allowed by Sect. 10-104). Located at 1400 Bakers Creek Ct. on approx. 14,204 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((5)) 24A1. (DEF. FROM 11/19/92)

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that the applicant was present, but the fence contractor had telephoned staff saying that he was tied up in traffic. Ms. Kelsey said the fence contractor had asked that the case be passed over until he could arrive.

Mrs. Harris so moved. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Pammel was not present for the vote.

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Page 187, February 2, 1993, (Tape 1), Scheduled case of:

9:10 A.M. GOLF VENTURES, INC., SP 92-S-032 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit golf driving range and commercial golf course. Located on Braddock Rd. on approx. 47.72 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31. (DEF. FROM 9/24/92 FOR NOTICES) DEF. FROM 11/19/92 FOR NOTICES AND SUBMISSION OF REVISED PLATS)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, Carlos M. Montenegro, 3141 Fairview Park Drive, South, Suite 640, Falls Church, Virginia, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report. She said the applicant was requesting special permit approval to allow a lighted 45 tee golf driving range, a lighted practice area, and a 18 hole par 3 golf course with a 8,000 square foot clubhouse, and lighted parking lot which will accommodate 81 vehicles. The proposed hours of operation would be from 7:00 a.m. to 10:00 p.m., seven days a week. A tributary of Popes Head Creek flows in a southeasternly direction across the property creating two Environmental Quality Corridor (EQC) areas. The applicant was requesting a modification of the transitional screening requirement along Braddock Road's frontage and portions of the eastern side lot line in addition to a waiver of the barrier requirement around the entire site. She said staff supported the modification and waiver except along Braddock Road where staff suggested a planted berm be provided. The subject property and adjacent parcels are located in the Occoquan Watershed and are planned for very low density residential development at .1 to .2 dwelling units per acre, or one house on every 5 to 10 acres. Ms. Anderson said the Comprehensive Plan for the area states that non-residential uses requiring a special exception or a special permit should be rigorously reviewed and should be granted only if the use is of a size and scale that will not adversely impact the character of the area. She said it was staff's opinion that the combination of the uses proposed are of a size and scale that would create an intensity that would not be in harmony with the plan for the area. Ms. Anderson added that the facilities with the most intensive lights were proposed to be located on the periphery of the property adjacent to very low density residential development. Staff proposed that the hours be restricted to daylight hours with only security lighting provided. The subject property is environmentally sensitive because of its location within the Popes Head Creek Watershed of WSPOD, the two tributaries on the site with their associated EQC, and the wildlife habitats that abound on the site. Ms. Anderson said numerous precautions are needed to protect the environmental quality of the property, especially the water quality and the water quantity. She added that none of the proposed development conditions recommended by staff can prevent the clearing of 80 percent of the subject property. Based on the applicant's proposal to access the site from Braddock Road, staff requested dedication to facilitate the widening of Braddock Road to six lanes. Ms. Anderson said to alleviate having to obtain right-of-way from the adjacent property, the applicant proposed to provide a temporary entrance and turn lane. At the time Braddock Road is widened, the applicant would provide a permanent entrance in the northeastern corner of the site. Ms. Anderson said the applicant had indicated there was a discrepancy in the boundary information provided for a portion of the site's frontage on Braddock Road and it was staff's opinion that this should be resolved prior to any approval of the application in order to ensure that the requested uses and screening can be provided within the area in question. She said staff did not believe the proposal was in harmony with the Comprehensive Plan and did not meet the required standards of the Zoning Ordinance; therefore, staff recommended denial of the application. In closing, Ms. Anderson said if it was the BZA's

intent to approve the application, staff would request that the application be deferred until the applicant could submit a revised plan, with the correct metes and bounds, which incorporates the proposed development conditions contained in the staff report.

Ms. Anderson said Connie Crawford with the Environmental Branch, Office of Comprehensive Planning, was present to respond to any questions the BZA might have.

In response to a question from Mr. Ribble, Ms. Anderson said there is a note on the plat indicating the boundaries shown on the plat are not the same as on the dedication plat which showed the applicant's dedication of right-of-way for Shirley Gate Road.

Mr. Montenegro said several new issues had been raised in the staff report and in discussions with citizens within the past week and some of those have not yet been addressed. He said based on these issues, it might be appropriate for the BZA to defer decision to allow the applicant an opportunity to resolve those issues.

He said the applicant was proposing to construct a 18 hole par 3 golf course, which was very much like the Burke Lake Golf Course, but on a smaller scale with far less impact on the property from the standpoint of grading. The driving range will be located in the most secluded portion of the property and will not be visible from Braddock Road and to the properties to the east and to the south. The properties to the west set well away from the shared lot line. The boundaries of the EQC's are located along the east side of the property and, with the exception of providing two detention ponds on the north end of the property, the northern portion of the property will not be impacted. He said the septic field will be located on the southeastern portion of the property and will serve the pro shop.
Mr. Montenegro said it appeared that staff had two basic concerns, one dealing with lighting and one dealing with the intensity. He said the applicant was proposing 81 parking spaces for a maximum of 200 people on both the golf course and driving range, which is comparable to Burke Lake's 27 hole course and driving range. The applicant was proposing to light the driving range with lights that will not be visible from the perimeter of the property because they will be recessed in the ground and point upward and each light will be equal to 4 foot candles. The remainder of the lighting will be comparable to accent lighting in the front yard of a residential property. He said the proposed 80 percent of clearing will be outside the EQC and will be equal to the same amount of clearing that would be involved if the site were developed with a cluster subdivision. (He discussed a handout submitted to the BZA showing the property from different angles.) The applicant proposed erecting a briar type barrier between the fairways and the EQC to prevent anyone from entering the EQC area. Mr. Montenegro said there has been an environmental consultant who has been involved in the project from day one and can demonstrate that the water will not be impacted by the stormwater measurements proposed by the applicant. The applicant plans to irrigate the golf course facility by using the water in the ponds and if this is not sufficient, the applicant will supplement with public water or obtain permission to construct wells. He said the 47 acre site does not have sanitary sewer and has only one septic site; therefore, the applicant believes this is an appropriate use of the property.

Chairman DiGiulian called for speakers in support of the request and hearing no reply called for opposition.

John Hilten, 5100 Meath Court, Fairfax, Virginia, represented the Popes Head View Homeowners Association; Douglas McIntosh, 11330 Lafferty Lane, Fairfax, Virginia; Joyce Wheeler, 1133 Lockhaven Lane, Fairfax, Virginia; and, Jerry Moser, 4804 Brenton Wood Drive, Fairfax, Virginia. The speakers believed the proposed use was too intense for the site, will not be compatible with the area, and will adversely impact the neighbors. They also expressed concern that the golf course may not be completed once the driving range is allowed to open.

Following a discussion among the BZA, Mrs. Thonen said she would like a report from staff as to how many patrons utilize the facility at Burke Lake.

In rebuttal, Mr. Montenegro said it was the applicant's intent to construct both the golf course and the driving range and added there will be no toxic seepage from runoff. He said he did not believe there will be a problem with overflow parking, there will be a security officer on site during off hours, and the septic field capacity is defined and has been approved by the Health Department. Mr. Montenegro said there will be turn lanes into the site and that he does not believe there will be any adverse impact from the proposed lighting.

A discussion took place between the BZA and Mr. Montenegro regarding the proposed lighting and the impact that it would have on the surrounding neighbors.

Mrs. Harris expressed concern that the issues raised in the staff report had not been addressed relating to the intensity of the proposed development and the increased traffic generation. Mr. Montenegro said he believed the use was in harmony with the Comprehensive Plan.

Mr. Kelley said he had never met a golf course that he did not like, but he did not like the one proposed by the applicant. He said he believed the application should be deferred to allow the applicant an opportunity to resolve issues dealing with the boundary, lighting, screening, water quality/control, and tree preservation. Mr. Kelley said he would move to defer the application to a date and time suggested by staff and allow each side 10 minutes to present additional information.

Mr. Pammel pointed out that he had been unable to find a soil analysis in the information submitted to the BZA and that he would like one.

Mr. Montenegro said a soil analysis was conducted, but it had not been submitted to the BZA. He suggested a four or five week deferral would be appropriate.

Mrs. Harris asked that the information be submitted to the BZA at least one week prior to the public hearing.

Chairman DiGiulian asked if there were any other location for the septic field other than the transitional yard. Mr. Montenegro replied the area proposed by the applicant was the only perkable site.

Mr. Hammack noted that the traffic study contained in the information appeared to be rather low and asked why the course would need 45 tees. Mr. Montenegro said the applicant was proposing to have classes. Mr. Hammack said if classes were going to be held on site the BZA needed to be made aware of that fact.

Mrs. Harris said she believed that it was misleading to compare the proposed golf course to the facility at Burke Lake.

Mr. Kelley asked staff for a date and time for the deferral. Ms. Anderson suggested March 16, 1993, at 8:00 p.m. Mr. Kelley so moved. Mrs. Harris seconded the motion. The motion carried by a vote of 7-0.

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Page 189, February 2, 1993, (Tape 1), Scheduled case of:

ROBERT H. E. AND FRANCES A. DAVIS, VC 92-D-095

(The BZA had passed over this case earlier in the public hearing.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert Davis, 1400 Bakers Creek Court, Herndon, Virginia, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report. She said the applicant was requesting a 2.0 foot variance to allow a 6.0 foot high fence to remain in the front yard of a corner lot. The application had been deferred from November 19, 1992, at which time only four BZA members were present.

Mr. Davis said it had not been his intent to be in violation of the Zoning Ordinance. He added that he probably would have installed the fence at the time his house was built, but the contractor asked that he wait until the houses on Lots 22, 23, and 25A were completed because of grading and site work that needed to be put in place. Mr. Davis said when he again approached the contractor, the contractor said his work schedule was too heavy and he was not available to construct the fence. Mr. Davis then contacted four other contractors, none of whom mentioned any problem with constructing a 6 foot high fence in a front yard. He said the fence was added in 1985 and the plat was filed with the County in 1986, the fence has been in place for 7 years and it would be an undue hardship to lower or relocate the fence as it would also require relocating the landscaping, and there are no objections from the neighbors nor the homeowners association. Mr. Davis pointed out that Butter Churn Drive is the only road that runs through the development; therefore, the road is a heavily traveled road.

In response to a question from Chairman DiGiulian, Mr. Davis replied the fence does not impact the sight distance for either Bakers Creek Court or Seven Pines Court. He added that the fence sets back approximately 8 feet from the edge of the sidewalk.

Chairman DiGiulian called the representative of the fence company to the podium.

Bob Erring with Beller Engineering & Service, Inc., Number 8 Crane Highway, Mitchellville, Maryland, came forward.

In response to questions from Mr. Hammack, Mr. Erring said his company was licensed to do business in the State of Virginia and had installed the applicant's fence. He said in 1984 when the fence was constructed he did not work for Beller Engineering.

Mrs. Harris asked if it was part of the company's standard contract to obtain the necessary permits and verify the zoning. Mr. Erring said that it was his personal policy, but he could not respond to something that happened in 1984. He said the company did not maintain records that far back.

Mrs. Thonen asked if the fence could be cut down without harming the fence. Mr. Erring said the entire fence would have to be rebuilt if it were cut down.

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

Mr. Hammack made a motion to grant VC 92-D-095 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 10, 1992, and modified as reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-095 by ROBERT H. E. AND FRANCES A. DAVIS, under Section 18-401 of the Zoning Ordinance to allow 6 foot high fence to remain in front yard of corner lot, on property located at 1400 Bakers Creek Court, Tax Map Reference 11-1((5))24A1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1993; 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(Cluster).
3. The area of the lot is 14,204 square feet.
4. There is a topographical rise in the middle of the lot that prevents privacy and the lot does have of a double front yard requirement.
5. The fence has existed on the lot since 1984 and from the testimony it does not appear that the applicant was at fault in the construction of the fence in any way.
6. It appears that the contractor was less than candid in where the fence could be located, and the contractor who actually built the fence did not do his job either.
6. There are no objections from the neighbors.
7. The fence is located approximately 8 feet within the lot line.

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

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

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

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

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

1. This variance is approved for the location of the 6.0 foot high fence shown on the plat prepared by Patton, Harris, Rust & Associates, and dated August 9, 1984, revised June 24, 1986, submitted with this application for the life of the existing fence and is not transferable to other land.

2. If this fence is replaced, the height and location of the replacement fence shall comply with the Zoning Ordinance applicable at that time.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 191, February 2, 1993, (Tape 1-2), Scheduled case of:

9:35 A.M. ULRICH & CHRISTEL THUMM, VC 92-D-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 3.9 ft. from side lot line (10 ft. min. required) and allow wall to remain 4.2 ft. high in front yard (4 ft. max. height allowed). Located at 6920 McLean Park Manor Court on approx. 2,941 sq. ft. of land zoned R-8. Dranesville District. Tax Map 30-4 ((41)) 9A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Ulrich Thumm, 6920 McLean Park Manor Court, McLean, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicants were requesting two variances, a 6.1 foot variance to allow a 8.2 foot high deck to be located 3.9 feet from the side lot line. The second request was for a .2 foot variance to allow a 4.2 foot high brick wall to remain in a front yard where a 4 foot wall is allowed.

Mr. Thumm said he acquired the property in good faith and was not aware that the existing brick wall was in violation of the Zoning Ordinance. He said he and his wife would like to construct a 14 x 6.2 foot deck 11 feet above ground to be located 3.9 feet from the side lot line. Mr. Thumm said there is approximately 10 feet of open space which belongs to the homeowners association which will place the deck 13.9 feet from the lot line that would be the most impacted. He said he believed the deck would be in harmony with the spirit and purpose of the zoning regulations and would not set a precedent. Mr. Thumm said his wife has an arthritic condition and to have the deck constructed off the main level of the house would be helpful to her. He said he and his wife have lived in the area for over 6 years, they are quiet neighbors, and the proposed location is the coolest part of the yard.

In response to questions from Mrs. Harris, Mr. Thumm used the viewgraph to show the location of another homeowner who had a second story deck. He said the proposed deck would be off the living room/dining area to the side of the house and the existing patio is off the living room to the rear of the house. Mr. Thumm again noted that the proposed location is the coolest part of the yard.

Mr. Pammel asked what the elevation would be. Mr. Thumm said it would be approximately 7.11 feet above ground.

Mr. Ribble asked the speaker if he had seen the letter in opposition and he replied that he had not. Staff provided the applicant with a copy of the letter. While the applicant was reading the letter, Chairman DiGiulian called for speakers in support of the request and hearing no reply called for speakers in opposition.

John R. Spring, attorney with the firm of Rees, Broome & Diaz, 8133 Leesburg Pike, Vienna, Virginia, represented the Stoneleigh Homeowners Association which is a 134 townhome community. He said Stoneleigh is located to the north of the McLean Park Manor Court and there are approximately a dozen homeowners in the Stoneleigh community who would be affected by the applicant's proposal. Mr. Spring said because of the proximity of the applicants' property to the Stoneleigh properties the deck will be approximately 16 to 19 feet high and will mean those properties will not be able to enjoy the privacy that they do currently. He said the applicants have alternate locations in which to construct the deck and the applicants have not established any evidence that would indicate there is a particular situation on the property that is not found on other R-8 townhome communities. Mr. Spring said the association sympathizes with the co-applicant's condition but does not believe that it is sufficient for the granting of the variance as it would constitute a convenience.

In response to a question from Mr. Hammack, Mr. Spring said there would be little the association could do if the applicants chose to construct the deck in the rear of their lot if it met the Zoning Ordinance requirements.

Thomas J. Sawyer, 1601 Dunterry Place, McLean, Virginia, said he and his wife were opposed to the request as he believed the deck would create an unfair intrusion into the scenic common area that exists between the two communities. He said the photographs were misleading from the viewpoint that they were taken and pointed out that the deck would not be blocked from the neighbors' view by the existing trees. Mr. Sawyer believed the deck would set an undesirable precedent and added that the applicants should have been aware of the zoning restrictions when they purchased the property. He said the proposed deck would intrude upon his and other Stoneleigh homeowners' privacy and the applicants have not met any of the required standards for the granting of a variance.

Mr. Hammack asked if any Stoneleigh residents have built decks off the first floor and Mr. Saywer said he was not aware of any.

Andrea Del Vecchio, 1559 Dunterry Place, McLean, Virginia, said she had submitted an opposition letter to the BZA and submitted a petition signed by surrounding neighbors into the record. She said she greatly values the privacy of her walled in back yard and since the proposed deck would overlook her yard she believed that would be an invasion of her privacy. Ms. Del Vecchio said the applicants have a beautiful back yard patio and that she respectfully disagreed that the deck was needed because of Mrs. Thumm's medical condition.

Barbara Searles, 1605 Dunterry Place, McLean, Virginia, said she had lived in the neighborhood since 1971 and her property would be overlooked by the applicants' property. She said at the time McLean Park Manor was built she was involved in the planting of the landscaping screening along common boundary. Ms. Searles said the deck would impact approximately a dozen homeowners since the applicants' property sets approximately 8 feet higher than those townhomes in the Stoneleigh community.

In rebuttal, Mr. Thumm disagreed that relocating the deck would be less of an impact and that he believed it was immaterial as to whom planted the trees in the common area.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant the applicants' request in part by allowing the brick wall to remain and to deny the deck as reflected in the Resolution and subject to the Development Conditions contained in the staff report dated January 26, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-125 by ULRICH AND CHRISTEL THUMM, under Section 18-401 of the Zoning Ordinance to allow construction of deck 3.9 feet from side lot line **(THE BZA DENIED THE CONSTRUCTION OF THE DECK)** and allow wall to remain 4.2 feet high in front yard **(THE BZA APPROVED THE WALL REMAINING IN THE FRONT YARD)**, on property located at 6920 McLean Park Manor Court, Tax Map Reference 30-4((41))9A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1993; 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-8.
3. The area of the lot is 2,941 square feet.
4. The applicants presented testimony that indicated compliance with the nine standards, specifically the topographical conditions that brought about the minor variance request for the wall.
5. The applicants did not show compliance with Standard 6(b) showing that the granting of the variance for the deck would alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a privilege or convenience sought by the applicant.

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

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

E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 wall shown on the plat prepared by Alexandria Surveys, Inc., dated October 19, 1992, submitted with this application and is not transferable to other land.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 193, February 2, 1993, (Tape 2), Scheduled case of:

9:45 A.M. THE ARTERY ORGANIZATION, INC., SP 92-Y-063 Appl. under Sect(s). 3-803 of the Zoning Ordinance to permit community swimming pool and tennis courts. Located at 5458 Crystalford Ln. on approx. 1.11 ac. of land zoned R-8 and R-12. Sully District. Tax Map 54-4 ((10)) pt. B; 54-4 ((12)) pt. A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Keith C. Martin, attorney with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Blvd., 13th Floor, Arlington, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the property is zoned R-8 and R-12 and is developed with recreational facilities including a swimming pool, wading pool, two tennis courts, and a 1,800 square foot bath house. Mr. Hunter said the property was rezoned from R-8 to R-12 with the approval of RZ 85-S-149 and RZ 79-S-017, respectively. In addition a proffer interpretation for RZ 79-S-017 dated April 7, 1987, permitted the relocation of one tennis court from the location shown on the General Development Plan to the eastern property boundary to allow it to be combined with the location of the recreational facility included with RZ 85-S-149. Mr. Hunter said while the facilities were shown on the Generalized Development Plan, they were never approved under a special permit application. He said the applicant was requesting special permit approval in order to legally establish the use as well as a modification of the transitional screening requirement in order to allow the previously approved transitional screening and barrier modifications to continue. Mr.

Hunter said staff believed the transitional screening yard along Lorton Lane should be provided, and if it is not provided a proffered amendment will be necessary. He added that additional plantings should be provided where storm drainage or sanitary sewer easements do not exist along certain boundaries of the site. In conclusion, he said staff recommended approval subject to the proposed development conditions being implemented.

Mr. Martin said it was really a "housekeeping application" and that he shared the embarrassment of the Zoning Evaluation Division staff along with all the other agencies involved in the application. He said everyone was so wrapped up in the rezoning application they just assumed that it was similar to a PDH application and since it was shown on a Final Development Plan a special permit was not necessary. Mr. Martin said the facility was completed last year and was used by the homeowners last summer and they were looking forward to another successful season.

Mrs. Harris asked if the applicant agreed with all the development conditions and Mr. Martin replied in the affirmative. He pointed out that Artery is no longer involved in the development, all the townhomes have been sold, and a homeowners association has been established.

Chairman DiGiulian called for speakers in support of the request.

Howard Hastings, President of the Walney Mills Homeowners Association, said the association was definitely interested in having the special permit approved, but that he was concerned with some of the conditions. He said the staff report states that the facilities are for the sole use of the residents of Walney Mills, and that is not the case. Mr. Hastings said there was a legal document filed with the County indicating that when Artery divided the original plan to develop a multi-use community into three separate parcels it was agreed that all three communities would share the facilities; therefore, he did not believe the screening was necessary. He added that the maximum number of family memberships reflected in the staff report was 378 and to his knowledge with all three communities included, it would be in excess of 450 families. Mr. Hastings also questioned the conditions relating to the hours of operation, parking spaces, loudspeakers, and lighting, and that he believed that all three communities should be represented at the public hearing and the other communities were not. He expressed concern that the financial responsibility would now fall on the communities' shoulders.

Mr. Hammack questioned whether the application was in order since all three communities were not listed. Mr. Hunter said the information used by staff was taken directly from the statement submitted by the applicant.

Mrs. Harris pointed out for the benefit of Mr. Hastings that there was no negotiating with respect to the development conditions.

Mr. Martin said the information was provided to him by Artery several months ago and that was what he forwarded to staff.

Mr. Ribble asked if he had knowledge of the other two communities and Mr. Martin said that he did not.

A discussion took place between the BZA and Mr. Martin as to how this would impact the approved use.

Mrs. Thonen made a motion to continue the public hearing on SP 92-Y-063 for approximately 30 days. Marilyn Anderson, Senior Staff Coordinator, suggested March 9, 1993, at 9:10 a.m. Mrs. Thonen so moved. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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The BZA recessed at 11:17 a.m. and reconvened at 11:26 a.m.

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Page 194, February 2, 1993, (Tape 2), Scheduled case of:

10:00 A.M. ALBERT H. HARACZ, JR., APPEAL A 92-M-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination of the Zoning Administrator that there are no nonconforming rights to outside storage in excess of 100 square feet on the appellant's property and that the property is subject to the provisions of Par. 24 of Sect. 10-102. Located at 6633 Pine Rd. on approx. 21,780 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((9)) 22.

The Deputy Zoning Administrator, William Shoup, informed the BZA that the appellant and the citizens were requesting a deferral in order to continue discussions with respect to resolving the issue. He said staff was in agreement and suggested a 60 day deferral.

The appellant, Albert Haracz, and Robert McIntire, a representative of the neighbors, came forward to agree to the deferral.

Jane Kelsey, Chief, Special Permit and Variance Branch, said it appeared that April 13, 1993, at 9:00 a.m. would be the most appropriate date due to the BZA's caseload on April 6th and April 20th.

Mrs. Harris so moved. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 195, February 2, 1993, (Tape 2), Scheduled case of:

10:15 A.M. DONALD E. AND NINA M. WEBER, VC 92-L-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow addition 17.5 ft. from rear lot line. Located at 6120 Dew Grass Dr. on approx. 10,604 sq. ft. of land zoned R-3. Lee District. Tax Map 82-3 ((13)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Donald Weber, 6120 Dew Grass Drive, Alexandria, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicants were requesting a variance in order to construct an addition 17.5 feet from the rear lot line. Ms. Greenlief corrected the date on the development conditions to reflect "1993" rather than 1992.

Mr. Weber referenced the statement of justification submitted with the application. He said that three of the neighbors, after receiving the certified notice letter, approached him and asked how they could convey their support to the BZA. Mr. Weber submitted three letters of support into the record.

In response to a question from Mrs. Harris, Mr. Weber said the existing deck was a multi-level structure where they have a picnic table.

A discussion took place between Mrs. Harris and Mr. Weber as to why the addition could not be relocated. Mr. Weber said to construct the addition to the other end of the house would require removal of the entire deck.

The co-applicant, Nina Weber, came forward and explained that they were requesting the addition in order to enlarge the kitchen, create a laundry room, and to provide overflow when all their children visit.

Mrs. Harris said the statement of justification said the addition was to be used to accommodate their handicapped daughter. Mrs. Weber explained that they had removed a wall this past fall to provide living space for their handicapped daughter, thus the house was brought down to two bedrooms, a living room, and a kitchen. She said the house will be given to their handicapped daughter when they are gone.

A discussion took place between Mrs. Harris and the applicants as to why the addition could not be reduced. Mr. Weber said their daughter is 32 years old and they are trying to create an atmosphere that will allow her to be independent while living in the same house with her parents.

Mrs. Thonen said the houses in the Rose Hill subdivision are small, the lots are hilly, the applicants' lot is pie shaped, and there does not appear to be any other feasible location.

There were no speakers to address the request and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 92-L-126 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 26, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-126 by DONALD E. AND NINA M. WEBER, under Section 18-401 of the Zoning Ordinance to allow addition 17.5 feet from rear lot line, on property located at 6120 Dew Grass Drive, Tax Map Reference 82-3((13))8, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1993; 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 10,604 square feet.
4. The applicants have met the nine required Standards for a variance, in particular the application meets the standard that the lot is irregularly shaped due to the way the house sits on the lot.
5. There is no opposition to the request.
6. Only one portion of the addition requires a variance.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Guy A. Sadler, Architect, dated October 12, 1992, revised to November 11, 1992, submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1993. This date shall be deemed to be the final approval date of this variance.

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10:30 A.M. KETTLER & SCOTT, INC., SP 89-Y-035, Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit community recreational facilities. Located 6119 Pleasant Valley Rd. on approx. 5.13 ac. of land zoned R-C, AN, WS. Sully District. Tax Map 53-1 ((1)) 4. (DEF. FROM 1/12/93 TO ALLOW TIME FOR THE APPLICANT TO MEET WITH THE CITIZENS AND TO SUBMIT REVISED PLATS.)

The applicant's agent, Rick Hausler, 8081 Wolftrap Road, Suite 300, Vienna, said since the last public hearing a revised plat has been submitted which conforms to the revised development conditions which the Virginia Run Citizens Association supports.

Lori Greenlief, Staff Coordinator, said the application was deferred from January 12th to allow the applicant time to work with the citizens and revise the plat. She added the public hearing was not held on January 12th and proceeded to present the staff report.

Ms. Greenlief said the applicant was requesting approval of a community recreational facility. She said this would be one of two recreational sites in the Virginia Run subdivision and the other site is also under special permit. The proposed use features four tennis courts, a multi-purpose court, a tot lot, an optional gazebo, and a play field. Ms. Greenlief said the gazebo and the tot lot was added to the plat since the last hearing date. She said also added to the plat was an additional 14 parking spaces for a total of 28 in one lot located in the center area of the site. Since the last hearing, a fence was added to the tennis courts and the entire area in the front was reconfigured. Ms. Greenlief said staff's response to the revised plat was contained in an Addendum dated January 26, 1993, which was mailed to each BZA member. She discussed Condition Number 9 which required Transitional Screening 1 along the eastern and southern lot lines and a portion of the northern lot line. Staff believed the screening was important now that the area will be used as a play field. Ms. Greenlief said staff's concerns had been met with the revised plat and staff recommended approval based upon the implementation of the development conditions contained in the Addendum.

Chairman DiGiulian asked the applicant if he agreed with the development conditions. Mr. Hausler said that he did and noted that the homeowners association had requested some minor changes.

Jack Spring, attorney with the firm of Rees, Broome, & Diaz, 8133 Leesburg Pike, Vienna, Virginia, represented the Virginia Run Citizens Association and expressed support for the request. He added that if the modifications would require that the case again be deferred, the Association would withdraw the modifications. Mr. Spring said the modifications involved Conditions 1 and 4 with an addition of Condition 17. He called the BZA's attention to the documents submitted to them and outlined the modifications.

Toni Clint said she had been a resident of Virginia Run since 1988 and that she was representing the tennis community. She asked that the hours of play be extended to 7:00 a.m. to 9:00 p.m. She requested that the BZA approve the option of possibly lighting the tennis courts sometime in the future. Ms. Clint said there are many people in the community who would like to utilize the courts but because of the time constraints they cannot. She expressed concern with the materials placed on the trails being tracked onto the courts. Ms. Clint submitted signed petitions into the record supporting both the extended hours and the proposed lights.

Mrs. Harris asked if these issues were raised at an Association meeting. Ms. Clint said she did not know. Mr. Spring said that he believed the Association was cognizant of the fact that the tennis club would like lighted courts, but the Association currently takes a neutral position on that issue.

Deborah Lesser, 6208 Hidden Canyon Road, Centreville, Virginia, said she had lived in the community since 1988 and although she did support the application as presented she did have two concerns. She said the drainage ditch that is noted for possible piping in the future presents a safety issue since the children play around the ditch.

Mr. Hammack asked if the parents allowed their children to play in the ditch. She said most of the parents do not allow it, but the children walk past the ditch on their way to school. Ms. Lesser said there was a trail on both sides of the ditch.

Ms. Lesser expressed concern that the proposed facility was supposed to be in place before she moved into her house in 1988 and asked for assistance in the bonding procedure to ensure that the facility is constructed. Chairman DiGiulian said that the Department of Environmental Management (DEM) would address the bonding question at the time of site plan review.

Dean Jones, 15141 Weatherburn Drive, Centreville, Virginia, said he had lived in the community since July 1988 and that he also supported the request but did have concerns. He said one of his concerns dealt with the transitional screening depicted on the plat and said that the screening did not exist and asked if that would be improved upon. Mr. Hammack said the Urban Forester would visit the site and determine if it was or was not adequate.

Mr. Jones said he did not believe the 28 parking spaces was adequate and that would cause homeowners to park on the school property and walk over to the tennis courts. Mrs. Harris said if the number of parking spaces was increased, it would cut down on the amount of recreational use.

There were no speakers in opposition to the request. Chairman DiGiulian called Mr. Hausler back to the podium at Mr. Kelley's request.

Mr. Kelley said that he did not plan to incorporate the Associations' suggestions into the development conditions. Mr. Hausler said he would leave that to the BZA's discretion.

Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 89-Y-035 subject to the Development Conditions contained in the Addendum dated February 2, 1993, as modified in the Resolution. He said he believed that if the BZA accepted the Association's suggestions it would be setting a precedent since it was not the applicant.

Mr. Pammel said he would not object to the hours of play being extended to 7:00 a.m. nor to the possibility of adding lighting in the future without the applicant having to come to the BZA. He said he would move an amendment to reflect those changes.

Chairman DiGiulian said he would not be willing to support the amendment as he did not believe that the request had been presented to the Association.

Mr. Pammel's amendment 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 89-Y-035 by KETTLER & SCOTT, INC., under Section 3-C03 of the Zoning Ordinance to allow community recreational facilities, on property located at 6119 Pleasant Valley Road, Tax Map Reference 53-1((1))4, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1993; and

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

1. The applicant is the developer of the land.
2. The present zoning is R-C, AN, WS.
3. The area of the lot is 5.13 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 8-403 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. However, upon issuance of the Non-Residential Use Permit, this approval will transfer to the Virginia Run Homeowners 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 prepared by Urban Engineering & Assoc., Inc., dated October 21, 199, revised to January 25, 1993 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 made available to members of the Virginia Run Homeowners Association and displayed at the Virginia Run Community Center.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan or waiver request 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 objections to a site plan waiver.

5. There shall be 28 parking spaces provided for this use as shown on the special permit plat. All parking for this use shall be on site. This shall not preclude a shared parking agreement, if found necessary.

6. Adequate turn-around area shall be provided in the parking lot as determined by the Director, DEM. This shall not infringe into the Transitional Screening area.

7. The hours of operation shall be limited to 8:00 a.m. to 9:00 p.m. These hours shall be posted on the property.

8. There shall be no lights on the property.

9. Transitional Screening shall be provided as follows:

   - Transitional Screening 1 shall be provided along the southern and eastern lot lines. Transitional Screening 1 shall be provided along the northern lot line in the area not planted with the row of evergreens. Existing vegetation shall be utilized if determined appropriate by the County Urban Forestry Branch.

   - A row of evergreen trees, other than white pines, shall be provided along the northern edge of the driveway as shown on the special permit plat. The species shall be determined by the County Urban Forestry Branch.

10. The limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by the County Urban Forestry Branch.

11. Stormwater Best Management Practices (BMPs) shall be provided if determined necessary by the Director, Department of Environmental Management (DEM) in accordance with the provisions of the Water Supply Protection Overlay District.

12. The application of fertilizer, pesticides and herbicides shall be coordinated with the Department of Extension and Continuing Education to ensure that application is minimal and adverse impacts to water quality from increased levels of fertilizer, pesticides and herbicides can be prevented to the maximum extent possible as determined by the Department of Extension and Continuing Education.

13. Once Pleasant Valley Road is improved to a four lane divided facility, if no median break is located at the site entrance, then the entrance shall become right-in and right-out only.

14. Ancillary easements shall be provided for the future improvement of Pleasant Valley Road upon demand by the Department of Environmental Management or the Virginia Department of Highways and Transportation.

15. A fence shall be provided around the tennis courts. The type and height shall be determined by the Director, Department of Environmental Management.

16. There shall be no lighted signs on 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 Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 199, February 2, 1993, (Tape 3), Information Item:

Request for Reconsideration for Pamela McAlwee, SP 92-B-053

Mrs. Thonen made a motion to deny the applicant's request. Mrs. Harris seconded the motion which carried by a vote of 6-1 with Mr. Hammack voting nay.

Mr. Hammack changed his vote later in the public hearing to "aye" as he had believed the BZA was considering the reconsideration request for the Sandra Willwerth, SP 92-P-015, application.

The vote was changed to 7-0.

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Page 200, February 2, 1993, (Tape 3), INFORMATION ITEM:

Request for Reconsideration for Sandra Willwerth, SP 92-P-015

Mr. Kelley made a motion to deny the request that the BZA reconsider its decision of January 26, 1993, to grant SP 92-P-015. Mrs. Thonen seconded the motion.

Mrs. Harris said the Supervisor from the Providence District had written to the BZA stating that there was a definite line made on Cedar Lane prohibiting any further commercial development and this is noted on the Comprehensive Plan.

Mrs. Thonen said that was brought out at the hearing.

Chairman DiGiulian said there was considerable discussion at the public hearing with respect to the Comprehensive Plan.

Mr. Hammack said he would support the request to reconsider the BZA's action and perhaps have additional testimony regarding the residential development that was to be constructed in the area.

Mr. Kelley said he believed there had been a significant amount of testimony at the public hearing relating to the character of the neighborhood.

Mr. Pammel said he believed that the Board of Supervisors have reviewed on numerous occasions applications and proposals by the Long Brothers, who are the owners of the large tracts of residential property between the west of Cedar Lane. Those applications have indicated residential, single family, two to three dwelling units to the acre.

The motion to deny the reconsideration carried by a vote of 5-1 with Mrs. Harris and Mr. Hammack voting nay.

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Mr. Hammack changed his earlier vote on the reconsideration of Pammel McAlwee, SP 92-B-053, to "aye".

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Page 200, February 2, (Tape 3), Information Item:

Approval of Resolutions from January 26, 1993

Mr. Pammel made a motion to approve the resolutions as submitted. Hearing no objection the Chair so ordered.

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Page 200, February 2, (Tape 3), Information Item:

Request for Additional Time
Phyllis M. and David C. Benner, VC 90-L-066

Mrs. Thonen made a motion to grant the applicants' request making the new expiration date June 28, 1993. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 200, February 2, (Tape 3), Information Item:

Request for Additional Time
Fairfax Covenant Church, SPA 87-S-075-2

Mr. Ribble made a motion to grant the applicant's request making the new expiration date March 1, 1995. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 200, February 2, (Tape 3), Information Item:

Fran Wallingford Appeal

Mrs. Thonen made a motion that the appeal was not timely filed and therefore should not be scheduled for public hearing. Mr. Pammel seconded the motion.

Mrs. Harris said the date on the letter from staff to the appellant was December 9, 1992, thus the appellant did not have thirty days in which to respond.

Chairman DiGiulian said he believed the appellant was present and wished to address the BZA. He said the BZA would hear discussion only on the timeliness issue.

Fran Wallingford said the Zoning Administrator's response to the letter requesting evaluation of off site parking was dated December 7, 1992, was postmarked December 9, 1992, and was

received on December 11, 1992. She said the response was filed on January 8, 1993, within thirty days of date mailed and date received. Ms. Wallingford said the holidays could have contributed to the delay in the mail and certainly did contribute to her efforts in requesting the appeal as her organization does not normally meet through the holidays.

Mr. Kelley said he would oppose the motion and said he had consistently argued that the County had to determine a better way in calculating the thirty day timeframe.

Mrs. Thonen said she did not believe that the appellant was an aggrieved party.

Ms. Wallingford said when the application was filed it was filed on behalf of all the signers of the original letter and the letter was signed by Chuck Trichilo, President of the Ridgely Hills Homeowners Association, an organization that owns common property and represents owners of property abutting the site. She added that the letter was also signed by Clay Cameron, who was present in the Board Room, and is the Land Use Chair of the Pineridge Civic Association, and by her, Land Use Chair of the Mantua Civic Association. Ms. Wallingford said she delivered the appeal application with the understanding that all the signers of the original letter were represented in the appeal request. The appeal form was not signed by any of the original letter signers because the only signature required was from someone authorizing the County access to the property. She said they do not have the authority to allow access nor is access necessary to address the concerns outlined in their letter. Ms. Wallingford said upon delivery of the appeal package she said she stated that all of the signers were part of the appeal request; however, since Mr. Shoup, the Deputy Zoning Administrator, required a signature on the appeal form she signed as an individual in order to meet the filing deadline. She submitted a letter into the record signed by Mr. Trichilo.

Mr. Hammack said he believed that the appellant was a proper aggrieved party.

Mrs. Harris asked for a clarification as what parking problem was being addressed by the appeal. Ms. Wallingford said the parking was both on the site and the satellite parking.

Mr. Shoup said the satellite parking addressed in the letter was located off of Glenbrook Road and that he did not believe it was part of the Mantua subdivision.

Ms. Wallingford submitted a map highlighting the communities to the BZA.

Mrs. Thonen withdrew her motion and Mr. Pammel withdrew his second.

Mrs. Harris made a motion to accept Fran Wallingford appeal and schedule the public hearing for April 6, 1993.

Mr. Kelley asked if the maker found the appellant to be an aggrieved party and the appeal was timely filed.

Mrs. Harris said she believed that the Zoning Ordinance was written in such a way to give a citizen thirty days to respond to the Zoning Administrator's decision.

Chairman DiGiulian agreed with Mrs. Harris' comments, but that he did have a problem with whether or not the appellant was an aggrieved party. He said that perhaps that issue should be resolved at the time of the public hearing.

Mr. Hammack said that he believed the appellant was an aggrieved party.

Chairman DiGiulian called for the vote and the motion carried by a vote of 7-0.

Jane Kelsey, Chief Special Permit and Variance Branch, suggested a time of 10:30 a.m. Mrs. Thonen so moved. Hearing no objection, the Chair so ordered.

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Page 201, February 2, (Tape 3), Information Item:

Change in BZA Meeting Dates

The BZA had previously discussed changing its meeting date to Wednesday rather than Tuesday since the Board of Supervisors many times needs to meet on Tuesdays following its Monday meetings. Since the BZA was planning to relocate to the Government Center, this would alleviate any conflicts which might occur with the BZA's use of the Board Room.

Following a brief discussion, Mrs. Thonen made a motion that the BZA meeting date be changed to Wednesday. She added that the one night meeting per month would remain the third Tuesday after the third Monday. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Change in Meeting Date for Mosque Hearing

A discussion took place among the BZA regarding the request from Larry Becker, attorney for the Mosque, that the hearing be moved to a later date as he would be out of town on February 16th.

Following the discussion, Mrs. Thonen made a motion to defer the hearing to March 30 1993, at 8:00 p.m. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 12:32 p.m.

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

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

SUBMITTED: March 2, 1993

APPROVED: March 9, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the New Government Center on February 9, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:15 a.m. and Mrs. Thonen gave the invocation.

Chairman DiGiulian advised that Barbara A. Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning, was present to give the Board a report on the proposed Zoning Ordinance amendments on churches.

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Page 203, February 9, 1993, (Tape 1), Board Item:

Ms. Byron came to the podium and advised that, the previous day, the Board of Supervisors had voted to reconsider their previous action at a previous meeting regarding the church amendment. At that time, they voted on two issues: The first was that a new use had been established, which is a church that is in conjunction with a child care center, nursery school or school of general education of 100 students or more. She said that, as of the present, the use would go to the Board of Supervisors. There was a concern that the uses should not have to go through two separate public hearings and, under the scope of the advertisement that the Board had before them, they could have both uses come before one body: the Board of Supervisors.

The Board of Supervisors also asked that staff come forward for authorization on February 22, 1993, with another Ordinance amendment which would make that same new special exception use also a special permit use; meaning that an applicant who has a church with a school, child care center, or nursery school of 100 students or more, could select whether they wanted to be under a special permit which would come before the BZA, or under a special exception which would come before the Board of Supervisors. Ms. Byron said that the motion further said that there should be a limitation on rehearing; i.e., there should be guidelines established to eliminate the possibility of applicants going before one body and, if the ruling was not to their liking, immediately going before the other body. Staff is in the process of developing safeguards against this type of a situation.

Mrs. Harris asked about the case of a church having already been before the BZA and wanting to amend their application to more than 99 children. Ms. Byron said that, as of today, their only option would be to go before the Board of Supervisors; however, they may soon have the option of going before the BZA.

Mr. Ribble asked which body would hear a revocation of a church which was under special permit, having been heard by the BZA. Ms. Byron said that had not been discussed specifically; however, in extrapolating out of the County Attorney's comments, she said it was their view that the body which granted the permit would revoke it.

Mrs. Thonen asked if Supervisor Elaine McConnell, Springfield District, had raised the issue of churches being allowed by-right on 5 acres. Ms. Byron said that, after the Board voted on the two motions heretofore discussed, Supervisor McConnell put forth a motion that was approved by the Board, asking staff to research an ordinance amendment which would allow churches, by-right in the residential districts where they are currently not allowed by-right, under certain circumstances. Two of the circumstances Supervisor McConnell put forward were: a 5-acre or greater lot and an arterial roadway. Ms. Byron said that staff would have to study this and report back to the Board. She said it would not go in the same timeframe as the amendment which the Board had directed staff to come back with in February 22, 1993.

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Chairman DiGiulian called for the regular agenda.

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Page 203, February 9, 1993, (Tape 1), Scheduled case of:

9:00 A.M. ABDUL R. MONDAL, VC 92-D-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow fence 6.4 ft. in hgt. within the min. req. front yard on a corner lot (4 ft. max. hgt. allowed by Sect. 10-104). Located at 1387 Butter Churn Dr. on approx. 10,865 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((9)) 23.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the Clerk had reported to her that the notices were not in order for this application and that it will need to be deferred.

Ms. Kelsey suggested a date of March 23, 1993, at 9:00 a.m., because the applicant is in violation and the Zoning Enforcement Branch asked that the matter be expedited.

Mr. Mondal's neighbor came forward to advise that he was the person who had initiated the complaint about the fence and that he was there to speak in opposition to the variance application. Mrs. Harris advised him that, since the notices were not in order, the BZA

could not hear his testimony. She asked him if the suggested hearing date was convenient for him and he decided that it was.

Mr. Hammack asked the neighbor if he was on adjoining Lot 22 and he said yes.

Chairman DiGiulian requested that staff send out the notices. Ms. Kelsey said it was not their normal practice, but that they could do so, if necessary.

Mrs. Harris moved to defer this application until March 23, 1993, at 9:00 a.m. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Page 204, February 9, 1993, (Tape 1), Scheduled case of:

9:10 A.M. ROBERT R. AND PATRICIA L. CHAPMAN, VC 92-V-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow construction of addition 15.2 ft. from street line of a corner lot (30 ft. req.). Located at 6100 Fort Hunt Rd. on approx. 11,037 sq. ft. of land zoned R-4. Mount Vernon District. Tax Map 83-4 ((3)) (7) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Chapman replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding properties are also zoned R-4 and developed with single family dwellings. He said that the applicant wished to construct a two-story addition 15.2 feet from the front lot line.

The applicant, Robert R. Chapman, 6100 Fort Hunt Rd., Alexandria, Virginia, presented his statement of justification. He said that he had submitted a petition to the BZA, signed by 18 neighborhood property owners who are in favor of his application. The reasons Mr. Chapman gave for requesting the variance for expansion of the residence is a growing family and an ailing relative. He said that the residence had been constructed in 1940 and the Ordinance became effective in 1978, requiring a 30 foot setback from the side road. Mr. Chapman pointed out that the proposed addition would be the same distance from the street line as the existing structure, which was built 52 years ago. He said that the property has exceptional narrowness; the house on one side is approximately 13.7 feet from the lot line and 15.2 feet on the other side. There is a extraordinary situation in the form of a substantial hill behind the house with a very old magnolia tree in excess of 50 years of age, as well as a poplar tree, which would make expanding behind the house difficult. Mr. Chapman said that denial of the request would present undue hardship because additional space is sorely needed to meet the demands of a growing family. He said he had already gone to closing in late December on the loan for the proposed addition. If the request is denied, the home will have to be sold. Mr. Chapman quoted the standards which he believed covered his situation.

Mr. Ribble asked Mr. Chapman if Jean Vandermite was still president of the Citizens Association in Belle Haven and he replied that he believed that she was; she had signed the petition.

Mrs. Harris asked what construction material the applicant planned to use on the addition. Mr. Chapman said that the existing home is a brick structure and the proposed addition would have clapboard siding because of the weight of the brick that would be required for the two-story addition. He said he had discussed the clapboard siding with Ms. Vandermite and her husband, who reside behind him.

Mr. Kelley said that he lives in the area, had viewed the property, and everything Mr. Chapman said was true; therefore, he supported the application. He pointed out that the existing dwelling is closer than the addition will be to the lot line.

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

Mr. Hammack made a motion to grant VC 92-V-128 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February, as amended by deleting Condition 3. Condition 3 was deleted to ensure that the applicant would have no problem in the future with the proposed construction material. The BZA believed the clapboard to be compatible and wanted to avoid having someone finding it incompatible in the future.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-128 by ROBERT R. AND PATRICIA L. CHAPMAN, under Section 18-401 of the Zoning Ordinance to allow construction of addition 15.2 ft. from street line of a corner lot, on property located at 6100 Fort Hunt Rd., Tax Map Reference 83-4((3))(7)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 February 9, 1993; 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 11,037 square feet.
4. The applicant has satisfied the 9 required standards for variance applicatons and, in particular, under number 2, it appears that the lot is exceptionally narrow.
5. The house was constructed about 50 years ago.
6. There are some exceptional topographic conditions and, in particular, under standard 2G, there exists an extraordinary situation, condition and use for the development of the property because it is just an extension of the existing house which was legal at the time of construction.
7. The variance will be only 15.2 feet at the closest point.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the variance plat prepared by R. C. Fields Jr. & Associates, dated November 9, 1992 submitted with this application and not transferable to other land.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 206, February 9, 1993, (Tape 1), Scheduled case of:

9:20 A.M. FIMAT, INC., DBA GOLD'S GYM & FITNESS CENTER, SPA 87-S-088-2 Appl. under Sect(s). 5-503 of the Zoning Ordinance to amend SP 87-S-088 for health club to permit change of permittee and increase in area, parking and number of employees and patrons. Located at 14290 Sullyfield Ct. on approx. 5.25 ac. of land zoned I-5, WS, AN. Sully District. Tax Map 34-3 ((5)) D2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Fifer replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the original special permit was granted in 1988 and was amended later that year to allow expansion of the Club. The current application requested further expansion from 11,600 square feet to 20,345 square feet, essentially utilizing the adjacent bay in the existing building. The applicant was also requesting an increase in the number of employees, the number of patrons, and the number of parking spaces. Ms. Greenlief said that the usual problem with this type of expansion is available parking but, in this case, adequate parking does exist. Staff had no other concerns with this application and recommended approval.

Carson Lee Fifer, Jr., Attorney/Agent, with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, presented the statement of justification, stating that the special permit the BZA had granted in December 1992 for another location would not be used; instead, the applicant would expand the use by amending the original special permit and using the two bays on either side of the facility.

Mr. Hammack asked Mr. Fifer if he had read the Proposed Development Conditions and if he found them to be acceptable. Mr. Fifer said yes to both questions.

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

Mr. Pammel made a motion to grant SPA 87-S-088-2 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions dated February 9, 1992, contained in the staff report.

Ms. Kelsey pointed out that the applicant was the lessee and asked that it be reflected in the record.

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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-088-2 by FIMAT, INC., DBA GOLD'S GYM & FITNESS CENTER, under Section 5-503 of the Zoning Ordinance to amend SP 87-S-088 for health club to permit change of permittee and increase in area, parking and number of employees and patrons, on property located at 14290 Sullyfield Ct., Tax Map Reference 34-3((5))D2, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1993; 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 I-5, WS, and AN.
3. The area of the lot is 5.25 acres; the area of the use is 20,345 square feet.
4. The applicant is expanding an existing special permit use by enlarging the facility to almost double the existing area.
5. There will not be a proportionate increase in the number of employees nor patrons on site, resulting in the intensity and development falling well within the provisions of the Comprehensive Plan and the Zoning District.

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 Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Patton Harris Rust & Associates, dated December, 1992 approved with this application, as qualified by these development conditions. This approval shall only govern the 20,345 square foot area to be occupied by the approved health club.

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

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

5. The maximum number of employees on site at any one time shall be eight (8).

6. There shall be minimum of forty-two (42) parking spaces provided for this use. At the time of site plan review, a parking tabulation shall be submitted to and approved by the Director, Department of Environmental Management (DEM) which shows that the required parking for all uses can be provided for Building 2 on Lot F1 as shown on the special permit plat or this special permit shall be null and void. All parking for this use shall be on site.

7. There shall be a maximum of 100 patrons on site at any one time.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 207, February 9, 1993, (Tape 1), Scheduled case of:

9:35 A.M. ALI A. YASSETIZADEH, VC 92-S-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 78.53 ft. min. lot width (80 ft. min. req.). Located at 8670 Center Rd. on approx. 21,430 sq. ft. of land zoned C-5 (Proposed R-3). Springfield District. Tax Map 79-3 ((6)) 10C. (Concurrent with RZ 92-S-030).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Matin replied that it was.

Greg Riegle, Staff Coordinator, presented the staff report, stating that the property is at the north side of Center Road, is zoned R-3 pursuant to action taken the previous day by the Board of Supervisors to change the zoning from C-5. He said that it was staff's belief that the variance application had satisfied the 9 required standards; absent the requested variance, the property would not be a buildable lot and could not develop in accordance with the recommendations in the Comprehensive Plan. The inability to develop is unique to the site and, accordingly, approval of the variance would not set an adverse precedent, all the other lots on Center Road had the ability to develop in accordance with the recommendations in the Plan and the requirements of the Zoning Ordinance. A variance of slightly more than 1.5 feet is a minimum request.

Mr. Ribble asked if there were no other lots in the subdivision that would require a variance and Mr. Riegle said that the other lots on Center Road had been developed and had width to permit at least one dwelling.

Hamid Matin, Agent, 14301B Sullyfield Circle, Chantilly, Virginia, presented the statement of justification, stating that the subdivision had been created before the Zoning Ordinance was created. He said that the applicant normally would not have been required to request a variance; however, since they also were requesting rezoning, they were required to comply with all the new rules and regulations of the current Ordinance.

Mrs. Harris and Chairman DiGiulian agreed that this parcel was the only piece of commercial land in a sea of residential property; this would be a good use for the property.

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

Mrs. Thonen made a motion to grant VC 92-D-137 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 2, 1993.

Mrs. Harris pointed out that granting this variance and changing the zoning will bring the property into conformance with the existing Comprehensive Plan.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-S-137 by ALI A. VASSETIZADEH, under Section 18-401 of the Zoning Ordinance to permit 78.53 ft. min. lot width, on property located at 8670 Center Rd., Tax Map Reference 79-3((6))10C, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 9, 1993; 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 21,430 square feet.
4. The zoning was changed from C-5 to R-3 the previous day by the Board of Supervisors.
5. If the variance were not granted, the property could not be residentially developed and residential development is more appropriate for this property than commercial development.
6. Granting this request and changing the zoning on this property will put the property in conformance with the existing Comprehensive Plan for this area.

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

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

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

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

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

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

1. This variance is approved to permit a minimum lot width of 78.53 feet as shown on the plat prepared by Dove and Associates dated December 4, 1989 and is not transferable to other land.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 17, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 209, February 9, 1993, (Tape 1), Action Item:

Approval of Resolutions from February 2, 1993, Hearing

Mr. Pammel moved to approved the Resolutions as submitted by the Clerk. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 209, February 9, 1993, (Tape 1), Action Item:

Rescheduling of Fran Wallingford Appeal
to April 27, 1993, at 9:30 a.m.

Mr. Pammel so moved, in order not to hear the case during the observance of Passover. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 209, February 9, 1993, (Tape 1), Action Item:

Request for Out-of-turn Hearing
Gregory Ellis
VC 93-M-003

Jane C. Kelsey, Chief, Special Permit and Variance Branch, gave the Board members an outline of how the applicant wished to enclose an existing screened porch, for which a variance had been previously granted.

Mr. Hammack moved to deny this request because of a very heavy caseload. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 210, February 9, 1993, (Tape 1), INFORMATION ITEM:

McLean Bible Church
SPA 73-D-151-3

Correspondence between William Hansbarger, attorney, and William E. Shoup, Deputy Zoning Administrator, and a copy of a letter to Supervisor Berger from Carson Fifer, attorney, the original of which had been forwarded to Chairman DiGiulian, were attached for review. Mr. Hammack said that he would like to know whether, when this case was heard, Mr. Hansbarger had been asked if he agreed with the Proposed Development Conditions. He asked that staff re-examine the tapes to find out whether Mr. Hansbarger had given summary acquiecence. Ms. Kelsey said she would do that.

Regarding the motion for judgement which had been filed by Warren Dennis against McLean Bible Church, he wanted to know if it raised the same issue. Mrs. Harris said that Mr. Fifer had told her that the motion was filed under the nuisance law.

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Page 210, February 9, 1993, (Tape 1), Information Item:

Revised BZA Meeting Dates and Place for Discussion

Mrs. Harris said she did not understand why this item was now moot, since she did not have cable and did not see the Board of Supervisors meeting wherein the BZA meeting place had been discussed.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the next meeting of February 23, 1993, would be held in the Massey Building.

Ms. Kelsey said that the question of whether the BZA would continue to meet on Tuesday or change their meeting date to Wednesday had not been resolved. She had not yet checked with the Massey Building personnel to find out if the meeting room was available on Wednesdays. She had been directing her research toward meeting in the Government Center Board Room in an effort to find out whether Wednesdays were available there. Chairman DiGiulian suggested that the BZA continue to meet on Tuesdays until they were sure where they ultimately would be conducting their meetings. If it is subsequently determined that the BZA will continue to meet at the Massey Building, they could then decide which day they would prefer.

Mrs. Harris questioned whether any confusion had been generated by the change in meeting places and Ms. Kelsey said yes, staff had re-noticed property owners, re-posted, and re-advertised for the February 23 meeting to ensure that all interested parties were aware of the proper location of the meeting.

In answer to questions from the Board, Ms. Kelsey said that the meeting date was not scheduled to change to Wednesday until April 27, 1993, as cases had already been scheduled through that date.

Chairman DiGiulian asked Ms. Kelsey to find out, before the next meeting, whether the Massey Building Board Room is available on Wednesdays because Mr. Pammel had a problem with Tuesday meetings.

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Page 210, February 9, 1993, (Tape 1), Information Item:

Letter received from
Administration of Early Childhood Church Programs
Copy of letter forwarded to Zoning Ordinance Amendment Branch, ZAD

Mr. Hammack referenced this item and asked that staff write a letter to inform them that the BZA is not the legislative body that imposes new requirements, policies, and fees on them. Chairman DiGiulian requested that Ms. Kelsey write a tactful letter to the group.

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As there was no other business to come before the Board, the meeting was adjourned at 10:05 a.m.

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

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

SUBMITTED: March 2, 1993

APPROVED: March 9, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on February 23, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:15 a.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 211, February 23, 1993, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL F. FITZGERALD, VC 92-L-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow construction of addition and carport 5.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307 for addition, 7 ft. min. side yard req. by Sects. 3-307 and 2-412 req. for carport). Located at 6442 Northanna Dr. on approx. 10,157 sq. ft. of land zoned R-3. Lee District. Tax Map 81-3 ((13)) (Q) 543.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Fitzgerald replied that it was.

David Hunter, Staff Coordinator, addressed the BZA. He stated that the applicant was requesting two variances. Mr. Hunter said that the first request was to allow construction of a one story addition 5.5 feet from the side lot line. The Zoning Ordinance requires a minimum 12 foot side yard; therefore, the applicant was requesting a modification of 6.5 feet to the minimum side yard requirement. Mr. Hunter stated that the second request was to allow construction of a carport 5.5 feet from the side lot line. The Zoning Ordinance allows a five foot intrusion into the minimum side yard for a carport; therefore, the applicant was requesting a modification of 1.5 feet to the minimum side yard requirement. He noted that the adjacent property is a vacant right-of-way for the Capital Beltway; therefore, there would be no detrimental impact on residential property.

The applicant, Michael F. Fitzgerald, 6442 Northanna Drive, Springfield, Virginia, addressed the BZA. He stated that the lot had a steep slope and the proposed location was the only level area on which to construct the carport and addition. He noted that the application met all the necessary standards, would be in harmony with the Comprehensive Plan, and would have no detrimental impact on the neighborhood. In summary, Mr. Fitzgerald stated that there were similar carports in the neighborhood and asked the BZA to grant the variance.

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

Mr. Hammack made a motion to grant VC 92-L-129 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 16, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-129 by MICHAEL F. FITZGERALD, under Section 18-401 of the Zoning Ordinance to allow construction of addition and carport 5.5 feet from side lot line, on property located at 6442 Northanna Drive, Tax Map Reference 81-3((13))(Q)543, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 1993; 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 10,157 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. There is an unusual condition with respect to adjacent property which is undeveloped parkland.
6. The applicant has testified that topographic conditions exist which justify the granting of the variance.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified additions shown on the variance plat prepared by Dewberry & Davis, dated September 1, 1992, revised December 7, 1992 submitted with this application and not transferable to other land.

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 5-0-1 with Mr. Pammel abstaining from the vote. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 212, February 23, 1993, (Tape 1), Scheduled case of:

9:10 A.M. JAN H. GROSSMAN & PAULA S. GROSSMAN, VC 92-B-130 Appl. under Sect. 18-401 of the Zoning Ordinance to allow an addition and decks 36.7 ft. from front lot line of a corner lot (40 ft. min. front yard req. by Sect. 3-107). Located at 8612 Raleigh Ave. on approx. 21,898 sq. ft. of land zoned R-1. Braddock District. Tax Map 70-1 ((2)) 174.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Lawson replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow construction of a two story addition and deck 36.7 feet from the front lot line on a corner lot. The Zoning Ordinance requires a minimum 40 foot front yard; therefore, the applicant was requesting a modification of 3.3 feet to the minimum

front yard requirement on Wakefield Drive. In summary, Mr. Hunter stated that the Zoning Administrator's files indicated that the houses along Wakefield Drive range in setback distant from 40 feet to over 100 feet.

In response to questions from the BZA, Mr. Hunter stated that over half of the houses along Wakefield Drive were located more than 40 feet from the property line. He noted that most of the corner lot structures were oriented towards the side streets.

The applicants' attorney, William B. Lawson, Jr., with the firm of Lawson and Frank, a Professional Corporation, 4141 North Henderson Road, Plaza Suite 5, Arlington, Virginia, addressed the BZA. He stated the subdivision had taken place in approximately 1953 under the previous Zoning Ordinance. Mr. Lawson explained that when the present Ordinance was adopted, the existing subdivision was placed into what was considered the most appropriate category. He stated that when a property was between categories, it was placed in the more stringent category with many of the lots having great discrepancies. Mr. Lawson said that the subject lot fell into that category because the 21,900 square foot lot is only 100 feet wide and the normal R-1 lot is 36,000 square feet with a 150 foot width. He also noted that the lot was further restricted because it has two front yards and an unusual shape. Mr. Lawson explained that although part of the addition would be within the Zoning Ordinance restrictions, the lot narrowed and caused the need for the variance. Mr. Lawson stated that if the addition were placed in the backyard, many large trees would be destroyed. He noted that on the northern side of the existing structure, the first floor extended beyond the basement and the proposed addition would allow an extension of the basement as well as the first floor. In summary, Mr. Lawson expressed his belief that the application was for a minimal variance and asked the BZA to grant the request.

In response to Mr. Pammel's question as to what were the specific hardships and why the addition could not be placed along Raleigh Avenue, Mr. Barnes stated that the exceptional shape of the property precluded the applicant from having reasonable use of the property. He asked the architect to address the placement issue.

The applicant's architect, Robert Weinstein, 918 F Street, N.W., Suite 205, Washington, D.C., addressed the BZA. He explained that if the addition was placed towards Raleigh Avenue, the existing windows in the living room and basement area would be completely blocked. Mr. Weinstein further explained that its proximity to the kitchen was the basis for the location of the dining room addition.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Cary Smith, 8601 Norfolk Avenue, Annandale, Virginia, addressed the BZA and stated that he lived directly across from the subject property. He expressed his support for the application and said that the proposed addition would be compatible with other structures in the neighborhood.

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

Mr. Pammel made a motion to grant VC 92-B-130 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 16, 1993.

Mrs. Harris stated that a lot of the corner lots have the same dimensions but this property has site specific problems. Lots 30, 31, and 56 are corner lots that are smaller but have an exceptional shape.

Mr. Ribble stated that the other corner lots are squared off and don't have the problems of this lot.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-130 by JAN H. GROSSMAN AND PAULA S. GROSSMAN, under Section 18-401 of the Zoning Ordinance to allow an addition and decks 36.7 feet from front lot line of a corner lot, on property located at 8612 Raleigh Avenue, Tax Map Reference 70-1((2))174, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 1993; 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-1.
3. The area of the lot is 21,898 square feet.
4. The subject lot does not conform to the Zoning Ordinance requirements for the R-1 district.
5. If the subject lot, which conforms to the Zoning Ordinance requirement for the R-2 district, was zoned as such, the applicant would not need the variance.
6. The lot has an unusual configuration.

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

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

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

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

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

1. This variance is approved for the location and the specific addition and decks shown on the variance plat prepared by DeLashmutt Associates, Ltd. dated October 2, 1992 submitted with this application and not transferable to other land.

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 1993. This date shall be deemed to be the final approval date of this variance.

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9:20 A.M. ROBERT D. STACY, SP 92-Y-066 Appl. under Sect(s). 8-913 of the Zoning Ordinance to allow modification to minimum yard requirement for construction of deck 10.2 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 15219 Louis Mill Dr. on approx. 12,708 sq. ft. of land zoned R-C, WS, AN. Sully District. Tax Map 33-4 ((2)) 179A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Stacy replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a special permit to allow the construction of a 7.5 foot high deck 10.2 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, the applicant was requesting a modification of 9.8 feet to the lot line. The Zoning Ordinance also allows a modification to the minimum yard requirements for certain R-C lots in accordance with the standards set forth in the staff report. It is staff's belief that this application met those standards; therefore, staff recommended approval subject to the development conditions contained in the staff report dated February 16, 1993.

The applicant, Robert D. Stacy, 15219 Louis Mill Drive, Chantilly, Virginia, addressed the BZA. He stated that he wished to build a deck on the back of the house. Mr. Stacy explained that the property had been rezoned and the existing structure was only 10 feet from the property line. He also explained that the existing sliding glass door, which now opens onto a 10 foot drop, would be utilized. Mr. Stacy said that many of the neighbors had already received approval for similar decks and they were supportive of the request. In summary, he stated that the deck would provide a finished appearance for the house and asked the BZA to grant the request.

In response to Mrs. Harris' question as to whether the sliding glass door could be utilized without the variance, Mr. Stacy stated that it could not.

Mrs. Harris made a motion to grant SP 92-Y-066 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 16, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-066 by ROBERT D. STACY, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirement for construction of deck 10.2 feet from side lot line, on property located at 15219 Louis Mill Drive, Tax Map Reference 33-4((2))179A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 1993; 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, WS, AN.
3. The area of the lot is 12,708 square feet.
4. The property was the subject of the final plat approval prior to July 26, 1982.
5. The property was comprehensively rezoned to the R-C district on July 26, or August 2, 1982.
6. The 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.
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 application has met the necessary requirement for the granting of the request.
9. The existing entrance dictates placing the deck at the proposed location.
10. The request is minimal and reasonable.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 specified deck shown on the plat 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 prepared by James R. Price, Land Surveyor, revised by Robert D. Stacy and dated November 19, 1992, submitted with this application and not transferable to other land.

3. A building permit and all required inspections shall be obtained.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval* date of the Special Permit unless construction has commenced, 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 6-0 with Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 10, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 216, February 23, 1993, (Tapes 1, 2, and 3), Scheduled case of:

9:35 A.M. COLVIN RUN PET-OTEL, INC., SPA 87-D-060 and SPR 87-D-060 Appl. under Sect(s). 8-907 and 3-103 of the Zoning Ordinance to renew and amend SP 87-D-060 for kennel to delete time limitation, to allow enclosure of runs, addition to existing building, and to increase land area. Located at 10127 Colvin Run Rd. on approx. 5.699 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) pt. 30.

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Reifsnyder replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the site consists of 5.6 acres and is occupied by a kennel, outdoor runs, and parking area which are situated on a knoll. He stated that the applicant was requesting a special permit amendment and renewal to allow the kennel for 250 animals to remain, the enclosure of the outdoor runs, the addition of three parking spaces for a total of 13 spaces, a slight increase in acreage to include the access drive, the addition of a small office, and the elimination of the five year term limitation. Mr. Heine said that the proposed hours of operation are 8:00 a.m to 6:00 p.m., Monday to Saturday, and noon to 3:00 p.m. on Sunday with 7 full-time and 25 part-time employees. He noted that the enclosure of the runs would increase the floor area from 4,243 square feet to 11,963 square feet.

Mr. Heine stated that the BZA initially granted the use for a kennel and outdoor runs in 1970 and it was subsequently renewed in 1976, 1981 and 1987. He noted that although in 1990 the Zoning Enforcement Branch directed the applicant to comply with the County's Noise Ordinance, staff found that the adjoining Colvin Meadows Subdivision was still impacted by the sound of barking dogs. Mr. Heine said that staff recommended approval and believed that the noise issue, as well as other concerns, would be mitigated by the acoustical treatment of the enclosure and the development conditions contained in the staff report dated February 16, 1993.

The applicant's attorney, Sarah H. Reifsnyder, 4020 University Drive, Suite 312, Fairfax, Virginia, addressed the BZA. She submitted a petition of support from the people who use the facility and stated that the kennel, which provided a valuable service to the community, had been in existence since the early 1970's. She noted that an earlier staff report had indicated that the kennel was an appropriate ancillary use in a predominantly residential area.

Ms. Reifsnyder stated that the applicant would like to improve the facility and mitigate the noise factor. She noted that the applicant had engaged Scott Harvey of Polysonics, Inc., a physical engineering firm, as well as Tom McNeil, an architect, to modernize the facility. She expressed her belief that the proposed renovations would eliminate most of the noise caused by the barking dogs. Ms. Reifsnyder explained that the open dog runs would be enclosed, the walls would be insulated, glass block would be used in lieu of windows, and a

roof with a drop acoustic ceiling would be installed to further mitigate noise. She stated that the applicant proposed to spend approximately $200,000 in order to continue the operation of an acceptable kennel.

Ms. Reifsnyder stated that the applicant had also met with concerned citizens and the executive committee of the Great Falls Citizens Association to resolve outstanding issues.

In summary, Ms. Reifsnyder addressed the development conditions and asked that the maximum number of animals continue to be 250, the site plan be waived, the land dedication requirement be eliminated, and to allow the existing transitional screening to satisfy the requirement.

In response to Mrs. Harris' question as to where the stockade fence would be located, Ms. Reifsnyder used the viewgraph to depict the area. She explained that while the runs would be enclosed, the area surrounded by the stockade fence would be used to allow a single dog to exercise. She expressed her belief that the stockade fence would mitigate noise.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Richard Peters, President of the Great Falls Citizens Association, P.O. Box 27, Great Falls Virginia, addressed the BZA and stated that the support was conditional. Mr. Peters thanked staff for their assistance and stated that the kennel was an asset to the community. He noted though, that there had been a detrimental noise impact on the neighbors. Mr. Peters also noted that there had been misrepresentation by the real estate agents who had informed the buyers that the kennel would be vacating the facility. In summary, Mr. Peters stated that the Citizens Association believed that the applicant was making a serious and commendable effort to be a good neighbor and eliminate the causes of complaint. He said that while the Citizens Association believed that an unlimited term was not warranted, a term of 12 to 15 years would be acceptable.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Steve Warner, 1207 Colvin Meadow Lane, Great Falls, Virginia; addressed the BZA, and read a letter of opposition from Danny Hsueh, 1208 Colvin Meadow Lane, Great Falls, Virginia. Mr. Warner expressed his own opposition to the application and asked the BZA to deny the request or limit the use for a two year term. He expressed his belief that the Zoning Ordinance was a variable or unknown.

In response to Mrs. Harris' question as to what section of the Zoning Ordinance was considered a variable or unknown, Mr. Warner stated that perhaps the Ordinance was not a variable or unknown, but the operating conditions were. He noted that the kennel noise was well above the Ordinance's specifications. Mrs. Harris stated that when she was a representative of the Great Falls Citizens Association she had approached the builder regarding noise mitigation measures and was informed that no barriers or mitigating measures would be taken because he and the buyers did not believe that there would be a noise problem. She expressed concern that after refusing to consider any noise mitigating measure during the construction, the homeowners who had known the kennel was in existence, would now express their desire to remove the use. Mr. Warner stated that the builder had deceived the buyers and had indicated that he would purchase the kennel property and the kennel would be moved. He further stated there were no guarantees that the applicant would obtain the necessary financing for the renovation. He expressed his belief that the applicant had not furnished sufficient proof that the renovations would resolve the problems and noted that the constant monitoring of the use would be a burden to the County and to the taxpayers.

In response to questions from Mr. Kelley as to how he could buy a house and then six months later expect to dispossess a business which had been in existence for many years, Mr. Warner stated that was not his intent. Mr. Kelley used an analogy to explain to Mr. Warner that it was a unique situation. He asked Mr. Warner if he had chosen to buy a home near Dulles Airport and found the noise was not acceptable, would he expect the airport to close. Before Mr. Warner could reply, the public hearing was interrupted by a man who informed the BZA that 110 people were waiting to use the room.

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The BZA was asked to vacate the Massey Building Board Room due to a scheduling conflict. The BZA recessed at 10:30 a.m. and reconvened in the Conference Room at 10:33.

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Chairman DiGiulian thanked the citizens for their cooperation in recessing to the Conference Room and noted that the BZA had not be cognizant of the double scheduling until the members arrived for the public hearing. The BZA resumed its hearing of the Colvin Run PET-OTEL, INC.

Mr. Kelley noted that it would be impossible for a business to obtain a loan on a project which only received a special permit for a two year term. Mr. Warner stated that if the renovations resolved the outstanding issues, then the special permit could be renewed. Mr. Kelley explained to Mr. Warner that a special permit could be revoked if the applicant did

not abide by the conditions, and again noted that the kennel could not receive the necessary financing to alleviate the noise problem if a special permit with only a two year term was granted. Mr. Warner stated that he had a right to live peacefully in his own home.

Mary Beth Lyons, 1207 Colvin Meadow Lane, Great Falls, Virginia; Yong Kim, 1211 Colvin Meadow Lane, Great Falls, Virginia; Cid Dela Cruz, 1201 Colvin Meadow Lane, Great Falls, Virginia; Sue No, 1209 Colvin Meadow Lane, Great Falls, Virginia; Samuel Kim, 1211 Colvin Meadow Lane, Great Falls, Virginia; addressed the BZA. They played a tape of the barking dogs that Mrs. Kim stated was made in the bedroom of her home and expressed their opposition to the request. The citizens explained that the kennel created a detrimental noise impact, was a potential heath and safety hazard, and asked the BZA to deny the request.

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

Ms. Reifsnyder stated that the applicant had been assured by the noise consultant that the proposed renovations would significantly lower the noise impact. She noted that although the kennel would be acoustically designed to mitigate any noise impact, topographic conditions would be a consideration.

The BZA asked why the runs could not be enclosed so that there would be no noise impact. Ms. Reifsnyder stated that the neighbors had indicated that when the dogs were inside the kennel there was no noise problem and assured the BZA that the enclosure of the runs would eliminate the existing noise impact.

Mr. Pammel stated that there was an obvious problem and the neighbors deserved a better quality of life than they were getting.

After a brief discussion with the BZA regarding technology which would alleviate the noise and air pollution, the BZA instructed the applicant to investigate the issue and submit a noise mitigation study to staff by March 2, 1993. The BZA also instructed staff to review the study with the appropriate County officials and report their findings to the BZA and the concerned citizens before the deferral date.

Mrs. Harris made a motion to defer SPA 87-D-060 and SPR 87-D-060 to April 6, 1993 at 10:30 a.m. Mr. Ribble seconded the motion which passed by a vote of 6-0 with Mrs. Thonen absent from the meeting. Chairman DiGiulian stated that written testimony would be accepted until March 22, 1993.

Ms. Reifsnyder stated that she would like to meet with the concerned neighbors to resolve the outstanding issues. The BZA agreed that such meetings would be commendable.

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Page 218, February 23, 1993, (Tapes 4), Scheduled case of:

9:50 A.M. STEVE A. LAWYER, VC 92-B-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow construction of addition 8.8 ft. from one street line of a corner lot and 15.7 ft. from other street line of a corner lot (20 ft. min. front yard req.). Located at 9200 Hunting Pines Pl. on approx. 6,279 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 58-4 ((32)) 36.

Chairman DiGiulian called the application and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Lawyer replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval in order to construct a garage addition 8.8 feet from one front lot line of a corner lot and 15.7 feet from the other front lot line of a corner lot. The Zoning Ordinance requires a minimum front yard of 20 feet; therefore, the applicant was requesting a modification of 11.2 feet from one front lot line and 4.3 feet from the other front lot line.

The applicant, Steve A. Lawyer, 9200 Hunting Pines Place, Fairfax, Virginia, addressed the BZA. He stated that the shape of the small corner lot precluded an addition being built without a variance. He explained that although the original design of the house depicted the garage addition, financial considerations had prevented him from contracting for the garage at the time of construction of the house. Mr. Lawyer stated that the garages on the two similar houses were constructed less than 10 feet from the lot line and expressed his belief that he should be allowed to have the same privilege as his neighbors.

In response to questions from the BZA as to whether a carport would suffice, Mr. Lawyer stated that he would like a standard two-car garage and said that any addition would encroach on the setback requirements. Mr. Lawyer explained that although the house had been situated so that a two-car garage could be added, the setback requirement had become more stringent after the builder had sold the property.

After a brief discussion, it was the consensus of the BZA to defer the application in order to allow the applicant to provide the original drawing, as well as photographs of the houses in the area with similar additions.

Page 219, February 23, 1993, (Tapes 1, 2, and 3), ~~COLVIN RUN PET-OTEL, INC., SPA 87-D-060~~ Alex Lawyer VC 92-D-13 (Ex) and ~~SPR 87-D-060,~~ continued from Page 218)

Mr. Kelley made a motion to defer VC 92-B-131 to March 9, 1993 at 11:15 a.m. to allow the applicant to submit additional information. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 219, February 23, 1993, (Tapes 4), Information Item:

Request for Additional Time
George Steven Hawkins, VC 89-L-062 and VC 89-L-063
5822 Tilbury Road
Tax Map Reference 81-1((2))pt.12C

Mr. Hammack made a motion to grant the additional time request. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting. The new expiration date will be February 9, 1995.

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Page 219, February 23, 1993, (Tapes 4), Information Item:

Request for Additional Time
The Enterprise School, Inc. SPA 85-C-049-2
1629 Beulah Road
Tax Map Reference 28-1((1))13

Mr. Hammack made a motion to grant the additional time request. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting. The new expiration date will be January 25, 1994.

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Page 219, February 23, 1993, (Tapes 4), Information Item:

Request for Additional Time
Special Permit Application, SP 90-M-048
Antioch Korean Baptist Church
6355 Lincolnia Road
Tax Map Reference 72-1((1))54

Mr. Kelley made a motion to grant the additional time request. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting. The new expiration date will be February 20, 1995.

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Page 219, February 23, 1993, (Tape 4), Information Item:

Approval of Minutes for January 5 and January 19, 1993

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

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Page 219, February 23, 1993, (Tape 4), Information Item:

Rescheduling of Appeal
Theodore B. Simpson, A 92-D-018

Mr. Hammack made a motion to reschedule the appeal to May 11, 1993 at 10:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 219, February 23, 1993, (Tape 4), Information Item:

Approval of Resolutions for February 9, 1993

Mr. Pammel made a motion to approve the resolutions as submitted. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 220, February 23, 1993, (Tape 4), Information Item:

Discussion and Revision of By-Laws Relating to Final Decision Date

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She read the revised wording for the BZA's approval.

The BZA approved a revised statement which read:

"No decision shall be officially filed in the Office of the Board until the day following the next official meeting day of the Board, but not less than eight days, whichever is the latter, unless otherwise waived by the Board of Zoning Appeals."

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Page 220, February 23, 1993, (Tape 4), Information Item:

Intent to Defer
Montessori School of Alexandria, Inc., SPA 80-L-033-3

Mr. Pammel noted that the applicant had already been granted a deferral.
Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the applicant had requested the current deferral because they had engaged an attorney and wished to do a traffic study. Mrs. Harris expressed her concerns regarding the applicant's letter which indicated the deferral would allow them to delete a development condition. Ms. Kelsey explained that the applicant had indicated that they would request the development condition regarding the number of vehicle trips per day be deleted.

Mr. Hammack made a motion to issue an intent-to-defer SPA 80-L-033-3 to April 20, 1993. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 220, February 23, 1993, (Tape 4), Information Item:

Memorandum Regarding Day of Week For The BZA Meeting

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA). She explained that when she asked if it would be possible to conduct the BZA hearings in the Massey Building on Wednesdays, she was informed that the room was reserved for several months.

Chairman DiGiulian noted that if the BZA moved its meetings to the Government Center a Wednesday meeting day would provide a cushion of one day between the Board of Supervisors' meetings and the BZA's meetings. He noted that the cushion was advisable because the Board of Supervisors' hearing sometimes extend into the next day and the cushion would keep the BZA from being bumped.

Ms. Kelsey stated that she had previously been informed that the Board Room at the Government Center would be available to the BZA for Wednesday meeting, but had since been informed that the BZA would not be allowed to use the facility.

The BZA discussed the parking problems the citizens would have trying to find a parking space at the Massey Building since in excess of 300 parking spaces will be deleted.

Mr. Pammel stated he probably would not be able to attend the first meeting of every month. He explained that since he had believed the BZA would be changing their meeting place to the Government Center and its meeting day to Wednesday, he had changed his schedule accordingly.

After a brief discussion regarding the meeting place, it was the consensus of the BZA to continue to investigate the possibility of using the Government Center Board Room.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

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

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

SUBMITTED: March 30, 1993 APPROVED: April 6, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 9, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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 Chairman DiGiulian called for the first scheduled case.

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Page 221, March 9, 1993, (Tape 1), Scheduled case of:

9:00 A.M. KENNETH J. PATTERSON, VC 92-V-120 Appl. under Sect. 18-401 of the Zoning Ordinance to allow addition 7.0 ft. from side lot line (15 ft. min. side yard required by Sect. 3-207). Located at 1105 Woodcliff Dr. on approx. 24,748 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 93-4 ((7)) (6) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth Patterson, 1105 Woodcliff Drive, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting a 8 foot variance in order to construct a two car detached garage.

Mrs. Harris said the applicant's statement of justification contained several references to other houses in the neighborhood that have two car garages built within the 15 foot setback. She asked if those garages were built by variances or when the houses was originally built. Mr. Heine said he believed that a large number were built with variances. He said he would review his notes to try to determine the type of variances that had been granted.

Mr. Patterson said he would like to construct a garage in order to provide protection for his vehicles and for storage. He said the garage would be constructed of brick similar to that of the existing house, the lots in the neighborhood are large wooded lots, and the proposed construction would be in harmony with the community. Mr. Patterson said out of the 82 houses in the community there are only 8 that do not have carports or garages. He said the garage would also protect his family from inclement weather.

Mr. Hammack asked how far back the house on the adjacent lot sits from the shared lot line. Mr. Patterson said 29 feet. He added that the neighbor had indicated he would support the request as long as the addition sits back 7 feet or more from the shared lot line.

Mrs. Thonen asked the applicant to address the hardship requirements. Mr. Patterson did so by reiterating his earlier comments.

Mrs. Harris asked if there had been a garage when he purchased the house. Mr. Patterson said the previous owner had converted the garage into a bedroom prior to the time he purchased the house. He said he would not like to construct the garage in the front of the house as he did not believe it would be in line with the rest of the neighborhood. Mr. Patterson said he did not believe a one car garage would be adequate.

In response to a question from Mr. Hammack, Mr. Patterson said there were no topographical problems on the lot.

Chairman DiGiulian called for speakers and no one came forward.

Jane Kelsey, Chief, Special Permit and Variance Branch, responded to Mrs. Harris' earlier inquiry with respect to other variances that have been granted in the neighborhood. She said there had been a variance granted on Lot 8, one denied on Lot 2, and several other lots were noted as having been the subject of variances, but the file did not contain any documentation relating to the type of variance.

There was no further discussion, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny VC 92-V-120 for the reasons noted in the Resolution.

NOTE: The applicant's request for a reconsideration was denied by the BZA on March 23, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-V-120 by KENNETH J. PATTERSON, under Section 18-401 of the Zoning Ordinance to allow addition 7.0 feet from side lot line, on property located at 1105 Woodcliff Drive, Tax Map Reference 93-4((7))(6)7, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 1993; 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 24,748 square feet.
4. Everyone wants a two car garage, but the applicant could have an oversized one car garage as a matter of right.
5. Although the neighbor on the east side of the applicant's property has voiced no objections to the garage being constructed 7 feet from the side lot line, a lesser variance would not be adequate because the garage shown on the plat is as narrow as it can be and still accommodate two cars.
6. The applicant has not presented testimony indicating a hardship.
7. There are no topographical conditions on the property.
8. The applicant has a lovely home and there is no doubt that the two car garage would enhance the value of the home more than an oversized one car garage, but there is no testimony to support the granting of the variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 23, 1993.

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Page 222, March 9, 1993, (Tape 1), Scheduled case of:

9:10 A.M. THE ARTERY ORGANIZATION, INC., SP 92-Y-063 Appl. under Sect(s). 3-803 of the Zoning Ordinance to permit community swimming pool and tennis courts. Located at 5458 Crystalford Ln. on approx. 1.11 ac. of land zoned R-8 and R-12. Sully District. Tax Map 54-4 ((10)) pt. B; 54-4 ((12)) pt. A. (DEF. FROM 2/2/93 FOR ADDITIONAL INFORMATION)

Chairman DiGiulian noted that the case had been deferred from February 2, 1993, for additional information.

Keith C. Martin, attorney with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Blvd., 13th Floor, Arlington, Virginia, said one of the issues raised at the earlier public hearing was the ownership of the recreational facility. He said the affidavit contained in the staff report was correct.

Mr. Hammack asked what had been determined with respect to a speaker's comments at the earlier public hearing regarding the other two developments being able to use the facility. Mr. Martin said there was an agreement between the master developer and the developers of the two adjacent subdivisions by way of easement agreement that allowed the homeowners of all three subdivisions to access the pool. He asked that the development conditions be revised to reflect a membership of "462" as opposed to 379.

Mr. Hammack asked if the change in the number of memberships would affect staff's recommendation of approval. David Hunter, Staff Coordinator, said that it would not. He said staff had determined that since the subdivisions using the facility would be in such close proximity it would be a predominately walk-to facility.

Mrs. Harris questioned whether 12 parking spaces was adequate. Mr. Martin said the facility was envisioned as a neighborhood facility and people would be walking to the facility. He said there would be no swim meets and added that the street in front of the club was wide enough to accommodate street parking.

Mr. Hunter pointed out that there are 12 parking spaces on site with 7 off site for a total of 19 parking spaces in the vicinity of the recreational facility.

Mr. Hammack said Development Condition Number 6 implied that the facility was used year round. Mr. Martin said the facility was essentially used from Memorial Day to Labor Day. Jane Kelsey, Chief, Special Permit and Variance Branch, said the tennis court season would extend past the pool season.

Howard Hastings, President of the Walney Mills Homeowners Association, said discussions have been held with the other two subdivisions and all have committed to jointly support the facility. He said the meeting room at the pool is not large enough to accommodate large parties and noted that he believed there was sufficient parking.

Chairman DiGiulian called for speakers to the request and hearing no reply closed the public hearing.

Mr. Pammel made a motion to grant SP 92-Y-063 subject to the Revised Development Conditions dated March 9, 1993, showing the membership to be "462".

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-063 by THE ARTERY ORGANIZATION, INC., under Section 3-803 of the Zoning Ordinance to permit community swimming pool and tennis courts, on property located at 5458 Crystalford Lane, Tax Map Reference 54-4((10))pt. B; 54-5((12))pt. A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 1993; 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 and R-12.
3. The area of the lot is 1.11 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 8-403 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 prepared by Vika Incorporated dated May, 1988, revised June 30, 1992 approved with this application, as qualified by these development conditions.

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

4. The maximum number of employees on site at any one time shall be 4.

5. The maximum number of family memberships shall be 462.

6. The hours of operation shall be limited to 9:00 a.m. to 9:00 p.m. These hours shall apply throughout the entire year.

7. There shall be a minimum of 12 parking spaces provided for the swimming pool and tennis courts on site as shown on the special permit plat.

8. No outside lighting or loudspeakers shall be used in conjunction with the swimming pool or tennis courts.

9. The transitional screening requirement shall be provided/modified along the lot lines specified below as determined by the County Urban Forestry Branch. Exact type, location, size and number of plantings shall be reviewed and approved by the County Urban Forestry Branch.

   Plantings shall be provided along the northern and northeastern property lines where no sanitary sewer or stormdrain easements exist.

   Transitional Screening 1 shall be provided along the southern property line within the designated twenty-five foot Transition Yard shown on the Special Permit Plat, as proffered with RZ 85-S-149.

   Plantings shall be provided along the eastern property line between the swimming pool and the sidewalk along Crystalford Lane.

   Additional plantings shall be provided in order to supplement the existing vegetation along the western property line between the swimming pool and the townhouses.

10. The barrier requirement shall be waived along all lot lines.

11. After-hours parties for the Walney Mills Community Swimming Pool and Tennis Courts shall be governed by the following:

    Limited to six (6 per season),

    Limited to Friday, Saturday and pre-holiday evenings,

    Weeknight parties limited to three (3) per year with written proof that all contiguous property owners have agreed,

    Shall not extend 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 extended-hour party or for the first one at the beginning of a swim season,

    Requests shall be approved only if there are no pending violations of the conditions of the Special Permit,

    Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

12. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:

All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, nine (9) months after the date of approval* unless the use is legally established and a Non Residential Use Permit is obtained. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 1993. This date shall be deemed to be the final approval date of this special permit.
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Page 225, March 9, 1993, (Tape 1), Scheduled case of:

9:15 A.M. JOSEPH A. LAHOUD, SPR 91-B-043 Appl. to renew SP 91-B-043 under Sect(s). 8-907 and 8-915 of the Zoning Ordinance to permit a home professional office and waiver of the dustless surface requirement. Located at 4415 Glenn Rose St. on approx. 22,500 sq. ft. of land zoned R-2 (C). Braddock District. Tax Map 69-1 ((3)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Joseph A. Lahoud, 4415 Glenn Rose Street, Fairfax, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting renewal of a special permit to extend the term limit for a home professional office for an additional six months and a waiver of the dustless surface for two gravel surface parking spaces located in the front yard. Mr. Heine said the use was approved by the BZA on October 29, 1991, with a one year term limitation and other conditions limiting the use. He said 534 square feet of the basement area is used to design computer software that allows for the operation of computer equipment by eye movement and is intended for the use of the physically disadvantaged. The use was established prior to the adoption of the Comprehensive Plan text that recommends residential development at 2 to 3 dwelling units per acre and indicates that non-residential development should only be permitted under certain circumstances. Mr. Heine said the low intensity use, no exterior changes in the dwelling, and the limit on the term of operation indicated that the use is compatible with the area's residential character. He said staff believed that the continuation of the use was acceptable for an additional twelve months to allow time for the applicant to relocate to a more appropriate area; therefore, staff recommended approval of SPR 91-B-043.

In response to a question from Mrs. Harris, Mr. Heine said staff was recommending twelve months rather than the requested six months to allow the applicant adequate time to complete the process and relocate.

Mr. Lahoud said he had made his presentation at the public hearing held a year and a half ago and that he appreciated staff's support. He believed the requested extension was reasonable as he was in a better position to project the future of the business and that he could now see "the light at the end of the tunnel". Mr. Lahoud said there are no objections from the neighborhood and there were no changes proposed for the use.

Mr. Kelley asked if he had chosen a permanent location. Mr. Lahoud said he was still exploring the possibilities.

There were no speakers to address the request and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SPR 91-B-043 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

Mrs. Thonen said although she believed the use was a good project she could not support the motion. She said the applicant has been operating as a home professional office for a year and a half and has had ample time to relocate to commercial space.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 91-B-043 by JOSEPH A. LAHOUD, under Sections 8-907 and 8-915 of the Zoning Ordinance to permit a home professional office and waiver of the dustless surface requirement, on property located at 4415 Glenn Rose Street, Tax Map Reference 69-1((3))2, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 1993; 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(C).
3. The area of the lot is 22,500 square feet.
4. The use is an acceptable use for the property.
5. Over the past year and a half that the applicant has been operating, there have been no complaints.
6. The information provided by the applicant as to what has been accomplished over the last year in developing the software for the physically disadvantaged is very impressive.
7. It is a minimal use of the property since only 534 square feet in the basement of the applicant's house is being used.
8. The use does not alter the character of the neighborhood.
9. The one year extension will allow the applicant time to find additional commercial space to relocate into.

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, 8-907, 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 as the special permit area of 534 sq. ft. within the basement of the existing dwelling located at 4415 Glenn Rose Street, and is not transferable to other land.

2. This Special Permit is granted only for the purpose, structure and uses indicated on the special permit plat (prepared by Alexandria Surveys, Inc., dated July 11, 1991) and approved with this application, as qualified by these development conditions.

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

4. The home professional use shall be approved for a period not to exceed twelve (12) months. The application for a renewal of the special permit shall be filed sixty days (60) before the expiration date of the special permit. The special permit shall remain valid until the application is acted upon by the Board of Zoning Appeals.

5. The maximum number of employees associated with this use shall be limited to four (4) on-site at any one time, including no more than two (2) employees not residing at the subject property.

6. The maximum number of visitor on-site at any one time shall not exceed two (2) per week. The maximum number of deliveries of supplies or equipment to the subject property shall not exceed two (2) per month.

7. Hours of operation shall be limited to 9:00 a.m. until 5:00 p.m., Monday through Friday.

8. No signs or other methods of identifying the home professional use shall be displayed on the subject property.

9. White Pines landscaping approved by the Urban Forestry Branch on December 30, 1991 of at least four (4) feet in height shall be maintained on the south and west sides of the gravel parking area in the front yard and between the two (2) existing trees on the north side of the driveway to screen the parking spaces from adjacent residential properties.

10. The number of parking spaces provided shall be a total of four (4) spaces. All parking shall be on-site and shall be designed according to the Public Facilities Manual (PFM) requirements. The two additional spaces shall be maintained on the south side of the driveway in order to provide maneuvering room, so that vehicles will not back into the street when exiting the property.

11. A waiver of dustless surface is granted for the gravel surface for two (2) parking spaces located south of the existing driveway. The waiver of the dustless surface shall be approved for a period of twelve (12) months to begin from the final approval date of this special permit renewal. The gravel surface shall be maintained in accordance with the standard practices approved by the Department of Environmental Management (DEM). The gravel surface shall be removed and shall be replaced with grass seed or sod within sixty (60) days after the expiration of this Special Permit.

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

Under Sect. 8-015 of the Zoning ordinance, this Special Permit shall automatically expire, without notice, six (6) months after the approval date* of the Special Permit unless the activity authorized has been legally established, or unless a new residential use permit is obtained, 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 6-1 with Mrs. Thonen voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 227, March 9, 1993, (Tape 1), Scheduled case of:

9:30 A.M. RUDOLPH & PAULETTE TYSON, VC 92-L-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow construction of addition 6.2 ft. from side lot line (12 ft. min. side yard req. under Sect. 3-307). Located at 5510 Leisure Ct. on approx. 12,015 sq. ft. of land zoned R-3. Lee District. Tax Map 82-1 ((14)) 4.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants' agent, William F. Garfinkel, 5335 Wisconsin Avenue, NW, Suite 440, Washington, DC, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicants were requesting a 5.8 foot variance in order to construct a two story addition. Mr. Hunter said the dwelling on Lot 3 is located 12.6 feet from the shared lot line.

Mr. Garfinkel submitted photographs showing the subject property from various angles and pointed out the large frontal area and how the lot tapers off to a reverse diamond. He said the house was originally located 11.7 feet from the side lot line, which was not in compliance with the Zoning Ordinance in effect at that time. The proposed addition would be an enlargement of the master bedroom area and there is no other location to construct the addition due to the way the house is sited on the lot. Mr. Garfinkel said there is a door leading to the basement on the other side of the house which alleviates the addition being constructed in that location. He said the house sits further back on the lot than the other houses and the yard slopes down, thus the proposed addition will not have a visual impact. (Mr. Garfinkel submitted sketches of the proposed addition and a copy of the original location survey to the BZA.)

Mrs. Harris asked if the applicant had discussed the proposed addition with the neighbor. Mr. Garfinkel said it was his understanding the applicants had talked to the neighbor and there were no objections.

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

Mr. Ribble made a motion to grant VC 92-L-132 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 2, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-L-132 by RUDOLPH & PAULETTE TYSON, under Section 18-401 of the Zoning Ordinance to allow construction of addition 6.2 feet from side lot line, on property located at 5510 Leisure Court, Tax Map Reference 82-1{(14)}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 March 9, 1993; 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 12,015 square feet.
4. The house is sited at an angle on the lot.
5. The lot is odd shaped.
6. The neighbors have not opposed the request.
7. Only one point of the proposed addition comes within 6.2 feet of the side lot line.
8. There are topographical problems in other areas of the yard.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the variance plat prepared by Coldwell, Skies & Almirall, dated November 9, 1992, submitted with this application and not transferable to other land.

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

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

4. The applicant shall obtain an Administrative Variance for the existing deck which is located 11.3 feet from the right side lot line.

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

Mrs. Thonen and Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 229, March 9, 1993, (Tape 1), Scheduled case of:

9:45 A.M. JOHN J. SCHAFFSTALL, SP 92-B-067 Appl. under Sect. 8-914 of the Zoning Ordinance to allow reduction to min. yard req. based on error in building location to permit addition to remain 9.3 ft. from side lot line and 17.4 ft. side yard total (20 ft. min. side yard total req. by Sect. 3-307). Located at 5027 DeQuincey Dr. on approx. 9,011 sq. ft. of land zoned R-3 (C). Braddock District. Tax Map 69-1 ((9)) 51.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John J. Schaffstall, 5027 DeQuincey Drive, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the request for special permit approval resulted from an error in building location to allow a single car garage addition to remain 9.3 feet from the side lot line with a total side yard of 17.4 feet. Ms. Langdon said the dwelling on adjacent Lot 50 is located approximately 12.7 feet from the shared side lot line.

Mr. Schaffstall said he had enclosed the existing carport not realizing that he needed to obtain a permit. He said there is a steep drop off in the rear of the lot. Mr. Schaffstall submitted photographs to the BZA showing similar houses in the neighborhood with garages.

In response to a question from Chairman DiGiulian, Mr. Schaffstall said he had not expanded the carport for the enclosure of the addition.

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

Mr. Kelley made a motion to grant SP 92-B-067 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 3, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-B-067 by JOHN J. SCHAFFSTALL, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirement based on error in building location to permit addition to remain 9.3 feet from side lot line and 17.4 feet side yard total, on property located at 5027 DeQuincey Drive, Tax Map Reference 69-1((9))51, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 1993; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. The applicant testified that he did not know that he needed a building permit since he was only enclosing an existing carport.

I. There are other homeowners in the neighborhood who appear to have done the same thing.

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 addition shown on the plat 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 prepared by Javier A. Arencibia, Architect, dated April 27, 1992, submitted with this application, as qualified by these development conditions.

3. A building permit reflecting the location of the garage addition shall be obtained within 90 days from the final approval date of this special permit. The applicant shall be responsible for the submission of building/construction plans or other submissions deemed appropriate by Fairfax County, if these are required.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 230, March 9, 1993, (Tape 1), Scheduled case of:

10:00 A.M. THEODORE B. SIMPSON APPEAL, A 92-D-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the parking lot lights at the McLean Bible Church are in compliance with Condition #11 of SPA 73-D-151-3. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A.

Jane Kelsey, Chief, Special Permit and Variance Branch, said the BZA had issued an intent to defer A 92-D-018 to May 11, 1993, at 10:00 a.m. Mrs. Harris so moved. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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The BZA recessed at 10:04 a.m. and reconvened at 10:30 a.m.

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Page 231, March 9, 1993, (Tape 1-2), Scheduled case of:

10:30 A.M. TRUSTEES OF JEHOVAH'S WITNESSES CENTREVILLE CONGREGATION, SP 92-Y-068 Appl. under Sect. 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 5700 Old Clifton Rd. on approx. 1.88 ac. of land zoned R-1 and WS. Sully District. Tax Map 66-1 ((2)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Keith C. Martin, attorney with the firm of Walsh, Colucci, Stackhouse, 2200 Clarendon Blvd., 13th Floor, Arlington, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was proposing to construct a 250 seat Kingdom Hall which will serve two congregations. The proposed one story 4,956 square foot structure will also house a 516 square foot apartment for a caretaker. Mr. Hunter said proposed religious services will be held on Sunday from 9:30-11:30 a.m. and 12:30-2:30 p.m., and on Tuesday and Thursday evenings from 7:30-9:30 p.m. Each congregation will meet once on Sunday and once during the week with each two hour meeting expected to have from 150 to 175 attendees. He said smaller groups may use the facility for fifteen minute meetings Monday through Saturday assembling for community work with approximately 25 persons in attendance. The applicant has indicated that no separate Sunday school or other school classes will be held on a regular basis.

Mr. Hunter said the applicant was requesting a modification of the transitional screening requirement along Old Clifton Road in order to allow the area to be landscaped with trees and shrubs along the site's frontage. He said staff supported the request provided the existing vegetation remains. The applicant has committed to providing Transitional Screening 1 along the northern, western, and southern lot lines and a 6 foot barrier on the inside edge of the transitional screening yard, as recommended by staff. Mr. Hunter pointed out that the plat before the BZA had been revised subsequent to the publication of the staff report. He said there would be two separate meetings on the same day in the church and any overlap of services would cause a parking problem, thus the hours of the two services should be spaced to allow all persons connected with the first service to leave the parking lot before those who will attend the second service arrive. Staff recommended a minimum of 1 1/2 hours between the Sunday services. Mr. Hunter said staff recommended approval based on the development conditions being implemented.

The applicant's agent, Mr. Martin said the congregation has searched for almost 5 years in order to purchase property in the area that could accommodate the two congregations. He said the two congregations are presently sharing a site in Fairfax City with two other congregations. The proposed structure has been designed to be one story, 23 feet in height, and residential in scale with a gross square footage of 4,956. The structure will include a 534 square foot apartment providing living space for the pastor. Mr. Martin said the facility will accommodate a maximum of 250 seats requiring a minimum of 63 parking spaces, but the applicant will provide 70 parking spaces in order to alleviate overflow parking. He said the congregation usually has 150 to 175 attendees at each Sunday service. The church was not designed with the intent or desire to seat 250 people and the number came out during discussions with staff. Mr. Martin said Transitional Screening 1 will be provided around the three sides that abut residential property and the plat has been revised to show a 6 foot board on board fence on all three sides next to the residential property. He said there is a BMP stormwater detention along the southern lot line and the applicant hopes to be able to provide 25 feet of transitional screening in that area. Mr. Martin said the development conditions he had submitted to the BZA requested that the applicant be given some flexibility with respect to this issue. He said meetings were held in Supervisor Frey's office with the residents of Centreville Green subdivision and discussions have taken place with other abutting neighbors. Mr. Martin said he believed the development conditions addressed the citizens' concerns although one neighbor was still requesting that the entrance be relocated. He said the issue had been raised with the Virginia Department of Transportation (VDOT), but the applicant would be willing to talk to VDOT again. The same neighbor had initially asked that a brick wall be constructed in lieu of the board on board fence, but the applicant believed that the visual impact will be negated with the fence and the existing vegetation. Mr. Martin said he believed the use would be in harmony with the neighborhood, the staff recommended approval of the use, and asked that the BZA grant the request.

In response to questions from Mrs. Harris with respect to transportation, Mr. Martin said if Old Clifton Road is constructed the site would be accessed to the south. He said the applicant would provide a right turn deceleration lane and the applicant must meet adequate sight distance.

Mrs. Harris and Mr. Martin discussed the site in Fairfax City that is now being used by four congregations. She said the subject property could not accommodate such an expansion.

Mr. Kelley asked if the applicant would object to the BZA setting a five year term on the use and added that he was very concerned with the possibility that the parking might be inadequate. Mr. Martin said the neighbors had requested that the parking be reduced. A discussion took place between Mr. Kelley and Mr. Martin about possibly reconfiguring the proposed structure to add more parking.

Mrs. Harris said she was concerned with the fact that there would no fixed seating in the church and about any future expansion. Mr. Martin said he believed the applicant had considered the issue of expansion and that was why they had requested the engineer to design as many parking spaces as possible.

A discussion took place between Mr. Hammack and Mr. Martin with respect to the size of the proposed apartment. Mr. Martin said the apartment would only be used by the pastor or a caretaker. Mr. Pammel said he would like to see the apartment enlarged. Mrs. Thonen did not agree with increasing the size.

Lenny Bianchi, a member of the church's Centreville congregation, said the Hall in Fairfax City was built approximately 30 years ago and presently is used by four congregations.

Mr. Kelley asked if the church had experienced any parking problems with the site in Fairfax City. Mr. Bianchi said there was no overflow parking. The facility has from 200 to 230 seats.

Mr. Bianchi said the church typically did not like to see the congregation get too large and when the number reaches 150 to 200 parishioners, the church is split into two congregations. In response to a question from Mrs. Harris as to where the second congregation would meet, Mr. Bianchi said the site would not be used for two congregations without approval of the BZA.

With respect to the apartment, Mr. Bianchi said the person who will occupy the apartment is a full time minister and his wife. He said traditionally when a pastor and his wife have children, they are replaced with someone who does not have children.

Mrs. Thonen said the staff report states that staff recommended approval of the use, thus the use must meet the parking requirements and all other applicable standards. Therefore, she said she would have a hard time voting against the church since it does meet the standards. Mr. Hunter said with the implementation of the development conditions, the use would meet the standards.

Mr. Hunter responded to the development conditions proposed by the applicant, and just submitted to the BZA and staff at the meeting. He said staff could not support the change to the first bullet of Condition Number 6, but could support the second and third bullets. Regarding the fourth bullet, he reiterated that the apartment could be used only by the pastor or the caretaker. Staff concurred with the fifth bullet and said staff could not respond to the sixth bullet without conducting additional research.

There were no speakers in support of the request and Chairman DiGiulian called for speakers in opposition to the request.

Sherry McMenamin, 13308 Green Mallard Court, Clifton, Virginia, said she lived on a lot that was not being directly impacted and pointed out the location of her property on the viewgraph. Ms. McMenamin said she was not opposed to churches in residential communities, but to the manner in which the application did not address the community's concerns. She raised three issues: (1) full transitional screening consisting of 50 feet of buffer, (2) lighting and hours of operation, and (3) transportation. Ms. McMenamin expressed concern with the applicant coming back to the BZA to request approval of a foot path between the community and the church property to provide overflow parking turning the cul-de-sacs into parking facilities. She said it was very disheartening when people in Fairfax County tell a citizen researching an application that "it's a done deal."

The BZA asked the speaker who had indicated that it was a done deal. Ms. McMenamin replied there were several but one was David Hunter.

Mrs. Harris and the speaker discussed what would be acceptable with regard to transitional screening. The speaker said 50 feet or more would be acceptable. Mrs. Harris pointed out that the plat before the BZA showed 50 feet of transitional screening.

Samuel Ham, 13301 Green Mallard Court, Clifton, Virginia, said he owned Lot 18. (He submitted photographs to the BZA showing the subject property from his property and the surrounding area.) He opposed the application based on the visual impact that the proposed use would have on his property.

Mrs. Harris and the speaker discussed the size of his house. He said his house consisted of 4,500 square feet.

David Guill, 13305 Green Mallard Court, Clifton, Virginia, owner of Lot 19 also expressed concern with the transitional screening and the visual impact of the proposed structure on his property.

David Bryant, 46472 Holiday Drive, Suite 9A, Sterling, Virginia, represented the owners of Lot 2, Michael and Marie Ricciardi. He said the applicant should scale down the size of the church, place fixed seating in the church, and reduce the number of parking spaces. Mr. Bryant expressed concern with the transportation impact and asked that the entrance be relocated to the north. He noted that the Ricciardi's were also asking that the applicant be required to construct a brick wall, rather than the board on board fence, in order to mitigate the visual impact.

Mrs. Harris and Mr. Bryant discussed the entrance relocation.

In response to questions from Mr. Hammack, Mr. Bryant said the Ricciardi's reside on Lot 2. He added that the rezoning took place prior to the Ricciardi's purchasing the property.

In rebuttal, Mr. Martin said the applicant was proposing to provide full transitional screening, the lighting will not be on all the time, and said for the record that the applicant will not ask for a pedestrian access through the Centreville Greens subdivision. He said early in the application process he contacted Hazel & Peterson to obtain the names and mailing addresses of the people who had purchased the adjoining lots. Mr. Martin said he contacted those citizens and they had attended the meeting in Supervisor Frey's office. He said because the adjoining properties sit up 13 feet higher than the subject property there is not a barrier yard that can immediately address the neighbors' concerns. Mr. Martin said the proposed structure is very modest and the applicant would be willing to go back to VDOT to ask a specific question relating to the relocation of the entrance.

In response to a question from Mr. Pammel as to what would happen if the congregation doubled within the next 5 years, Mr. Martin said he believed that concern could be addressed in the development conditions which would limit the hours of operation and limiting the number of services to be held on Sunday.

Mr. Martin said the two congregations have been searching for a site for 5 years in order to leave the Fairfax City site.

Mr. Hammack asked if members of the two congregations could attend either service or were they limited to one particular service. Mr. Bianchi explained that the current attendance for Sunday services may range between 110 and 130 parishioners. He said it is only once or twice a year that the 250 seats would be needed and added that the congregations are organized by territory and the parishioners from that territory would normally attend that particular service.

Chairman DiGiulian asked if staff had any additional comments. Mr. Hunter said with all due respect to the speakers, for the record he would like to refute the claim that he had at any time represented to anyone that any application under consideration by the BZA was "a done deal." He said the representation that staff recommended approval did not equate with "done deal."

Chairman DiGiulian closed the public hearing.

Mr. Hammack said the property was an awfully small site but after listening to the testimony and reviewing the proposed plan he believed the applicant had satisfied the standards. Mr. Hammack added that there are no good sites for churches in Fairfax County any more and added that the traffic does not go through the community where a lot of the opposition was centered. He made a motion to approve SP 92-Y-068 with changes to the Development Conditions as follows:

Conditions 1 through 4 would remain the same.

Condition 5 revised to read: "The maximum seating capacity for the main areas of worship shall be limited to a total of 250. Seventy (70) parking spaces shall be provided. All parking shall be on site. If all parking is not contained on site, implementation of car pool or van pool procedures shall be initiated immediately by the congregation. The facility shall be limited to serving two congregations of the Jehovah's Witnesses without further approval of this Board. The two services of the two congregations shall be spaced so as to allow a minimum of 1 and 1/2 hours between the services of the two congregations."

Conditions 6 through 16 shall remain the same.

Condition 17: "Two trees measuring 10 to 12 in height at planting shall be placed on the southern side of any light fixture within 30 feet of the southern property line in order to shield the lights from the residence on tax map 66-1((2))Parcel 2.

"The parking lot and signage lights shall be used only in conjunction with the specified Tuesday and Thursday evening meetings and shall be shut off at 10:00 p.m. If it is determined that the glare from the signage lighting interferes with the ability of cars entering and exiting Parcel 2 to see oncoming traffic from the north, applicant agrees to eliminate such lighting."

NEW - "The residential apartment in the facility shall only be made available to a pastor."

NEW - "The applicant shall post "No Parking" signs along the property's Old Clifton Road frontage and along the frontage of Parcel 2, subject to conformance with applicable signage regulations."

NEW - "The right turn deceleration lane shall be designed to maintain storm water drainage downstream along Old Clifton Road, subject to the approval of DEM."

Mrs. Thonen seconded the motion.

Mrs. Harris said it appeared from the testimony that there were a lot of unanswered questions on the part of the applicant. She agreed that the request could be slightly changed so that everyone was pleased with the application and suggested that perhaps a deferral was in order.

Mr. Pammel said he would support a motion to defer.

Mr. Ribble pointed out that the applicant had agreed to discuss the entrance relocation with VDOT and to meet with the citizens. He said he would also support a deferral.

Mrs. Thonen said she did not believe there was any room for negotiation with respect to the transitional screening based on the testimony. She pointed out that all involved parties had to be reasonable.

Mrs. Harris said hopefully the public hearing had shown the citizens there were constraints on what the BZA could ask the church to do. She made a substitute motion to continue the public hearing for a 30 day period in order to allow the applicant to meet with the surrounding citizens to resolve outstanding issues. Mr. Pammel seconded the motion.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested April 13th at 9:30 a.m.

Chairman DiGiulian suggested that the BZA entertain a motion that each side be given a time limit of 10 minutes for comments. Mrs. Thonen so moved. Hearing no objection, the Chair so ordered. Both motions passed by a vote of 5-2. Chairman DiGiulian and Mr. Hammack voted nay.

Mrs. Harris said she could not testify as to what Mr. Hunter had told the citizens, but in knowing how he performs his work he may have said that staff was supporting the proposal, and the BZA does illicit information from staff, but the BZA makes up its own mind.

Chairman DiGiulian said that he did not believe that Mr. Hunter would have said "it was a done deal" until the BZA had voted on the application.

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The BZA took a brief recess. Mrs. Thonen and Mr. Ribble did not return to the Board Room after the recess.

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Page 234, March 9, 1993, (Tape 2-3), Scheduled case of:

11:00 A.M. FOX MILL WOODS SWIM & TENNIS CLUB, SPA 81-C-093-2 Appl. under Sect. 3-203 of the Zoning Ordinance to amend SP 81-C-093 for community recreation facilities to permit additional tennis court lights. Located at 2634-A Black Fir Ct. on approx. 5.116 ac. of land zoned R-2. Hunter Mill District (Formerly Centreville District). Tax Map 26-3 ((10)) F2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Peter Kendrick, 2656 Black Fir Court, Reston, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the existing recreational use was approved under SP 81-C-093 on July 20, 1976, and on April 12, 1983 the BZA approved SPA 81-C-093-1 to amend SP 81-C-093 to permit the continuation of the use of the tennis court lights. The applicant was requesting approval of a special permit in order to add tennis court lights to the two easternmost tennis courts. He noted that the current Zoning Ordinance requires the provision of 35 parking spaces and a previous special permit development condition required a minimum of 30 parking spaces on the site. The applicant has provided 32 parking space and staff was of the opinion that the number was adequate for the use. Mr. Hunter said staff concluded with the adoption of the proposed development conditions the use would be in harmony with the Comprehensive Plan and in conformance with applicable standards; therefore, staff recommended approval.

In response to a question from Mrs. Harris about the automatic shutoff for the lights, Mr. Hunter said he had been told by the applicant that the automatic shutoff device was now functioning.

Mr. Kendrick said in response to a survey conducted in late 1991 of the club's membership and in response to several club members the club's board initiated an investigation of additional lights. The results of that survey reflected that the members were in support of additional lighting and their board started the process in January 1992. He said meetings were held on May 4th and May 21st with the homeowners, who were not in support of the additional lights, to try to resolve their concerns. Mr. Kendrick said the club recognizes that the timer at various points in time has not worked as a result of power outages. He said the timer has been replaced by a digital timer with a four day battery backup to ensure that the problem does not continue. Mr. Kendrick said the County required the applicant to contact fifteen homeowners abutting the subject property by certified mail and ten of those fifteen homeowners have signed a petition supporting the addition of the lights. He said he believed there is sufficient transitional screening between the existing lights and the surrounding properties to more than protect those homeowners from any intrusion of the lights on to their property.

Mr. Hammack asked the speaker to point out the location of Mr. Kussman's property in relation to the tennis courts. The speaker did so.

Mrs. Harris asked how long the timer has not worked. Mr. Kendrick said he was not sure, since the timer had work sporadically.

Marian Kendrick, 2656 Black Fir Court, Reston, Virginia, said she is currently the tennis liaison to the Fox Mill Swim and Tennis Club Board. She said the club has tried very diligently in the time that she has been on the board, for the past year, to monitor the timer situation. Ms. Kendrick said she has gone down numerous times to check on the timer and reset it, if the lights had not gone off. She said the board had asked the neighbors to contact them at any time the lights remained on. The past president did receive two or three telephone calls over the past tennis season and he immediately tried to respond to the problem.

Mr. Kelley said it appeared that perhaps someone had tampered with the timer. The speaker said she had no way of knowing if that had occurred. She said there was not a lock on the previous timer, but there was now be a lock on the new one and the only one with keys will be board members.

The BZA and the speaker discussed the location of the timer and who would have access to that location.

Mrs. Harris asked if the timer had been an ongoing problem since 1985. Ms. Kendrick said since she has only been on the board since last spring she could not respond to anything that may occurred prior to that time.

Mr. Kelley asked how late the tennis pro was on the courts. The speaker said the tennis pro's programs end at 9:00 p.m. although he does sometimes remain on the courts until 10:00 p.m. teaching private lessons. She said she has talked with him about monitoring the courts until he leaves at 10:00 p.m. He has agreed to do so.

Chairman DiGiulian called for speakers in support of the request.

Bev Jordan, 2630 Black Fir Court, Reston, Virginia, supported the request as she did not believe that it would be intrusive. She said traffic would not be an issue since the club is used by the swim team six days a week and this use would be less of an impact than those meets.

Donna Sohinki, 2633 Black Fir Court, Reston, Virginia, said there has been a lot of vandalism at the pool and she believed that the additional lights might help deter this problem.

The lighting contractor for the club, Tilford Jones, said the timer is mechanical and is energized by the electrical current coming into the system. When there is a power failure, the timer was thrown off. Since the club has installed a battery backup, that problem has been alleviated. He said the timer is in a locked area and will not be generally accessible. Mr. Jones said the light poles will be 20 feet in height and the light will be aimed down towards the ground.

Mr. Kelley said it appeared that there had been consistent violations on the part of the club. Mr. Jones said with the replacement of the timer, the problem has been eliminated.

Mrs. Harris pointed out that the neighbors were being impacted by the existing lights. Mr. Jones submitted photographs to the BZA showing the lights at night the cutoff line of the glare.

Brenda Root, 2642 Black Fir Court, Reston, Virginia, said she moved into the neighborhood 2 1/2 years ago and one of the major reasons was because of the club. She supported the request and added that it was a needed facility in the community.

The following citizens came forward to oppose the request.

Virginia Snaider, 2631 Wild Cherry Court, Reston, Virginia, said she would like to read a letter into the record from Steven Kussman dated February 14, 1993. The BZA said they had

received a copy of the letter. Ms. Snaider did not read the letter. She said the lights stay on past 10:00 p.m. and that she had called the past president two times. Ms. Snaider said there are times when people are on the courts playing loud music late at night.

The BZA and the speaker discussed how long the problem had been ongoing and if she believed someone was tampering with the timer. Ms. Snaider said the problem seems to have gotten worse in recent years. She added that she could not comment on whether or not someone was tampering with the timer.

Diane Trentacoste, 11929 Riders Lane, Reston, Virginia, said she lived behind the tennis courts and the problem has been ongoing for at least 4 years and she has personally called six or seven times. (She read a letter of opposition into the record. A copy of the letter is contained in the file.)

Ellen Jones, 2622 Black Fir Court, Reston, Virginia, said she works for an airline company and comes home between the hours of midnight and 1:30 a.m. She said it is not unusual for the tennis courts lights to be on when she comes home.

In rebuttal, Mr. Kendrick said he was disturbed with the low number of calls the club's board had received if the lights were indeed on as often as the neighbors had indicated. He said "boom boxes" are not allowed on the tennis courts and the club employs a security guard during the summer. Mr. Kendrick said there is a security light that comes on at night.

The BZA and the speaker discussed who is responsible for ensuring that the courts are locked at the appointed hour. Mr. Kendrick said there is a spring loaded door on the courts and no one can enter without a key.

A discussion took place between the BZA and the speaker regarding the possibility of erecting a gate at the entrance Black Fir Court to the tennis courts. The speaker said he was willing to go back to the board to discuss the possibility.

Mr. Kendrick said the lights could not be turned on without a key because they are key controlled. He said the key does nothing more than to supply the power to the lights. If no one is playing tennis, the lights are not on.

Mrs. Harris said that was the whole point, the lights were on because someone was playing tennis. She expressed concern that the applicant was requesting an intensification of a situation that the club does not have under control at present.

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

Mr. Hammack made a motion to grant SPA 81-C-093-2 for the reasons noted in the Resolution subject to the Development Conditions as revised.

A discussion took place among the BZA with respect to Condition Number 11. Mr. Hammack said he was very disappointed that the club president would not allow Mrs. Trentacoste to speak to the club's board as noted in her letter.

Chairman DiGiulian said he would like Condition Number 11 revised to require that the club install a gate from Black Fir Court. Mrs. Harris agreed.

Mr. Kendrick said he was concerned about how the club could protect itself if someone filed a complaint and the lights were operating properly. The BZA assured the speaker that the complainant would have to substantiate the complaint.

Mr. Hammack had no objections to the modification as reflected in the Resolution. He pointed out to the applicant that the Virginia General Assembly had given the BZA the authority to revoke a special permit if the applicant does not comply with the development conditions.

Ms. Snaider expressed concern with the installation of the gate since it might prevent emergency vehicles from entering the pool area.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-C-093-2 by FOX MILL WOODS SWIM & TENNIS CLUB, under Section 3-203 of the Zoning Ordinance to amend SP 81-C-093 for community recreation facilities to permit additional tennis court lights, on property located at 2634-A Black Fir Court, Tax Map Reference 26-3((10))F2, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 1993; 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 5.116 acres.
4. The misuse of the tennis courts and the misuse of the property by juveniles cannot be used as a detriment to the overall benefit of the tennis players.
5. Based on the testimony presented, there appears not to have been complete compliance with the former development conditions and the BZA expects strict compliance with the conditions.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 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 entitled "As Built Site Plan" prepared by Associated Engineers, Inc., revised by Hans H. Runow, dated March, 1982, revised through July 20, 1992 approved with this application, as qualified by these development conditions.

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

4. The number of family memberships shall not exceed 300.

5. The hours of operation for the tennis courts shall be limited to 8:00 a.m. to 10:00 p.m. May through October and 8:00 a.m. to 8:00 p.m. October through April. The hours of operation for the swimming pool shall be limited to 8:00 a.m. to 9:00 p.m. May 1 through October 1.

6. There shall be a minimum of 30 and a maximum of thirty-two parking spaces provided for the swimming pool and tennis courts on site as shown on the SPA Plat.

7. Lighting of the tennis courts shall be in accordance with the following:

   The combined height of the light standards and fixtures shall not exceed twenty (20) feet.

   The lights shall focus directly onto the subject property.

   Shields shall be installed, if necessary, to ensure that the lights are focused directly onto the property.

   The use of the tennis court lights shall be regulated by a key control system and an automatic shutoff device to insure the lights are automatically cut off at 10:00 p.m. There shall be strict compliance with this Development Condition. Failure to comply with this Development Condition shall subject the applicant to discontinuance of the use of the lights in conjunction with the tennis courts.

8. After-hours parties for the Fox Mill Woods Swim and Tennis Club shall be governed by the following:

   Limited to six (6 per season),

   Limited to Friday, Saturday and pre-holiday evenings,

   Weeknight parties limited to three (3) per year with written proof that all contiguous property owners have agreed,

   Shall not extend 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 extended-hour party or for the first one at the beginning of a swim season.

Requests shall be approved only if there are no pending violations of the conditions of the Special Permit.

Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

9. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:

   All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations: add sufficient amounts of lime or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.

   If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

10. A walkway shall be maintained from Black Fir Court to the facility.

11. Unauthorized use of the facility after its approved hours of operation shall be prohibited. The applicant shall install a security gate or chain at the entrance to the facility in addition to the employment of a security guard as required to ensure compliance with this provision.

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 238, March 9, 1993, (Tape 3), Action Items:

Request for Additional Time
B & E, Inc., VC 89-P-152

Approval of Minutes for
December 15, 1992, January 12, 26, 1993, and February 2, 9, 1993

Request for Date and Time for
The McLean Bible Church Appeal

Request to do Intent to Defer
Hilltop Sand and Gravel Appeal Indefinitely

Mr. Pammel made a motion to approve all action items. Mrs. Harris seconded the motion which passed by a vote of 5-0. Mrs. Thonen and Mr. Ribble were not present for the vote.

The new expiration date for VC 89-P-152 is October 5, 1994.

The McLean Bible Church Appeal was scheduled for May 11, 1993, at 10:00 a.m.

Hilltop Sand and Gravel Appeal will be officially indefinitely deferred at the BZA's April 6, 1993 public hearing at the time the case is regularly scheduled.

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11:15 A.M. STEVE A. LAWYER, VC 92-B-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow construction of addition 8.8 ft. from one street line of a corner lot and 15.7 ft. from other street line of a corner lot (20 ft. min. front yard req.). Located at 9200 Hunting Pines Pl. on approx. 6,279 sq. ft. of land zoned PDH-3. Braddock District. Tax Map 58-4 ((32)) 36. (DEF. FROM 2/23/93 FOR ADDITIONAL INFORMATION.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Steve A. Lawyer, 9200 Hunting Pines Place, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, said this case was deferred from February 23, 1993. The deferral allowed the applicant an opportunity to submit photographs of other houses in his subdivision which have existing garages that are similar to his request.

The BZA reviewed the photographs. Chairman DiGiulian asked the applicant if he had anything further to add. The applicant replied that he did not.

Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant VC 92-B-131 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-B-131 by STEVE A. LAWYER, under Section 18-401 of the Zoning Ordinance to allow construction of addition 8.8 feet from one street line of a corner lot and 15.7 feet from other street line of a corner lot, on property located at 9200 Hunting Pines Place, Tax Map Reference 58-4((32))36, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 9, 1993; 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 PDH-3.
3. The area of the lot is 6,279 square feet.
4. The property has an unusual configuration and has two front yards.
5. Where the two streets go around the corner is not a rectangle, it is an unusual shape, thereby making the distance from the edge of the pavement and the curb and gutter not a consistent distance between them and the house
6. The house was placed on the lot at an angle.
7. There is a sanitary easement on the rear of the lot.
8. The situation on the property is unusual and it not general in nature.
9. The addition will not impact the sight distance around Hunting Pines Place.
10. It will not be a substantial detriment to the adjacent properties and will not change the character of the zoning district.
11. The applicant submitted photographs of other houses in the neighborhood that have similar garages.

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

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

E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Alexandria Surveys, Inc., dated December 3, 1992, submitted with this application and is not transferable to other land.

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mrs. Thonen, Mr. Pammel, and Mr. Ribble were not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 17, 1993. 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 1:03 p.m.

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

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

SUBMITTED: April 6, 1993

APPROVED: April 13, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 16, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; and James Pammel. Mary Thonen and John Ribble were absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:00 p.m. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 241, March 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. MONTESSORI SCHOOL OF ALEXANDRIA, INCORPORATED, SPA 80-L-033-3, appl. under Sect. 3-403 of the Zoning Ordinance to amend SP 80-L-033 for child care center and private school of general education to increase enrollment to 99 children and to amend a development condition regarding vehicle trips, on approx. 3.6293 acs., located at 6300 Florence La., zoned R-4, Lee District, Tax Map 82-4((1))17A, 17B; 82-4((36))A. (DEF. FROM 9/24/92 FOR TRAFFIC ANALYSIS. DEF. FROM 12/15/92 AT APPLICANT'S REQUEST)

Chairman DiGiulian noted that the Board had previously issued an Intent to Defer this case. Mrs. Harris moved to defer the case to April 20, 1993, at 8:00 p.m. Mr. Kelley seconded the motion, which carried by a vote of 4-0. Mr. Pammel was not present for the vote. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Page 241, March 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. EMERSON AND AMELITA G. DUGA, VC 92-P-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a deck 10.0 ft. from front lot line (20 ft. min. front yard required by Sect. 3-507). Located at 2997 Steven Martin Dr. on approx. 5,802 sq. ft. of land zoned R-5. Providence District. Tax Map 48-3 ((37)) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. and Mrs. Duga replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is situated between two streets and has two front yards; it is adjacent to single family detached dwellings zoned R-5 on three sides and to residential property zoned R-2 to the south; the applicants were requesting a variance of 10 feet; and research of the files for the subdivision indicated that no variances had been approved. There is a deck located to the rear of the house on Lot 19; however, the Building Permit revealed that the deck is in excess of 20 feet from the front lot line on Five Oaks Road.

In answer to a question from Mrs. Harris, Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the stairs are considered to be part of the deck, as defined by the Zoning Ordinance.

The applicants, Emerson and Amelita G. Duga, 2997 Steven Martin Drive, Fairfax, Virginia, presented the statement of justification, submitting a photo of the deck on Lot 19 to show that the neighbors house was situated further back from the front lot line.

Mrs. Harris asked if, at the time they bought the house, the applicants had discussed with the builder the possibility of building something outside the glass doors at the back of the house. Mrs. Duga said they had not discussed such a possibility because they did not have the money to make any additions to the basic house.

Mr. Kelley asked if adding a deck to the house had been an available option when the applicants bought the house and Mrs. Dugas said it was not an option; she said that the option was a bay window and they did not have the money to exercise the option.

A discussion between the applicants and the Board ensued regarding the fact that the builder had installed sliding glass doors leading nowhere. It was determined that the applicants were limited to a 3 or 4 foot deck without a variance. It was also determined that the house with the deck by right is located 37 feet from the lot line; whereas, the applicants' house is located 24 feet from the lot line.

There were no speakers and Chairman DiGiulian closed th public hearing.

Mr. Hammack moved to grant VC 92-P-124 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 9, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-124 by EMERSON AND AMELITA G. DUGA, under Section 18-401 of the Zoning Ordinance to permit a deck 10.0 ft. from front lot line, on property located at

2997 Steven Martin Dr., Tax Map Reference 48-3((37))20, ~~Mrs. Harris~~ Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 1993; 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-5.
3. The area of the lot is 5,802 square feet.
4. The frontage of the lot is legally on Five Oaks Road but the configuration of the house is such that it faces Steven Martin Drive.
5. The lot is accessed by a pipestem which means that the lot is fairly short in depth on one side, being 82.8 feet deep, while the lot next to it, which has a legal deck attached, is 37 feet from Five Oaks Road and is centered on the lot. The applicant's lot is small and pushed back behind Lot 32 to squeeze Lot 19 in.
6. Even though the orientation is reversed, the proposed deck would face Five Oaks Road, which would not in any way be detrimental to the neighbors.
7. The variance requested is not large and there is quite a bit of yard between the proposed deck and the property line.
8. There is no opposition to the request from the neighbors, as evidenced by a petition signed by the neighbors in support of the application.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat by prepared Larry N. Scartz, Certified Land Surveyor, dated February 24, 1992 revised through November 12, 1992 submitted with this application and is not transferable to other land.

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

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

Mrs. Harris seconded the motion which carried by a vote of 4-0. Mr. Pammel was not present for the vote. Mrs. Thonen and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 243, March 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. GOLF VENTURES, INC., SP 92-S-032 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit golf driving range and commercial golf course. Located on Braddock Rd. on approx. 47.72 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31. (DEF. FROM 9/24/92 - NOTICES NEED TO BE DONE. DEF. FROM 11/19/92 FOR NOTICES AND SUBMISSION OF REVISED PLATS. DEF. FROM 2/2/93 FOR ADDITIONAL INFORMATION ONLY)

Chairman DiGiulian advised that the Board had a letter from the applicant's representative requesting an indefinite deferral and asked if there was anyone present who would like to address the deferral request.

Douglas and Stephanie McIntosh came to the podium, stating that they had previously appeared before the Board to speak in opposition to this application. Mr. McIntosh said that the homeowners who surround the area are steadfastly against the project and presented a list of twelve reasons. He said that the applicant had not presented information to the Board, even though they had asked for a deferral to that date; it was his understanding that a deferral had been requested after the deadline for submission of information as requested by the the Board of Zoning Appeals at the previous hearing, and had submitted nothing in good faith since the time of the last hearing. Mr. McIntosh proceeded to present opposition to the application.

Chairman DiGiulian asked Mr. McIntosh to address the deferral only, as that was the issue before the Board at the time. He said that, if the Board decided to hear the case, then testimony would be heard. Mr. McIntosh said he was requesting that the Board not defer the case but, instead, that they deny the case. Chairman DiGiulian again said that the issue before the Board was whether or not to defer the hearing. Mr. McIntosh said that he would like the Board to hear the case that night.

Mrs. Harris asked if the applicant's agent had been in contact with anyone recently. Mr. McIntosh said that the applicant's agent had not provided the homeowners' group with any supplemental information. They had not received a copy of the latest letter from the applicant's agent requesting deferral.

Mr. Kelley alluded to Mr. McIntosh's acknowledgement of the fact that the project could be worked out with changes. Mr. McIntosh emphasized that Mr. Montenegro, the applicant's agent, had requested a five-week deferral, yet he had not used that time to submit supplemental information to anyone. He asked, under those circumstances, why Mr. Montenegro should be given any extra time.

Mr. Hammack noted that Mr. Montenegro had been given five weeks to come back and address the Board's concerns, at which time they would have made a decision. He said that he was inclined to deny the application because Mr. Montenegro had not appeared at the time he, himself, had requested to be heard.

In answer to a question from the Board, Marilyn Anderson, Senior Staff Coordinator, advised that Mr. Montenegro had submitted nothing to staff. She said the Board had requested at the last hearing that any information be submitted to the BZA no later than one week prior to this hearing. Mrs. Anderson said that, for that reason, she had called Mr. Montenegro on a number of occasions but without any results. She had also suggested to Mr. Montenegro that he be present for the hearing and she was under the impression that he would be there.

Mr. Kelley said that he would like to make a motion to deny the application, but would like to give the agent the benefit of the doubt and would withhold the motion until after the Action Items had been reviewed, in the event that Mr. Montenegro might appear by that time.

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Request for Reconsideration
Kenneth J. Patterson, VC 92-V-120

Mrs. Harris tried to recall what had transpired at the original hearing. She asked if the staff report was available for the Board's review. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that, if the Board wished to hold the decision over until the following week, staff would make the staff report available to the Board. Ms. Kelsey referred the Board to the Resolution before them, which listed eight reasons for their decision.

Mrs. Harris moved to defer decision on this item until the following week. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Approval of the Resolutions for March 9, 1993
with the exception of Patterson, VC 92-V-120

Mrs. Harris so moved. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Request to Set Date and Time for Appeal
Swanee A. Busic; Donald & Jan Hoffman;
Pine Ridge Civic Association;
and Ridgelea Hills Homeowner's Association

Mr. Hammack moved to hear the appeal on May 18, 1993 at 10:00 a.m. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

(NOTE: On March 23 1993, the Board rescheduled the appeal to May 25, 1993, at 10:00 a.m. because the May 18 meeting will be at night.)

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Request for Out-of-Turn Hearing
St. Aidan's Episcopal Church, SPA 92-V-003

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the application was presently scheduled for May 25, 1993; it was set for prestaffing on March 23, 1993 and for staffing on April 8, 1993. She said that the staff coordinator's draft was due on April 25. Ms. Kelsey said that this application had been before the Board last year; however, the staff coordinator at that time is no longer with the office and a new staff coordinator would need to do a site visit and start from the beginning, so to speak.

Mrs. Harris questioned why the application was received on February 17 and was just now coming before the Board for this request. Ms. Kelsey said that, although the application had been received on February 17, it did not meet all the submission requirements and was not accepted until March 1, 1993. No action could be taken on the application until it had been accepted.

Ms. Kelsey also mentioned that Mr. Ribble had advised her that some of the Conditions previously imposed had not yet been complied with, which staff had planned to look into in conjunction with reviewing the new application.

Mr. Kelley moved to deny the out-of-turn hearing request. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Request for Out-of-Turn Hearing
Steven J. McDougal, VC 93-L-018

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that, since the request was for a yard variance, the case would not be staffed and there would be no objection to an out-of-turn hearing, if the Board desired to grant it. She advised that April 27 or May 4, 1993, was recommended by staff, depending on the status of the advertising schedule. The applicant's letter indicated that a family tragedy had prompted his request for an out-of-turn hearing on a variance for the property of his recently deceased mother.

Mrs. Harris moved to grant an out-of-turn hearing for either April 27 or May 4, 1993. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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8:00 P.M. GOLF VENTURES, INC., SP 92-S-032 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit golf driving range and commercial golf course. Located on Braddock Rd. on approx. 47.72 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 31. (DEF. FROM 9/24/92 - NOTICES NEED TO BE DONE. DEF. FROM 11/19/92 FOR NOTICES AND SUBMISSION OF REVISED PLATS. DEF. FROM 2/2/93 FOR ADDITIONAL INFORMATION ONLY)

Chairman DiGiulian asked if the applicant or his agent were present and received no response.

Chairman DiGiulian said it was his understanding from discussion earlier in the meeting that staff had received no further information from the applicant or his agent.

Mr. Kelley made a motion to deny SP 92-S-032 for the reasons outlined in the Resolution.

Mrs. Harris added that she believed the transportation, intensity of the use, tree preservation and construction in a very sensitive area should be considered by the applicant in any proposed future application. She said that whatever they decide to come back with should be environmentally compatible, as opposed to denuding the EQC.

Mr. Kelley said that he did not prefer to have Mrs. Harris's remarks become a part of his motion. He did not believe that the applicant's proposal would cause severe damage to the tree line. Although it might affect transportation, he did not believe the size of the course could accommodate 1,000 people a day.

Mr. Hammack said that staff's analysis was thorough and he agreed with it.

Mr. Pammel said that staff had provided the information he had requested on soils and it veriffed what he had believed: i.e., the site is not suitable for anything other than a few limited uses, one of which is a golf course, with the impervious soils prohibiting residential use.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-S-032 by GOLF VENTURES, INC., under Section 3-C03 of the Zoning Ordinance to permit golf driving range and commercial golf course, on property located on Braddock Rd., Tax Map Reference 56-4((1))31, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 16, 1993; 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 47.72 acres.
4. The applicant is trying to put too much on this piece of property.
5. According to research, a good "Par 3" course has an average length of 150 to 160 yards; the proposed course is about 120 or 125 yards, which puts it into the category of a "Pitch and Putt."
6. A good "Par 3" has grass tees; the proposed course will have mats for tees, which makes a big difference to a golfer.
7. The proposed course is the type of facility seen at Myrtle Beach and Ocean City with a jungle motif, or other motif.
8. The use of the property for some type of a golf facility is not out of the question, if it is appropriate for the size of the area.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-603 and 8-606 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. Mrs. Thonen and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 24, 1993.

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As there was no other business to come before the Board, the meeting was adjourned at 8:40 p.m.

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

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

SUBMITTED: March 30, 1993

APPROVED: April 6, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 23, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:17 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 247, March 23, 1993, (Tape 1), Scheduled case of:

9:00 A.M. ABDUL R. MONDAL, VC 92-D-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow fence 6.4 ft. in hgt. within the min. req. front yard on a corner lot (4 ft. max. hgt. allowed by Sect. 10-104). Located at 1387 Butter Churn Dr. on approx. 10,865 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((9)) 23. (DEF. FROM 2/9/93 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Mondal replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow a 6.4 foot high fence to remain in a front yard of a corner lot. He noted that there are two front yards on the property. Mr. Heine also noted that a variance to allow a 6.0 high fence to remain in the front yard was granted on adjoining Lot 24A-1 by the BZA at the February 2, 1993 public hearing. The Zoning Ordinance requires a maximum height of 4 feet for fences in a front yard; therefore, the applicant was requesting a variance of 2.4 feet.

The applicant, Abdul Mondal, 1387 Butter Churn Drive, Herndon, Virginia, addressed the BZA and presented a written statement which is included in the file. He stated that Douglas and Patricia Lynch's petition in opposition was misleading and the allegations were untrue and unsupported. Mr. Mondal explained that because the neighborhood children use the cul-de-sac for a playground, he needed the fence to ensure his family's peace, safety and security. He explained that the balls entering his yard created a nuisance and damaged the siding on his house. He also noted that the neighborhood children climb the fence to retrieve the balls which create a potential insurance liability. He stated that the police verification was attached to the written statement.

Mr. Mondal stated that the subject lot has an exceptionally narrow back yard and expressed his belief that the fence has no detrimental impact on the neighbors. He noted that it had been in existence for 18 months and did not become an issue until he asked a neighbor's son not to climb over the fence. Mr. Mondal stated that the character of the Zoning Ordinance would not be changed by the granting of the variance and noted that there are several similar fences in the area. He also noted that the fence had been approved by the Crestbrook Homes Association.

He expressed his belief that his request should not be adversely influenced by the neighbor's letter because the orientation of the Lynch's house on the lot was the problem, not the fence. He also refuted some of the Lynch's allegations and again noted that no opposition had been raised until the confrontation with their son. In an attempt to settle the dispute, Mr. Mondal stated that he had conferred with Mr. Lynch and believed that Mr. Lynch's proposal to bring the fence back to the corner of the house would substantially reduce the use of his yard.

In summary, Mr. Mondal stated he had built the fence in good faith and with the approval of the Crestbrook Homes Association. He said that he had not been aware that a variance would be needed and he had not been advised by the Association that it would be a violation of the Zoning Ordinance.

In response to Mrs. Harris' question as to whether he had checked the Fairfax County Ordinance before constructing the fence, Mr. Mondal stated that he had not. He explained that he had proceeded under the belief that all he needed was the Crestbrook Homes Association's approval.

In response to Mr. Kelley's request, Mr. Mondal presented additional photographs to the BZA.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Douglas Lynch, 1403 Butter Churn Drive, Herndon, Virginia, addressed the BZA. He stated that the fence had a detrimental impact on his property. He explained that besides being unsightly, the fence would adversely affect the resale value of his property. In summary, Mr. Lynch stated that the fence blocked the fixed address on his house which could delay fire and rescue or a police response.

In response to Mr. Kelley's question as to whether he had consulted with Mr. Mondal prior to construction of the fence, Mr. Lynch stated he had expressed his objection to the location and height of the fence before it was built. Mr. Lynch stated that although the information he had submitted to the BZA regarding the Crestbrook Homes Association requirement that County approval be obtained for the fence had been erroneous, the information had been obtained from the Association's Architectural Review Board.

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

Mr. Mondal expressed his belief that the fence would cause no problem with emergency vehicles finding Mr. Lynch's house. He stated that the Lynch's lot was inferior and expressed his belief that he should not be penalized because of it. Again he noted that the neighbors had similar fences, he had the Association's approval, and had built the fence in good faith.

In response to Mrs. Harris' question as to whether he had children, Mr. Mondal said that he had three children. Mrs. Harris stated that she had visited the site and the fence was a large board-on-board fence and she could not find any other fence in the community which was similarly situated in the front yard. She said she had found that most of the other properties were open with a good view and expressed her belief that the fence was inappropriate.

Mrs. Thonen stated that if children could be used to justify having a 6 foot fence in the front yard, then almost everyone in Fairfax County would qualify.

Mr. Pammel made motion to deny VC 92-D-127 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 92-D-127 by ABDUL R. MONDAL, under Section 18-401 of the Zoning Ordinance to allow fence 6.4 feet in height within the minimum required front yard on a corner lot, on property located at 1387 Butter Churn Drive, Tax Map Reference 10-2((9))23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 1993; 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 10,865 square feet.
4. Children cannot be used as the justification for granting a 6.4 foot high fence variance in a front yard.
5. The application, in addition to being under Sect. 18-401 of the Fairfax County Zoning Ordinance, also falls under Sect. 10-104 of the Ordinance.
6. The applicant has not presented testimony showing that the request complies with the standards or criteria set forth for the granting of a variance.
7. A 4 foot fence, which is a requirement of the Zoning Ordinance, would not deprive the applicant of the appropriate use of the property and would provide privacy.
8. The photograph illustrates that the appearance of a 6.4 foot fence in the front yard does not comply with the purpose of the Zoning Ordinance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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

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

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

Mrs. Harris seconded the motion which carried by a vote of 6-0-1 with Mr. Hammack abstaining from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 1993.

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Page 249, March 23, 1993, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN R. POTTER & DIANE E. GELBURD, VC 92-P-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow construction of addition 8.5 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 7222 Pinewood St. on approx. 12,026 sq. ft. of land zoned R-4. Providence District. Tax Map 50-1 ((7)) 67.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Gelburd replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow a two-story addition to be located 8.5 feet from the side lot line. Ms. Greenlief said that the addition would contain a garage on the basement level, a family room on the first floor, and a master bedroom on the second floor. The Zoning Ordinance requires a minimum 10 foot side yard; therefore, the applicants were requesting a modification of 1.5 feet to the minimum side yard requirement.

The applicant, Diane Gelburd, 7222 Pinewood Street, Falls Church, Virginia, addressed the BZA. She stated that the variance was needed for the basement level garage. Ms. Gelburd said that the only area to intrude on the setback requirement would be the garage, as the rest of the addition would conform to the Zoning Ordinance requirements. She explained that the protruding chimney on the side of the house had caused the need for the variance. Ms. Gelburd stated that after considering all options, she believed that the proposed location would allow the addition to be the most aesthetically and architecturally compatible with the neighborhood. She noted that the steep slopes in the front and rear yards of the lot precluded the building of the addition anywhere else on the property, and further noted there were other similar additions on Pinewood Street. In summary, Ms. Gelburd said that the addition would provide the needed space for an invalid parent and asked the BZA to grant the request.

In response to Mrs. Harris' question as to whether the additions on the other houses on the street had required variances, Ms. Gelburd said that she believed that two had received variances. Ms. Greenlief stated that Lots 34 and 73 had been granted variances. Ms. Gelburd stated that the location of the addition was selected because it would have the least impact on the adjacent neighbors.

In response to Mr. Hammack's question as to whether the existing driveway cement pads would be removed, Ms. Gelburd stated that while she would prefer to keep the pads, she had no objection to their removal.

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

Mr. Hammack made a motion to grant VC 92-P-136 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 16, 1993 with the addition of the following development condition:

"4. The existing driveway tracks shall be removed and the area reseeded."

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Thonen stated that, although she supported the motion, she did not agree with the additional development condition. Mr. Kelley stated that he, too, did not agree with it.

Mr. Kelley made a substitute motion to grant VC 92-P-136 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 16, 1993. Mrs. Thonen seconded the motion.

Mr. Pammel stated that he would support the original motion. Mrs. Harris stated that, although she agreed with the original motion, she did not know if the BZA could put such a restriction on a variance. Mr. Hammack noted that the BZA often stipulated that the addition must be architecturally compatible with the existing structure. Mr. Pammel noted that the BZA had previously required that an applicant remove an existing driveway.

In an attempt to clarify an issue, Ms. Greenlief stated that the variance was not limited to the garage, but was for a building addition with other elements.

Chairman DiGiulian called for a vote on the substitute motion which failed by a vote of 3-4 with Mr. Kelley, Mr. Ribble, and Mrs. Thonen voting aye; and Chairman DiGiulian, Mrs. Harris, Mr. Hammack, and Mr. Pammel voting nay.

Chairman DiGiulian called for a vote on the original motion which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-P-136 by STEPHEN R. POTTER AND DIANE E. GELBURD, under Section 18-401 of the Zoning Ordinance to allow construction of addition 8.5 feet from side lot line, on property located at 7222 Pinewood Street, Tax Map Reference 50-1((7))67, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 1993; 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 12,026 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The property is located in an older neighborhood and while the lot is a comfortable 12,026 square feet, the 65 foot wide lot is narrow.
6. The chimney on the side of the house has caused the need for a variance.
7. The request is for a minimal variance.
8. The topographical conditions dictate the location and placement of the garage 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 addition shown on the plat prepared by Barkley Pierce Associates dated November 20, 1992, revised December 10, 1992, submitted with this application and not transferable to other land.

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

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

4. The existing driveway tracks shall be removed and the area reseeded.

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

Mrs. Thonen seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 251, March 23, 1993, (Tape 1), Scheduled case of:

9:10 A.M. HOWARD W. DAWSON, JR. AND ELLEN M. DAWSON, VC 92-Y-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow construction of addition 6.5 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307). Located at 13648 South Springs Dr. on approx. 8,727 sq. ft. of land zoned R-3 (Cluster) and WS. Sully District. Tax Map 65-4 ((4)) 531.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Dawson replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that while the abutting property to the south and west are developed with single family detached dwellings, the property to the north and east is homeowners open space. Ms. Greenlief said that the applicants were requesting a variance to allow a screened porch addition 6.5 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicants were requesting a modification of 18.5 feet to the minimum rear yard requirement.

The applicant, Howard W. Dawson, Jr., 13648 South Springs Drive, Clifton, Virginia, addressed the BZA. He stated that the existing structure is situated so that the corner is exactly 25 feet from the lot line; therefore, it precluded the construction of a screened porch without a variance. He noted that the existing deck would be removed and replaced by the 14 by 14 foot screened porch. Mr. Dawson explained that the builder had constructed the existing deck 11.6 feet from the rear lot line and the steps 6.5 feet from the rear lot line. He said that he did not know if the builder had obtained a variance.

In response to Mrs. Harris' question as to why the steps could not be placed on the eastern side of the deck, Mr. Dawson stated that it would block the walk-out basement windows and door, thereby restricting the light. He said that they also planned to construct a patio outside the basement sliding glass door. Mr. Dawson used the viewgraph to depict the windows and proposed deck. He noted that although the neighbor had built a similar deck, they had not needed a variance.

In response to Mrs. Thonen's question as to whether the builder would have been subject to the setback requirements in a cluster development, Ms. Greenlief stated that the builder would have had to met the setback requirements. Mrs. Thonen noted that the builder must have

taken liberties. Mr. Dawson said that the adjoining property to the rear was open land with woods and a storm drainage area.

In response to Mrs. Harris' question as to the side setback requirements, Ms. Greenlief stated that there is an 8 foot minimum side yard requirement for a total side yard of 20 feet.

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

Mrs. Thonen made a motion to grant VC 92-Y-138 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 16, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-138 by HOWARD W. DAWSON, JR. AND ELLEN M. DAWSON, under Section 18-401 of the Zoning Ordinance to allow construction of addition 6.5 feet from rear lot line, on property located at 13648 South Springs Drive, Tax Map Reference 65-4((4))531, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 1993; 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 (cluster).
3. The area of the lot is 8,727 square feet.
4. The application meets the necessary standards for the granting of a variance.
6. The house is located in a skewed way which restricts the applicant's use of the property.
7. The contiguous property to the rear is open; therefore, the addition will not infringe on anyone else.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Harold A. Logan Associates, P.C., dated December 15, 1992, submitted with this application and not transferable to other land.

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

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

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

Mr. Kelley and Mr. Ribble seconded the motion which carried by a vote of 5-2 with Mr. Hammack and Mr. Pammel voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 253, March 23, 1993, (Tape 1), Scheduled case of:

9:20 A.M. RICHARD AND JUDY HAMPTON, VC 93-M-001 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow addition 20.7 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-207). Located at 3803 Hillcrest Ln. on approx. 23,903 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((3)) 27.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Hampton replied that it was.

David Hunter, Staff Coordinator, presented the staff report and stated that the Accotink Stream Valley Park lies to the east of the subject property and the 100 year floodplain of Accotink Creek also extends into the northern portion of the subject property. He said that the applicants were requesting approval of a variance to enclose an existing screened porch and to expand it as a one story addition 20.7 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicants were requesting a modification of 4.3 feet to the minimum rear yard requirement.

The applicant, Richard J. Hampton, 3803 Hillcrest Lane, Annandale, Virginia, addressed the BZA. He explained that the steep slope and unusual shape of the lot, the flood plain, and the placement of the house on the lot greatly restricted the location of the addition. Mr. Hampton said that he would like to renovate the structure by enlarging the kitchen and living area. In summary, Mr. Hampton stated that the character of the house would not be changed, there would be no detrimental impact on the neighbors, the roof line would be the same, and the variance would be minimal.

In response to Mrs. Harris's question as to whether the existing wood shed would be removed, Mr. Hampton said it would. He stated that the two existing sheds along the property line would remain.

Mr. Pammel stated that although Mr. Hampton had referred to the floodplain being to the east of the property, it is actually to the north.

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

Mrs. Harris made a motion to grant VC 93-M-001 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 16, 1993 with an additional development condition:

"4. The existing wood shed to the rear of the house will be removed during construction."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-001 by RICHARD AND JUDY HAMPTON, under Section 18-401 of the Zoning Ordinance to allow addition 20.7 feet from rear lot line, on property located at 3803

Hillcrest Lane, Tax Map Reference 59-4((3))27, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 1993; 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-2.
3. The area of the lot is 23,903 square feet.
4. The subject property has unusual characteristics.
5. The flood plain, which occupies a portion of the property, restricts the location of the addition.
6. The rear of the property adjoins Fairfax County land.
7. The property has an unusual pie shape configuration.
8. The house is skewed on the lot.
9. The strict application of the Ordinance would produce an undue hardship.
10. The request is for a minimal variance.
11. Only the corner of the addition is going to intrude into the back yard. The rest of the addition will be within the rear yard requirement.
12. The character of the zoning district will not be changed by the granting of the variance.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Site Design Engineering, Inc., dated November 11, 1992, revised through January 5, 1993, submitted with this application and not transferable to other land.

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

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

4. The existing wood shed to the rear of the house will be removed during construction.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 255, March 23, 1993, (Tape 1 & 2), Scheduled case of:

9:30 A.M. JULE DINGELL WALOWAC, VC 92-D-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to allow subdivision of one lot into two lots, proposed lot 34B having lot width of 30.13 ft. (100 ft. min. lot width req. by Sect. 3-206). Located at 6113 Franklin Park Rd. on approx. 1.21 ac. of land zoned R-2. Dranesville District. Tax Map 41-2 ((2)) 34.

Chairman DiGiulian called the applicant to the podium and asked if the revised affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Strobel replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He said that the applicant was requesting a variance to the minimum lot width requirement in order to subdivide the property into two lots with proposed Lot 34A having a lot width of 149.10 feet and proposed Lot 34B having a lot width of 30.13 feet. He stated that the Zoning Ordinance requires a minimum lot width of 100 feet; therefore, the applicant was requesting a 69.87 foot variance for Lot 34B.

Mr. Heine said that it was staff's determination that the proposed application was not in harmony with the recommendations of the Comprehensive Plan which recommends a density of one dwelling per acre when physical constraints are present. He noted the property was constrained by Little Pimmit Run's floodplain and a 25 foot wide sanitary sewer easement on the western portion of the site which would concentrate two lots on the east side of the property. The concentration would be out of character with the area's dispersed pattern of development. He said that the application did not meet the intent of the Comprehensive Plan which emphasized that infill development be compatible with the surrounding land uses, and there are no pipestem lots in the neighborhood created as a result of the variance process. He explained that the pipestem lots located northwest of the property were subdivided in 1969 under previous subdivision and zoning ordinances. In summary, Mr. Heine stated that there were also environmental impacts related to the Environmental Quality Corridor (EQC) for Little Pimmit Run which have not been addressed on the special permit plat.

The applicant's attorney, Lynn Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich, and Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the BZA. She stated that the applicant would like to subdivide the property into two half acre lots. She noted that the property, which has a lot width of 180 feet along Franklin Park Road, would be within the permitted density in the R-2 district.

Ms. Strobel stated that when the property was acquired, the applicant had a reasonable expectation of development because it was zoned R-17 with a minimum lot requirement of 90 feet. She said the subject property also has a unique condition in that there is a 25 foot sanitary easement and a portion of the lot is in the flood plain. Ms. Strobel stated that the request was for a minor variance of 10 percent, the surrounding lots have a similar lot size, and the configuration of the proposed lot would be in character with the surrounding neighborhood. She used the viewgraph to depict the similarity of the proposal to other lot sizes in the area and noted that a pipestem configuration was not unique to the area.

She stated that although the applicant could develop the property with one large single family house, the size of the house would not be in harmony or compatible with existing houses in the area. Ms. Strobel expressed her belief that the proposal would be environmentally sensitive and noted that the proposed structures would be situated so that they had the least impact on the adjoining properties. She said that the application would be in harmony with the Zoning Ordinance and noted that the combined frontage of the two lots provided 90 percent of the Zoning Ordinance requirement.

Ms. Strobel stated that, although the staff report indicated that the application was not in harmony with the Comprehensive Plan, the Plan is not one of the criteria specified in Section 18-404 of the Zoning Ordinance, nor is it a requirement of the Virginia State Statute. She noted that the Plan made recommendations for land development and expressed her belief that

the application was in compliance with the Plan. She further noted that the Plan stated that nonconforming pipestem lots should be encouraged when the results was for the protection of the EQC. She presented a wetland study and noted the lot was significantly constrained by the Little Pimmit Run.

Ms. Strobel referred to the subdivision across from the subject property and expressed her belief that the application was far superior to that division of property. She noted that the proposed location for the driveway would mitigate any safety problems. In summary, Ms. Strobel stated that although six neighbors supported the application, the Franklin Farms Citizens Association would not. She expressed her belief that a pipestem driveway would allow the safest and best access to the property and would also be environmentally sensitive. She asked the BZA to grant the request.

In response to Mrs. Harris' question as to whether the applicant owned any other property in the area, Ms. Strobel stated that she did not. Ms. Strobel expressed her belief that the proposal was the most environmentally sensitive use of the land. She noted that the construction of two houses on the property would be in harmony with the neighborhood.

Mr. Hammack stated that the adjoining property owner did not support the application. He noted that the applicant had previously owned that property. (A copy of the letter from the adjoining property owner is contained in the file.)

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

E. Andrew Keeney, an attorney with the law firm of Baker and Hostetler, 437 North Lee Street, Alexandria, Virginia, represented a group of the neighbors; Herbert Becker, 2009 Loraine Avenue, McLean, Virginia, represented the Franklin Area Citizens Association; Dan Knise, 6110 Franklin Park Road, McLean, Virginia; Timothy Hurd, 6118 Franklin Park Road, McLean, Virginia; Brook Kane, 6102 Franklin Park Road, McLean, Virginia; Allen Barringer, 6127 Franklin Park Road, McLean, Virginia; Hazel Scott, 3938 North Dumbarton, McLean, Virginia; Kenneth Kies, 6109 Franklin Park Road, McLean, Virginia; Catherine Slotkoff, 3942 North Dumbarton Street, McLean, Virginia; Deborah Fialka, 1959 Rockingham Street, McLean, Virginia; Charles Davidow, 6117 Franklin Park Road, McLean, Virginia; addressed the BZA. They stated that they were in opposition to the request and agreed with staff's analysis of the application. They expressed their belief that the application did not meet the Zoning Ordinance standards for variances and the intent and spirit of the Comprehensive Plan. The citizens explained that the area had been developed through consolidation of lots which were compatible with the Zoning Ordinance and expressed their belief that the applicant, too, should comply with the Zoning Ordinance. They explained that the community had a major roll in forming the language of the Comprehensive Plan in anticipation of future problems that could arise from the redevelopment of the area; therefore, the Plan reflected the community's position on development. They noted the Plan recommended that the lots which fell into this category be developed on the high end of the density range.

In addressing the traffic issue, the citizens stated that the subdivision would double the amount of traffic and adversely affect safety of the neighborhood. They noted that the road was substandard, narrow, sloped steeply upward, and had a one lane bridge. They also noted the traffic generated by a child care center that was almost directly across from the subject property.

The citizens expressed their belief that the rural nature of the area would be threatened by the subdivision. They noted that living next to a floodplain, which was also designated as a bird sanctuary, was a privilege to be shared, enjoyed, and protected. In summary, the neighbors expressed their concern with property values, environmental pollution, and fill material. They emphasized their support for staff's recommendation and asked the BZA to deny the request.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Ms. Strobel stated that the applicant had not installed any fill material and had no intentions of using fill material on the property. She noted that the applicant had submitted a wetland study and had successfully addressed all the environmental concerns. She noted that although the wetland study was a development condition, it had been done in advance in order to mitigate any concerns. Ms. Strobel expressed her belief that the proposal was a reasonable use of the property and the request would be compatible with the neighborhood. She explained that the request would not set a precedent because there were no other lots in the area that had the two combined features, the size in excess of one acre and lot frontage of 180 feet. In summary, Ms. Strobel stated that pipestems already exist in the neighborhood and asked the BZA to judge the case by its merit and grant the application.

Mrs. Harris stated that according to the letter from Ester Wolh, 3944 Dumbarton Street, McLean, Virginia, trash, such as old refrigerators, concrete block, etc. had been dumped on the subject property. She had also indicated that the dumping may have taken place with the applicant's knowledge. Ms. Strobel said that unfortunately the applicant did not live on the property, therefore was unable to monitor the land.

Chairman DiGiulian said that although the proposal provided a 100 foot setback from the stream, the application merely adhered to the Zoning Ordinance requirement of a 15 foot setback from a floodplain. Ms. Strobel stated that was correct. Chairman DiGiulian noted that the plat indicated that clearing and grading into the floodplain would take place on Lot 34b. Ms. Strobel noted that although the plat showed that clearing and grading would take place, the Zoning Ordinance stipulated that it could not encroach into the limits of the floodplain and asked the surveyor's representative to clarify the issue.

John Thielacker, an agent with William H. Gordon Associates, Inc., 4501 Daly Drive, Chantilly, Virginia, addressed the BZA. He stated that the plat was in error and the applicant would have to observe the EQC in the 100 year floodplain limits where it is less than or greater than the 100 foot setback from the stream valley. He noted that the issue was covered by a development condition contained in the staff report. Chairman DiGiulian asked if he had proposed clearing and grading in the floodplain. Mr. Thielacker stated that he had not.

Mrs. Harris noted that staff did not prepare the plat; therefore, they could not be responsible for the error. Mr. Thielacker stated that William H. Gordon Associates, Inc. was responsible for the error.

Mr. Ribble make a motion to deny VC 92-D-133 for the reasons reflected in the resolution.

Mr. Pammel seconded the motion. He stated that the applicant's attorney had not presented testimony that demonstrated the lack of a variance would result in a situation where they would not have reasonable use of the property.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-D-133 by JULE DINGELL WALOWAC, under Section 18-401 of the Zoning Ordinance to allow subdivision of one lot into two lots, proposed lot 34B having lot width of 30.13 feet, on property located at 6113 Franklin Park Road, Tax Map Reference 41-2((2))34, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 1993; 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 1.21 acres.
4. The applicant's attorney has done a good a job in presenting the case; however, the potential environmental impact is of great concern.
5. The pipestem driveway could set a precedent.
6. In view of the physical constraints on the property, it should be developed in the low density range.
7. The application has not met the necessary standards for the granting of a variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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

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

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

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

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

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 1993.

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The Board of Zoning Appeals recessed at 11:15 a.m. and reconvened at 11:35 a.m.

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Page 258, March 23, 1993, (Tape 3), Scheduled case of:

10:00 A.M. WAT YARNNA RANGSEE FOUNDATION OF USA, SP 92-S-065 Appl. under Sect(s). 3-C03 and 8-915 of the Zoning Ordinance to allow place of worship, monastery and related facilities and waiver of the dustless surface requirement. Located at 11226 Chapel Rd. on approx. 4.3789 ac. of land zoned R-C, WS. Springfield District. Tax Map 76-4 ((2)) 9B.

Chairman DiGiulian called the applicant to the podium.

The applicant's agent, Sunthorn Sirivanakark, 4612 North 2nd Road, Arlington, Virginia, addressed the Board of Zoning Appeals. He stated that he would like to postpone the hearing in order to consult with legal counsel. He explained that because the issue was very complicated, they would like to have legal representation.

In response to Chairman DiGiulian's question as to how long a deferral would be necessary, Mr. Sirivanakark said two weeks would be sufficient.

Chairman DiGiulian called for a show of hands from citizens present for the case and most of the audience indicated that they were present for the case.

The applicant's attorney, John Belt, with the firm of John E. Belt and Associates, 7030 Lee Park Court, Falls Church, addressed the BZA. He stated that he had been hired on Friday, and although he had attempted to have his name put on a revised affidavit, he was unable to do so. He expressed his belief that the members of the monastery were hampered by language and believed it was imperative that they have legal representation. Mr. Belt expressed his belief that a religious issue was involved in the application.

Perry Vanover, Fairfax Station Homeowners' spokesman, addressed the BZA. He stated that he was in opposition to a deferral. Mr. Vanover explained that the applicant had been issued eight notices of violation within a two year period and has had ample time to prepare for the hearing.

Mrs. Harris stated that a deferral would be inconvenient to the citizens who were present for the hearing.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that staff would like to comment on the deferral.

Susan Langdon, Staff Coordinator, stated that the application had originally been scheduled for February 23, 1993. She explained that before notification or advertisement had taken place, the applicant had requested staff to reschedule the hearing for an additional 90 days. She stated that because of the existing violations, staff had only agreed to a one month time extension. She also stated that Betty Zirkle, with the County Attorney's office, had indicated the revised affidavit could have been ready by close of business on Monday, March 22, 1993.

Mrs. Harris made a motion to hear the case as scheduled. She expressed her belief that no religious issue was involved with the application. Mrs. Harris noted that the BZA voted on land use issues only, that adequate time had been given to the applicant, repeated notices of violations had been issued by the County, the staff report was printed on March 15, 1993, and the applicant had already been granted a one month deferral. She also noted that a great many citizens were present for the hearing.

Mrs. Thonen seconded the motion. She stated that the BZA ruled on land use issues and not on religious issues. Mrs. Thonen expressed her belief that it would be unfair to have so many citizens turn out for a hearing only to have the case deferred.

Mr. Kelley stated that he would reluctantly oppose the motion because every applicant was entitled to legal counsel. He said that perhaps the applicant did not recognize the nature of the opposition and expressed his belief that the attorney needed adequate time to prepare the case.

Mr. Pammel stated it would be advantageous to both the applicant and the neighbors to permit an attorney to present the case.

Mrs. Harris asked the applicant's agents to testify as to their professions.

Mr. Sirivanakarn said that he was a research biologist with the Environmental Protection Agency. He explained that because the organization did not have the finances to employee professionals, he had volunteered his services. He expressed his belief that a lawyer was needed because he did not have the qualifications to discuss staff concerns.

"Mr. Roger" Sombat Khramapitaksook, 5501 Backlick Road, Suite 100, Springfield, Virginia, addressed the BZA. He stated that he was a real estate agent and was trying to find a new property which would be suitable for the applicant. He explained that he had only become involved in the matter after the applicant's property had been purchased. Mr. Khramapitaksook indicated that he realized the importance of the Zoning Ordinance restrictions and asked for a deferral.

Chairman DiGiulian stated that he would concur with a deferral. He noted that it would be in the best interest of everyone involved, but expressed his belief that be no additional deferral should be given.

Mrs. Harris withdrew her motion. She stated that neither of the two agents would be qualified to address the BZA's concerns.

Mr. Kelley made a motion to defer SP 92-S-065 until April 6, 1992 at 10:45 a.m. and that no further deferral requests would be entertained by the BZA.

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

Mrs. Harris requested that the applicant's attorney submit any additional written testimony to staff by March 30, 1993.

Mrs. Thonen apologized to the audience and explained that legal considerations demanded the granting of the deferral.

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Page 259, March 23, 1993, (Tape 1), Scheduled case of:

10:15 A.M. SHIHAB KHATIB, TRUSTEE, SP 92-P-069 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to allow workshop/storage shed to remain 0.1 ft. from rear lot line (9.5 ft. min. yard req. by Sect. 10-104). Located at 1931 Byrd Rd. on approx. 10,892 sq. ft. of land zoned R-3. Providence District. Tax Map 39-1 ((10)) (4) 4B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Khatib replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a special permit for an error in building location to allow a workshop/storage shed to remain 0.1 feet from the rear lot line. The Zoning Ordinance requires a minimum 9.5 foot rear yard; therefore, the applicant was requesting a modification of 9.4 feet to the rear yard requirement. Ms. Langdon noted that the roof of the workshop/storage shed overhung 1.1 feet onto Lot 6.

Ms. Langdon explained that the application was filed as a result of a violation issued by the Zoning Enforcement Branch, Office of Comprehensive Planning (OCP), on December 27, 1991, and a Decree of Dismissal was issued by the Circuit Court of Fairfax County on December 14, 1992. She said that the Decree required, among other things, that the violations set forth in the violation notice of December 27, 1991, either be cleared or be the subject of a special permit application. She stated that the applicant filed for a special permit for an

error in building location on December 18, 1992. Ms. Langdon noted that a representative from the County Attorney's office was present to answer any questions that the BZA may have concerning the litigation.

Ms. Langdon said that the plat indicated that the shed was located within a 20 foot wide storm drain easement. She stated the Department of Public Works (DPW) had investigated the site and had determined that DPW maintained the easement. Ms. Langdon said the easement conveys a stream through the rear portion of the lot and that DPW will require the applicant to remove any structures located within the storm drain easement. She noted that a representative from DPW was also present to answer any questions the BZA may have.

In conclusion, Ms. Langdon stated it was staff's belief that the application did not meet the necessary standards and the workshop/storage shed was located in violation of the requirements of the DPW; therefore, staff recommended denial.

In response to Mrs. Harris' question as to whether the other violations mentioned in the staff report had been corrected, Ms. Langdon stated that they had.

The applicant, Shihib Khatib, 9320 Leesburg Pike, Great Falls, Virginia, addressed the BZA. He stated that shortly after they had purchased the property, they had removed an old rusty metal shed and constructed the existing cement block shed on the original site. Mr. Khatib explained that they had considered the metal shed a safety and health hazard and had merely replaced it with a well constructed, aesthetically pleasing building. He stated that although the structure was located within the storm drainage easement, the shed was built well above the ground and proper drainage measures had been taken. He explained that the reason the roof of the shed extended one foot into the adjoining yard was to abate drainage problems. Mr. Khatib stated that the application met the necessary standards, the replacement of the shed had eliminated a rodent problem, the shed was approximately 200 feet from the houses on Lots 5 and 6, there would be no detrimental impact on the neighbors, and asked the BZA to grant the request.

Mrs. Harris noted that although the applicant's shed was not on the neighbor's property, the roof overhang was. Mr. Khatib explained that he had merely replaced an existing shed and did not believe that it had a detrimental impact on the neighbors. Mr. Khatib stated he had not obtained a building permit because he had been under the impression that one was not needed.

The applicant's father, Mr. Khatib, addressed the BZA. He explained that he had replaced the existing shed because of the danger to his children from rodents residing under the shed. Mr. Khatib said that although the original plat depicted the shed, the revised plat did not. He stated that when he received the Building Permit for the addition in 1985, he did not understand that a Building Permit would also be required for the shed. He stated that he had used the metal shed's existing foundation when he constructed the concrete shed.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Khaled Khatib, 1931 Bird Road, Vienna, Virginia, addressed the BZA. He stated that the shed had no detrimental impact on the neighbors, was environmentally safe, was well built, and provided a much needed storage area for the family. Mr. Khatib said that if it proved to be unsafe or the neighbor complained, they would remove the shed.

Chairman DiGiulian stated that the Saddlebrook Development Corporation, which owned the abutting property to rear, opposed the request.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

In response to questions from Mr. Kelley, Jan L. Brodie, Senior Assistant County Attorney, stated that the special permit request was the result of the a court case which involved the violations on applicant's property on Lyons Street in another part of Fairfax County. She stated when that case was being settled, the violations on the subject property had come to light and the settlement of the court case reflected that the violations had to be removed or a special permit granted. Ms. Brodie explained that the County had tried to include all violations that existed on the applicant's properties so that the whole matter could be settled.

In response to Mrs. Harris' question regarding the storm water easement, Weldin Spurling, Engineer II, Maintenance and Construction Division, DPW, stated that there was an impact from the stream channel, some erosion and undermining of the wall. He explained that although at present, the impact was minimal, over time it could get worse. He explained that the stream had a varying water surface elevation depending on stream activity and if the problem was left uncorrected, the wall may suffer some structural damage and may fail. Mr. Spurling explained that although a redesign was feasible, it would require a professional engineer to survey the area and determine if it was feasible to redirect the stream channel. He noted that all adjacent property owners would have to consent to the modification. In summary, Mr. Spurling stated that DPW would prefer the shed, and any other encroachment, be removed.

Mr. Kelley made a motion to deny SP 92-P-069 for the reasons stated in the staff report dated March 16, 1993, and for the reasons reflected in the Resolutions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-P-069 by SHIHAB KHATIB, TRUSTEE, under Section 8-914 of the Zoning Ordinance to allow reduction to minimum yard requirements based on error in building location to allow workshop/shed to remain 0.1 feet from rear lot line, on property located at 1931 Byrd Road, Tax Map Reference 39-1((10))(4)48, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 1993; 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 10,892 square feet.
4. The BZA seldom requires anyone to remove a structure; but there is no alternative in this case.
5. The application does not meet the necessary standards for the granting of a special permit for a building in error.
6. The BZA agrees with the staff report which indicates that the shed is located within the storm sewer easement and has the potential of creating problems.
7. The fact that the shed extends onto the adjacent property cannot be resolved.
8. The shed is so close to the lot line that the appearance cannot be mitigated with screening.

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 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 1993.

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Page 261, March 23, 1993, (Tape 3), Scheduled case of:

10:30 A.M. JOHN AND LAURA ROBIC, SP 92-D-071 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to allow a home professional office. Located at 11901 Plantation Dr. on approx. 5.0 ac. of land zoned R-E. Dranesville District. Tax Map 6-1 ((1)) 12.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Robic replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicants were requesting approval of a special permit to operate a home professional office. Ms. Langdon stated that the office, which would occupy 1,500 square feet of a 5,000 square foot dwelling, would be used by the applicants to operate a telecommunications consulting business. She said that two full-time employees would work on the premises and no clients would come to the house. Ms. Langdon noted the applicants had indicated that the use would be temporary, and they would lease office space within the next year. She stated that staff believed the application met the necessary standards and recommended approval subject to the development conditions contained in the staff report dated March 16, 1993.

The applicant, John Robic, 11901 Plantation Drive, Great Falls, Virginia, addressed the BZA and stated that the five acre subject property was surrounded by three vacant lots. He noted that the property had a separate parking area, as well as the parking provided by the circular driveway; therefore, parking would not be a problem. Mr. Robic explained that, because of the nature of his business, there would be no clients coming to the house. He explained that all communications were done electronically and very rarely would anyone be required to consult with him at his place of business.

Mr. Robic explained that due to the cost of pending litigation involving his former employer, he was unable to afford to establish a business outside his house. He expressed his belief that the use would be temporary and that the lawsuit would be favorable to him. He noted that once the legal fees were paid, he would be able to afford rent. Mr. Robic stated that he had consulted with the neighbors who have expressed no opposition to the request.

In addressing the development conditions, Mr. Robic asked the BZA to allow, in addition to the two full-time employees, a receptionist and a bookkeeper. Mr. Kelley asked why a receptionist would be needed when no clients came to the house. Mr. Robic explained that he also employees 20 people who operate out of their own homes; therefore, they receive a great many telephone calls.

Mrs. Harris asked that if most of the business was done electronically, why two full-time employees were needed on-site. Mr. Robic explained that he, and the two other employees mentioned in the staff report, were the general managers of the firm. He stated that each person handled upwards of $500,000 in business per year and must concentrate their efforts on the clients; therefore, a receptionist was needed.

Mr. Ribble noted that the application had already been advertised and if any modifications were made, the application would have to be amended.

In response to Mrs. Harris' question as to why the applicant could not obtain office space, Mr. Robic stated that the firm was spending $15,000 a month in legal fees; therefore, he could not afford rent. He explained that he had commenced operating a business from his home in June and had immediately consulted with Fairfax County in order to obtain approval.

Chairman DiGiulian called for staff comments.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated the since the application before the BZA requested a maximum of two employees, staff could not support the request for additional employees,

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

Mr. Hammack made a motion to grant SP 92-D-071 subject to the development conditions contained in the staff report dated March 16, 1993 with the following modification to the development conditions:

"10. This special permit is granted for a period of fifteen (15) months from the date of approval of this special permit."

Mr. Pammel seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Kelley stated that he would support the motion although he believed that the applicant had exaggerated the cost of leasing office space.

Mrs. Thonen stated that she could not support the motion. She stated that the applicant was being very honest when he stated he would have more employees than advertised and expressed her belief that residential areas should not be impacted with commercial uses.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-D-071 by JOHN AND LAURA ROBIC, under Section 3-E03 of the Zoning Ordinance to allow a home professional office, on property located at 11901 Plantation Drive, Tax Map Reference 6-1((1))12, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 23, 1993; 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-E.
3. The area of the lot is 5 acres.
4. The application meets the necessary standards for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-907 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 Andrew P. Dunn, Land Surveyor, dated October 16, 1989, Revised February 9, 1993 and approved with this application, as qualified by these development conditions.

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

4. A Non-Residential Use Permit shall be obtained within 60 days of the approval of this application. All required Fairfax County permits shall be obtained.

5. The number of employees on-site shall, in addition to the owner/applicant, not exceed two (2) full-time employees.

6. The maximum hours of operation shall be from 8:00 a.m. to 5:00 p.m., Monday through Friday.

7. A minimum of four (4) parking spaces shall be provided on-site. One of these spaces shall be accommodated in the garage.

8. There shall be no exterior alterations to the residence which would change the residential appearance of the property and there shall be no signs associated with the home professional office use.

9. Meetings between the applicants or employees and clients shall not be held on-site.

10. This special permit is granted for a period of fifteen (15) months from the date of approval of this special permit.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-1 with Mrs. Thonen voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 31, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 263, March 23, 1993, (Tape 3), Information Item:

Request for Reconsideration
Kenneth J. Patterson, VC 92-V-120

Mr. Pammel made a motion to deny a reconsideration for VC 92-V-102 which was heard and denied at the March 9, 1993 public hearing. Mrs. Thonen seconded the motion.

Mrs. Harris noted that there were other sites on the property where the addition could be located by-right.

The motion carried by a vote of 7-0.

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Page 264, March 23, 1993, (Tape 3), INFORMATION ITEM:

Approval of Resolutions for March 16, 1993

Mr. Pammel stated that the Resolution on VC 92-P-124, Emerson and Amelita G. Duga, reflected that Mrs. Harris had not only made the motion, but had also seconded the motion.

Jane C. Kelsey assured Mr. Pammel that the necessary correction would be made and asked that the BZA also include the Resolution for VC 92-V-120, Kenneth J. Patterson in the motion.

Mr. Pammel so moved. The motion carried by a vote of 7-0.

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Page 264, March 23, 1993, (Tape 3), Information Item:

Request for Date and Time
James A. Kelley and Sharon B. Kelley Appeal

Mr. Pammel made a motion to schedule the public hearing for May 4, 1993 at 10:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 264, March 23, 1993, (Tape 3), Information Item:

Revocation Hearing Procedure for Dar Al-Hijrah, SP 84-M-009

Chairman DiGiulian submitted a copy of a proposed order for the procedure of the revocation hearing scheduled for March 30, 1993. He stated that the Board of Zoning Appeals should be in agreement on the format for the public hearing.

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Page 264, March 23, 1993, (Tape 3), Information Item:

Parking Accommodations at the Massey Building

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals and submitted information regarding the parking situation at the Massey Building. She also presented the BZA with a copy of the current agendas.

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Page 264, March 23, 1993, (Tape 3), Information Item:

Rescheduling of Appeal Application A 92-M-004
Swanee A. Busic; Donald & Jan Hoffman;
Pine Ridge Civic Association;
and Ridgelia Hills Homeowner's Appeal

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals and asked permission to reschedule Appeal A 92-M-004 from May 18, 1993, at 10:00 a.m., to May 25, 1993, at 10:00 a.m. She explained that the May 18, 1993, public hearing would be conducted at night; therefore, the case could not be heard at 10:00 a.m. Chairman DiGiulian so ordered.

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Page 264, March 23, 1993, (Tape 3), Information Item:

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals and thanked Jan L. Brodie, Senior Assistant County Attorney, for attending the public hearing.

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As there was no other business to come before the Board, the meeting was adjourned at 12:33 p.m.

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

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

SUBMITTED: April 27, 1997

APPROVED: May 4, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on March 30, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Staff Members Present: James P. Zook, Director, Office of Comprehensive Planning; Jane Gwinn, Zoning Administrator; David Bobzien, County Attorney; Jan Brodie, Senior Assistant County Attorney; Carl I. Sivertsen, Deputy Zoning Administrator; Joe Bakos, Assistant Chief, Zoning Enforcement Branch; Arthur Singer, Senior Zoning Inspector; Jane C. Kelsey, Chief, Special Permit and Variance Branch; and, Betsy S. Hurtt, Clerk, Board of Zoning Appeals.

Chairman DiGiulian called the meeting to order at 8:01 p.m.

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Page 265, March 30, 1993, (Tapes 1, 2, 3), Scheduled case of:

8:00 P.M. REVOCATION HEARING: DAR AL-HIJRAH, Revocation Hearing under Sect. 8-016 of the Zoning Ordinance to determine whether or not to revoke SPECIAL PERMIT SP 84-M-009 for failure to comply with conditions of the special permit approval for mosque and related facilities. Located at 3159 Row St. on approx. 3.5559 ac. of land zoned R-3. Mason District. Tax Map 51-3 ((1)) 19B.

Chairman DiGiulian announced the public hearing was being held at the Zoning Administrator's request to consider revocation of Special Permit SP 84-M-009. He said the Zoning Administrator based her position on the fact that there has been continued non-compliance with Condition Number 15 of the Special Permit. The condition reads in part, "that all parking shall be contained on site unless the applicant obtains permission for coordinated parking from the Board of Supervisors". He outlined the procedure to be followed for the public hearing. The Zoning Administrator would first present her position, the representative of the mosque would follow, with a maximum of ten minutes for each presentation. Following those presentations, speakers would be called with individual speakers having three minutes and representatives of either a homeowners association or civic association having five minutes. He asked that each speaker pay particular attention to the lights on the podium, and when the red light comes on that is the signal that their allotted time had expired. Chairman DiGiulian called for Ms. Gwinn's presentation.

The applicant's attorney, Larry Becker, with the firm of LIEDING & BECKER, P.C., 1427 Dolley Madison Boulevard, McLean, Virginia, came forward and made a formal motion that the hearing be deferred. He said on January 29, 1993, the applicant requested that the Zoning Administrator render an interpretation for the basis for which she believed the mosque was in violation of the special permit. He said that on March 12, 1993, the applicant once again requested the interpretation in order to prepare for the public hearing. Mr. Becker said on March 18, 1993, the Zoning Administrator provided the applicant with an interpretation, but he did not agree with that interpretation. He said there was no legal basis and there is no enabling legislation, statute, or ordinance that would allow the BZA to take revocation action. Mr. Becker said he planned to appeal the Zoning Administrator's interpretation.

Chairman DiGiulian asked if the appeal had been filed. Mr. Becker said he had obtained the documents and they were included as a part of the exhibit that he had distributed just prior to the public hearing. He said the applications would be filed on March 31, 1993.

Mr. Becker said the applicant was also in the process of making an application for approval from the Fairfax County Board of Supervisors for an additional 101 parking spaces on additional land that the applicant purchased on February 18, 1993. He said the special exception had been prepared and that he had submitted a copy of the plat depicting the additional parking spaces during a meeting with staff earlier in the day. Mr. Becker said the applicant planned to meet with the engineer on April 1, 1993, in order to finalize the plat so that it could be submitted with the special exception. He said the applicant was in the process of submitting a special permit amendment to the BZA which would allow the applicant to redesign the existing parking in order to provide 60 more parking spaces on site. Mr. Becker said the applicant was also in the process of making application to the Board of Supervisors for coordinated parking with the neighboring churches for approximately 210 parking spaces. He said if the BZA upheld the applicant's appeal then there would be no basis for proceeding with the revocation hearing. If the special permit amendment and the special exception applications are approved, Mr. Becker said it would change the facts relating to the case immensely. He asked the BZA to defer the hearing to allow the applicant an opportunity to proceed with the applications.

Chairman DiGiulian asked how the BZA knew the applications would be filed since there are several letters over the span of a year in the Zoning Administrator's memorandum indicating that some type of application was going to be filed and it never occurred. He said the first letter was dated July 1991. Mr. Becker said the applications have been prepared and had been given to the Zoning Administrator. He said the applicant was ready to file the applications but it was decided by agreement, following discussions with staff, that the applicant should meet with the engineer to finalize the plat so as not to have the applications rejected. Mr. Becker said the BZA had his word that the documents were prepared and ready to go forward.

Mr. Hammack asked the nature of the changes that have to be made to the plat. Mr. Becker said the changes dealt with setback requirements, landscaping, and a title search on the underlying ownership of Olin Drive, which the applicant was asking be vacated.

In response to a question from Mrs. Harris with respect to the BZA's authority pertaining to the revocation hearing and the BZA's authority to hold the hearing, Jan Brodie, Senior Assistant County Attorney, said she believed the BZA did have the authority to hold a revocation hearing.

Mrs. Thonen said the Virginia General Assembly gave the BZA the authority to revoke special permits. Mr. Becker said he did not believe the BZA had the enabling legislation to deal with the offsite parking requirements that it was trying to impose on the applicant. Mrs. Thonen said the applicant had requested 90 parking spaces, which the BZA approved; the BZA had required that all parking be on site, and since the applicant was not complying with that condition, it was a violation. Mr. Becker said he disagreed with the Zoning Administrator's interpretation relating to Condition Number 15 and the underlying theory under which the revocation hearing was going forward. He said the Zoning Administrator had specifically stated in her interpretation that Condition 15 states that all attendees of the mosque must park on site, which was not the wording of Condition Number 15. Mr. Becker said the Zoning Administrator had included in her interpretation that attendees could not park offsite. He added that the BZA did not have the enabling legislation to make that restriction on the applicant, or any other church in Fairfax County, because the Board of Supervisors had not given them that authority.

Mr. Kelley asked if Mr. Becker believed that to be true of all special permits and Mr. Becker said that he did. He added that it had not been made clear at the special permit public hearing that the BZA was limiting off site parking. Mrs. Thonen suggested that he go back and read the minutes of the special permit hearing and pointed out that said she had expressed her concern with the parking and the traffic at that time. She said the BZA had deferred the earlier revocation hearing at Mr. Becker's request and still nothing has been done and she believed that it would be unfair to everyone wishing to speak if they were not heard.

Mr. Pammel expressed concern that the BZA might be in an awkward position if the applicant filed an appeal since the BZA would be the body that would hear both the appeal and the revocation. He suggested that the BZA go into executive session with the County Attorney to discuss the matter. Mrs. Harris said the appeal had not been filed nor had anything else been filed. Chairman DiGiulian said he believed that the issues could be discussed in open session.

Mr. Pammel made a motion that the BZA go into Executive Session to discuss legal matters. Mr. Hammack seconded the motion. Mr. Kelley inquired as to what would be said in executive session that could not be said in open session. Mrs. Thonen said she believed that all issues involving the case should be discussed in open session.

Mr. Hammack asked the Zoning Administrator what section of the Zoning Ordinance gives the BZA the authority to impose off street parking restrictions. Ms. Gwinn said it was her position that under the general authority that the BZA has to issue permits there is enabling authority, as well as Zoning Ordinance provisions, that speaks to the BZA imposing conditions and restrictions on a use. The BZA must also find that a use, before it can be approved, complies with the General Standards. Two of those Standards speak to the use being in harmony with the purpose and intent of the zoning district, assuring that the proposed use will be harmonious and will not adversely impact the development of the neighboring properties, and also addresses traffic. She believed that the issue of parking being off site was certainly relevant to that determination and to impose a condition precluding off site parking was ensuring that the use meets the General Standards. It was her position the BZA does have that authority. Ms. Gwinn said to take Mr. Becker's arguments to their conclusion, it would appear that the BZA could never require more than the minimum Zoning Ordinance requirements for screening or for parking, signs, etc. She said the purpose of the BZA and special permits is to ensure that the use will be compatible and to impose additional conditions.

Chairman DiGiulian said there was a motion on the floor and the question was whether or not the BZA should go into executive session.

The motion failed by a vote of 2-5 with Mr. Hammack and Mr. Pammel voting aye; Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, Mr. Kelley, and Mr. Ribble voting nay.

Mr. Kelley made a motion that the BZA deny Mr. Becker's request for a deferral and proceed with the revocation hearing. Mrs. Thonen seconded the motion.

Mrs. Harris said she believed Mr. Pammel's earlier question needed to be addressed before proceeding with regard to the filing of an appeal. Mr. Kelley said a simple statement made by anyone stating that they were going to file an appeal would stop the BZA from doing an awful lot of things. Chairman DiGiulian said the County Attorney could respond to the question.

Ms. Brodie said the filing of an appeal would not preclude the BZA from proceeding with the revocation public hearing. She said the Code provides that the filing of an appeal with the Circuit Court of a decision of the BZA or the Zoning Administrator does not preclude the BZA or the Zoning Administrator from proceeding with enforcement. Mrs. Harris said the question dealt with an appeal that would be filed with the BZA, not the Circuit Court.

Ms. Gwinn said the applicant has not filed an appeal, therefore it has not been determined whether it was timely filed and accepted. She said it was her position that her interpretation of the condition has been well known since the first Notice of Violation was issued in April 1989. Ms. Gwinn suggested that perhaps the BZA could proceed with the public hearing and defer decision, and if the applicant files the appeal, the appeal and the revocation could be heard together.

Chairman DiGiulian said the fact was that an appeal had not been filed.

Mr. Hammack asked what would happen if the applicant filed an appeal and the BZA agreed with Mr. Becker's arguments that the BZA did not have the authority to impose additional parking spaces with respect to the revocation public hearing. Ms. Gwinn said she assumed that the BZA would not revoke the special permit. Mr. Hammack noted that Mr. Becker had indicated that the applicant also planned to file special permit amendment and special exception applications which would provide additional parking. He asked if the matter would be moot if those applications were approved. Mr. Hammack also questioned if the applicant obtained an additional 400 parking spaces, but still parks off site, would that be a violation. Ms. Gwinn said if parking was still occurring off site there would still be the issue of whether or not that constituted a violation of the special permit.

Mr. Kelley said these were suppositions and assumptions on the part of the Zoning Administrator and Mr. Hammack and called for a vote on his motion. He said the violations have been occurring for two years and the citizens deserved to be heard. The motion carried by a vote of 6-1 with Chairman DiGiulian, Mrs. Harris, Mrs. Thonen, Mr. Kelley, Mr. Pammel, and Mr. Ribble voting aye; Mr. Hammack voting nay.

Chairman DiGiulian called for the Zoning Administrator's presentation.

Ms. Gwinn located the property which was subject to special permit approval in 1984. She referenced her memorandum to the BZA dated March 23, 1993, which outlined her position. She said the issue dealt with Condition Number 15 of that special permit which addressed on site parking. There have been three Notice of Violations issued to the applicant stating that off site parking does constitute a violation and those notices were issued in April 1991, September 1991, and September 1992. Ms. Gwinn said in February 1992, in response to concerns regarding parking, the Board of Supervisors established a residential permit parking district in the adjacent neighborhoods which restricts parking on a daily basis between the hours of 12:00 p.m. to 5:00 a.m. She said the mosque has attempted to secure agreements from neighboring churches for shared off-site parking to try to ameliorate the problem. The mosque has indicated they have agreements for 210 parking spaces, but the documents submitted to staff indicated 120 spaces with the majority being provided by the Church of Christ, immediately opposite the mosque, and the First Christian Church of Falls Church. Even with these agreements, staff's inspections show a minimum of 220 vehicles parked off site primarily along the service road in front of Ravenworth Towers and in its parking lot, and along the service drive in front of the funeral home, and all the way down past Munson Hill and along Rio Drive. Ms. Gwinn said even with the shared parking agreements there are a tremendous number of vehicles that are not being accommodated on the subject property or on the two church parking lots. She said the violation has been occurring for two years, the applicant would need almost 400 parking spaces to accommodate the vehicles going to the mosque. In addition during their holy month of Ramadan, there are additional parking problems for the entire month and in the absence of any signed shared parking agreements, staff recommended that the special permit be revoked.

Ms. Gwinn said James P. Zook, Director, Office of Comprehensive Planning; Jan Brodie, Senior Assistant County Attorney; and, Captain Libby, with the Mason Substation, of the Police Department; and Art Singer, Senior Zoning Inspector who has been working on the case, were all present to respond to questions.

She noted that Mr. Becker had met with the staff earlier in the day and had submitted one plat and one application form that was incomplete and not acceptable. It did not provide the information required by the Zoning Ordinance.

In response to a request from Mr. Kelley, Chairman DiGiulian called Captain Libby to the podium.

Captain Libby said there has been two police officers trying to assist with the traffic flow and this number was recently increased to three. During the period of Ramadan, there were four officers on Friday and two on a daily basis. He added that in addition generally on Fridays there is anywhere from two to five officers assigned to the area at an average cost to the County of $25 to $27 per hour per officer. Captain Libby said in November the police began towing vehicles that were blocking driveways, parked too close to driveways or intersections, or if the owner had three or more unpaid tickets. This resulted in the towing of 10 to 20 vehicles. He said since February 21, 1991, when the permit was issued, and March 19, 1993 the police have written 850 parking tickets and of those 407 were for residential permit parking violations. During a similar period from February 21, 1989 to February 20, 1991, there were 107 parking tickets issued in the same area and the only substantial difference during that timeframe is that the Lord and Taylor store closed. Captain Libby said there have been 17 motor vehicle accidents within 100 feet of the intersection where the mosque is located, 9 involving injury, 8 involving property damage. He said prior to the

mosque opening there were 7 motor vehicle accidents, 3 involving injury, 4 involving property damage. Captain Libby said the police department is in a difficult position of enforcing not only parking regulations but maintaining the roadways so that emergency vehicles can get in and out of the surrounding neighborhoods. He said it is difficult to get officers to work off duty in the area, especially female officers, because they endure verbal abuse from selected members attending the mosque.

Mr. Ribble asked if the speaker believed that the tickets and towing were generated by the people attending the mosque. Captain Libby said that he did.

Mrs. Harris asked if there had been any noticeable change in the impact at any given time. Captain Libby said the impact stays at a reasonable level if the police are there in large numbers every Friday. If there is one Friday the number of police is decreased due to reassignment to another part of the district, the impact increases significantly the next week. Mrs. Harris asked if this interfered with the officers performing other duties. Captain Libby said having to assign additional police officers for three to four hours impacts the police department because it takes officers from other duties.

Mr. Kelley asked if any formal charges had been brought against any members of the mosque or any citizens. Captain Libby said there have not been a large number of charges but there have been some for disorderly conduct. He added there have also been charges made against officers. He said they are working in less than ideal circumstances.

The applicant's agent, Mr. Becker, said ten years ago he appeared before the BZA to request special permit approval for the first mosque in Northern Virginia. He said the mosque is a magnificent $6,000,000 structure and the site is well maintained with trees and shrubbery. The applicant has recently purchased an additional lot, Lot 22, approximately one half block away from the mosque which will cost the mosque about $410,000 after improvements. Mr. Becker said that ironically the applicant was before the BZA because it had been too successful, and because for one hour on Friday at 1:30 p.m. Fairfax County has determined that it will not tolerate any off site parking for those who want to worship at the mosque. He said Fairfax County has engaged in activities which has limited the exercise of the attendees to worship. The Board of Supervisors passed a parking regulation which he believed was specifically for limiting the parking off site for those attending the mosque making the sole purpose of the parking restriction to limit the free exercise of religion at the mosque. The mosque attendees have been told they cannot park on the access roads and have been told, in so many words that the number of people attending the mosque must be limited. They have not actually been told that because that is unconstitutional. Mr. Becker said it was impossible for everyone attending the mosque to park on site since it is the only mosque in Northern Virginia and there are thousands who are muslim. This is a young mosque and it is not an established institution such as the Catholic church which has a bureaucracy in it, and perhaps would be more responsive. He believed the leaders of the mosque have been extremely responsive as they had engaged in shared parking arrangements with the neighboring churches providing an additional 190 parking spaces and the applicant was continuing to negotiate with other neighborhood churches to obtain other shared parking agreements. Mr. Becker said the mosque has hired one or two police officers every Friday afternoon to help with the traffic and during Ramadan there were at least three officers hired to monitor traffic. He referenced the plat he had discussed with the Zoning Administrator earlier in the day and said 101 off site parking spaces would be added, if approved by the Board of Supervisors. If the applicant's request for special permit approval is approved, it would increase the on site parking by 60 spaces. Mr. Becker said when the special permit was approved in 1984, the leaders of the mosque could not anticipate the number who would attend the mosque, nor did staff.

Chairman DiGiulian asked the speaker to conclude his remarks as his allotted time had been up for quite some time.

Mr. Becker challenged the BZA to share their personal experiences with respect to churches in their neighborhood that have overflow parking and noted three in his neighborhood. He said the mosque was not the only religious facility in the County experiencing parking problems.

Chairman DiGiulian once again asked Mr. Becker to conclude his remarks. Mr. Becker noted that this was a due process hearing and said he would respectfully request that he be given an opportunity to make his case. Chairman DiGiulian said he had outlined the time limits at the beginning of the hearing.

Mr. Ribble said it appeared from the conditions that the BZA and staff had taken into consideration the potential for parking problems since the conditions specifically addressed obtaining approval from the Board of Supervisors for coordinated parking. He said it was his understanding that this had not occurred. Mr. Becker said that was correct.

Mrs. Harris said the transcript of the public hearing indicated that he had agreed with the development conditions and asked if that were true. Mr. Becker said that it was. She said the transcript also stated that Mr. Becker had said if the congregation grew too large the congregation would be split and start another. Mr. Becker called the BZA's attention to the list of seven different organizations that are in the process of building, planning to build, in the process of making application, or operating other mosques in Northern Virginia. Mrs. Harris and Mr. Becker discussed Condition Number 15.

A discussion took place between Mr. Kelley and Mr. Becker about comments Mr. Becker had made that inferred there was some subtle form of religious discrimination on staff's part. He asked Mr. Becker if he believed that. Mr. Becker said he had not said that, but that was the effect of what has happened and noted that everyone has the right to park on public streets. Mr. Kelley said that it appeared the Board of Supervisors and staff wanted the neighbors to have the right to access their driveways. Mr. Becker agreed.

In response to questions from Mr. Hammack, Mr. Becker said he would have to defer to the leaders of the mosque as to the number of people attending services on Friday. He said the special permit amendment and special exception would be filed no later than the end of next week, if not sooner.

Mr. Zook asked if he could elaborate on Mr. Hammack's question. He said if he had understood correctly, Mr. Hammack's question dealt with an application for the satellite parking and Mr. Becker's response dealt with an entirely different issue. He said the speaker was addressing another application dealing with additional parking on site or on a separate lot owned by the applicant.

Mr. Hammack said it appeared with the additional parking testified to by the speaker, the applicant would have a total of 467 parking spaces. Mr. Becker believed that was a fair estimation.

There were no further questions and Chairman DiGiulian called for speakers in support of the Zoning Administrator.

At this time, Mr. Becker noted his objection for the record and said since this was a due process hearing that he did not believe it was appropriate for testimony to be given by outside speakers in opposition to the matter. Chairman DiGiulian so noted the objection.

In response to Mr. Hammack's question concerning the brief Mr. Becker submitted, Ms. Gwinn said it was submitted prior to the beginning of the meeting.

Jackie Gilbert, President, Lee Boulevard Heights and Lower Munson Hills, 6110 Brook Drive, Falls Church, Virginia, read a prepared statement into the record noting that there was a parking problem and that the problem has been ongoing since the mosque opened. She said she did not believe the mosque has taken appropriate measures to alleviate the impact of the parking on the neighbors and asked the BZA to take corrective action. (A copy of her prepared statement is contained in the file.)

Jan Pitts, Resident Manager of Ravenwood Towers apartments, 6166 Leesburg Pike, Falls Church, Virginia, said the mosque attendees park in the spaces at Ravenwood Towers which impacts the residents. She said she has had cars towed and has been threatened by mosque attendees and has had to call the police on several occasions.

Julie Jacks, President, Lafayette Park Condominium Association, located at Rio Drive and Leesburg Pike, Falls Church, Virginia, almost directly across the street. She said the Association has been experiencing parking problems since the mosque opened. The mosque requested that the Association enter into a shared parking agreement, but on advice of attorney the Association declined. Staff has to be stationed at the entrance of the condominium parking lot to prevent people attending the mosque from entering the lot during the hours the cars are in the area, which creates a financial burden on the Association.

Dan Meisinger, Past President of the Vinewood Citizens Association, 6164 Vine Forest Court, Falls Church, Virginia, said there is a major parking problem every Friday afternoon and the women in the neighborhood have been verbally cursed. He said there are ways for the mosque to alleviate the impact. Mr. Meisinger said his church in Falls Church had parking problems and they leased additional space and shuttled people back and forth, thus they have had no more problems. The problem at the mosque has gone for two years or more.

Roy Wright, 3227 Apex Circle, Falls Church, Virginia, represented Munson Hill citizens and said the neighbors have been impacted by the overflow parking generated by the mosque. He said the homeowners also have rights. (A copy of his prepared statement is contained in the file.)

Beverly Barnes, President of the Board of Directors, Barcroft Hills Condominium Association, 3245 Rio Drive, Falls Church, Virginia, said the citizens have expressed concern with safety due to the congestion on Fridays. She said the Association has had to station an employee in the parking lot to keep mosque attendees from parking and this has caused a financial burden on the association.

Bob Mace, Coordinator for the Citizens Task Force on the mosque, 6109 Brook Drive, Falls Church, Virginia, read a prepared statement into the record which addressed the traffic impact and the large number of people who attend services at the mosque on Fridays. (A copy of his prepared statement is contained in the file.)

In response to a question from Mrs. Harris about the people crossing Route 7, Mr. Mace said there is a police officer at Row Street but many people cross in other locations which causes a traffic hazard.

Mrs. Harris said she had been there two Fridays and the traffic was terrible and it appeared crossing the streets was a hazard. She pointed out there are six exits to Leesburg Pike that are used by the mosque attendees and they are not monitored.

Norman Slizock, 6069 Whooten Drive, Falls Church, Virginia, read a letter into the record from Melissa and Scott Stricker, residing at 6104 Munson Hill Road, Falls Church, Virginia, voicing their concern about the parking. The Strickers said they had called the police, the County, and the mosque leaders advising them that the worshipers were not obeying the laws. (A copy of the letter is contained in the file.)

Sylvia Johnson, 6110 Brook Drive, Falls Church, Virginia, said she was appalled at the ill will and friction that has been generated by the parking and the mosque leaders' inability to resolve the problem and that they have not obeyed the law. She said it is the mosque's responsibility to resolve the problem, and the problem is about parking not freedom of religion. (A copy of her prepared statement is contained in the file.)

Elaine Marcuse, 6112 Munson Hill Road, Falls Church, Virginia, said there has been a traffic impact ever since the mosque opened and although permit parking was instituted in the neighborhood there is still a parking problem.

Susan Flinner, Brook Drive, Falls Church, Virginia, said she had supported the applicant's request to build the mosque originally and it was with great reluctance that she appeared before the BZA to ask that the special permit be revoked. She said she believed that revocation was the only way that the County would get the mosque leaders to cooperate and bring the parking into compliance.

Eric Hanson, 3103 Worthington Circle, Falls Church, read a statement into the record from Ann Mace voicing her objection to the traffic congestion and asking that the BZA do something to assist the citizens. (A copy of her prepared statement is contained in the file.)

Winifred Gore, Glen Forest Drive, Falls Church, Virginia, said she took exception to some of Mr. Becker's remarks and said that perhaps some other churches do experience parking problems and pointed out that "two wrongs don't make a right". She was concerned with the traffic congestion.

There were no further speakers in support of the Zoning Administrator and Chairman DiGiulian called for speakers in support of the applicant.

Juanita Gheyoub, 30 S. Old Lee Road, #302, Arlington, Virginia, said she attended the mosque and that the leaders have been trying to resolve the parking problem. She said if the special permit is revoked the BZA would be revoking her First Amendment Right.

Mrs. Harris asked what type of instructions the mosque leaders have given to the attendees. Ms. Gheyoub said the leaders have distributed leaflets and maps indicating where parking is allowed and where it is not allowed. Mrs. Thonen pointed out to the speaker that the neighbors had rights and that the BZA has been very patient waiting for the mosque to come up with a solution.

Ruqiyyah Abuds-Salam, 3245 Rio Drive, #702, Falls Church, Virginia, Deputy Director of the American Muslim Council, a non-profit social, political council based in Washington, D.C. came forward. She attends the mosque and appealed to the BZA to show neighborly compassion and to allow the mosque to remain open.

Roxie France Nuriddin, 6616 Leesburg Pike #8202, Falls Church, Virginia, said she was aware of the problems that illegal parking has caused at Ravenwood Tower because she lives there. She said the mosque leaders have asked the attendees not to park illegally and are trying to resolve the problem.

Mrs. Harris asked if the leaders had discussed carpooling. The speaker said she had heard the leaders request that people carpool.

Susan Douglass, 2018 Burfoot Street, Falls Church, Virginia, said she attends the mosque and that she was in favor of keeping the mosque open because it provides many educational functions for all ages, both muslim and non-muslim. Ms. Douglass apologized to the neighbors for any injury they have experienced from a small minority of the attendees of the mosque.

Mohamed Shameem, 5816 Seminary Road, Falls Church, Virginia, said the founding fathers would be very proud if they were to drive down Route 7 and see all the churches of different denominations. He was sure the mosque seems like a very strange culture, but it is very much like any other congregation. Mr. Shammem said it hurt him to hear how the neighbors have suffered.

In response to questions from Mrs. Harris with regard to the parking, Mr. Shameem said he did not believe there are 300 vehicles illegally parked. He asked the BZA to be patient and allow the mosque time to resolve the issue.

Omar Farouq, 6109 Teaberry Way, Clinton, Maryland, asked if the same action would be taken against a Jewish synagogue or a Catholic church. He said the leaders of the mosque should

not be punished for what a small percentage of attendees is doing. He said the people are violating the law, not the mosque, and suggested that the violators be given tickets.

Rashidah Farouq, 6109 Teaberry Way, Clinton, Maryland, said she believed the basic problem was that the mosque was not seen as a part of the community, but as a bunch of foreigners invading the neighborhood. She said to weigh the parking inconvenience against closing the mosque, the issues would not be even.

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The BZA recessed at 10:02 p.m. and reconvened at 10:18 p.m.

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Everett Anderson, 1026 Towlston Road, McLean, Virginia, yielded his speaking time to Albert Mokhiber.

Albert Mokhiber, President of the American Arabic Anti-Discrimination Committee, a national grass roots civil rights organization founded by former Senator James G. Abourezk with over 75 chapters across the United States, said he opposed the revocation. He said the organization was very concerned that the mosque was being discriminated against based on the neighbors' fears and misunderstanding. Mr. Mokhiber said the mosque leaders were making every effort to resolve the overflow parking problem.

Chairman DiGiulian asked the speaker to summarize as his allotted time had elapsed quite some time ago.

Mr. Mokhiber said it would be ironic for Fairfax County to start closing religious institutions when the former Soviet Union is opening them.

Mr. Ribble said this was a land use issue and had nothing to do with a particular religion. He said there is at least one other church of another denomination that would be coming before the BZA on a potential revocation issue.

The BZA and the speaker discussed the parking violation and why the mosque was in violation. Mr. Mokhiber suggested that the mosque leaders and the neighborhood be given time to resolve the parking problem.

Cheryl Benjamine, 3231 Apex Circle, Falls Church, Virginia, said the issue was not a parking problem but was caused by the neighbors who live in the neighborhood. She said they are used to living around their own kind and do not know how to deal with the people attending the mosque. She believed the issue was outright discrimination.

Father Saliba, leader of the St. George Church, 4335 16th Street, N.W., Washington, D.C., said his church had also experienced parking problems and he was able to work with the community to resolve the problem. He said although the leaders have told the people not to park illegally, the leaders cannot control everyone.

Abodrhman Alamoudi, Director, American Muslim Council, 1212 New York, NW, Suite 400, Washington, D.C., said he was torn between his religious beliefs and what he would have done if he lived near the mosque. He said he was part of the mosque administration in 1987 and had been involved in the building of the mosque. Mr. Alamoudi said they had not anticipated the parking problem and noted other locations that the council was trying to build mosques. He said he did not believe the mosque was being discriminated against and said the leaders of the mosque had to be accountable for resolving the problem.

Mahmood Shah, 6113 Munson Hill Road, Falls Church, Virginia, said he lives very close to the mosque and attends services at the mosque. Although he did sympathize with the neighbors, he said he was not impacted by the parking.

Ahmad Dahmas, 7916 Candlewood Drive, Alexandria, Virginia, said there was no other mosque and that he believed the hearing was a waste of taxpayers money.

Mejdi Alkhateeb, 902 McMillian Court, Great Falls, Virginia, said although he was a new American his three daughters were born in the United States and religion was very important to his family. He said individuals are responsible for the parking problem, not the mosque, and asked the BZA to punish the individuals.

Nellis Al'saign, 3133 Cofer Road, Falls Church, Virginia, said she would forego speaking as the other speakers had said what she had intended to say.

Doud Daud Alkhatib, 1410 North Mead Street, Arlington, Virginia, said his concern was not a religious one, but more of a community nature because of the mosque teachings. He asked the BZA to give the mosque an opportunity to resolve the difficulties.

Abdul Khan, 2301 North 11th Street, Apt. 104, Arlington, Virginia, apologized to the neighbors for problems they have experienced over the past two years and asked why the County took so long to take action. He asked if the parking spaces would have to be increased in the future if the number of mosque attendees continued to grow.

Mahair Siday, 612 Live Oak Drive, McLean, Virginia, said he could understand this type of action being taken in a "hick town in Iowa, West Virginia, or Kentucky", but not in Fairfax County. He said the mosque leaders have talked to the attendees about parking illegally, but they cannot be held responsible for individual actions.

Ahmad Matar, 4121 S. Four Mile Run, Arlington, Virginia, said the mosque attendees are confused as to where they can legally park. He said he has talked to the police trying to determine where the people can park.

Althaecca Muttardy, 3350 Gordon Street, Falls Church, Virginia, said her family attends Friday services at the mosque and also attends activities at the Islamic Community Center of Northern Virginia. She said they are trying to build other places of worship which will ease the impact on the use of the mosque. Ms. Muttardy said the cooperation of the BZA and the Board of Supervisors will be needed in order to get other applications approved.

Abdelwahab Hassan, 1201 S. Courthouse Road, #226, Arlington, Virginia, said there is sufficient parking around the mosque and asked that the parking restriction signs be removed. He said there was confusion with regard to the areas where the attendees can legally park.

Sharifa Alkhateib, President of the Muslim Education Council, 902 McMillen Court, Great Falls, Virginia, said the people attending the mosque are experiencing communication problems as they come from different nationalities. She said there are approximately 70,000 muslims in Northern Virginia with 20,000 living in the general area of the mosque, which means there will be continued heavy use of the mosque. Ms. Alkhateib said there is only one mosque in the Northern Virginia area and to close the mosque would give a very strong, very negative message to all muslims and it would have very far reaching negative effects.

Mohsen Bagnied, 6402 Gregory Court, Springfield, Virginia, said he sympathized with the neighbors and asked the neighbors to be tolerant because his neighborhood also experiences parking problems. He said there is only one mosque in the Northern Virginia area and asked that BZA allow it to remain open.

Mrs. Harris discussed with the speaker the number of a people who attend the mosque on Fridays. Mr. Bagnied said the men are required to attend a service on Friday, but some cannot because of their jobs.

Salim Abdus-Salam, 3245 Rio Drive, #702, Falls Church, Virginia, said if the mosque is closed it would deny the attendees the right to worship. He apologized to the neighbors for all the anguish they have been caused.

Michelle Rothstein Latiff, 2920 Furman Lane, Alexandria, Virginia, said since accepting Islam she has experienced discrimination and part of this has been caused by the way the media erroneously portrays muslims. She believed the action being taken was based on hatred caused by misconceptions.

Mohammed Fasihuddin, 2033 Gallows Road, Vienna, Virginia, said the mosque is a necessary part of the muslim life and the mosque administration is trying to assist with the problem.

Lisa Wilcox, 3515 North Washington Boulevard, Apt. #508, Arlington, Virginia, said she attended a Presbyterian church in Bethesda, Maryland, which has over 2,000 regular members and also has parking problems. She believed it was unfair to punish all the people attending the mosque for the actions of a few.

John A. Johnson, 3643 N. Nelson Street, Arlington, Virginia, a trustee for the Church of Christ, said it was not his intent to take one side or the other, but did want his church's position to be fully understood. He said the church is presently sharing approximately 120 parking spaces with the mosque. Mr. Johnson said he believed that revocation was the most extreme action that could be taken under the circumstances and one that could possibly have repercussions throughout the entire religious community.

Hasheem (inaudible), Vice President of the Dar Al-Hijrah, said the last thing a muslim wishes to do is cause pain or inconvenience to any human being or creature. He apologized to the neighbors for the conduct of some of the attendees and said those people were far removed from the teachings of Islam. He said the mosque has been encouraging the attendees to comply with the parking and asked that the mosque not be penalized for a few.

Chairman DiGiulian said someone had approached him during the recess and asked that the BZA try to get an answer to a question. Carman Pugly, Apex Circle, Falls Church, Virginia, asked if the mosque could be required to put up a bond to ensure completion of the mosque's suggestions until such time as the parking issue has been resolved. The Chairman did not respond. After further statements, the Chairman called the gentleman out of order.

Ms. Gwinn had no closing remarks.

Mr. Becker said the staff has been very cooperative and there has been no discrimination on the part of staff. He said staff has worked very closely with the applicant on trying to resolve the problem.

Mr. Hammack asked staff whether parking was allowed along the service roads. Ms. Gwinn said there are certain parts of the service road that are posted with "no parking" signs. She said she would like to research the public parking requirements along Rio Drive and Ravenwood Tower and bring a response back to the BZA.

Mrs. Harris asked if there was a school on site. A gentleman representing the mosque said it was basically religious training for the children to learn the verses of the Koran, but it is not a school.

Mr. Kelley made a motion to defer the vote to June 15, 1993, at 8:00 p.m. He further moved that the Zoning Administrator and the applicant's attorney each be given one half hour for further testimony. Mr. Kelley requested that written testimony be submitted to staff seven days in advance of the public hearing so that the information can be forwarded to the BZA in a timely manner. Mr. Ribble seconded the motion.

Mr. Pammel suggested that the motion be amended to state that it was a continuation of the public hearing since additional testimony was going to be taken. Mr. Kelley said he had considered that alternative, but that he did not want to leave the impression that there will not be a vote on June 15th although the BZA would not be barred from deferring the vote on that date.

Mrs. Thonen said she was very interested in how the mosque planned to resolve the parking problem.

Chairman DiGiulian said he understood the intent of the motion to be that the public hearing was to be recessed to June 15th. He agreed with limiting the speaking time for verbal testimony.

Mrs. Thonen said she would like any additional testimony to be on the parking issue only because she did not believe anyone was judging the value of their religion or anything concerning the religion. The BZA was discussing parking.

The BZA discussed the motion. Mr. Kelley said he just wanted to make it clear that a motion could be in order on June 15th to either revoke or not to revoke the special permit.

Mr. Hammack asked staff how long it might take for the coordinated parking and the things Mr. Becker said he would do to be completed. Chairman DiGiulian said he believed a short deferral was in order. He said the BZA could always issue an intent to defer.

Ms. Gwinn said the special permit amendment would take approximately ninety days for the BZA to take action and the special exception could take as long as six months. She added that the parking coordination would be handled administratively by the Department of Environmental Management and forwarded to the Board of Supervisors. She said there is no set time.

Mr. Ribble said he believed that the issue could be put "on the fast track". Mr. Kelley said he hoped that by the end of May, the revocation hearing could be cancelled.

Following further discussion, Mrs. Harris called for the question. The motion carried by a vote of 7-0.

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Page 273, March 30, 1993, (Tape 3), Action Item:

Request for Reconsideration for
Abdul and Zeenat Mondal, VC 92-D-127

Mrs. Thonen made a motion to deny the applicants' request that the BZA reconsider its decision of March 23, 1993, to deny VC 92-D-127. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 273, March 30, 1993, (Tape 3), Action Item:

Approval of March 23, 1993 Resolutions

Mrs. Thonen made a motion to approve the resolutions as submitted. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 273, March 30, 1993, (Tape 3), Action Item:

Request for Out of Turn Hearing for
Easter Seal Summer Concert Series at Westfields

Mrs. Thonen made a motion to grant the applicant's request for an out of turn hearing and

schedule the public hearing for May 18, 1993. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:50 p.m.

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

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

SUBMITTED: April 27, 1993

APPROVED: May 4, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 6, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 275, April 6, 1993, (Tape 1), Scheduled case of:

9:00 A.M. MCLEAN CHILDREN'S ACADEMY, INC., SPA 82-D-083-4 and SPR 82-D-083-2 Appl. under Sect(s). 3-303 and 8-907 of the Zoning Ordinance to amend and renew SP 82-D-083 for nursery school and child care center to add parking. Located at 6900 Elm St. on approx. 10,390 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((5)) 3. (DEF. FROM 1/12/93 TO ALLOW TIME FOR THE APPLICANT TO RESOLVE PARKING ISSUE)

Reid M. Dudley, Site Engineer, with the firm of Runyon, Dudley, Anderson Associates, Inc., 10650 Main Street, Fairfax, Virginia, came to the podium to represent the applicant. He alluded to Mr. Hammack having made the motion at the previous hearing and, because Mr. Hammack was not yet present, requested a deferral of the hearing.

During the ensuing discussion Mr. Hammack arrived and the proceedings continued.

Lori Greenlief, Staff Coordinator, presented the addendum to the staff report, stating that the decision on this application had been deferred from January 12, 1993, to allow the applicant sufficient time to resolve the issue of increasing the parking; on February 23, 1993, the applicant filed an amendment to the application, SPA 82-D-083-4, to allow an increase in parking spaces on the site; an addendum to the staff report was published on March 30, 1993, and the applicant submitted a revised plat which showed three additional parking spaces along the east side of the school building, connected to the turnaround area by a driveway. Ms. Greenlief said staff noted that the parking spaces are tandem parking spaces, as are the three spaces on the west side of the building and cannot be counted as legal parking spaces; there is still inadequate parking for the use on site; several other transportation concerns still remain and were outlined on the addendum; screening was still an issue, as was conformance with the Location of Guidelines for Child Care Facility in the Comprehensive Plan. Ms. Greenlief said that staff was concerned with the amount of impervious surface on the small site and how stormwater runoff would be handled; staff recommended grasscrete pavers or some other type of treatment that would allow infiltration for the proposed parking spaces.

Ms. Greenlief stated that, for the reasons stated in the original staff report and the addendum, staff recommended denial of SPR 82-D-083-2 and SPA 82-D-083-4.

Mr. Dudley came forward to request approval of the applications, not because they had been approved previously, but because he believed the operation had been a success for the past twelve years. Mr. Dudley addressed the present re-evaluation of the parking required by the Ordinance, precipitated by the new application. He gave some rationale of why he believed that the applicant does not have a parking problem. Mr. Dudley said that Ms. Touchton had been in contact with the Dolly Madison Community Library and he read a letter from Edwin Clay, Director of Libraries. The letter stated that it constituted an agreement for the staff and clientele of the McLean Children's Academy to use the parking lot of the Dolly Madison Community Library when circumstances generate a need for overflow parking and outlined the procedure for facilitating the arrangement. Mr. Dudley emphasized that this did not constitute a shared parking arrangement, but was only additional insurance for an emergency situation. He said that the applicant supported the revised Proposed Development Conditions, with a few suggested changes. He wished to change Condition 6 as follows:

6. The four (4) parking spaces located to either side of the building shall be reserved for employees only as noted on the plat. ~~THE PARKING SPACE DESIGNATED AS PARKING SPACE NO. 3 SHALL BE USED FOR PARKING, BUT SHALL BE RESERVED FOR PERSONNEL ONLY.~~ Adequate turning around movements in the vicinity of the turnaround area ~~is~~ be determined by the Director, Department of Environmental Management (DEM).

He asked that Condition 13 be changed back to a term of five years instead of two years.

Mrs. Thonen said she would be more comfortable if the applicant already had the Board of Supervisors' (BOS) approval on the agreement for shared parking because the BZA could not approve shared parking. Mr. Dudley said that was why they indicated that the letter submitted was not a shared parking agreement. Mrs. Thonen said that she would prefer that the applicant get approval from the BOS for the shared parking agreement before the BZA rules on the case.

Mrs. Harris said that many of the parents at the last hearing commented on the fact that the teachers do not park on site and that the spaces designated as tandem spaces, to the west, were vacant. She asked if there would be a new ruling that the teachers have to park on site.

MR. DUDLEY: Well, presently, the teachers--it's my understanding and from my observation that there are teacher(s) parking on site. There are as many as three vehicles--three vehicle parking spots.

MS. HARRIS: I understand Mrs. Touchton alluded to that but the parents who came up and talked said that they were always vacant and I--which raised the concern that the teachers were not parking on site and that was one of my concerns: that they would park someplace else, and they said that they sometimes did, which brought up the issue that there wasn't enough space to even have the teachers park on site, that they used that place for drop off, pick up, turning movements, things like that.

MR. DUDLEY: That's not the case. There are...of the four employees, there are always vehicles on site of those employees. Some of those employees get to the site either by carpooling or drop-off.

MS. HARRIS: Well, that was what was supposed to happen, but in testimony that came repeatedly that wasn't the case.

MR. DUDLEY: Well, there other parents here again today and maybe we need to clear that issue, 'cause there seems to be some misunderstanding on my observation and my understanding of talking with the parents and the faculty members.

CHAIRMAN DIGIULIAN: Further questions? Thank you. Anyone else to speak in support of the application?

Karen Owen, parent of two children who attend McLean Children's Academy, stated at the last hearing that she had observed some of the teachers parking off site, but that she had not observed that since then; she also submitted a petition/letter signed by forty people in support, stating that parking had not been a problem.

Others speaking in support were: Sue Gordon and Patricia Devoe, Administrative Director of McLean Children's Academy, who stated that there were no parking problems. They noted the difficulty of finding any type of child care in the area and lauded the quality of the child care at the applicant's facility.

There were no speakers in opposition to the application.

MR. HAMMACK: Mr. Chairman?

CHAIRMAN DIGIULIAN: Mr. Hammack.

MR. HAMMACK: In Special Permit application number SPR 82-D-083-2, made by MCLEAN CHILDREN'S ACADEMY, INC. for renewal of SP 82-D-083 to operate a nursery school and child care center on property located at 6900 Elm Street, I'm going to make a motion that, I think I did last time, and it was maybe voted down, but to go ahead and to continue the operation of the school and to address an issue raised by Mrs. Thonen in Development Condition 10, where she suggested that we defer decision on this until a shared parking agreement is approved by the Board of Supervisors under Section 11-102 of the Ordinance. I think there is some merit in that suggestion, except that, as I recall the testimony that's gone on here, we really don't have off-site activities that would require a shared parking agreement; and so, unless we--I think that, unless there is testimony that there are activities that would require shared parking, I'm not sure I see the necessity for a deferral for them to act on something when you don't have big events and things taking place at the school--so I'm not going to--my motion won't be for deferral. I think that there's testimony indicating that three additional spaces have been put on site. We really have never had any opposition to this particular application except from staff. It is in a transitional area in McLean, right on the corner of Dolly Madison, which is busy, and the other side of Dolly Madison is commercial and business space. I don't know whether or how long this use will remain at this site, but I think that it satisfies the standards at the present time. So, I'm going to make a motion we--in application number SPR 82-D-083-2 and I'm not sure about these numbers--we have on Development Conditions SPA 83-D-083-4--we're giving things two numbers now?--whereas the Board of Zoning Appeals adopt the standard special permit resolution form and reached the following conclusions of law. That the applicant has presented testimony indicating compliance with the General Standards for Special Permit Uses and additional standards for this use as contained in Section 8-006 and the applicable sections of the Zoning Ordinance. NOW THEREFORE, be it resolved that the subject applicant is granted with the Development Conditions--revised Proposed Development Conditions contained in the staff report dated April 6, 1993, with two--three changes. Development Condition number 6--I feel like the engineer made a good point. I think we could change that to read: The four parking spaces located on either side of the building shall be reserved for employees only as noted on the plat. Adequate turning movements for turnaround shall be determined by the Director, Department of Environmental Management (DEM). On number 10, I would like to add the word "required" in front of "parking" and say: "All required parking shall be on site unless a shared parking arrangement is approved by the Board of Supervisors...."--and continue that on. And, on number 13, I think we ought to go ahead and approve it for five more years.

MR. KELLEY: Second the motion. What is the required (unintelligible)?

MR. PAMMEL: Mr. Chairman.

MR. HAMMACK: Required is the term used in the Statute. When you read that the parking--on site parking requirements and talk about all the parking shall be on site and then they--all the way through the Statute they talk about all required parking. We have an interpretation

by the Zoning Administrator involving the Northern Virginia Jewish Community Center that says only required parking has to be on site and I think we ought to be consistent with that.

MS. HARRIS: But isn't the number of required parking spaces twelve for this site?

MR. HAMMACK: We've said six.

MS. HARRIS: I don't know but, according to the Zoning Ordinance, the required parking is twelve.

CHAIRMAN DIGIULIAN: Mr. Hammack's motion says that six is the required parking.

MRS. THONEN: Yeah, but we can't modify parking. That's what I have been told--legally, we can't...

MR. KELLEY: I seconded the motion and I was absent at the earlier hearing's requirements and I read through this and I'm perplexed a little bit that we're trying to fix something that's not broken. We get parking violations that happen all over this County--there have been no complaints about this--I'm just at a loss as to understand what's been going on. I'm amazed somebody hasn't called yet.

MRS. THONEN: The thing that I'm saying is, if we're going to be consistent with having them live to the Zoning Ordinance, then we have to be consistent. I think...

MR. KELLEY: You said--and you are one of the great proponents on this Board for decent child care and good child care...

MRS. THONEN: That's right, but I...

MR. KELLEY: You can delay--

MRS. THONEN: Let's leave out that--I'm not trying to put them out of business. They can go get the shared parking thing and they'll meet all the parking requirements. I'm saying that makes them legal and they don't--I wouldn't even say to come back in two years, you know, if they get that shared parking, I don't think they should have to come back.

CHAIRMAN DIGIULIAN: Further discussion on the motion? All in favor?

CHAIRMAN DIGIULIAN, MR. KELLEY AND MR. HAMMACK: Aye.

CHAIRMAN DIGIULIAN: Opposed?

MRS. THONEN, MRS. HARRIS, MR. RIBBLE AND MR. PAMMEL: Nay.

CHAIRMAN DIGIULIAN: The motion fails for a lack of four votes.

MRS. THONEN: Now, Mr. Chairman, is it possible to put in a substitute motion now.

CHAIRMAN DIGIULIAN: Just a new motion.

MS. HARRIS: Just a new motion.

MRS. THONEN: May I put in a new motion?

CHAIRMAN DIGIULIAN: Yes.

MRS. THONEN: Mr. Chairman, I would like to defer SPR 82-D-083-2 and -4 to have them get the shared parking agreement and just defer decision and have them come back for the decision after the Board of Supervisors has signed the shared parking agreement.

MS. HARRIS: I'll second the motion. I would also like to add that, if a shared parking agreement is obtained, I think the three additional spaces that are provided on site possibly could be deleted because I think it adds impervious space to the site, it reduces the transitional yard and makes it less of residential character. So I think, if they have--if they do secure parking places off site under a shared parking agreement, that they might want to look at that. Is that possible, Mrs. Thonen?

CHAIRMAN DIGIULIAN: I hope that's not part of the motion.

MS. HARRIS: No, I'm just saying it's a possibility.

CHAIRMAN DIGIULIAN: You know--maybe we ought to decide how many blades of grass they should have around the building, too.

MS. HARRIS: Well, why don't we look into that?

MRS. THONEN: Well, I would like to leave me--the thing that I'm really concerned about is the parking and, as I said before, we have a lot of them coming up here where the parking is a big issue and I think the fact that they do not meet the parking (requirement) and they--we've told over and over we waive everything but we can't waive the parking. So, you

know, and I'd like to ask staff--they can continue operating while this is order, can't they?

LORI GREENLIEF: Yes, there are no current violations.

MRS. THONEN: Pardon?

LORI GREENLIEF: There are no current--there is no notice of violation so they could continue...

MRS. THONEN: Well, so, until--and they should be able to get that shared parking rather quickly because the Board says they will really act on that, so anyway, when they get that I can see no reason for having them come back in two years.

CHAIRMAN DIGIULIAN: All in favor of the motion?

MRS. THONEN, MRS. HARRIS, MR. RIBBLE AND MR. PAMMEL: Aye.

CHAIRMAN DIGIULIAN: Opposed?

CHAIRMAN DIGIULIAN, MR. KELLEY AND MR. HAMMACK: Nay.

CHAIRMAN DIGIULIAN: The motion carries by a vote of 4-3.

LORI GREENLIEF: Mr. Chairman, I'm sorry, the Clerk and I didn't get the distribution of the vote on the first motion.

CHAIRMAN DIGIULIAN: The first motion in favor was Hammack, DiGiulian and Kelley.

LORI GREENLIEF: And this time was...

CHAIRMAN DIGIULIAN: This time, in opposition was Hammack, DiGiulian and Kelley.

MR. KELLEY: I hope we all keep these same standards throughout.

CHAIRMAN DIGIULIAN: Yeah, I do to.

MRS. THONEN: That's what I'm trying to do. As I said, we can't waive parking and we have several of the other churches that want...

MR. KELLEY: ...(INAUDIBLE) a lot of fun fixing things that aren't broken.

MR. HAMMACK: Well, under the shared parking Code section, they can reduce parking by 50%.

MRS. THONEN: They can, but we can't.

MR. HAMMACK: I'm not sure we can't. We only have to determine that they're in compliance.

CHAIRMAN DIGIULIAN: Right.

MR. HAMMACK: ...(INAUDIBLE) Zoning Administrator. We can impose any reasonable development condition.

MRS. THONEN: Well, I have been told over and over, we can waive a lot of things but not parking.

MR. HAMMACK: Well, that's one of the issues that...

MRS. THONEN: Maybe that's what we should have an interpretation on.

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Page_____, April 6, 1993, (Tape 1), Scheduled case of:

9:10 A.M. GREGORY S. ELLIS AND MIRIAM ELLIS, VC 93-B-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 21.2 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307). Located at 5111 Kings Grove Ct. on approx. 8,697 sq. ft. of land zoned R-3 (C). Braddock District. Tax Map 69-3 ((16)) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gregory S. Ellis, 5111 Kings Grove Court, Burke, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located south of Braddock Road and east of Twinbrook Road in the Kings Grove Subdivision; the surrounding lots are also zoned R-3 and developed with single family detached dwellings. She said that the request for a variance of 3.8 feet to the minimum yard requirement resulted from the applicant's proposal to enclose an existing screened porch. Ms. Langdon said that

the dwelling on adjacent Lot 17 to the southeast is located approximately 30 feet from the shared rear lot line.

Mr. Ellis said that they had applied for and were granted a variance in 1986 to construct the screened porch which he understood had the same minimum yard requirements as if it were enclosed. At the time of approval, the written variance actually said "addition to the home," but the plat itself had a notation that said "screened in porch," which is why he said he was now again before the Board. Had the inconsistency not existed, his understanding was that they could have proceeded to enclose the porch without again appearing before the Board. Mr. Ellis said that the enclosure process consisted only of exchanging screens for windows, and putting in electricity and air conditioning/heating. He said that his neighbor on Lot 11 has a similar glassed enclosure and that his proposed enclosure would fit very nicely into the neighborhood. Mr. Ellis said that one reason for enclosing the porch was that his wife could then use it year round for her child care facility.

In answer to a question from Mrs. Harris, Mr. Ellis said he believed his wife cared for five children at the present time. Mrs. Harris asked if, at the time of the original hearing, it had been stated that the addition was being constructed for the use of the child care facility and he said that it had been stated as the major reason for the variance request.

Mr. Pammel asked the applicant if he or his wife had a permit from the State of Virginia for child care. Mr. Ellis said that his wife had permits through Fairfax County Business Licensing and some sort of a zoning allowance for the child care, and had been checked by the Health Department and Fire Department every year.

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

Mr. Pammel moved to grant VC 93-B-003 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 30, 1993.

Mrs. Thonen seconded the motion.

Mr. Kelley said he would vote against approval because he did not approve of a two step process to get something that the applicant might not have gotten originally.

Mr. Hammack said he would support the motion because he would have supported a sunroom addition that only required a 3.8 foot variance, although the fact that it is for day care is probably a convenience that would justify denying it; however, he would support the motion because he believed there was no other place to put the addition and the variance is fairly minimal.

Mrs. Harris said she had a problem with someone obtaining a variance to expand a non-residential use because it was a convenience as opposed to a clearly demonstrable hardship approaching confiscation of property. For that reason, she said she would vote against the motion.

Chairman DiGiulian said he would support the motion because the structure was already there, the lot had an irregular shape, and an unusual condition existed in the location of the building on the lot.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-003 by GREGORY S. AND MIRIAM ELLIS, under Section 18-401 of the Zoning Ordinance to permit addition 21.2 ft. from rear lot line, on property located at 5111 Kings Grove Ct., Tax Map Reference 69-3((16))10, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1993; 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 Cluster.
3. The area of the lot is 8,697 square feet.
4. The configuration of the lot and the location of the house on the lot are such that it would be impossible to locate any addition in any other area than where it is presently proposed.
5. There already is a screened enclosure in that location and the applicant was requesting nothing more than to glass in the enclosure and make it a permanent year-round type of addition.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Matthews, Wheatley and Allison, Land Surveyors, dated November 24, 1992, submitted with this application and is not transferable to other land.

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

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

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

Mrs. Thonen seconded the motion which carried by a vote of 5-2. Mrs. Harris and Mr. Kelley voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 280, April 6, 1993, (Tape 1), Scheduled case of:

9:20 A.M. DIRK POMEROY AND TRACEY MOSIER DEVERILL, VC 93-M-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 9.7 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 3917 Forest Grove Dr. on approx. 13,786 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 60-4 ((19)) 68.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dirk Pomeroy Deverill, 3917 Forest Grove Drive, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located north of Columbia Pike between Gallows Road and Sleepy Hollow Road in the Sleepy Hollow Woods Subdivision; the lots to the north, south and west also are zoned R-3 and developed with single family detached dwellings; the lot to the east is zoned R-2 and developed with Saint Albans Church. Ms. Langdon said the applicant proposed to enclose an existing carport to construct a one-car garage and was requesting a variance of 2.3 feet to the minimum side yard requirement; regarding surrounding uses, the dwelling on adjacent Lot 69 to the south is located approximately 13.3 feet from the shared side lot line.

Mr. Deverill came forward to present the statement of justification, stating that he had purchased the property the previous summer with the intention of enclosing the carport, only to learn that a variance was required; he intended to use brick face exactly like the existing facade; he noted that there were other properties in the area with enclosed carports, but he did not know if variances had been required.

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

Mrs. Thonen made a motion to grant VC 93-M-002 for the reasons outlined in the Resolution, subject to the Development Conditions contained in the staff report dated March 30, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-002 by DIRK POMEROY AND TRACEY MOSIER DEVERILL, under Section 18-401 of the Zoning Ordinance to permit addition 9.7 ft. from side lot line, on property located at 3917 Forest Grove Dr., Tax Map Reference 60-4((19))68, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1993; 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 HC.
3. The area of the lot is 13,786 square feet.
4. The carport is already there and the Board usually allows enclosure of a carport when the material and design used is compatible with the existing facade of the dwelling.
5. The property has exceptional narrowness.
6. The request for permission to build a one-car carport is very reasonable.
7. Denial of the request would cause a hardship.
8. Granting this request will not unreasonably restrict the use of the adjacent property owners, nor cause any impact on them.
9. Granting the request will not change the character of the area.

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated December 15, 1992, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 282, April 6, 1993, (Tape 1), Scheduled case of:

9:40 A.M. KENNETH W. SMITH, JR. AND ANNA C. SMITH, VC 93-L-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 11.2 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 6912 Ridgeway Dr. on approx. 21,780 sq. ft. of land zoned R-1. Lee District. Tax Map 90-1 ((7)) 30.

Chairman DiGiulian stated that his office had prepared the plats for this application and he would abstain from participating in the hearing.

Chairman DiGiulian relinquished the chair to Vice Chairman Ribble.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kenneth W. Smith, Jr., 6912 Ridgeway Drive, Springfield, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property was located in the Franconia Heights Subdivision, north of the Fairfax County Parkway; the property on the west is undeveloped and also zoned R-1; the property on the other three sides is developed and also zoned R-1; the applicants propose to build a two-car garage with a second-level storage area and a one-story recreation room at the rear of the garage.

In answer to a question from Mr. Ribble, Mr. Heine stated that the house next door to the applicant was 31 feet from the shared lot line.

Mr. Smith came forward to present the statement of justification, stating that the lot is extremely narrow, about twice as long as it is wide; he believed the approval of the variance would not be detrimental to the adjacent properties; he submitted a petition from the neighbors in support of the application and stated that he met all the standards for approval of his request; he further stated that there was no other suitable place for the additions.

Mrs. Harris said that the applicant's property appeared to be extremely flat, identical to every other piece of property on Ridgeway Street, and asked the applicant how, in light of this, his property could be exceptional. She said that it might be too narrow to do what the applicant wished to do, but it was not exceptionally narrow compared to the other properties in the area. Mr. Smith said they believed their lot was too narrow for the intended use of

the attached garage. Mrs. Harris emphasized that the Zoning Ordinance stated that a property had to be exceptional in the area of its location to qualify for consideration.

Mr. Pammel stated that one of the problems the Board ran into frequently was a situation with a non-conforming lot; this lot does not meet the minimum size requirements or any of the requirements of the R-1 district; it is a situation where the R-1 district came into being after the lots were developed; the subject area was probably subdivided in the '40s or late '50s when half-acre lots were common throughout the County; the R-1 zoning came later and situations kept arising where new standards were being applied to lots in zones which require greater dimensions than are present, as in this situation. He said that, if one considered the R-2 zoning at which the subject property is developed, he believed that the side yard requirement would probably be something like 12 feet and the property would be in compliance.

Mrs. Thonen concurred with Mr. Pammel's statement.

Mrs. Hammack asked Mr. Smith how high his storage area would be on the second level and Mr. Smith said it would be a full story high.

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

Mr. Kelley made a motion to grant VC 93-L-005 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 30, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-005 by KENNETH W., JR. AND ANNA C. SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of additions 11.2 ft. from side lot line, on property located at 6912 Ridgeway Dr., Tax Map Reference 90-1((7))30, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1993; 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-1.
3. The area of the lot is 21,780 square feet.
4. The lot is exceptionally narrow.

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

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat prepared by John P. DiGiulian, Certified Land Surveyor, dated October 23, 1992 submitted with this application and is not transferable to other land.

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

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 4-2-1. Mrs. Harris and Mr. Hammack voted nay. Mr. DiGiulian abstained.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 284, April 6, 1993, (Tape 1), Scheduled case of:

9:50 A.M. MAHLON A. JONES, VC 93-H-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.83 ft. from side lot line and side yard total of 12.7 ft. (8 ft. min. side yard and 24 ft. total req. by Sect. 3-207). Located at 2316 Riviera Dr. on approx. 16,157 sq. ft. of land zoned R-2 (C). Hunter Mill District (Formerly Centreville District). Tax Map 38-1 ((22)) 59. (Application amended as noted below.)

Vice Chairman Ribble relinquished the chair to Chairman DiGiulian.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mahlon A. Jones, 2316 Riviera Drive, Vienna, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the Tanglewood Subdivision, northeast of Vale Road, and is surrounded by single family detached dwellings. Mr. Heine said that the applicant was requesting a variance to allow the construction of a one-story addition at the rear of the garage, 8.0 feet from the side lot line, with total side yards of 18.87 feet, for a variance of 5.13 feet. Mr. Heine explained that the applicant had amended the original application.

Mr. Jones came forward to present the statement of justification, stating that the variance was being requested to add a one-story addition at the rear of the garage. He said that the application had been amended because of advice he had received after filing with only a 1.83-foot minimum side yard. Mr. Jones said that the principal reason for needing the variance was the exceptional shape of the property and exceptional condition related to the pie-shaped lot, resulting in either front yard or side yard and no rear yard, according to the Zoning Ordinance. He said that, regardless of what direction he chose to build in, he would be governed by the side yard requirements. Also limiting his options is the type of dwelling on the lot; he has one of the six corner lots in the subdivision, all pie-shaped. The other five are developed with two-story colonial type houses, which leave quite a bit of available yard; his is the only lot with a rambler which is long and narrow and cuts down on

his available side yard. Mr. Jones stated that his hardship was not shared by the other property owners in the neighborhood who had quite a bit more available side yards. He said that he planned to use material compatible with the existing facade.

Mr. Pammel noted an existing one-story portion of the house and asked if it was part of the original house or an addition. Mr. Jones said that it had been added about eight years ago.

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

Mr. Ribble moved to grant VC 93-H-006 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 30, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-H-006 by MAHLON A. JONES, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line and side yard total of 18.87 ft., on property located at 2316 Riviera Dr., Tax Map Reference 38-1((22))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 April 6, 1993; 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 Cluster.
3. The area of the lot is 16,157 square feet.
4. The lot has an exceptional shape and is a corner lot.
5. The situation of the house on the lot is exceptional, with practically no back yard and side yard.

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

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

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

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

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

1. This variance is approved for the location and the specific addition shown on the plat prepared by John B. Gooch, Certified Professional Engineer, dated March 19, 1993 submitted with this application and is not transferable to other land.

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

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

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

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

Mrs. Thonen seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 286, April 6, 1993, (Tape 1), Scheduled case of:

10:00 A.M. HILLTOP SAND AND GRAVEL COMPANY, INC., Appeal 93-L-001 Appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that escrowing funds in lieu of actual construction of interim road improvements is not in conformance with Development Conditions 16 and 17 of Special Exception Amendment SEA 78-L-074-3. Located at 7950 Telegraph Rd. on approx. 132.27 ac. of land zoned R-1, I-3 and Natural Resources Overlay District. Lee District. Tax Map 100-1 ((1)) 9.

Chairman DiGiulian noted that the Board had issued an Intent to Defer on March 9, 1993. In answer to a question from Chairman DiGiulian, Lori Greenlief, Staff Coordinator, advised that the applicant had requested a deferral of indefinite duration, which she believed the Board did not make a policy of granting. A discussion ensued to find an appropriate deferral date.

Mrs. Thonen made a motion to defer hearing A 93-L-001 until September 14, 1993. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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Page 286, April 6, 1993, (Tape 1), Action Item:

Approval of Minutes from February 23 and March 16, 1993

Mrs. Thonen so moved. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 286, April 6, 1993, (Tape 1), Action Item:

Request for Additional Time
B. Brooke, Jr. and Sandra J. McCauley
VC 90-C-132

Mrs. Harris moved to grant additional time for VC 90-C-132, with a new expiration date of August 13, 1993. Mr. Pammel seconded the motion, which carried by a vote of 7-0.

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Page 286, April 6, 1993, (Tape 1), Action Item:

Memo from Deputy Zoning Administrator
Fran Wallingford Appeal
A 93-M-002

Lori Greenlief, Staff Coordinator, advised the BZA that William E. Shoup, Deputy Zoning

Administrator, had planned to come before the Board on this item. Chairman DiGiulian said that, if the Deputy Zoning Administrator was going to come before the Board, he believed the appellant also should have an opportunity to be present.

Mr. Kelley said he read in a memo that the appellant had been advised of this impending action.

Mrs. Harris asked if the appellant was not required to submit a letter to the Board if they wished to withdraw the appeal.

Ms. Greenlief said she believed Mrs. Harris to be correct; however, she did not want to speak for the Deputy Zoning Administrator, who she believed would be arriving some time soon.

Mr. Pammel advised that he believed the thrust of Mr. Shoup's letter was that a decision recently made by the Board of Supervisors on a special exception made the whole issue of this appeal moot.

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Page 287, April 6, 1993, (Tape 1), Scheduled case of:

Continuation of McLean Children's Academy, Inc.
SPA 82-D-083-4/SPR 82-D-083-2

Ms. Greenlief noted that the Board had failed to specify a deferral date for these applications. Mr. Ribble suggested that staff call the applicant and present them with a couple of dates to select from. The Board would then rule on the date at their next meeting.

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The Board recessed at 10:15 a.m. and reconvened at 10:35 a.m.

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Page 287, April 6, 1993, (Tape 1 & 2), Action Item:

10:30 A.M. COLVIN RUN PET-OTEL, INC., SPA 87-D-060 and SPR 87-D-060 Appl. under Sect(s). 8-907 and 3-103 of the Zoning Ordinance to renew and amend SP 87-D-060 for kennel to delete time limitation, to allow enclosure of runs, addition to existing building, and to increase land area. Located at 10127 Colvin Run Rd. on approx. 5.699 ac. of land zoned R-1. Dranesville District. Tax Map 12-4 ((1)) pt. 30. (DEF. FROM 2/23/93 FOR ADDITIONAL NOISE MITIGATION INFORMATION)

Don Heine, Staff Coordinator, advised that the Board of Zoning Appeals (BZA) had heard these cases on February 23, 1993; the main issue raised was the type of acoustical design measures that were required to be incorporated into the proposed run enclosures to mitigate the noise caused by the barking dogs. The BZA instructed the applicant to prepare a study setting forth the technology which would be used to address the noise issue. The study was to be evaluated by the appropriate County agencies and the concerned citizens, with the findings to be reported back to the BZA. The application was deferred to April 6, 1993 to consider the findings; the results of the County agencies' evaluation of the findings are contained in the addendum to the staff report. Mr. Heine said that staff is still of the opinion that the barking dog issue, as well as other concerns, can be mitigated by imposing the recommended development conditions, which include specific acoustical design recommendations; therefore, staff recommended approval of these applications, subject to the Proposed Development Conditions contained in Attachment 1 of the staff report addendum, with one minor change on page 2 of Attachment 1: Condition 12-B should state, "...seals having an STC rating of ~~38~~ 28 STC,...."

Chairman DiGiulian asked Mr. Heine to confirm that the County had reviewed the study and was agreeable to the end results. Mr. Heine said that was true, with certain conditions which would be addressed during the plan review stage.

Chairman DiGiulian asked if there was anyone who would like to address the sound issue and said that the amount of time would be limited to ten minutes.

Sarah H. Reifsnyder of the law firm of Blankingship & Keith, 4020 University Drive, Fairfax, Virginia, came forward to represent the applicant, calling the BZA's attention to her letter of April 9, 1993 to Mr. Heine and the Proposed Development Conditions attached thereto, which contained slight revisions to the staff's Proposed Development Conditions.

Steve Warner came forward and said he would like to be sure that the letter from he and his wife, Mary Beth Lyons, 1207 Colvin Meadows Lane, had been received by the Board. Mrs. Thonen said that they had several letters which would be made part of the record. Mr. Warner said that they believed there was no guarantee that 40 dBA was low enough because they could still hear the dogs, even when they are inside the enclosed kennel. He said they agreed with the staff report concerning the ceiling and ventilation duct work; they believed the number of dogs should be reduced and that time constraints should be imposed to assure the neighbors that this would go forward in a timely manner.

Mr. Hammack asked Ms. Reifsnyder to point out which conditions had been modified in her version of the Development Conditions. She referred him to Condition 9, concerning the dedication requirements which she said did not make any sense because the dedication would not touch the Route 7 right-of-way. Ms. Reifsnyder referenced Condition 10 and said they asked that it be revised to reflect the fact that Transitional Screening 1 had been deemed to already have been met along all the boundaries of the property as a result of the most recent special permit and site plan approval and implemented under that special permit.

Ms. Reifsnyder responded to Mr. Warner's comment, stating that they had a meeting with staff and the County building people about the ventilation issue and had submitted a letter to staff dated March 22, which was in the hands of the Board members.

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

Mrs. Harris moved to grant SPA 87-D-060 and SPR 87-D-060 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the addendum to the staff report dated March 30, 1993, as amended: Condition 9 was stricken because Mrs. Harris believed that the portion of land referenced therein is not directly related to the use; she agreed with the applicant's agent that it would be an illegal dedication of property. Referencing Condition 10, Mrs. Harris said it was her understanding that Transitional Screening 1 was going to be maintained along the northern and southern boundaries; therefore, a sentence was added stating, "Any existing trees which die shall be replaced and the barrier requirement shall be waived." Condition 12-B was changed from 35 to 28 STC, as previously mentioned by Mr. Heine.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-D-060 and Special Permit Renewal Application SPR 87-D-060 by COLVIN RUN PET-OTEL, INC., under Sections 8-907 and 3-103 of the Zoning Ordinance to renew and amend SP 87-D-060 for kennel to delete time limitation, to allow enclosure of runs, addition to existing building, and to increase land area, on property located at 10127 Colvin Run Rd., Tax Map Reference 12-4((1))pt. 30, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1993; 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 R-1.
3. The area of the lot is 5.699 acres.
4. The citizens and the applicant have come a long way on the application with the staff.
5. The previous problem with the noise is being addressed by measures proposed by the applicant to mitigate the problem; the applicant is attempting to be a sensitive neighbor, which will hopefully result in the continuation of a good relationship between the citizens and the applicant.
6. The mitigating measures taken just since the last meeting will help the situation a great deal.
7. The Pet-Otel has been there for a long time and, with new neighbors coming in, it is reasonable to assume that things need to change in order to attain a satisfactory coexistence. The Development Conditions should make that happen.

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. The 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 November 4, 1992, revised January 26, 1993 approved with this application, as qualified by these development conditions.

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

4. The maximum number of animals at the facility at any one time shall not exceed 200.

5. The hours of operation shall be limited to from 8:00 a.m. to 6:00 p.m., Monday through Saturday, and noon to 3:00 p.m. on Sunday.

6. The fenced area north of the kennel shall either be enclosed by an acoustical fence that is solid from the base through the top or, as an alternative, this area shall only be used by one animal at a time escorted by an attendant.

7. There shall be a minimum of 13 parking spaces provided on site, as shown on the special permit plat. All parking shall be on site.

8. The outside lights shall focus directly onto the subject property, and shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

9. Transitional Screening 1 shall be maintained along the northern boundary of the application property between the drainage easement and the entrance driveway. Transitional Screening 1 shall be maintained along the southern boundary of the application property between the edge of existing trees and the eastern lot line.

   Existing trees along the western, southern and eastern boundaries of the application property shall be maintained and shall satisfy the requirement for Transitional Screening 1 along these lot lines. Any existing trees which die shall be replaced. The barrier requirement shall be waived.

10. Noise levels generated by the use shall meet the provisions of Sect. 108-5-2 of the Fairfax County Noise Ordinance, and not exceed 40 dBA at the property line between 7:00 a.m and 10:00 p.m. and 30 dBA between 10:00 p.m. and 7: 00 a.m. Noise readings shall be performed by a qualified consultant which indicate conformance prior to the issuance of a non-residential use permit.

11. At site plan and building permit review, the applicant shall demonstrate that the following attenuation measures are incorporated into the design of the enclosed runs and kennel shown on the special permit plat as set forth in the Noise Study prepared by Polysonics, dated March 4, 1993, pages 1-4:

    A. The exterior wall assemblies shall have a Sound Transmission Class (STC) rating of at least 50 STC,

    B. The exterior doors shall be insulated steel with magnetic seals having an STC rating of 28 STC,

    C. The exterior windows shall have an STC rating of 35 STC, and

    D. The composite roof and ceiling system shall have a minimum STC rating of 50 STC.

Other attenuation measures shall be provided if determined necessary by DEM's Building Plan Review Branch.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1993. This date shall be deemed to be the final approval date of this special permit.

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10:35 A.M. ROBERT T. AND RHONDA W. EBERT, VC 93-P-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307.). Located at 2126 Robin Way Ct. on approx. 8,630 sq. ft. of land zoned R-3 (C). Providence District. Tax Map 39-1 ((29)) 31.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert M. Berriz, 13972 New Braddock Road, Centreville, Virginia, the applicant's agent, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the subject property is located south of Old Courthouse Road and east of Woodford Road, in the Robin Glen Subdivision; surrounding lots are also zoned R-3 and developed with single family detached dwellings; the request for a 10-foot variance resulted from the applicant's proposal to construct a one-story screened porch addition. Mr. Hunter said that research in the Zoning Administration Division's files indicated that the dwelling on adjacent Lot 51 to the west is located approximately 28.4 feet from the shared lot line.

Mr. Berriz stated that the subject lot is of exceptional shallowness; the two rear corners of the lot are 25 feet from the property line, resulting in approximately half of the proposed screened porch actually falling into the required minimum yard. Mr. Berriz said that neighbors did have deeper lots, which would allow them to construct additions and said that there are other screened porches in the area. He said that the neighbors with whom he had spoken were not opposed to the construction of the proposed screened porch; he provided their names and addresses to the Board. Mr. Berriz said the applicant planned to install an evergreen privacy screen around the perimeter of the back yard to give them and neighbors year-round privacy.

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

Mr. Hammack moved to grant VC 93-P-004 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 30, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-004 by ROBERT T. AND RHONDA W. EBERT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15 ft. from rear lot line, on property located at 2126 Robin Way Ct., Tax Map Reference 39-1((29))31, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1993; 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 Cluster.
3. The area of the lot is 8,630 square feet.
4. The lot is shallow.
5. The house is situated toward the rear of the property, at an angle, so that a triangular portion of the proposed addition would fall within the original 25-foot required yard.
6. If the addition were cut back to fit without encroaching into the 25-foot required yard, there would not be much point in constructing it.
7. The situation is exceptional enough to satisfy the 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 location and the specified addition shown on the plat prepared by Paciulli, Simmons & Associates, LTD., dated December 9, 1992, signed and sealed on December 18, 1992, submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 291, April 6, 1993, (Tape 2), Scheduled case of:

10:45 A.M. WAT YARNWA RANGSEE FOUNDATION OF USA, SP 92-S-065 Appl. under Sect(s). 3-C03 and 8-915 of the Zoning Ordinance to allow place of worship, monastery and related facilities and waiver of the dustless surface requirement. Located at 11226 Chapel Rd. on approx. 4.3789 ac. of land zoned R-C, WS. Springfield District. Tax Map 76-4 ((2)) 9B. (DEF. FROM 3/23/93 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sunthorn Sirivanakarn, 4612 N. 2nd Road, Arlington, Virginia, said that he was one of the applicants and replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the site was located west of the intersection of Chapel Road and Wolf Run Shoals Road in the Haly and Lady Subdivision; the properties on all sides are zoned similarly and developed with single family detached dwellings. Ms. Langdon said that the site is presently developed with a 5,190 square foot single family dwelling, an 8 foot by 12 foot shed, an 8 foot wide by 484 foot long gravel pipestem driveway and a 15 space gravel parking area. A tributary to Popes Head Creek bisects the northern portion of the property and is located within a mature outland hardwood forest that is part of the Popes Head Creek Environmental Quality Corridor (EQC). On March 4, 1991, the Zoning Enforcement Branch of the Office of Comprehensive Planning received a complaint regarding the operation of a temple in a residential dwelling on the subject property; between March 4, 1991, and July 1, 1992, the Zoning Enforcement Branch issued eight notices of violation to the applicant; the Zoning Enforcement Branch notified

the applicant that the use of the property as a place of worship required the approval of a Group 3 Special Permit and that no permit had been granted by the Board of Zoning Appeals. The applicant filed for a special permit on November 23, 1992. The applicant was requesting approval of a special permit for a place of worship, a residence for four Buddhist monks, a place for publishing and disseminating a quarterly Buddhist magazine, and a place to hold meetings of the executive members of the Foundation. Ms. Langdon said the applicant stated that each day two to five members of the organization from the community come to the residence to offer breakfast and lunch to the monks; on Saturdays and Sundays, up to 40 people may worship at any given time. The applicant stated that there is no formal worship service; worshipers come and go throughout the day; special holidays occur four to five times per year; the special worship services are scheduled on Sunday and may attract large crowds of 40 to 100 people at any one time; in the past, up to 200 people have been observed, with up to 150 cars parked on site; the site serves members from northern Virginia, Maryland and the District of Columbia; a waiver of the dustless surface requirement for the driveway and parking area has been requested; a modification of the transitional screening requirement along all lot lines has been requested; and a waiver of the barrier requirements along all lot lines has also been requested.

Ms. Langdon said there are several concerns and outstanding issues related to the application; the primary concern is a failure to maintain the very low density residential character of the area and the stability of the neighborhood as is recommended by the Comprehensive Plan. Additionally, the applicant has not addressed the environmental and transportation issues raised in the review of the application; staff is concerned about the affect this non-residential use may have on the stable residential neighborhood surrounding it and about the use of the property by up to 200 people at one time; the applicant has not proposed any measures to mitigate the impact of the use on surrounding residential uses; the use is concentrated on the southern quarter of the site, thereby impacting existing residential uses to the west, south and east; the parking area is located within five feet of both the southern and eastern lot lines, with no existing vegetation screening the parking area and no reserved space for planting additional vegetation. Ms. Langdon said that the Comprehensive Plan also recommends that non-residential uses requiring special permit approval be oriented to arterial roads; Chapel Road is a narrow, winding road that serves the local community and is not an arterial road. She said that the Office of Transportation recommended that a commercial entrance be provided for places of worship. Commercial entrances are a minimum of 30 feet wide, but the entrance to the site is only 10 feet wide. The large volume of traffic generated by this use, coupled with the parking area designed for only 15 cars, would likely cause overflow parking along both the very narrow pipestem driveway and Chapel Road. The applicant stated that attempts had been made to solve the traffic problems by reserving a parking lot at the Burke Shopping Center and providing van shuttles for members to attend services at the site. While this could help to resolve the issues, in staff's opinion, it does not ensure compliance. Additionally, Ms. Langdon stated, the drainfield on site is approved for residential use only and the capacity of the drain field is limited in the permit issued by the Fairfax County Health Department; activities and/or events that increase the use of septic facilities may cause a failure of the drain field; while the applicant is working to resolve concerns, the Health Department has stated that not all issues have been resolved. She said that staff, therefore, concludes that the proposed use is not in harmony with the recommendation of the Comprehensive Plan, does not satisfy all of the general standards for a place of worship, monastery and related facilities and for a waiver of the dustless surface requirement. For the foregoing reasons, Ms. Langdon said, staff recommended denial of this application.

Mr. Kelley referenced Ms. Langdon's mention of several outstanding issues and asked if she believed they could ever be resolved to the point where staff might recommend approval. Ms. Langdon said she believed it would be very difficult; Virginia Department of Transportation (VDOT) requires a 30-foot minimum commercial entrance and the applicant does not even have that much property available.

Mr. Sirivanakarn came forward to present a statement of justification, stating that all of the interested participants present, including the monks and the officer of the Foundation, agree with the analysis in the staff report that the property does not meet the standard zoning requirements for use as a place of worship. He said that, after receiving the notice of violation from the Zoning Enforcement Branch on July 1, 1992, they wanted to admit that it was unfortunate on the part of the Foundation to buy the property and move in. Mr. Sirivanakarn said they do not intend to stay on the property and are trying to sell it; they would like to have a temporary special permit to allow the monks to continue to live there until they find another place for them. He said that, when they first started receiving notices of violation, there was no one with authority to act upon the issues; they were slow to respond because they had to find a volunteer who could spare the time to represent the Foundation. Mr. Sirivanakarn said that several Board meetings were held during May through August of 1991 to discuss the zoning problem and search for new, legally suitable property for the Foundation; in the summer and fall of 1992 attempts were also made to avoid traffic and crowding situations by reserving parking spaces at the Burke Shopping Center and providing a van pool for busing to and from the property. He said that they later adopted a plan to rent outside facilities for special events such as the Buddhist holidays. Mr. Sirivanakarn described at great length efforts to find property suitable for their needs. He referred to Sombat Dhrampitaksook, a/k/a Mr. Roger, who he said they had engaged as their consultant and broker/dealer, and who had acted on their behalf from the summer of 1991 to the summer of 1992 in making contact with the Zoning Enforcement representative and informing him that they definitely planned to move from the present site.

Mr. Sirivanakarn said that they had submitted an application for a special permit in August of 1992. The application was finally processed in November 1992 after corrections to the plat and consultations with the Health Department regarding the septic tank.

Although they had not complied with the Zoning Enforcement Department's request to move from the property, Mr. Sirivanakarn said that they had significantly reduced the number of people and cars coming to the site so that the neighbors would not be disturbed. He said that they would continue attempting to keep the situation under control as long as they needed to remain on the site. Mr. Sirivanakarn said that they had put the present site up for sale about eighteen months ago and have had a "for sale" sign in the driveway since that time; they would continue to try to find a buyer for the present site and also would continue to search for a suitable new site for their facility; he went into great detail in describing the problems they had run into along the way.

Mr. Sirivanakarn requested that the BZA give them one or two years to find a suitable site and, in the interim, give them a temporary permit to remain on the site, during which time they would use the facility for worshipping on Sunday only, cutting the number of worshipers down from 40 to 30 at any one time, with the number of cars limited to 15. He elaborated on the various steps they would take if given a temporary permit.

Mr. Sirivanakarn said that, if the application should fail to be approved, he hoped that a reasonable amount of time would be given for the Foundation to continue their search for a new site.

Mrs. Harris asked staff if there was a limit on how many unrelated people may reside in one dwelling. Ms. Langdon told her the answer was four. Mrs. Harris concluded that, by right, the four monks could continue to live in the house and not conduct services.

Roger Sombat Dhramapitaksook (known as Mr. Roger), 7914 Daly Drive, Fairfax, Virginia, came forward to state that he is a licensed real estate agent in the State of Virginia, presently affiliated with REMAX in Springfield, Virginia; he has been engaged by the applicant since early summer of 1991; his first priority is to buy and negotiate a suitable site for his client. Mr. Roger went into great detail to describe his past efforts on the applicant's behalf.

The following people spoke in opposition: Walter Fields, 11224 Chapel Road, Fairfax Station, Virginia, onto whose property the driveway significantly and illegally encroaches by 8 feet, according to Mr. Fields; Tom Bates, 11216 Chapel Road, Fairfax Station, Virginia; Duane Sonnenburg, 11304 Chapel Road, Fairfax Station, Virginia; T.L. Raney, 11206 Chapel Road, Fairfax Station, Virginia; Roger Wesley, Lot 11A; James Manning, 6036 Makely Drive, Fairfax Station, Virginia; and Perry Vanover, 6221 Ballsford Drive, Fairfax Station, Virginia.

The concerns of the neighbors speaking in opposition were as follows: The applicant has been in violation of the Zoning Ordinance since 1991; blatant zoning violations committed by the applicant and documented in at least six letters from the County Zoning Enforcement Branch; numerous police reports and visits by the County Health Inspectors; the statements in the application are understated; 250 to 400 people have been on the property with associated vehicles at one time; the pipestem runs under the deck of one of the property owners and encroaches upon the property of another; the applicant removed trees to make room for more parking; the pipestem has no transitional screening for the first 200 feet; vehicles on the property come with license plates from as far away as New York, New Jersey, and Florida, creating a dangerous situation on Chapel Road near the pipestem entrance; approval could undermine the stability of the neighborhood; a non-residential use could create a precedent in the area since there are no other non-residential uses in the vicinity; impact upon the Occoquan watershed which has recently been brought to residents' attention by virtue of the fact that the Potomac water intake valve had been shut down recently and more use was being made of the Occoquan watershed; contamination of water wells; ingress and egress to property is limited and Chapel Road is not an arterial road; increased traffic on narrow, winding Chapel Road; overloading the sewage system; dust from the gravel driveway; soil contamination from vehicles leaking oil or transmission fluids; the applicant has stated that they serve an area covering Maryland, Virginia and the District of Columbia, which would generate large crowds of people and vehicles; trespassing on neighbors' property to get to the applicant's site; and this may not have been a good faith purchase.

In rebuttal, Mr. Roger said that his client had no intention of staying any longer at the site than is necessary; all they needed was more time to find a suitable residence for their monks.

Mrs. Harris moved to deny SP 92-S-065 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 92-S-065 by WAT YARNNA RANGSEE FOUNDATION OF USA, under Sections 3-C03 AND 8-915 of the Zoning Ordinance to permit place of worship, monastery and related facilities and waiver of the dustless surface requirement, on property located at

11226 Chapel Rd., Tax Map Reference 76-4((2))9B, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 6, 1993; 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, WS.
3. The area of the lot is 4.3789 acres.
4. Some of the problems are created by the applicant not knowing what the zoning requirements are for the property.
5. There is no question that it is difficult to find another piece of property for the use; however, every other church, temple or synagogue is in exactly the same situation.
6. The zoning requirements must be complied with, whether or not the applicant knew of them before purchasing the property, because they should have made themselves aware of the zoning requirements before making the purchase.
7. Good conscience would not allow such a flagrant violation of the Zoning Ordinance to continue just because the applicant has not been able to find another, more suitable piece of property. It is the problem of the applicant and is not the problem of the surrounding neighbors, nor a problem with the Zoning Ordinance.
8. The applicant is significantly impacting the neighborhood.
9. The parking is far too intense, complicated by off-site parking and parking on a narrow pipestem, which is not only a violation of the Zoning Ordinance, but is hazardous to the people in the neighborhood.
10. It is impossible for 200 people to use the septic field without the danger of having the septic field fail and the possibility of wells in the area becoming contaminated and leaving the neighboring property owners without any source of water because they may not connect to a sewer. This would be devastating to the neighbors.
11. The property is in a Water Supply Protection Overlay District (WSPOD), which is taken very seriously. It was instituted to maintain water quality for all residents of Fairfax County. The intense use on the applicant's property is contrary to everything which WSPOD was established to accomplish.

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 8-603 and 8-608 of the Zoning Ordinance.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 14, 1993.

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Page 294, April 6, 1993, (Tape 2), Action Item:

Memo from Deputy Zoning Administrator
Fran Wallingford Appeal, A 93-M-002

William E. Shoup, Deputy Zoning Administrator, asked the Board of Zoning Appeals to consider dismissing this appeal for the reasons set forth in his March 26, 1993 memorandum. He said this was an appeal of his decision regarding an off-site parking arrangement for an event that was proposed to be held at the Northern Virginia Jewish Community Center at 8900 Little River Turnpike on December 13, 1992. It was his determination that the proposed arrangement, which involved a shuttle bus service for the event, was not in violation of the special exception conditions that were applicable to the Center at the time, and was not a violation of the Zoning Ordinance. It was Mr. Shoup's position that there were no conditions of that approval which specifically restricted or precluded off-site parking. Ms. Wallingford, representing nearby citizens, appealed that decision.

On March 22, 1993, the Board of Supervisors (BOS) approved a special exception amendment, SEA 81-P-021-2, which requested a change in the hours of operation for the Center and for the addition of a private school on the site. In that approval, conditions were imposed which addressed the subject issue, specifically Condition 24 pertaining to large events held at the Center, and allowed for some restricted off-site parking. Mr. Shoup said that, because the legality of off-site parking has now been addressed by the BOS, he believed the appeal issue to be moot and, therefore, recommended that the BZA dismiss Appeal A 93-M-002.

Page 295, April 6, 1993, (Tape 2), FRAN WALLINGFORD APPEAL, A 93-M-002, continued from Page 294)

The appellant, Fran Wallingford, came forward to state that the BOS approved new development conditions on March 22, 1993, and that Condition 24 addressed future large events and off-site parking for the future events. She said that the new development condition did not ensure compliance. Ms. Wallingford said that her appeal was not based on the new development conditions; therefore, she did not believe the issue was moot. She said that her goal was to gain an understanding of the Zoning Ordinance, and an interpretation that would enable her to understand the influence of the special exceptions and special uses which surround their area. Ms. Wallingford said that their need for understanding the Zoning Ordinance, both in language and intent, was to ensure that the special exception and the special permit uses are in harmony with the low density residential character of the area, and that any proposed use shall not adversely impact the neighboring properties. She requested that the BZA consider hearing the appeal.

Mrs. Harris reviewed the chronology of events leading up to the appeal; her understanding was that the BOS had imposed a condition to address the issue of off-site parking. Ms. Wallingford said that the condition addressed the issue in a way that said there would be no off-site parking in residential neighborhoods, addressing two specific streets: Glenbrook Road and Skyview Lane. She said that the concern of the individuals involved in the appeal was the impact of off-site parking on residential communities, specifically the off-site parking at the end of Glenbrook Road, which is not an arterial but just a two lane road. Mrs. Harris said that the BOS had already acted in a legislative capacity. Chairman DiGiulian and Mr. Hammack said they were not sure that the BOS had addressed the appeal. Mrs. Harris believed that, in making their decision, they had addressed the issue of off-site parking. Mr. Hammack said that citizens still have a right to address the appeal of the Zoning Administrator's decision before the BZA, even though the BOS took action in the Gesher School application and changed the development conditions. Mr. Hammack said that, if the BZA dismissed Ms. Wallingford's appeal, the action of the BOS regarding off-site parking would be considered binding.

Ms. Wallingford stated that part of the concern with the off-site parking is that it addresses large events at the 6-acre site and they estimate having approximately 3,000 people in attendance.

Mr. Hammack moved to deny Mr. Shoup's recommendation that the appeal be dismissed. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Page 295, April 6, 1993, (Tape 2), Action Item:

Swanee A. Busic; Donald and Jan Hoffman;
Pine Ridge Civic Association; and
Ridgelea Hills Homeowner's Association

William E. Shoup, Deputy Zoning Administrator, noted that his memorandum to the BZA recommended dismissal of A 92-M-004, but that consideration had been deferred until April 20, 1993.

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Page 295, April 6, 1993, (Tape 2), Scheduled case of:

Continuation of McLean Children's Academy, Inc.
SPA 82-D-083-4/SPR 82-D-083-2

MRS. THONEN: I don't know how I need to do this, but with my motion on the McLean Children's Academy, Inc., there's a couple of things I'd like to add to that motion. But, what I need to know now--do I just make a new motion or do I reconsider.

CHAIRMAN DIGIULIAN: I think you have to make a motion to reconsider.

MR. KELLEY: Well, what was the nature of the changes?

MS. HARRIS: Yeah, I'm lost here.

MRS. THONEN: Well, what I would like to do is ask that on this coordinated parking, in accordance with Section 11-102 of the Zoning Ordinance, that we ask the Board to waive the fees.

MR. KELLEY: I think that's a separate motion.

MRS. THONEN: ...and also to expedite this case.

MR. KELLEY: Mr. Chairman, I would...

CHAIRMAN DIGIULIAN: I don't know that we need to reconsider that if we're going to do that...let's just...that's a Board Matter that...

Page 296, April 6, 1993, (Tape 2), CONTINUATION OF MCLEAN CHILDREN'S ACADEMY, INC., SPA 82-D-083-4/SPR 82-D-083-2, continued of Page 295)

MRS. THONEN: No, but I would like to be sure that...okay, Mr. Chairman, in SPR 82-D-083-2 at McLean Children's Academy, Inc., I would like to make a motion under this coordinated parking in accordance with Section 11-102 of the Zoning Ordinance, that we ask the Board to waive the fees for this child care. I feel very strongly about child care where needed, but I was still concerned about the parking, so I would like to have them waive the fee and expedite this hearing for the McLean Children's Academy.

MR. KELLEY: I second the motion.

CHAIRMAN DIGIULIAN: All in favor?

ALL AYES

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Page 296, April 6, 1993, (Tape 1), Scheduled case of:

Parking for BZA Members

Mr. Ribble asked that staff check into the reserved parking for BZA members.

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As there was no other business to come before the Board, the meeting was adjourned at 11:50 a.m.

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

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

SUBMITTED: May 18, 1993

APPROVED: May 25, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 13, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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 Chairman DiGiulian called for the first scheduled case.

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Page 297, April 13, 1993, (Tape 1), Scheduled case of:

9:10 A.M. ALBERT H. HARACZ, JR., APPEAL 92-M-020 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination of the Zoning Administrator that there are no nonconforming rights to outside storage in excess of 100 square feet on the appellant's property and that the property is subject to the provisions of Par. 24 of Sect. 10-102. Located at 6633 Pine Rd. on approx. 21,780 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((9)) 22. (DEF. FROM 2/2/93 AT APPELLANT'S AND NEIGHBORS REQUEST)

Chairman DiGiulian called for the location of the property and for a staff report.

The Deputy Zoning Administrator, William Shoup, addressed the Board of Zoning Appeals (BZA). He explained that the case had originally been scheduled for February 2, 1993, and had been deferred at last minute at the request of the neighbors and the appellant. He noted that a proposal which would have allowed the appellant to move and screen his outside storage area had been introduced in an attempt to resolve the issue and negate the need to pursue the appeal. Mr. Shoup stated that after reviewing the circumstances of the proposal, it was the Zoning Administrator's position that the proposed solution would not be in compliance with the Zoning Ordinance provisions. He stated that the Zoning Administrator's position was stated in the staff report dated January 25, 1993.

He said that the issue dealt with the outside storage of miscellaneous items on the appellant's property. Mr. Shoup stated that the provisions in Par. 24 of Sect. 10-102 of the current Zoning Ordinance, which limits outside storage to no more than 100 square feet, requires that the storage be on the rear half of the lot and that it be screened from view of the first floor of an adjoining dwelling.

He explained that the appellant had stored, outside on his property, numerous items in excess of 100 square feet. Although the outside storage was not in dispute, the issue before the BZA was the appellant's contention that he had a nonconforming right to such storage. He explained that the current limitations went into effect on August 14, 1978, and the 1959 Zoning Ordinance had regulated, under the definition of junk yard and accessory use, storage to under 100 square feet and required it not be in any half of any lot that adjoined the street. Mr. Shoup stated that it was the Zoning Administrator's position that those provisions provided for some limited outside storage, incidental to a principle use, and that such storage had to be customary accessory and subordinate to the principle use. Accordingly, it was the Zoning Administrator's position that outside storage of all types of materials under the provision is limited to 100 square feet.

Mr. Shoup stated it was the appellant's position that the 1959 Zoning Ordinance provisions only limited outside storage of junk, scrap metal, and other scrap materials which were unusable and therefore subject to its limitations. He explained that the appellant had indicated that he has had storage of miscellaneous usable items since 1964; therefore, the storage was not subject to limitations under the previous Zoning Ordinance. Mr. Shoup stated that the Zoning Administrator did not concur with the appellant's position. He explained that such logic would allow an entire yard to be covered with miscellaneous material so long as the items were usable.

Mr. Shoup stated that the appellant's position would not be in keeping with the intent of the Zoning Ordinance to allow some outside storage as an accessory use; the 1959 Zoning Ordinance provisions require that outside storage be limited to 100 square feet; there was no nonconforming right; and the appellant was subject to the regulations of the current Zoning Ordinance. In summary, Mr. Shoup said that while it was the Zoning Administrator's position that the appellant does not have a nonconforming right in excess of 100 square feet of outdoor storage, the Zoning Administrator believed that since the storage was established under the 1959 Zoning Ordinance, the requirements for the location and screening under the current provisions are not applicable.

In response to Mrs. Harris' question as to who had requested at the April 14, 1987 meeting, that the appellant submit affidavits to the Zoning Administrator, Jane W. Gwinn, Zoning Administrator, stated that she had requested the affidavits. She explained that when Mr. Haracz presented his position regarding his nonconforming rights, he had agreed to support the position with affidavits. Ms. Gwinn stated that although staff disagreed with the appellant's position, the issue should have been resolved. She noted that because of staff's workload, it had not been diligently pursued.

The appellant, Albert H. Haracz, Jr., 6633 Pine Road, Alexandria, Virginia, addressed the BZA. He submitted a number of duplicate documents to insure that they would be made a part of the record. He also submitted two letters of support from neighbors and a notice that he had circulated throughout the community.

Mr. Haracz stated that he had been collecting and storing usable items for his private use since 1964. He explained that in 1987, he had submitted two affidavits attesting this as verification of his grandfathered use. Mr. Haracz expressed his belief that the zoning officials confused scrap material and debris. He stated that the problem was not the allowed 100 feet of outside storage of scrape material and debris, but was the general outside storage of personal property. Mr. Haracz explained that he recycled all the material and used it for his personal use. He stated that his garage had been constructed with recycled materials and expressed his belief that we waste our resources and noted that Fairfax County had launched a campaign to reduce the amount of material in the landfill. Mr. Haracz again emphasized the fact that he did not consider the material in his yard to be junk and the storage of outside material was a established prior use, therefore was not subject to the Zoning Ordinance and was a nonconforming right. Mr. Haracz stated that he had met with the neighbors in an attempt to resolve the issue, but was unable to do so. Mr. Haracz stated that in 1987, he had met with the Zoning Administrator and the Fairfax County Attorney to discuss the issue. He had stated his position and had been asked to submit two affidavits attesting to such established and continued storage. Mr. Haracz noted that he had promptly acquiesced to the request and had been led to believe that the affidavits would document his nonconforming rights. He said if a citizen could not rely on the word of the Zoning Administrator and the County Attorney, then who could they trust. In summary, Mr. Haracz asked that the BZA find and decree that there are no limits on outside storage on his property.

Mrs. Harris' asked if it had been the appellant's understanding that after the two affidavits were submitted to the Zoning Administrator, his case had been documented. Mr. Haracz stated that he had thought the affidavits had resolved the issue. He explained that, although he was somewhat perturbed, he had not been surprised to receive further correspondence from the County. Mr. Haracz stated that he had duly answered the correspondence and expressed his wish to settle the issue.

In response to Mr. Pammel's question as to whether he rebuilt vehicles, Mr. Haracz stated that he did restore vehicles as a hobby but did not attempt to sell anything to the public. He stated that he occasionally drove the antique vehicles which were licensed and operable.

Mrs. Harris asked if the other pieces of equipment on the property were stationary. Mr. Haracz said that he uses the large wheelbarrow as a leaf basket, but the yellow piece of equipment was used as a yard ornament. He explained that one person's junk is another person's treasure.

Mrs. Thonen expressed her belief that pictures of the property seem to indicate that the appellant was keeping a junk yard for cars. Mr. Haracz approached the BZA and pointed out the decals indicating that the vehicles had received inspection stickers and noted the license plates on the vehicles.

In response to Mrs. Harris' question regarding the possibilities of storing some materials in the garage, Mr. Haracz stated that the garage was full of materials which needed protection from the weather. He explained that because he used the materials in his hobby, it would be impossible to anticipate when a specific piece of material would be used. Mr. Haracz estimated that approximately 15,000 feet of the lot was used for storage. Mrs. Harris expressed her concern regarding the amount of material stored in the yard.

Mrs. Thonen noted that although Mr. Haracz had stated that some of the neighbors liked the condition of his yard, there were also letters from the neighbors which expressed concern with the materials stored in the yard. She stated that the BZA must rule on the basis of the Zoning Ordinance and the use of the land. Mr. Haracz stated that he was grandfathered under the previous Zoning Ordinance.

In response to Mr. Kelley's question as to whether Mr. Haracz restores vehicles and then sells them, Mr. Haracz stated that he did not. He again stated that there were no requirements for inspections of antique vehicles. Mr. Haracz said antique vehicle owners take so much pride in the condition of their vehicle, the authorities found that inspections were not necessary.

Mrs. Thonen asked how old a car must be before it was considered an antique. Mr. Haracz said it had to be 25 years old.

Chairman DiGiulian called for speakers to the request and the following citizens came forward.

Bessie Chambers, 5100 Birch Lane, Annandale, Virginia; and Maria Buchanan, 6623 Tunlaw Court, Alexandria, Virginia; addressed the BZA. They expressed their concern with the amount of materials stored on the property. They presented pictures of the subject lot and also pictures of the neighboring houses. The citizens noted that Notices of Violation had been issued and said most of the neighbors would like the debris removed from the yard. They explained that although Mr. Haracz had stored materials for many years, it had progressively gotten worse. They expressed their belief that although the vehicles may start, they would not run. They noted that the corner lot had limited space in the rear yard because it has two front yards.

Eugene Cave addressed the BZA and stated that he had attended the 1987 meeting between the County Attorney, the Zoning Administrator, and Mr. Haracz. He stated that the issue was the outside storage of materials in Mr. Haracz' yard and he verified that Mr. Haracz had been

told to present two affidavits that would substantiate he had previously keep reusable materials on the property well in excess of 100 square feet. He said that it had been indicated that the affidavit would be acceptable proof to establish his prior existing right.

Mrs. Harris asked if Mr. Haracz had stored materials on the property since 1964, was there language in the Zoning Ordinance that would limit the nonconforming use to the 1987 level. She noted that the testimony had indicated that the amount of materials stored in the yard had substantially increased. Ms. Gwinn stated that traditionally in a nonconforming use, the extent to which it existed on the date that it became nonconforming is its limit, and it is not suppose to expand or enlarge. She noted that due to the nature of the alleged nonconformity, it was hard to define the exact degree of the alleged non-conformance. She stated that she did not know if Mr. Haracz purchased the material, and therefore had sales receipts.

There being no further speakers to the appeal, Chairman DiGiulian called for rebuttal.

In rebuttal, Mr. Haracz stated that most of the material was donated to him; therefore, he did not have sales receipts. He expressed his belief that some of the neighbors were attempting to control his life style. Mr. Haracz stated that he believed in recycling, there had been no increase in the amount of storage, the storage was a grandfathered right, and asked the BZA to find and decree that there are no outside storage limitations on the property.

In response to Mr. Kelley's question as to whether the vehicles were operable, Mr. Haracz said that it would take a few days to accomplish that task.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to uphold the determination by the Zoning Administrator that there are no nonconforming rights to outside storage in excess of 100 square feet on the appellant's property and that the property is subject to the provisions of Par. 24 of Sect. 10-102 of the Zoning Ordinance for property located at 6633 Pine Road, on approximately 21,780 square feet of land, zoned R-2, Mason District.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel stated that he had been concerned by Mr. Haracz' statement that others were trying to dictate their way of life on him. He stated that he did not believe when Mr. Haracz undertook his hobby, that he recognized the rights of the neighbors and the constraints of the Zoning Ordinance. Mr. Pammel expressed his belief that over a period of approximately 20 years an expansion had taken place and materials had been added. He stated that the pictures depicted an example of activity that was not consistent with the residential character of the neighborhood and was not respective of the rights and interest of the community as a whole.

The motion carried by a vote of 7-0 and will become final on April 21, 1993.

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Page 299, April 13, 1993, (Tape 1), Scheduled case of:

9:25 A.M. KATHERINE E. GOOCH, VC 93-V-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 11.58 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located at 7743 Southdown Rd. on approx. 22,157 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-2 ((18)) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Gooch replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to construct a one-car garage 29.0 feet, an addition 22.5 feet, a roofed deck 11.58 feet, an enclosed porch 19.1 feet, and a deck 26.9 feet from the front lot line. The Zoning Ordinance requires a minimum 35 foot front yard; therefore, the applicant was requesting modifications of 6.0 feet, 12.5 feet, 23.42 feet, 15.9 feet, and 2.1 feet, to the front lot line.

In response to Mrs. Harris' question as to how far the existing house was located from the front and side lot lines, Ms. Langdon stated that it was located 16.3 feet from the front lot line, 15 feet from one side lot line, and 26.4 feet from the other side lot line.

The applicant, Katherine Gooch, 5310 Woodlawn Avenue, Chevy Chase, Maryland, addressed the BZA. She stated the property, which abuts the Potomac River, consists of approximately one-half acre. She explained that she would like to renovate the existing structure which had been built in 1913 as a fishing camp. Ms. Gooch explained that in an attempt to modernize the house while keeping its unique character, the structure has been gutted and the architect had submitted plans to add a minimum amount of space. Ms. Gooch stated that because of the dilapidated condition of the existing structure, the neighbors were in full support of the request.

The applicant's architect, John B. Savage, 1017 Queen Street, Alexandria, Virginia, addressed the BZA and stated the house had been constructed prior to the 1941 Zoning Ordinance and expressed his belief that the application met the requirement for the granting of a variance. He explained that the exceptional narrowness, marine clay soil, and topographical conditions of the lot had caused the need for the variance. Mr. Savage stated that due to the nature of the soil, piles would have to be installed to prevent landslides. He stated that in 1982 a landslide occurred on the property and the soil's report had proved to be a valuable tool in preventing a similar situation from reoccurring. Mr. Savage stated that the request would allow the applicant to enjoy the river, to have a livable house, and to increase property values in the area. In summary, he stated that the original placement of the house on the lot and the poor soil condition had placed an undue hardship on the applicant.

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

Mr. Hammack made a motion to grant VC 92-V-007 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 6, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-007 by KATHERINE E. GOOCH, under Section 18-401 of the Zoning Ordinance to allow construction of additions 11.58 feet from front lot line, on property located at 7743 Southdown Road, Tax Map Reference 102-2((18))21, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1993; 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 22,157 square feet.
4. The application has satisfied the necessary standards for the granting of a variance.
5. The placement of the house on the lot has caused the need for the variance.
6. The constraints caused by the marine clay soil limit the location of the addition on the lot.
7. The reason given in Mr. Savage's testimony justifies the granting of the variance.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by John Savage, Architect, P.C., dated January 14, 1993, signed and sealed on January 25, 1993, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 21, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 301, April 13, 1993, (Tapes 1 and 2), Scheduled case of:

9:30 A.M. TRUSTEES OF JEHOVAH'S WITNESSES CENTREVILLE CONGREGATION, SP 92-Y-068 Appl. under Sect. 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 5700 Old Clifton Rd. on approx. 1.88 ac. of land zoned R-1 and WS. Sully District. Tax Map 66-1 ((2)) 1. (DEF. FROM 3/9/93 TO ALLOW THE APPLICANT TO WORK WITH THE CITIZENS TO TRY TO RESOLVE OUTSTANDING ISSUES.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Martin replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant had submitted an amended special permit plat which depicted a revised parking lot arrangement, an enlarged storm water detention pond, and a modified transitional screening yard along the northern property line. Mr. Hunter said that the applicant had also modified the transitional screening yard along the northern property line to include twenty-three, twelve to fourteen foot evergreen trees instead of eighty-nine, six to twelve foot evergreen trees.

Mr. Hunter stated that the BZA had deferred the public hearing from March 9, 1993 to allow the applicant and neighboring citizens an opportunity to resolve outstanding issues.

Mrs. Harris stated that a great deal of water collected on the property and expressed her concern as to whether the revised storm water retention pond would be adequate. Mr. Hunter said that the revised plat depicted an enlarged storm water retention pond which had been determined by the Department of Environmental Management (DEM) as being sufficient.

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 BZA. He stated that the Public Facility Manual (PFM) required that post development runoff be equal, or be below predevelopment runoff and noted that the proposed storm water management pond met the Best Management Practices of the PFM. Mr. Martin said that the proposed development would probably improve on the predevelopment drainage situation. He explained that while the existing situation allows unrestrained runoff from the site onto Old Clifton Road, the proposed development has been engineered so that the runoff would be diverted to the storm water management pond.

Mr. Martin stated that the applicant has agreed to the transitional screening requirements and would also be willing to modify the transitional screening along the northern lot line. He noted that in addition to the transitional screening, a six foot board-on-board fence would be constructed along the parking lot side of the property.

He noted that the citizens' concerns regarding traffic, but assured the BZA that the church meetings would take place during non-peak hours and would not have a detrimental impact on the area.

Mr. Martin said that the modest brick church was residential in scale and would accommodate two congregations of approximately 125 members which would meet at different times. He explained that the church had requested a 250 seat facility in order to provide for new members and to allow for additional attendance on holy days.

He stated that the BZA had deferred the case so that the applicant and the citizens could meet to resolve outstanding issues. Mr. Martin said that there had been a meeting in Supervisor Frey's office between the citizens and the applicant. He explained that the applicant had been receptive to the citizens concerns and had agreed to Dr. Ham's request that additional trees be placed along the northern property line. He noted that in order to accommodate the neighbors, the applicant had submitted a written request to the Virginia Department of Transportation (VDOT) regarding the relocation of the driveway, but VDOT had turned down the proposal which they determined to be unsafe. Mr. Martin stated the neighbors had also expressed their desire that the applicant reduce the size of the church and parking lot. He explained that the applicant believed the request was unreasonable and noted that the size of the small residentially scaled church was modest. He further explained that no off-site parking would be available and expressed his belief that reduction of the parking area would make it impossible to accommodate the congregation. He said that the application was practical and asked the BZA to grant the request.

Mrs. Harris expressed her concern regarding the parking situation and the congregations' future growth. She noted that there would be no latitude for expansion and no off-site parking would be available. Mr. Martin stated that each church was delegated to a specific congregation based on geographic location. He said that the church was very regulated and when a congregation outgrew its functional size, the church formed a new congregation. Mr. Martin said that while the church usually limited the congregation to 125 people, they have a large turnout for holy days. He noted that the applicant would be willing to accept a development condition which would require that all parking be on-site.

Mrs. Thonen expressed her belief that staff should revise the parking requirements for churches. Mr. Martin expressed his belief that the applicant should only be required to meet the existing requirement. He noted that the Board of Supervisors had the power to amend the Zoning Ordinance. Jane Kelsey, Chief, Special Permit and Variance Branch stated that the issue had been discussed by the Board of Supervisors, but that the churches had opposed a Zoning Ordinance amendment which would have increased the required parking area. Mr. Martin noted that the applicant would be willing to incorporate a shuttle service for holy days and noted that this arrangement had worked for other applicants.

Mrs. Harris stated that the Union Mill Community Association's Board of Directors had asked for a deferral. However, Mr. Martin stated that all the issues had been addressed and expressed his objection to a deferral.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Lenny Bianchi, 14723 Braddock Road, Centreville, Virginia, addressed the BZA. He stated that he was a lifelong Fairfax County residence and a member of the congregation. He stated that it had taken the applicant four years to find a site that would be convenient for the congregation. He stated that the congregation needed a new facility, would be a good neighbor, and parking would be adequate.

Mr. Ribble stated that although the facility in Fairfax City was shared by three other congregations, it was contrary to the churches rules of operation to share their facility with other denominations.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Donna Matthias, 13305 Green Mallard Court, Clifton, Virginia; Mike Ricciardi, 5704 Old Clifton Road, Clifton, Virginia; David Guill, 13305 Green Mallard Road, Clifton, Virginia; and Samuel Ham, 13301 Green Mallard Court, Clifton, Virginia; addressed the BZA. They stated that they were concerned with the inadequate parking and screening, the storm water management pond, the size of the proposed structure, and the traffic impact on the roads. They noted that many of the members of the congregation did not reside in Fairfax County and expressed their belief that the congregation should build their facility in Prince William County. They expressed their belief that the request would detrimentally impact on the quality of life in their community.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Mr. Martin stated that although the volume of the storm water management pond had not changed, DPW had reviewed the plans and determined that the storm water would be accommodated by the proposed pond. He again stated that although traffic was a problem, the small congregation would not have a substantial impact on the area. He expressed his belief that the request was reasonable and asked the BZA to grant the request.

Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 92-Y-068 with the following modifications:

"5. The maximum seating capacity for the main area of worship shall be limited to a total of 200 seats. Sixty-eight (68) parking spaces shall be provided. All holy day events parking shall be located on-site or additional parking shall be provided off-site. All parking associated with the use shall be on site. Shuttle buses shall be used to transfer worshipers from the off-site parking to the church. The two services for the two congregations shall be spaced so as to allow a minimum of one and one-half (1 1/2) hours between services as to allow the parking area to be completely depleted before new people come.

6. Transitional Screening 1 shall be provided along the northern, western and southern property lines. The existing vegetation along the eastern property line shall be deemed to satisfy the transitional screening requirements provided a Landscape Plan is approved by the Urban Forester which details landscaping, as mentioned below, in order to supplement the existing vegetation. Two rows of ten (10) feet evergreen trees to be placed along the northern property line.

22. Only the two (2) designated congregations, at the size designated by the seating, will be able to use the facility."

Mr. Kelley seconded the motion.

Mr. Hammack stated that to limit the church to 200 would be ignoring the growth in the community. He further stated that to limit the use of the church to the two designated congregations would simply require that they build another church, which is an inefficient and uneconomical use of the property. Mr. Hammack stated that the property was located on the main road and there would be no detrimental impact on the residential street. He expressed his belief that the modifications of the development conditions would not be appropriate.

Mr. Kelley stated that the applicant could return to the BZA and amend the application to accommodate future growth. He stated that the BZA could make a determination as to the merits of the application based on the impact the existing special permit was having on the community.

Mr. Hammack stated that the BZA has never restricted the number of church services and expressed his belief that such action would not be appropriate.

Chairman DiGiulian expressed his belief that by placing certain limitations on the church, the BZA would effectively be making it financially impractical to build. He said the most open and honest thing would be to deny the request.

Mr. Hammack stated that staff had been satisfied that the applicant met the necessary requirements and noted the policy set by the Board of Supervisors in approving various schools and places of worship throughout the County. He further noted that the Board of Supervisors had refused to review the parking requirement for churches. Mr. Hammack said the traffic would not impact the residential streets and expressed his belief that the application should be granted as staff recommended.

Mrs. Thonen noted that the installation of twelve foot evergreen trees would impose a financial burden on the applicant and expressed her belief that the condition went beyond the normal requirements.

Mr. Pammel stated the applicant has been truthful in their testimony and expressed his appreciation that they had planned for the future and had designed the 250 seat facility so that it could accommodate the maximum participation on the highest holy day. He stated that the application had satisfied staff and the minimum requirements as set forth in the Zoning Ordinance.

Mrs. Harris stated that she believed that within a few years the 250 seat facility would be used to it full potential.

Mr. Hammack stated that the testimony has indicated that the church's policy was to limit the congregation to approximately 150 people; therefore, the congregation would split once it reached capacity.

The BZA had a brief discussion on the rapid growth of the area.

The motion failed by a vote of 3-4 with Mrs. Harris, Mr. Kelley, and Mr. Ribble voting aye; and Chairman DiGiulian, Mrs. Thonen, Mr. Hammack, and Mr. Pammel voting nay.

Mrs. Thonen made a motion to grant SP 92-Y-068 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 2, 1993 with the following modifications to the development conditions:

"5. The maximum seating capacity for the main area of worship shall be limited to a total of 250. Sixty-eight (68) parking spaces shall be provided. All parking

associated with this use shall be on site. The two services for the two congregations shall be spaced so as to allow a minimum of one and one-half (1) hours between services.

6. Transitional Screening 1 shall be provided along the northern, western and southern property lines. The existing vegetation along the eastern property line shall be deemed to satisfy the transitional screening requirement provided a Landscape Plan is approved by the Urban Forester which details landscaping, as mentioned below, in order to supplement the existing vegetation. Six (6) additional 12 foot evergreens trees shall be located along the northern lot line within the transitional screening yard with the location approved by the Urban Forester."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-Y-068 by TRUSTEES OF JEHOVAH'S WITNESSES CENTREVILLE CONGREGATION, under Section 3-103 of the Zoning Ordinance to allow a church and related facilities, on property located at 5700 Old Clifton Road, Tax Map Reference 66-1((2))1, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 13, 1993; 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 and WS.
3. The area of the lot is 1.88 acres.
4. The applicant has testified that they will keep all church related parking on site.
5. The BZA cannot treat this applicant any differently than the BZA treats other churches.
6. Traffic may be a problem; but, traffic is a problem all over Fairfax County.

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 William G. Hawes, dated September 6, 1991, revised through February, 1993 and approved with this application, as qualified by these development conditions.

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

4. This Special Permit is subject to the provisions of Article 17, Site Plans. 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 main area of worship shall be limited to a total of 250. Sixty-eight (68) parking spaces shall be provided. All parking associated with this use shall be on site. The two services for the two congregations shall be spaced so as to allow a minimum of one and one-half (1) hours between services.

6. Transitional Screening 1 shall be provided along the northern, western and southern property lines. The existing vegetation along the eastern property line shall be deemed to satisfy the transitional screening requirement provided a Landscape Plan is approved by the Urban Forester which details landscaping, as mentioned below, in order to supplement the existing vegetation. Six (6) additional 12 foot evergreens trees shall be located along the northern lot line within the transitional screening yard with the location approved by the Urban Forester.

7. Landscaping and building foundation plantings shall be provided along all sides of the proposed building in order to enhance the visual appearance of the building. The landscaping and the foundation plantings shall be shown on a Landscape Plan which shall be provided to the County Urban Forester for review and approval.

8. The barrier requirement shall be provided inside the transitional screening yard along the northern, western, and southern property lines in the form of a six foot high, board-on-board fence, and shall be waived along the eastern property line.

9. A tree preservation plan shall be established in coordination with and subject to approval by the County Urban Forester in order to preserve to the greatest extent possible substantial individual trees or stands of trees.

10. The limits of clearing and grading shall be as shown on the special permit plat.

11. The floor area ratio (FAR) shall be limited to 0.061.

12. The maximum building height shall be 23 feet.

13. There shall be no organized outdoor activity associated with this special permit use.

14. Best Management Practices to WSPOD standards shall be provided to the satisfaction of the Director, Department of Environmental Management. The pond shown as a dry pond on the plat shall be designed as a BMP to the satisfaction of DEM; it may become a facility other than a dry.

15. A right turn deceleration lane shall be provided to the satisfaction of the Virginia Department of Transportation.

16. Adequate sight distance shall be provided to the satisfaction of the Virginia Department of Transportation.

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

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

    The light source shall be concealed within the light fixture and focus downward.

    Shields shall be installed, if necessary, to ensure that the lights are focused directly onto the property.

    The intensity of light generated by the proposed parking lot lights and mounted building lights shall not exceed 0.2 Footcandles as specified by the Illuminating Engineering Society's document entitled, "Lighting for Parking Facilities". All bulbs on site shall be limited to 70 watts.

    The parking lot lights shall be used only in conjunction with the specified Tuesday and Thursday evening meetings, and shall be shut off at 10 p.m.

18. The mounted building lights shall focus downward and shall not be lit after 10 p.m.

19. The lighted identification sign shall not be lit after 10 p.m. and shall conform with Article 12 of the Zoning Ordinance.

20. If required by the Department of Environmental Management (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.

21. The architecture of the proposed structure shall be in conformance with the elevations submitted with this application.

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

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) 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 4-3 with Chairman DiGiulian, Mrs. Thonen, Mr. Hammack, and Mr. Pammel voting aye; Mrs. Harris, Mr. Kelley, and Mr. Ribble voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 21, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 306, April 13, 1993, (Tape 2), Action Item:

Request for Additional Time
John J. Magill, SP 91-M-072

Mrs. Harris made a motion to grant the applicant's request. Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date will be September 3, 1993.

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Page 306, April 13, 1993, (Tape 2), Action Item:

Approval of Minutes from March 9, 1993

Mrs. Thonen made a motion to approve the minutes as submitted. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 306, April 13, 1993, (Tape 2), Action Item:

Request for Reconsideration
Wat Yarnna Rangsee Foundation, SP 92-S-065

Mrs. Harris made a motion to deny the applicant's request. Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 306, April 13, 1993, (Tape 2), Action Item:

Approval of April 6, 1993 Resolutions

Mr. Pammel asked that Item 8 of the finding of facts in the Resolution for SP 92-S-065, Wat Yarnna Rangsee Foundation of USA, be modified. He suggested that the word "tremendously" be replaced by the word "significantly."

Mrs. Thonen made a motion to approve the resolutions as modified. Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 7-0.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and suggested that Item 5 of the finding of facts in the Resolution for VC 93-1-005, Kenneth W. and Anna C. Smith, be deleted. She explained that staff believed the deletion would help the motion to be more defensible.

Mr. Kelley made a motion to approve the resolution as modified. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 306, April 13, 1993, (Tape 2), Action Item:

Request for Out-of-Turn Hearing for
Rutherford Area Swimming Club, SPA 72-A-112

Chairman DiGiulian noted that the case was scheduled for June 8, 1993.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and stated that the application had originally been scheduled for June 15, 1993. She noted that because the BZA had a very complex hearing on that date, the case had been moved to June 8, 1993. Ms. Kelsey said there was currently no public hearing on June 1, 1993, and the notices have already been prepared for the May 25, 1993 public hearing.

Mrs. Thonen made a motion to deny the out-of-turn hearing. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 307, April 13, 1993, (Tape 2), ACTION ITEM:

Request for Intent to Withdraw
Daniel & Virginia M. Marowitz, VC 92-M-013

Chairman DiGiulian stated that the applicant had submitted a letter requesting withdrawal.

Mr. Pammel made a motion to issue an intent to allow the withdrawal of VC 92-M-013 which is presently scheduled for April 20, 1993 at 8:00 p.m.

Chairman DiGiulian so moved.

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Page 307, April 13, 1993, (Tape 2), Action Item:

Scheduling of Public Hearing
McLean Children's Academy Applications
SPA 82-D-083-4 and SPR 82-D-083-2

Chairman DiGiulian stated that the scheduling of the applications had been deferred from April 6, 1993.

Mrs. Thonen stated the applicant's letter indicated that they were attempting to resolve the issues.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the appellant was presently operating without a special permit. She noted that the deferral was granted so that the appellant could submit a shared parking proposal.

Mrs. Thonen made a motion to defer SPA 82-D-083-4 and SPR 82-D-083-2 to September 21, 1993 at 8:00 p.m. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Board of Zoning Appeals Meeting Dates

Jane Kelsey, Chief, Special Permit, addressed the Board of Zoning Appeals and noted that Chairman DiGiulian had requested staff to delete the September 8, 1992; and December 16, 1993, meetings from the schedule. She also noted that staff would, if possible, delete the July 21, 1993, meeting from the schedule.

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As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

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

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

SUBMITTED: May 14, 1993

APPROVED: May 18, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 20, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

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 Chairman DiGiulian called for the first scheduled case.

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Page 309, April 20, 1993, (Tape 1), Scheduled case of:

8:00 P.M. DANIEL AND VIRGINIA W. MAROWITZ, VC 92-M-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 1 lot into 3 lots with proposed Lot 3 having lot width of 12 ft. (80 ft. min.lot width required by Sect. 3-306). Located at 3109 Sleepy Hollow Rd. on approx. 1.56 ac. of land zoned R-3. Mason District. Tax Map 51-3 ((1)) 15. (RECONSIDERATION HEARING GRANTED. DEF. FROM 1/12/93 AT APPLICANTS' REQUEST.)

Chairman DiGiulian noted that at the April 13, 1993 public hearing, the BZA had issued an intent to allow withdrawal as requested by the applicant.

Mrs. Thonen made a motion to allow the withdrawal of VC 92-M-013. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

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Page 309, April 20, 1993, (Tape 1), Action Item:

Recommendation to Dismiss
Swanee A. Busic; Donald and Jan Hoffman;
Pine Ridge Civic Association; and Ridgelea Hills Homeowner's Association
Appeal Application, A 93-M-004

William E. Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and asked the BZA to consider the recommendation, as set forth in his March 26, 1993 memorandum. He noted that the appeal involved issues related to the Northern Virginia Jewish Community Center (NVJCC) located at 8900 Little River Turnpike. Mr. Shoup said he recommended the appeal be dismissed. The appeal pertained to Barbara A. Byron's, Director, Zoning Evaluation Division, Office of Comprehensive Planning, determination that she was unable to establish that the existing 37,331 square foot of cellar space at the NVJCC was constructed in violation of SEA 81-P-021-1. He stated that the appellants maintain only 31,102 square feet of cellar space was authorized by the Board of Supervisors.

Mr. Shoup stated that on March 22, 1993, the Board of Supervisors approved Special Exception Amendment SEA 81-P-021-2 which requested a change in the hours of operation of the NVJCC and the addition of a private school. He said that in the amendment approval, a condition was imposed which addressed the square footage of the cellar space. Specifically Condition 17 allowed for approximately 37,331 square feet of cellar space and it precluded any further expansion of the cellar area. Mr. Shoup expressed his belief that with the Board of Supervisors approval, which specifically addressed the legality of the size of the existing cellar space, the appeal issue was moot; therefore, he recommended dismissal of A 93-M-004.

Mr. Pammel made a motion to accept the recommendation of the Deputy Zoning Administrator and dismiss A 93-M-004. The motion died for the lack of a second.

Chairman DiGiulian called for speakers to the dismissal and the following citizens came forward.

The appellants' attorney, Mark Friedlander, with the law firm of Friedlander and Friedlander, 2018 Clarendon Boulevard, Arlington, Virginia, addressed the BZA and asked that it hear the case. He stated that the appellants did not believe Condition 17 resolved the issue and expressed his belief that the Board of Supervisors had merely stated a fact when they referred to the 37,331 square feet of cellar space; whereas the issue raised by the appeal was that the cellar space was built contrary to SEA 81-P-021-1 which granted a maximum 31,102 square feet of cellar space. Mr. Friedlander said that the issue was not moot and the appeal should be heard by the BZA.

In response to Mr. Pammel's question as to what the appellants hope to achieve by having the BZA hear the appeal, Mr. Friedlander stated that there were many issues of concern which should be discussed at the public hearing. He explained that although he was not advocating a revocation of the Special Exception, the BZA could limit the amount of cellar space which could be utilized by the NVJCC. He noted that the NVJCC would also have the option of returning to the Board of Supervisors to specifically have the 31,102 square feet of cellar space increased to 37,331 square feet of cellar.

In response to Mrs. Harris' question as to whether the issue of the cellar space had been addressed during the SEA 81-P-021-2 hearing by the Board of Supervisors, Mr. Shoup stated that the Board of Supervisors had been aware of the issue. He affirmed it was the Zoning Administrator's position that the new development conditions contained in SEA 81-P-021-2 superseded all previous development conditions.

Fran Wallingford, 3311 Mantua Drive, Fairfax, Virginia, addressed the BZA. She stated that the issue had not been addressed by the Board of Supervisors and the number of speakers had been limited. She explained that the citizens had addressed the issue in letters to the Board of Supervisors and Planning Commission.

In response to Mrs. Harris' question regarding the issues discussed at the Board of Supervisors public hearing, Mr. Shoup explained that he had not attended the hearing. He said that he had been informed by other staff members that the Board of Supervisors had been made aware of the issue. Ms. Wallingford said that she agreed that the Board of Supervisors was aware of the issue, but noted the matter was not discussed at the public hearing. Ms. Wallingford stated that she agreed with Mr. Friedlander's position on the issue.

The NVJCC's attorney, Keith Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., 2200 Clarendon Blvd., 13th Floor, Arlington, Virginia, addressed the Board of Zoning Appeals. He stated there had been numerous hours of discussion and negotiation by the NVJCC and the concerned citizens regarding the development conditions which were ultimately approved by the Board of Supervisors. He explained there had been a four hour deferral and it had been agreed upon by both sides to limit discussion during the public hearing. Mr. Martin said that the issue had been discussed at length and was a topic of the development conditions.

In response to Mrs. Harris' question as to the agreement, Mr. Martin stated that the limit of discussion had been agreed upon, not the development conditions. He explained that although he had been briefed, he had not been involved in the negotiation.

Carrol Cole, spoke on behalf of Clay Cameron, Land Use Chairman of the Little River Pine Civic Association, and Swanee A. Busic, one of the appellants. She stated that she participated in the negotiations and no discussion had taken place regarding Condition 17. She explained that although the concerned citizens had requested that 37,331 square feet of cellar space be removed, they had been informed by staff and by the NVJCC that it would not be done. She expressed her belief that all parties concerned realized they had intended to go forth with the appeal and they were led to believe Condition 17 did not constitute approval by the Board of Supervisors, but was simply a statement regarding the size of the cellar space.

In response to questions from the BZA, Mr. Shoup stated that the NVJCC had excavated approximately 6,000 square feet of additional cellar space when they constructed their facility. He explained that cellar space is excluded from the Gross Floor Area and Floor Area Ratio (FAR) calculations, even if the space is used for classrooms. He stated that 6,000 square feet represented approximately 17 percent of the 37,331 square feet, therefore could not be administratively approved by the Zoning Administrator. Mr. Shoup explained that although the original footprint did not change, an additional 6,000 square foot area in the basement had been excavated. He explained that Ms. Byron was unable to make a determination that the drawing which had been initially submitted with the application was part of the approval of the special exception. Mr. Shoup explained that the determination was based on the fact that no plats or drawings depicting the square footage of cellar space was tied to the special exception approval. He expressed his belief that the Board of Supervisors explicitly addressed and rectified the issue by including Condition 17 in SEA 81-P-021-2. Mr. Shoup stated that the appeal had been filed before the special exception amendment was acted upon by the Board of Supervisors.

Mr. Pammel made a motion to dismiss Appeal A 93-M-004. He stated that the Board of Supervisors had rectified the situation with Condition 17 of SEA 81-P-021-2 which was granted on March 22, 1993.

Mr. Kelley seconded the motion.

Mr. Hammack stated the issue was whether Ms. Byron could retroactively approve an expansion of a footprint that was not approved or applied for in the original application. He said the citizens were not disputing the fact that the Board of Supervisors could amend the application, and expressed his belief that they had the right to have the appeal of the earlier decision heard. Mr. Hammack stated that 6,000 square feet was a substantial expansion and staff's testimony did not substantiate whether the project had been properly approved or constructed. He noted that the BZA often requires citizens to remove structures that are built in error. Mr. Hammack again stated that the appellants had the right to a public hearing.

Mr. Kelley stated that the Board of Supervisors had been aware of the situation and had deliberately made the appeal moot. Mr. Pammel agreed with Mr. Kelley and stated that the BZA would be in a very awkward position if it were to override the Board of Supervisors' legislative action. Chairman DiGiulian stated he believed that Mr. Pammel was wrong because the appeal was filed before the Board of Supervisors took action and expressed his belief that the appellant had a right to be heard. Mr. Hammack stated that he did not believe the Board of Supervisors had jurisdiction over the BZA and noted that the Circuit Court hears appeals of the BZA's decisions. Mrs. Thonen said she believed that the Board of Supervisors had rectified the situation when it approved the development conditions in SEA 81-P-021-2.

In response to questions from the BZA, Mr. Shoup again stated the cellar area could contain classrooms without altering the FAR. He said that although the applicant had submitted an initial drawing depicting cellar space square footage, the approved plans did not include the sheet which showed the cellar space square footage.

The BZA had a brief discussion regarding both the special exception and the appeal process.

The motion carried by a vote of 5-2 with Chairman DiGiulian and Mr. Hammack voting nay.

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Page 311, April 20, 1993, (Tape 1), Scheduled case of:

8:00 P.M. BETH EL HOUSE, INC., SP 93-V-002 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a group housekeeping unit. Located at 7820 Schelhorn Rd. on approx. 33,160 sq. ft. of land zoned R-2. Mount Vernon District. Tax Map 102-1 ((7)) (7) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Donnelly replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit to operate a Group Housekeeping Unit within an existing single family dwelling. She explained that Beth El House will offer transitional housing for formerly homeless single-parent families. Ms. Langdon noted that the length of stay for each resident would generally be between six months and two years. She further noted that the families would probably be headed by females, with no more than two children per family. Ms. Langdon said the adults would be either employed and/or in job training or furthering their education. The children also would be either in school or in a day care program.

Ms. Langdon stated that in order to comply with the community's concerns, the applicant had submitted a revised statement which reduced the maximum number of individuals living in the dwelling from ten to eight. An expectant mother could possibly be one of the residents. She noted that a case worker, a house manager, and various volunteers would visit the residence on a daily or weekly basis, but would not reside in the house. Ms. Langdon stated the plat submitted with the request showed a 340 square foot addition which the applicant now indicated would not be constructed. In summary, Ms. Langdon stated that staff recommended approval subject to the development conditions contained in the staff report dated April 13, 1993. She said staff had no objection to the changes to Conditions 1, 4, and 6 as proposed by the applicant.

The applicant's attorney, William E. Donnelly, III, with the law firm of Hazel and Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, addressed the BZA. He stated the applicant had made several concessions in order to alleviate the neighbors concerns and noted that staff had recommended approval.

Mr. Donnelly stated the proposed modifications to Condition 1 would guarantee that the permit could not be transferred without amending the special permit. He further stated that Condition 4 would modify the request so there would be no more than three families for a total of eight residents, and Condition 6 would ensure the addition shown on the plat would not be constructed. Mr. Donnelly noted that the procedural issue was whether the BZA would allow the conditions to be amended without requiring a revised plat.

Mr. Donnelly expressed his belief that the application was a worthy cause and noted the law firm was handling the case on a pro bono basis. He stated that from a land use standpoint, the site was ideal. Mr. Donnelly explained that the large, well buffered lot was on the periphery of the residential community which would provide an excellent transitional use between the residences and the abutting office building. In summary, Mr. Donnelly stated that the location was convenient to services such as the library, fire department, school, governmental center, and stores.

In response to questions from the BZA regarding parking, Mr. Donnelly noted the parking would be adequate for the three drivers in residence and a case worker who would visit the residence twice a week. He explained that the driveway had been expanded by the previous owner, Fairfax County Social Services, which used it for a group home. Mr. Donnelly said because of their financial position, it would be doubtful that a family would own more than one vehicle.

Mr. Pammel noted that the proposed addition would not be constructed and asked whether the existing facility could accommodate the families. Mr. Donnelly stated that existing storage space would be converted into a bedroom and the facility would be adequate.

Mr. Donnelly introduced the President of Beth El House, Inc., Emily Rothberg, 3830 Seminary Road, Alexandria, Virginia, and stated that she could better explain the goals of the organization.

Ms. Rothberg addressed the BZA and thanked Mr. Donnelly for his assistance. She stated that the organization, which had been formed in order to help the homeless, had chosen to lend support to homeless families in a structured home environment. Ms. Rothberg stated that a case manager who will be available twenty-four hours a day, as well as other volunteers, would provide support for the families as a transition to self-sufficiency. She explained that the residents would be single mothers who will be carefully selected through a rigorous screening process which will include extensive background checks. Ms. Rothberg said that the parents will be employed in job training or will be furthering their education and the children will be either in school or in day care. She noted that the location was excellent, the yard was ideal, and the lot was well buffered. In summary, Ms. Rothburg stated that community relations were of paramount importance to the organization; therefore, they would work closely with the neighbors and the Hybla Valley Farm Civic Association.

Chairman DiGiulian called for speakers in support of the request and the following citizens came forward.

The President of the Hybla Valley Farm Civic Association, Terry Jemison, 2804 Boswell Avenue, Alexandria, Virginia, addressed the BZA and expressed his support for the request. He stated the Civic Association, which was involved in the redevelopment of the Route One Corridor, had initially been concerned with the proliferation of subsidized housing in the Sherwood Hall Lane Corridor. He said that the applicant has been receptive to the community's concerns and the Civic Association was satisfied with the concessions and the resulting application.

In response to Mrs. Thonen's question regarding the letter of opposition, Mr. Jemison stated that at the Civic Association meeting there had been no votes in opposition.

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

Mr. Hammack made a motion to grant SP 93-V-002 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 13, 1993 with the following modifications:

"1. This approval is granted to the applicant only and is not transferable without an amendment to this Special Permit, and is for the location indicated on the application and is not transferable to other land.

4. The number of residents on-site shall not exceed eight (8), nor shall there be more than three (3) families in residence.

6. The proposed additions shall not be constructed."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-V-002 by BETH EL HOUSE, INC., under Section 3-203 of the Zoning Ordinance to allow a group housekeeping unit, on property located at 7820 Schelhorn Road, Tax Map Reference 102-1((7))(7)16, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 1993; 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 R-2.
3. The area of the lot is 33,160 square feet.
4. The application meets the necessary standards for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 an amendment to this Special Permit, 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 Lawrence G. Deigh, Architect, dated January 25, 1993, submitted with this application, as qualified by these development conditions.

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

4. The number of residents on-site shall not exceed eight (8), nor shall there be more than three (3) families in residence.

5. A minimum of four (4) parking spaces shall be provided on-site.

6. The proposed additions shall not be constructed.

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

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

Mr. Pammel seconded the motion which carried by a vote of 6-1 with Mrs. Thonen voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 28, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 313, April 20, 1993, (Tapes 1 and 2), Scheduled case of:

8:00 P.M. MONTESSORI SCHOOL OF ALEXANDRIA, INC., SPA 80-L-033-3 Appl. under Sect(s). 3-403 of the Zoning Ordinance to amend SP 80-L-033 for child care center and private school of general education to permit an increase in enrollment to 99 children and to amend a development condition regarding vehicle trips. Located at 6300 Florence Ln. on approx. 3.6293 ac. of land zoned R-4. Lee District. Tax Map 82-4 ((1)) 17A, 17B; and 82-4 ((36)) A. (DEF. FROM 3/16/93 AT APPLICANT'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Donnelly replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a special permit amendment in order to amend SPA 80-L-033-1 for a child care center and private school of general education, to allow an increase in the maximum daily enrollment to ninety-nine children from the current seventy-five children, and to amend a development condition regarding vehicle trips. He said that the maximum number of employees present daily would remain twelve and no additions to the existing structure were proposed.

Mr. Hunter stated that a staff report recommending denial of the applicant's request for permission to increase enrollment to ninety-nine children was published on September 14, 1992. He explained that staff's recommendation for denial was based on the expansion of the non-residential use within the interior of the residential neighborhood. He noted staff's concern that the proposed increase in enrollment and the subsequent increase in vehicle trips per day would negatively impact the single family character of the neighborhood and would further overload the capacity of the local street system. Mr. Hunter said the staff report had indicated that the applicant had not satisfied the previously imposed Development Condition Number 14 which limited the number of vehicle trips generated by the use to 140 per day.

He stated that at the September 24, 1992 public hearing for SPA 80-L-033-3, the BZA had deferred the case for approximately 90 days. Mr. Hunter said it had been the consensus of the Board that the applicant comply with the existing development conditions before being allowed to increase the enrollment. He noted that the deferral had allowed the applicant an opportunity to establish procedures such as carpools in order to comply with the special permit conditions. He noted the applicant had been instructed to monitor the trips on a bi-weekly basis, and staff had been instructed to periodically monitor the traffic generated by the use.

Mr. Hunter stated that the applicant has subsequently amended the application to request a deletion of Development Condition Number 14 which limits the number vehicle trips generated by this use to a maximum of 140 per day. He said that a traffic analysis submitted by the applicant was received by the Office of Comprehensive Planning on April 15, 1993. Mr. Hunter stated that although staff had forwarded the study to the Office of Transportation, they had not had sufficient time to review the study or submit written comments. He stated that staff had incorporated all applicable conditions with a modification to Condition Number 14 to allow a small increase in the number of vehicle trips per day to 180.

In summary, Mr. Hunter said staff could not support increasing the intensity of the proposed use, nor concur with the deletion of Development Condition 14; therefore, staff continued to recommend denial.

In response to Mr. Hammack's question as to whether there had been a recent traffic count, Mr. Hunter said the informal traffic count conducted by staff had indicated approximately 50 vehicle trips per day associated with the use.

Mrs. Harris stated that the letters had indicated buses pick up the children at a park approximately one mile from the school. She expressed concern as to whether the applicant was merely transferring the traffic problem from one location to another. She also expressed concern regarding the health and safety of the children compelled to wait on the buses. Mr. Hunter said that whether it was appropriate to have off-site pickup was not addressed in the Zoning Ordinance.

In response to Mr. Kelley's question as to whether any other similar application was subject to a restriction on vehicle trips per day, Mr. Hunter said he did not believe there was. He noted that it was imposed because of the number of violation associated with the use and the neighbors' concerns regarding traffic. Mr. Hunter noted that the previous problem with the cuing on Florence Lane had been remedied by the wide entrance and the improved site design.

Mr. Kelley expressed his concern as to whether the condition regarding the vehicle trips per day may have been punitive. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated the condition stemmed from the fact that a child care center or school of more than seventy-five is supposed to be on a collector street or arterial road. She explained that the guideline for a local street was seventy-five students.

In response to Mr. Kelley's question as to whether the site was large enough to accommodate other special permit uses such as a church, Mr. Hunter said it was. He noted that the site's location on a substandard road in the interior of a residential neighborhood and the narrow, one way bridge close to Telegraph Road had concerned staff.

The applicant's attorney, William E. Donnelly, III, with the law firm of Hazel and Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, addressed the BZA. He presented a traffic study to the BZA and stated that the school's Administrator, Jean Adolphi, the firm's Planner, Peggy Keyes; and the Traffic Consultant from Gorove/Slade Associates, 1140 Connecticut Avenue, N.W., Suite 1200, Washington, D.C.; were present to answer any questions the BZA may have. He stated the applicant would like to increase enrollment from seventy-five to ninety-nine students and to modify the condition which governed the number of vehicle trips per days. Mr. Donnelly said staff based its recommendation to deny the increase in enrollment on the "locational guidelines" in the Comprehensive Plan. He noted that staff had no objection to increasing the vehicle trips per day to 180.

Mr. Donnelly stated that the case had been deferred to allow the applicant an opportunity to comply with the existing special permit. He explained that the applicant had contracted for a Transportation Management Plan which would be acceptable to the BZA as well as the concerned parties. Mr. Donnelly stated the school had purchased two school buses each of which can accommodate twenty-two children. He explained that the buses shuttle the children to and from Jefferson Manor Park and the school. He noted that the park is located on Telegraph Road and the traffic generated by the shuttle service has no substantial impact on the major arterial road. In addressing Mrs. Harris' concern regarding the safety of the children, Mr. Donnelly said the school provides two buses so that there is always a bus present at the Park to assure that no children are left alone or exposed to inclement weather.

Mr. Donnelly stated that the shuttle service is not only inconvenient to the parents but also denies them contact with the children's teachers. He submitted a traffic proposal which would provide shuttle buses in the morning only. Mr. Donnelly expressed his belief that the transportation proposal would reduce traffic by approximately twenty percent and would

accomplish the objectives sought by staff. In summary, Mr. Donnelly expressed his belief that the application was in compliance with the Comprehensive Plan and asked the BZA to grant the request.

In response to Mrs. Thonen's question as to where the students live, Mr. Donnelly said that although many students live within walking distance, others must be driven. He deferred further comments to the school's Administrator, Ms. Adolphi.

Mrs. Thonen asked why the buses could not pickup and deliver the children at their homes. Jean Adolphi, 6300 Florence Lane, Alexandria, Virginia, addressed the BZA and stated that it would take approximately two hours each morning and each evening for the bus to pickup and deliver the children to their homes. She expressed her belief that the children were too young for such a program.

In response to Mrs. Harris' question as to whether Condition 14 would be acceptable to the applicant, Mr. Donnelly said it would be.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Carol Freeman, 619 Upland Place, Alexandria, Virginia; Richard Stevens, 5212 Leeward Lane, Alexandria, Virginia; Gary Huegel, 5805 Huron Place, Alexandria, Virginia; Donald Crane, 4337 Marjoran Court, Alexandria, Virginia; Brad Buchanan, 3306 Wessynton Way, Alexandria, Virginia; Terry Jeminson, 2804 Boswell Avenue, Alexandria, Virginia; Kathy Tresnak, 204 Summers Drive, Alexandria, Virginia; Paula Shorten, 7308 Snaden Court, Springfield, Virginia; addressed the BZA. They said their children attended the school which has provided loving care as well as an excellent education for their children. They expressed concern regarding the traffic restrictions imposed by the development conditions and explained that they, as well as the children, were not happy with the busing. They preferred having daily contact with the teacher in order to monitor their children's progress and asked the BZA to accept the traffic program submitted by the consultant.

The BZA explained to the speakers that they did not mandate the busing. It noted that while the development conditions may stipulate the number of vehicle trips per day, the school administration has the prerogative to institute any program they deem suitable. The BZA noted, however, that the use was commercial and explained that residential and commercial uses are governed by different requirements of the Zoning Ordinance.

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

Mrs. Harris made a motion to grant SPA 80-1-033-3 subject to the development conditions contained in the staff report dated September 14, 1992.

Mr. Pammel seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Thonen made a motion to amend Mrs. Harris' motion to raise the number of students to ninety-nine. Mr. Kelley seconded the motion. Mrs. Harris accepted the amendment as part of her motion.

Mr. Kelley asked the applicant if twelve employees would be sufficient for ninety-nine students. Mr. Donnelly said they would. Mr. Kelley stated that he would prefer the vehicle trips per day development condition be deleted and expressed his belief that the school was the only one in Fairfax County to be subject to such a condition. Mr. Hunter said that although staff had not researched the issue, he believed Mr. Kelley was correct.

Mr. Kelley made a motion to amend Mrs. Harris' motion to remove Development Condition 14. 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 Amendment Application SPA 80-L-033-3 by MONTESSORI SCHOOL OF ALEXANDRIA, INC., under Section 3-403 of the Zoning Ordinance to amend SP 80-L-033 for child care center and private school of general education to permit an increase in enrollment to 99 children and to amend a development condition regarding vehicle trips, on property located at 6300 Florence Lane, Tax Map Reference 82-4((1))17A, 17B; and 82-4((36))A, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 20, 1993; 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 3.6293 acres.
4. The applicant has presented testimony that the application meets the necessary standards for the granting of a special permit.
5. The BZA was impressed by the applicant's ability to resolve the outstanding issues and to bring the application into compliance.
6. The applicant has spent over $80,000 in order to meet the development conditions.
7. The applicant has instituted the use of buses and car pools in order to relieve the traffic impact on the neighborhood.
8. The applicant realized that the development conditions were not met and set a good example by meeting them.
9. The school has demonstrated its community involvement and the Homeowners Association voted unanimously to support the request.
10. Many applicants explained why they cannot meet the development conditions, but this applicant has overcome the difficulties and has met the development conditions.
11. The parents and children will get accustomed to the measures the school has taken to meet the realistic 180 vehicle trips per day requirement which is an acceptable situation for the residential neighborhood.
12 The BZA can allow the increase to 99 children because the new buses and car pooling will allow the 180 vehicle trips per day figure to be met.

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 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 Holland Engineering, dated June 22, 1992) and approved with this application, as qualified by these development conditions.

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

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

5. The maximum daily enrollment shall not exceed ninety-nine (99) children, ages toddlers to 12 years.

6. The maximum number of employees shall be limited to twelve (12) on-site at any one time.

7. Hours of operation shall be limited to 7:30 a.m. until 6:00 p.m., Monday through Friday.

8. The number of parking spaces provided shall satisfy the minimum requirement set forth in Article 11 and shall be a minimum of nineteen (19) spaces. All parking shall be on site and shall be designed according to the Public Facilities Manual (PFM) requirements. Compliance with the requirements shall be determined at site plan review by the Director of DEM.

9. Transitional Screening 1 shall be maintained along all lot lines. Existing vegetation shall be used where possible, and supplemented where necessary, to satisfy this requirement. The degree and nature of supplementary plantings shall be determined by the Urban Forester. Screening along the eastern lot line shall be maintained in such a manner so as not to interfere with the provision of adequate sight distance at the property's entrance. All play equipment shall remain outside the required screening yards.

10. Interior parking lot landscaping shall be maintained in accordance with Article 13. Landscaping shall be provided within the grassed median shown on the approved plat, per the Urban Forester's review and approval.

11. Barrier requirements shall be waived along the south, west and the western half of the north lot lines. A six (6) ft. wood fence shall be maintained between the required screening yard and the existing structure along the eastern half of the northern property line. All other fences shown on the Special Permit plat shall be maintained to satisfy the buffer requirement.

12. The applicant shall adhere to the approved tree preservation plan to protect and preserve existing trees. The limits of clearing and grading shall be maintained to include the EQC and the existing tree line as shown on the SP plat. Vegetation located within the EQC shall remain undisturbed and in its natural state. Trees located within the developed portion of the site and depicted on the SP plat shall be preserved, pursuant to the Urban Forester's approval.

13. All trash shall be stored on-site in appropriate containers and shall be screened from view.

14. The maximum number of vehicle trips per day generated by this use shall be limited to 180 per day. Monitoring is to be conducted by the applicant and submitted to the Zoning Enforcement Branch, DCP for review of compliance with this condition once during the fall term, 1993, within three (3) months of the school opening and once during the spring term for a one-week period each and at such time when the school is at maximum enrollment. If the number of vehicle trips per day is determined to exceed 180, the applicant, within thirty (30) days of the determination, shall submit a program for management of trip generation to the Zoning Enforcement Branch for review and approval of how this requirement shall be met and shall institute such plan within sixty (60) days of approval of such management 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 legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, six (6) months after the approval date* of the Special Permit unless the activity authorized has been legally 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. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 28, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 317, April 20, 1993, (Tape 2), Scheduled case of:

Request for Reconsideration
Trustees of Jehovah's Witnesses Centreville Congregation
Special Permit Application SP 92-Y-068

Mr. Hammack made a motion to deny the neighbors' request that the BZA reconsider its decision of April 13, 1993, to approve SP 92-Y-068. Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Harris stated she had contacted Jan L. Brodie with the County Attorney's Office to ask if it would be possible to limit the number of congregations within a church and Ms. Brodie had said that it was. Chairman DiGiulian stated this issue could be discussed at another time. The question before the BZA was should its decision be reconsidered.

The motion carried by a vote of 6-1 with Mrs. Harris voting nay.

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Page 317, April 20, 1993, (Tape 2), Action Item:

Approval of April 13, 1993 Resolutions

Mrs. Thonen made a motion to approve the Resolution as submitted. The Chair so moved.

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Page 318, April 20, 1993, (Tape 2), Action Item:

Request for Intent to Defer
McLean Bible Church Appeal, A 93-D-003

The BZA had a brief discussion regarding the deferral.

Mrs. Thonen made a motion to defer A 93-D-003 to September 14, 1993. The Chair so moved.

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Page 318, April 20, 1993, (Tape 2), Action Item:

Request for Intent to Defer
Theodore Simpson Appeal A 92-D-018

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that the appellant was requesting the deferral because he believed the issue could be resolved.

Mrs. Thonen made a motion to defer A 92-D-018 to September 14, 1993. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 318, April 20, 1993, (Tape 2), Action Item:

Request for Intent to Defer
James A. and Sharon B. Kelley Appeal, A 93-V-005

Mr. Pammel noted that the appellant's attorney had stated that the public hearing date conflicted with a previous commitment and asked staff to comment on the scheduling process. Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated the standard operating procedure has been to have the Zoning Administrator's office contact the appellant and/or appellant's agent and set a mutually acceptable date. She noted that the BZA had previously granted an indefinite deferral in order to allow the appellant the opportunity to file an application for a fence variance. Ms. Kelsey stated that the appellant had also indicated that he would like to amend his variance application to allow a portion of the six foot fence to remain.

Mrs. Thonen made a motion to issue an intent to defer A 93-V-005 which was scheduled to be heard on May 4, 1993. Mr. Hammack seconded the motion which carried by a vote of 7-0.

Mr. Kelley stated that he was no relation to the appellant. He requested that staff be prepared to answer the appellant's attestation that the road was a major arterial road. Ms. Kelsey noted that the road could appear to be used as a major arterial road and not be designated as one.

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Page 318, April 20, 1993, (Tape 2), Action Item:

Request for an Out-of-Turn Hearing
William M. Livingston, VC 93-V-026

Mrs. Thonen made a motion to grant an out-of-turn hearing for VC 93-V-026. She stated that the applicant had already initiated construction when he discovered he needed a variance. She noted his statement had indicated that his building materials were being ruined by the delay and further noted that she had also been informed that soil erosion was taking place.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that a building permit would also have to be obtained. She submitted pictures of the site and noted that the applicant had completed a substantial portion of the structure. She suggested that if the BZA was inclined to grant an out-of-turn hearing, a public hearing date of June 8, 1993, would be appropriate.

The BZA had a brief discussion on the scheduling of the case.

Mrs. Thonen made a motion to grant the applicant's request for an out of turn hearing and schedule the public hearing for the suggested date. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 318, April 20, 1993, (Tape 2), Action Item:

Request for an Out-of-Turn Hearing
Richard and Brenda Lisi, SP 93-S-018

Mr. Hammack made a motion to grant the applicants' request for an out-of-turn hearing and schedule the public hearing June 8, 1993. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Relocation of the Board of Zoning Appeals Meeting Place
to the Government Center

Jane Kelsey, Chief, Special Permit and Variance Branch, stated that the Board of Supervisors had approved the Board of Zoning Appeals moving its public hearings to the Government Center. She said that the person who schedules the Board of Supervisors Board Room had approved the Tuesday meeting dates. However, there were exceptions relating to some of the BZA's proposed Wednesday meeting dates. Chairman DiGiulian stated that unless the BZA can have all its meetings on Wednesday, it should not change from its previously approved Tuesdays.

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Mrs. Thonen stated that she would be unable to attend the Board of Zoning Appeals meetings on May 11, 1993 and May 18, 1993.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 p.m.

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

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

SUBMITTED: May 18, 1993

APPROVED: May 25, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on April 27, 1993. The following Board Members were present: Vice Chairman Paul Hammack; Martha Harris; Mary Thonen; Robert Kelley; James Pammel; and John Ribble. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Hammack called the meeting to order at 9:06 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Hammack called for the first scheduled case.

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Page 321, April 27, 1993, (Tape 1), Scheduled case of:

9:00 A.M. SEWASEW KIFLE, SP 92-L-062 Appl. under Sect(s). 3-803 of the Zoning Ordinance to permit home child care facility. Located at 6022 Crocus Ct. on approx. 2,342 sq. ft. of land zoned R-8. Lee District. Tax Map 81-4 ((34)) 290A. (DEF. FROM 1/26/93 FOR NOTICES)

Vice Chairman Hammack said it was his understanding that the applicant was requesting a withdrawal. Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to a memorandum dated April 20, 1993, from the Staff Coordinator, Lori Greenlief, which stated that the notices had not been done. She said the applicant had contacted the Clerk and stated that he no longer wished to proceed with his application. The Clerk asked that he send a letter to staff, but the applicant has not done so. Therefore, staff was requesting that the BZA dismiss the application for lack of interest and failure to prosecute.

Mrs. Thonen made a motion to dismiss SP 92-L-062 for lack of interest. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mr. Pammel and Mr. Ribble not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 321, April 27, 1993, (Tape 1), Action Item:

Approval of Resolutions from April 20, 1993 Hearing

Mrs. Thonen made a motion to approve the resolutions as submitted. Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 321, April 27, 1993, (Tape 1), Action Item:

Request for Date and Time
Yahya M. Al-Hussain Appeal

Mrs. Thonen made a motion to schedule the appeal for July 7, 1993 at 10:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 321, April 27, 1993, (Tape 1), Action Item:

Request for Date and Time
Worldgate Associates Limited Partnership Appeal

Mr. Pammel made a motion to schedule the appeal for July 13, 1993 at 10:00 a.m. Mrs. Harris and Mrs. Thonen seconded the motion which carried by a vote of 5-0. Mr. Ribble was not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 321, April 27, 1993, (Tape 1), Action Item:

Request from Larry Becker, attorney for Dar-Hajrah

Mrs. Harris asked staff for a clarification as to what Mr. Becker was requesting. She said it appeared that he was asking that church files approved by the BZA be entered into the record of the Mosque Revocation hearing. She asked if there was any precedent for entering an application into the record of a public hearing for a secondary application.

Jane Kelsey, Chief, Special Permit and Variance Branch, said Mrs. Harris' understanding was correct. She said staff could comply with Mr. Becker's request but it would require copying all documents relating to each case. The documents would then have to be forwarded to the BZA with sufficient time to allow the BZA an opportunity to review the documents prior to the June 15th revocation hearing. Ms. Kelsey said she had discussed this with Mr. Becker and informed him that it would be his responsibility to do the research and submit the documents to the BZA prior to the deadline.

Mrs. Thonen said that it is the usual procedure for public information. Ms. Kelsey agreed.

Vice Chairman Hammack asked if staff would assist Mr. Becker. Ms. Kelsey said that, as she had stated in her letter to Mr. Becker, staff would be available to assist and would provide Mr. Becker with the requested files should he chose to proceed.

Mr. Pammel said he believed staff's response was more than adequate and that this is the standard procedure in any case whether it be rezoning, legislative, or an appeal. He said there are certain responsibilities incumbent upon the applicant to research and obtain information.

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Page 322, April 27, 1993, (Tape 1), Scheduled case of:

9:15 A.M. EDUARDO RAMIREZ & MARIA MAGDALENA SANGUINETTI, VC 93-S-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.4 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 5919 Fairview Woods Dr. on approx. 25,165 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 77-1 ((20)) 64.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Maria Magdalena Sanguinetti, 5919 Fairview Woods Drive, Fairfax Station, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the subdivision was originally zoned R-1 and developed under the cluster provisions of the Zoning Ordinance with a 12 foot side yard requirement, but was later changed to R-C. The Board of Supervisors has not made a motion to include the subdivision among certain R-C lots that require special permits, therefore a variance is needed. Mr. Heine said the applicants were requesting a 13.6 foot variance in order to construct a 7.6 foot high deck 6.4 feet from the side lot line.

Ms. Sanguinetti submitted letters in support of the request to the BZA in addition to photographs that she would reference in her presentation. She said they bought the house in good faith with the intentions of adding a deck at a later date due to budget constraints at the time the house was constructed. They were not advised by the salesman or the contractor of the changes in the zoning that would took place, otherwise they would have proceeded with the deck at the time of construction. Ms. Sanguinetti said their property is a corner lot with a large front yard occupied by the septic field. She said the lot has a very narrow side yard, one of the side corners of the house is only 11.7 feet from the lot line, and the side yard has a sloped angled shape which is 7.6 feet below the main area of the house. Ms. Sanguinetti said there are two septic fields in one corner of the yard making the side yard useless without a deck. She said the walkout bay window and the triple french doors cannot be used to access the outside without a deck and presents a safety hazard. Ms. Sanguinetti said the deck will be approximately 55 feet from the neighbors' house, therefore it will not be a detriment. She said although the neighbors do not object to the concept of the deck; they are concerned with the future resale value of their property. Ms. Sanguinetti said she believed the deck addition will not have a negative impact on the neighbors' property as she believed the proposed deck will improve the looks of the house. She said the zoning district will not be changed by the granting of the variance, the deck could have been built at the time the house was constructed, the deck will allow them to use their yard, and the deck will be similar to others in the neighborhood.

In response to questions from Mr. Kelley, Ms. Sanguinetti said the deck they were proposing is approximately the same size the contractor could have built. She added that the shape is a little different due to the relocation of the house.

Mrs. Harris asked the size of the deck and Ms. Sanguinetti read the dimensions from the plat.

Mrs. Thonen said it was her understanding that even a contractor had to meet certain setback requirements. Jane Kelsey, Chief, Special Permit and Variance Branch, said the R-1 provisions indicate that the side yard is 12 feet and since the deck exceeds 4 foot in height, it could not extend into a required side yard; thus, they could not have built a deck 6 feet from the side lot line even prior to the rezoning to the R-C District.

Ms. Sanguinetti said she had been under the impression that the contractor could have built the deck to within 5 feet from the lot line.

Ms. Kelsey said Sect. 2-412 stipulates if a deck is more than 4 feet in height, it cannot extend into a side yard. Since she had not done the research on the application, Ms. Kelsey said she would have to review the subdivision plans to determine how the property was originally zoned. She said she would be glad to do so, if the BZA would like to defer the case.

In response to a question from Mrs. Thonen with regard to the height of the proposed deck, Ms. Sanguinetti said the deck would be 7.6 feet high in order to line up with french doors.

Mr. Pammel said the existing dwelling encroached into the side yard .3 of a foot, which would require a variance for the structure. Ms. Sanguinetti said they had obtained an administrative variance.

Mr. Kelley said he would make a motion to defer the application, after concluding the hearing, in order to determine what the situation was in the subdivision at the time the applicants' house was constructed. He said there was a similar situation in the townhouses where he lives. Mrs. Thonen said she did not like to see contractors construct houses with french doors that really have no way to access the outside. Mr. Kelley agreed.

Ms. Kelsey said she had discussed the issue of the doors opening into space with the Department of Environmental Management (DEM) at an earlier request by the BZA. She was told if the contractor provides a secure barrier across the doors, the doors comply with the building code. Mrs. Thonen said she did not believe it was a good way to do business. Ms. Kelsey said she would be glad to discuss the issue with DEM again.

Vice Chairman Hammack asked how long staff would need to do the research. Ms. Kelsey said a week would be sufficient.

Mr. Kelley said he would like to know the maximum size deck the applicants could have added prior to the zoning district change. Mrs. Thonen said she liked to treat every applicant fairly.

Vice Chairman Hammack called for speakers in support of the application and hearing no reply called for speakers in opposition.

Ronald Leonard, 5921 Fairview Woods Drive, Fairfax Station, Virginia, said he was both for and against the request. He said he sympathized with the applicants and believed they were proposing an architecturally attractive structure, but he was concerned with the degree of variance being requested. Mr. Leonard said he had discussed the request with the applicants and as long as he lived on the adjacent property there was no problem, but pointed out that the deck might be contested should he choose to sell his property.

In response to a question from Vice Chairman Hammack, Mr. Leonard said from the corner of the applicants' house to the nearest corner of his house was approximately 41 feet. He said his house is approximately 19 feet from the shared lot line.

There was no further speakers and Vice Chairman Hammack closed the public hearing.

Mr. Kelley made a motion to defer decision for two weeks to allow staff time to research the questions raised by the BZA with regard as to what could have been done at the time the house was constructed, specifically what size deck and what location.

Mrs. Thonen said she would like to be present for the hearing and asked that it be deferred to another date.

Ms. Kelsey suggested the night meeting of May 18, 1993, at 8:00 p.m. Hearing no objection, Vice Chairman Hammack so ordered.

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Page 323, April 27, 1993, (Tape 1), Scheduled case of:

9:30 A.M. HILLEL & CLAIRE H. SAMISCH, VC 93-B-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.7 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-207). Located at 5506 Southport Ln. on approx. 16,489 sq. ft. of land zoned R-2. Braddock District. Tax Map 77-2 ((23)) 9.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Hillel Samisch, 5506 Southport Lane, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicants were requesting a 10.3 foot variance in order to construct a sunroom addition 14.7 feet from the rear lot line. The dwelling on Lot 6 is located approximately 15.8 feet from the shared lot line.

Mr. Samisch submitted a letter in support of the request from the owner of Lot 6 to the BZA. He said they purchased the house in good faith in December 1989, the house has a master bedroom and bath on the first level, and three small bedrooms and bath on the second floor. Mr. Samisch said since purchasing the house his son has gone through a divorce and he and the two grandsons, 6 and 4 years old, spend every weekend with the applicants. He said the house has no recreation room nor basement, therefore the only place for the boys to play is in the family room. Mr. Samisch said the lot is unusual as it is trapezoidal shaped with the house being constructed well to the rear of the lot due to restrictive easements on both sides of the lot. Although the sunroom could possibly be built on the front of the house, it would destroy the symmetry of the house and by adding the sunroom on the rear of the house they can take advantage of the existing french doors in the family room. Mr. Samisch said they also have a daughter living in Charlotte, North Carolina, who visits with her four children ranging in ages from 9 years to 17 months. He and his wife have just completed a course in stress management given at Fair Oaks Hospital hoping this would help them in controlling their stress, but the addition of another room for the children to play in would provide a helpful escape.

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

Mr. Pammel made a motion to grant VC 93-B-008 for the reasons outlined in the Resolution and subject to the Development Conditions contained in the staff report dated April 20, 1993.

Mrs. Thonen said she would support the motion based on land use not on the number of grandchildren the applicant had.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-008 by HILLEL AND CLAIRE H. SAMISCH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.7 feet from rear lot line, on property located at 5506 Southport Lane, Tax Map Reference 77-2((23))9, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 27, 1993; 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-2.
3. The area of the lot is 16,489 square feet.
4. The applicant has presented testimony with respect to an unusual configuration of the lot, in particular the fact that the dwelling is located to the rear of the property due to constraints of easements that are located in the front of the lot, as well as on the side. This precluded locating the dwelling any closer to the front lot line, thus necessitating the need for a variance in order to construct any additions to the rear of the lot, which would be the logical place for an extension.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Larry N. Scartz, Certified Land Surveyor, dated January 18, 1993, submitted with this application and is not transferable to other land.

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 5, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 325, April 27, 1993, (Tape 1), Scheduled case of:

9:45 A.M. SAINT THOMAS EPISCOPAL CHURCH, SP 93-D-001 Appl. under Sect(s). 3-103 and 8-915 of the Zoning Ordinance to permit a church and related facilities, nursery school and waiver of the dustless surface requirement. Located at 8991 Brook Rd. on approx. 5.28 ac. of land zoned R-1. Dranesville District. Tax Map 28-2 ((1)) 12 and 28-2 ((5)) A.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The Rector at St. Thomas Episcopal Church, John W. Morris, 12014 Cheviot Drive, Herndon, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the site is currently developed with a 150 seat church, a one story rectory, and a 64 space gravel parking lot with entrances from Brook and Lewinsville Roads. The existing church was established prior to the Zoning Ordinance amendment which made churches special permit uses in residential zoning districts and, if approved, this application will bring the entire site under special permit. Ms. Langdon said the applicant was requesting approval to establish a nursery school with a maximum daily enrollment of 99 students with no structural changes to the church. She said the nursery school will operate in classrooms within the existing church building and the applicant proposes to fence the existing play area with a 3 1/2 foot high chain link fence. The applicant was requesting approval of a modification to the dustless surface requirement to allow the parking area to remain a gravel surface. She said the applicant was also requesting a modification of the transitional screening and barrier requirements to allow the existing vegetation to satisfy the screening requirement, and the proposed chain link fence to satisfy the barrier requirement. Staff recommended that Transitional Screening 1 be provided along the northern boundary of the site and a solid wood barrier be provided along the northern side of the play area. The screening and barrier would serve to screen the residential use to the north from the noise and potential visual impact of the nursery school. Ms. Langdon said the applicant has agreed to provide the barrier, but does not feel they can provide the transitional screening. In conclusion, she said with the implementation of the proposed development conditions the nursery school and the modification of the dustless surface requirement would be in harmony with the recommendations of the Comprehensive Plan, and would satisfy all the General Standards and the Standards for all Group 3 and Group 9 uses. Therefore, staff recommended approval of SP 93-D-001.

Ms. Langdon asked that the wording "... for the nursery school ..." be added to Condition Number 7.

Mr. Pammel asked how high an accessory building shed could be without requiring a variance. Mrs. Thonen said 8 1/2 feet.

Pastor Morris said there have been two other schools at the church and they were only asking that the permit be reissued. He said the size of the school would be limited to 20 students per day due to the size of the facilities. Pastor Morris said since it would be such a small scale operation, they were asking that it be approved without any significant modifications. He said the church did not have a lot of money to invest in parking lots, screening, etc.

Mrs. Harris asked which of the development conditions he had a problem with and Pastor Morris said all of them. He said it was his understanding that the screening had been waived. Ms. Langdon explained that Transitional Screening 1 was required in order to screen the use from residential uses, but staff was recommending a modification with the exception of the northern boundary where there is no existing screening. Mrs. Harris asked if he had gotten a copy of the development conditions and if he had read them. Pastor Morris said that he had, but the church did not have the money to provide the screening, or pave the parking lot, or widen County roads.

In response to questions from Vice Chairman Hammack, Ms. Langdon pointed out the location of the play area and the area where staff was recommending a solid wood barrier. She said the lots adjacent to the play area are developed with single family residents.

Pastor Morris said the neighbors have expressed no concern with the nursery school.

Mr. Ribble asked staff if the church had a permit in the past for a nursery school. Ms. Langdon said there had been two permits that are no longer active, S-107-71 for the Accotink Academy and S-179-74 for the Shaffer School.

Mrs. Harris pointed out that the site entrance was a Virginia Department of Transportation requirement (VDOT) and cannot be waived by the BZA.

Mrs. Thonen said Condition Number 9 required dedication only, that it would not involve any money. Pastor Morris thanked Mrs. Thonen for the clarification and added that he was not at liberty to agree to the dedication.

Mrs. Harris said it appeared that the church was not fully aware of what needed to be done in order to have the school instituted at the church. She said that she would be willing to defer the case in order for the church and the applicant to review the development conditions and work with staff. Pastor Morris asked how much latitude the church would have. Mrs. Thonen said she believed staff had given the applicant quite a bit of latitude. Mrs. Harris agreed.

Pastor Morris said the church's pockets were not particularly deep, but if the access and right-of-way was an issue he would be willing to pursue those issues. He added that the church was not in a position to spend thirty or forty thousands to resurface the parking lot.

Mr. Pammel said staff was not asking the applicant to pave the parking lot, but one of the issues that would have to be addressed was bringing the entrance up to VDOT standards. He said the BZA was not imposing the requirements but the issues would come up during the site plan process.

Vice Chairman Hammack said the BZA could delete the condition but the applicant would have to address the issue at the time of site plan review.

Pastor Morris said if he understood correctly the BZA was insisting on the fencing of the play area and the transitional screening, but the site entrance would be VDOT's decision. He asked the BZA to clarify the issue of right-of-way.

Mrs. Thonen said she believed the applicant needed to work with staff.

Mr. Pammel said staff was requesting that the applicant dedicate an additional 5 feet for Lewinsville Road in order to make the width 45 feet from centerline, and it is presently 40 feet. He noted there was also a request for a 10 foot trail easement. In response to a question from Mr. Pammel with regard to the 1 foot dedication on Brook Road, Ms. Langdon said VDOT had requested the additional foot.

Vice Chairman Hammack said the applicant should be prepared to address the development conditions when they come back to the BZA. Mrs. Thonen said someone had to be willing to stand up and agree with the conditions.

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

Vicki T. Anderson, 8859 Glenridge Court, Vienna, Virginia, said a nursery school was needed in that part of the County due to the long waiting lists at the existing schools. She said they are working on a very limited budget and the major changes being requested were impossible for them to do.

Vice Chairman Hammack said the BZA understood the financial problems, but it required a commitment on the part of the church to make the improvements.

Mr. Pammel pointed out that the applicant would also have to go through an approval process with the State and the health department. Ms. Anderson said she was a director of another pre-school; therefore, she was aware of the restrictions.

Karen S. Brandt, 10903 Pony Club Court, Reston, Virginia, said she and Ms. Anderson would really like to open the school, but there was no way they could make the requested improvements. She said the biggest issue was the transitional screening as they did not have the funds to provide 40-6 foot trees.

Vice Chairman Hammack asked what the cost would be for the trees. Ms. Brandt said they would probably be three to six hundred dollars a piece. Mrs. Harris said that was not correct. Mrs. Thonen said they would probably be no more than a hundred dollars a piece or less. Ms. Brandt said they could not afford to purchase the trees.

Douglas Roderick, 45559 Clearview Terrace, Sterling, Virginia, senior warden of the church, said the church was trying to provide a service to the community, not make money. He said the church did not have the funds to commit to any major improvements.

There was no opposition and Vice Chairman Hammack closed the public hearing. He asked the applicant how long a deferral would be needed. Pastor Morris said a month would be appropriate.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested May 25, 1993, at 10:00 a.m.

Mrs. Thonen made a motion to defer to the date and time suggested by staff. Mrs. Harris seconded the motion.

Mr. Kelley said he believed this was a good example of bureaucratic excess. He said the church has existed for many years, they were only requesting to add a nursery school, and staff was imposing a lot of expensive requirements. Mr. Kelley said he would be willing to make a motion to grant the application with the following changes to the development conditions:

Condition Number 4: "... This special permit is not subject to the provisions of site plan."

Delete Condition 8, with the exception of the fence.

Delete Conditions 9 and 10."

Mrs. Thonen said even if the BZA were to delete the requirement for site plan, the applicant would still have to go through the process. She disagreed with deleting the requirement that the site entrance be redesigned as determined by VDOT as she believed there was the potential of a safety problem. Mrs. Thonen said she did not want to give the applicant the impression that the application would be granted on May 25th with Mr. Kelley's recommendations.

After discussion among the BZA members, Mrs. Harris called for the question.

The motion carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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The BZA recessed at 10:12 a.m. and reconvened at 10:20 a.m. At this time Vice Chairman Hammack relinquished the Chair to Mr. Ribble.

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Page 327, April 27, 1993, (Tape 1), Scheduled case of:

10:00 A.M. FRAN WALLINGFORD, Appeal 93-M-002 Appl. under Sect. 18-301 of the Zoning Ordinance to appeal Zoning Administrator's determination that off-site parking associated with the Northern Virginia Jewish Community Center use is not a violation of the Zoning Ordinance provisions or the conditions imposed in the approval of Special Exception Amendment SEA 81-P-021-1. Located at 8900 Little River Turnpike on approx. 6.21 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((1)) 65A.

William Shoup, Deputy Zoning Administrator, located the subject property and said staff's position was set forth in the April 19, 1993 staff report. He said the appeal dealt with his determination that off-site parking associated with an event held at the Northern Virginia Jewish Community Center (JCC) is not a violation of the Zoning Ordinance provisions or conditions imposed under SEA 81-P-021-1. Mr. Shoup said the JCC is a public benefit association and at the time the appeal issue surfaced it was subject to the conditions of the special exception amendment, which was approved by the Board of Supervisors on September 29, 1986. The appeal pertains to an event known as the "Chanukah Happening" held at the JCC on December 13, 1992, which generated a proposal by the JCC to utilize off-site parking, shuttle bus service from the Olam Tikvah on Glenbrook Road located nearby. Mr. Shoup said the issue was whether such an off-site parking arrangement is permitted, and noted there are no conditions under the special exception amendment which prohibits such an arrangement. He said there are also no Zoning Ordinance provisions which precludes off-site parking. There are provisions under Par. 1 of Sect. 11-102 requiring that all required parking for a use be provided on site or on a contiguous lot under the same ownership. It further provides that the Board of Supervisors may authorize alternative parking locations under certain criteria. Mr. Shoup said the appellant argues that the off-site parking arrangement for the "Chanukah Happening" event was not in compliance with that provision. He noted that through the special exception amendment process in 1986 and subsequent site plan review it was determined

that 200 parking spaces were required for the use with 207 parking spaces being provided; therefore, since the minimum required parking has been satisfied on site, it was staff's position that Par. 1 of Sect. 11-102 was not applicable. As a result, it was staff's position that the off-site parking was not a violation under the special exception amendment approved in 1986, therefore was not a violation of the Zoning Ordinance. On March 22, 1993, the Board of Supervisors approved SEA 81-P-021-2 which contained Condition Number 22 that requires all parking be on site with the exception as outlined in Condition Number 24 that provides for some limited off-site parking, with restrictions. Mr. Shoup said since the Board of Supervisors has addressed the legality of the off-site parking, he believed that the appeal issue was moot.

In response to a question from Mrs. Harris as to the definition of required parking, Mr. Shoup said it would be the minimum requirements under the Zoning Ordinance. He added this case would be a little different because there is not a specific parking requirement for a public benefit association. He said staff has viewed these associations by looking at the major components of the use and applying the parking requirements for that use as stipulated in the Zoning Ordinance.

A discussion took place between Mrs. Harris and Mr. Shoup as to whether large gatherings or festivals would be considered a use on the subject property. Mr. Shoup said he did not believe it would be considered a use in terms of parking the site.

Mrs. Thonen questioned if the BZA should change the wording to "all required parking on site" rather than "all parking on site" when granting special permits. Mr. Shoup said he did not believe that was necessary since the Zoning Ordinance stipulates that all required parking be on site. He said the BZA and Board of Supervisors impose conditions on certain special permit and special exception applications that require all parking on site, but it was not done in the JCC special exception that was applicable at that time.

Vice Chairman Ribble said he believed the BZA required all parking on site because staff always made it a part of the conditions.

Mr. Hammack said for a number of years staff has been concerned with parking requirements and have indicated to the BZA that the Zoning Ordinance requires that all parking be on site. Based on that information, the BZA has included development conditions in many special permits that says that "all parking shall be on site." He said it appears that staff is now reversing that position or is now making a more considered interpretation. Mr. Hammack added if there is not a specific development condition stipulating that all parking be on site, the people attending a particular function at a church could park anywhere that was presumably legal. He noted that the Zoning Ordinance really dealt with the minimum number of required spaces. Mr. Shoup said that was correct.

Fran Wallingford, 3311 Mantua Drive, Fairfax, Virginia, said Clay Cameron had a family emergency and was out of town and Chuck Trichilo was sick. She said the communities of Mantua, Pine Ridge, and Ridgelea Hills are surrounded by special exception and special permit uses; therefore, it is important that the communities understand the Zoning Ordinance. (Ms. Wallingford submitted a map to the BZA showing the various uses that surround the communities.) She said they were concerned with the impact of having so many uses around the communities, especially along the Route 236 Corridor. The County staff also expressed their concern during the Comprehensive Plan review process a few years ago and recommended that language be added to the Plan that would either limit or prohibit additional expansion of special exception and special permit uses in the Corridor. Ms. Wallingford said the Comprehensive Plan Providence Task Force also supported that position, but the Planning Commission did not; therefore, the language was not added to the Plan. She said the communities wanted to understand the Zoning Ordinance and the application of the rules to ensure that all their special exception and special permit neighbors are treated equally, and that the communities act appropriately with respect to any new or expanded use requests in order to avoid any adverse impacts on the communities.

Ms. Wallingford said in 1981 the Board of Supervisors approved a special exception to establish a public benefit association on the JCC's site of approximately 40 acres zoned R-1. In 1986, the Board of Supervisors approved a special exception amendment which allowed the applicant to add approximately 7 acres and approved the construction of a new building. This approval did not include outdoor tennis courts or an outdoor swimming pool as stated in the Zoning Administrator's letter, as those items were removed from the site in order to make room for the building. She said the surrounding communities were extremely concerned about the impact that the redevelopment would have on the area with regard to noise, visual impact, traffic safety, and parking. The communities tried to have these concerns addressed in the development conditions and during the amendment process by the District Supervisor, the County staff, and the JCC, that parking was self limiting because the Zoning Ordinance states that "if they could not park it, they couldn't do it." She said it was reasonable for the citizens to believe what they were told because why would the parking requirements be so specifically defined and be such an intricate part of the process if an applicant could overflow a site at any time. Based on the information provided to them, the citizens did not address parking in a specific development condition. She said the citizens were also told that Condition Number 2 provided the neighborhoods additional protection by stipulating that the special exception amendment was granted only for the purpose, structure, or use indicated on the amendment plat approved with the application and as qualified by the development conditions. Ms. Wallingford said the new building was built with a Floor Area Ratio (FAR) of .15, the maximum allowed in a R-1 Residential District, and according to Planning

Commissioner Strickland was three times the average FAR of other uses along Route 236. She said with the basement included in the calculation, the effective FAR becomes .27, almost double the maximum allowed. The center opened in December 1990 and is a wonderful facility enjoyed by many throughout the metropolitan area and is a public benefit association. Ms. Wallingford said staff stated in their letter that there is no particular parking requirement in Article 11 of the Zoning Ordinance for a public benefit association; however, Article 9 does address this type of association. She said the parking that was approved for the site was based on uses as defined on the plat; however, all the approved uses are not listed on the plat. Ms. Wallingford said Par. B of Sect. 11-102 of the Zoning Ordinance states that when an expansion or enlargement requires provision of off street parking, based on a particular use, the minimum off street requirement of this Article shall be provided for the entire structure. On December 23, 1992, a letter was sent to Zoning Enforcement asking that staff take a look at an advertised Sunday event which requested attendees to park off-site at a location on Glenbrook Road approximately .7 miles from JCC, which is not owned by the JCC. She said the JCC was expecting over 3,000 attendees based on a similar event that had been held the previous year. Zoning Enforcement staff responded to the citizens' request stating that the conditions imposed by the Board of Supervisors in approving SEA 81-P-021-1 did not preclude off-site parking for events held at the JCC; therefore, a violation did not exist. Ms. Wallingford said the Zoning Ordinance states in Par. 1 of Sect. 11-102 that all required off-site parking shall be located on the same lot or on a contiguous lot under the same ownership, but the Board of Supervisors acting upon a specific application may authorize alternate locations subject to certain conditions. She said Zoning Enforcement indicated that the development conditions automatically allowed the JCC off-site parking by right, because off-site parking was not addressed and the distance and the ownership requirements as stipulated in the Ordinance did not have to be met.

Ms. Wallingford said the off-site location used during the event is a special permit use with conditions that state the hours of operation shall be normal hours for a synagogue and any changes in the use or additional use shall require the approval of the BZA. The synagogue also has a preschool with the hours of operation from 9:00 a.m. to 3:15 p.m., Monday through Friday, which also requires BZA approval for any change or additional use. She asked if any special exception or special permit approved site could establish themselves as an off-site parking facility for other organizations without some form of public forum process or some evaluation of the impact on the community. Ms. Wallingford said all the communities were trying to do was to understand how to proceed and how to deal with their special exception and special permit neighbors.

The BZA discussed with staff why all the ongoing uses were not depicted on the approved plat. Mr. Shoup said he believed the Board of Supervisors acted upon the representation made by the applicant at the time the special exception application was filed. Mrs. Harris questioned why the day care was not listed and why it did not change the parking tabulation. Mr. Hammack said the BZA had dismissed an appeal at its April 20, 1993 public hearing dealing with the square footage area on the subject property dealing with the approval authority, which he had believed to be an important procedural issue. He believed the issue before the BZA really dealt with just an interpretation of the statute.

Mrs. Thonen said she believed it had to be determined whether the BZA should be requiring "all parking on-site" or "all required parking on-site."

A discussion took place among the BZA relating to the number of uses and the required number of parking spaces. Mr. Pammel said apparently the parking standards were only applied to the public benefit association and did not include all the uses that would be conducted at the site. Mr. Hammack said he believed it was the special events that were causing the problem.

In response to a question from Mrs. Harris, Ms. Wallingford said it was her understanding there have been three special events held at the JCC to date. The special exception amendment approved on March 23rd will allow them to have five special events with the approval of the District Supervisor.

Mrs. Harris expressed concern that the issue was not clarified when the special exception was originally approved. Ms. Wallingford said the latest special exception amendment still did not list all the uses and it was her understanding that the applicant was working with the County to obtain parking reduction approval.

Mr. Hammack asked who told the citizens that the use could not be expanded without further approval. Ms. Wallingford said she could not remember the staff member, but she could tell them the name of the Supervisor. (She did not mention the name.)

Mrs. Thonen said the BZA was in an awkward position in that the Board of Supervisors had already approved the expansion and they were the ones who control the Zoning Ordinance and the citizens should be working on revisions to the Ordinance. Ms. Wallingford said that they had considered that possibility but the parking problem has been taken out of their hands. They have requested that they be allowed to review the Department of Environmental Management's analysis, but this has not been provided to the citizens as of this date.

Mrs. Harris said it was pretty obvious that if the applicant did not have sufficient parking on site to accommodate the uses, then they should cut down the number of uses. Mr. Shoup said he did not believe they had expanded the use.

Keith Martin, attorney with firm of Walsh, Colucci, Stackhouse, Emrich, Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, represented the JCC. He said he would try to simplify the issue as he believed Ms. Wallingford's inadvertent scatter gun approach of community issues, public relation issues, and irrelevant Zoning Ordinance interpretations got the issue off the beaten track. Mr. Martin said it was an appeal of an interpretation of Article 11 of whether the term of "all required parking" has to be on-site. He believed Mr. Shoup had adequately addressed the issue and it has been a consistent determination that the minimum parking requirements for Article 11 as set forth in the Zoning Ordinance for commercial/residential uses stipulate that parking has to be on-site. The issue of all minimum parking on-site was resolved in 1986, and the issue before the BZA was whether or not all parking has to be on-site for a particular event at a particular use and he believed the answer was "no." Mr. Martin said JCC tried to address the public relation issue and understand it has been a concern of the neighborhood that during the special events that parking was occurring on public streets.

Mrs. Harris said it was unclear as to whether or not all the proposed uses were noted on the plat and if an omission would have affected the parking tabulation. She believed the BZA could raise the issue of the minimum parking requirement. Mr. Martin disagreed and said the appellant could not appeal something that occurred seven years ago. Mr. Hammack suggested that a lot of applicants did not list all the activities that might occur on site when filing an application, because they do not know.

Carrol Cole, 3915 Pineland Street, Fairfax, Virginia, spoke on behalf of Clay Cameron and distributed copies of the Olam Tikvah development conditions to the BZA. She asked if Olam Tikvah was in violation of its special permit by allowing the JCC to park on their site. The citizens were concerned as to how this might impact the communities. Ms. Cole said she had taken each use that she was aware of taking place at the JCC site and tabulated parking for each use under the Zoning Ordinance and arrived at a deficit of 229 parking spaces.

Vice Chairman Ribble asked if staff had any closing comments.

Mr. Shoup said the issue was not whether more parking spaces should have been provided in 1986, only if the special events being held at JCC were in violation. There is nothing in the special exception amendment approved on September 29, 1986 which precluded off-site parking. He addressed an earlier comment made by Mr. Hammack relating to the mosque parking issue and said this was different as the problem at the mosque was a continuing problem, where this issue dealt only with special events.

Mr. Hammack asked if the mosque would be in compliance if they came and requested that the development condition relating to parking be modified to say "all required parking shall be on site." Mr. Shoup said he believed that might possibly be true, but since he was not involved with the mosque issue he could not respond.

Vice Chairman Ribble called for rebuttal from the appellant.

Ms. Wallingford asked if the BZA could clarify whether or not a special exception or special permit use could become an off-site parking facility for another use.

Mrs. Harris explained to the appellant that was a separate issue and was not before the BZA. Ms. Wallingford asked if there was another avenue they could use to obtain answers without having to go through the appeal process. The BZA and Mrs. Wallingford discussed the appeal procedure.

There was no further discussion and Vice Chairman Ribble closed the public hearing.

Mr. Hammack said in as much as he would like to lend support to the appellant after reading the staff report, and in the interest of consistency, he believed the interpretation of the Zoning Administrator was correct and reasonable. He made a motion to uphold the Zoning Administrator.

Mrs. Harris, Mr. Kelley, and Mr. Pammel seconded the motion.

Mr. Pammel said he believed Mr. Shoup had made a reasonable interpretation based on the Ordinance.

Mrs. Thonen agreed and said a lot of times staff has to make decisions based on the Ordinance as it is written, and that she believed Mr. Shoup's interpretation was correct.

Mrs. Harris said she would support the motion and commended the citizens for their diligence as she believed their actions had prompted the Board of Supervisors to take action to try to remedy some of the deficiencies in the original special exception.

Mr. Hammack believed the statute needed to be "tightened up" with regard to ensuring that the applicant sets forth all proposed uses and anticipated uses which would be conducted on site.

Mrs. Thonen called for the question. The motion carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Statement from Brian McCormack
Attorney Representing the BZA in the Burke Court Case
In Chancery No. 122492

Jane Kelsey, Chief, Special Permit and Variance, called the BZA's attention to a statement received from Brian McCormack for services rendered after the decision was handed down from the Circuit Court on the Burk variance. She asked the BZA to approve the statement, if they chose to do so.

Mr. Hammack asked if this would be appealed to a higher court. Ms. Kelsey said the Circuit Court had reversed the BZA decision; therefore, the approval of the variance was null and void. She said she had discussed the issue with Chairman DiGiulian on April 26th and it was her understanding that Mr. McCormack asked the Circuit Court to reconsider its decision. Ms. Kelsey said the action to request the attorney to ask for the Reconsideration needed to be approved by the BZA.

Mr. Hammack made a motion to approve payment of the statement. Mr. Kelley seconded the motion. The motion carried by a vote of 5-1 with Mrs. Harris voting nay. Chairman DiGiulian was absent from the meeting.

Mrs. Harris asked why this action was not brought before the BZA. Vice Chairman Ribble said Mr. McCormack had followed standard procedure.

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As there was no other business to come before the Board, the meeting was adjourned at 11:23 a.m.

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

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: May 11, 1993

APPROVED: May 18, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on Tuesday, May 4, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; James Pammel; and John Ribble. Paul Hammack and Robert Kelley were absent from the meeting.

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 Chairman DiGiulian called for the first scheduled case.

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Page 333, May 4, 1993, (Tape 1), Scheduled case of:

9:00 A.M. BENJAMIN L. ORCHARD, III, VC 93-M-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.7 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207) and permit fence 6 ft. high to remain in front yard (4 ft. max. height allowed by Sect. 10-104). Located at 4800 Edwards St. on approx. 21,780 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-1 ((12)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Orchard replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow an attached two car garage with a second story 3.7 feet from the side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicant was requesting a modification of 11.3 feet to the minimum side yard requirement.

Mr. Heine stated that the applicant had also requested a variance to allow an existing six foot fence to remain in a portion of the front yard; however, the plat was revised to show that the fence did not extend into the front yard.

The applicant, Benjamin L. Orchard, III, 4800 Edward Street, Alexandria, Virginia, addressed the BZA. He stated that, as the drawing submitted to the BZA depicted, the renovation of the house would include additions on either side of the existing house. Mr. Orchard said that one addition would provide the necessary bedroom space for his three children, and the other addition would provide a garage. He said that the layout of the existing house precluded placing the additions anywhere else on the lot. In summary, Mr. Orchard expressed his belief that the additions would be architecturally and aesthetically pleasing.

In response to Chairman DiGiulian's question as to whether the proposed garage would intrude any further into the side lot line than the existing garage, Mr. Orchard stated that it would not and noted that the existing foundation would be used.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 93-M-012 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 27, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-012 by BENJAMIN L. ORCHARD, III, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.7 feet from side lot line, on property located at 4800 Edwards Street, Tax Map Reference 72-1((12))2, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 4, 1993; 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 and HC.
3. The area of the lot is 21,780 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The unusual lot is wide but not deep.
6. The applicant has presented testimony that the expansion of the residence to meet the needs of his family will be located on both sides of the property.
7. The addition on the north side will be no closer to the side lot line that than the existing garage, thus there will be no additional encroachment into the side yard.
9. The staff report indicated that a 2 foot side yard variance was previously granted to Lot 8.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 structures shown on the plat prepared by Larry N. Scartz, Certified Land Surveyor, dated December 15, 1992, received by DCP and stamped April 21, 1993, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the addition prior to any construction.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, the variance for the addition shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. 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 May 12, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 334, May 4, 1993, (Tape 1), Scheduled case of:

9:10 A.M. STEVEN J. MCDOUGAL, VC 93-L-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5 ft. from side lot line (12 ft. min. side yard req. by Sect(s). 3-307 and 10-104). Located at 7411 Loisdale Rd. on approx. 12,228 sq. ft. of land zoned R-3. Lee District. Tax Map 90-4 ((6)) 286. (OTH GRANTED 3/16/93)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. McDougal replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow a two-car detached garage 5.0 feet from the side lot line. The Zoning Ordinance requires a 12 foot minimum side yard; therefore, the applicant was requesting a modification of 7.0 feet to the minimum side yard requirement.

The applicant, Steven J. McDougal, 7411 Loisdale Road, Springfield, Virginia, addressed the BZA. He said that he wished to build a two car detached garage and noted that it could not be placed anywhere else on the lot.

In response to Chairman DiGiulian's question as to why the garage could not be constructed within the 12 foot setback, Mr. McDougal stated that it would not be practical. He said that the garage would be architecturally compatible with the existing house and noted that if it were placed in the backyard a number of trees would have to be removed.

In response to Mrs. Harris' question as to whether the size of the garage could be reduced, Mr. McDougal said no.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 93-L-018 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 27, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-018 by STEVEN J. MCDOUGAL, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 5 feet from side lot line, on property located at 7411 Loisdale Road, Tax Map Reference 90-4((6))286, 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 4, 1993; 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 12,228 square feet.
4. The lot has limited open space.
5. If the garage was placed in the middle of the yard, it would distract from the subject property and the adjoining properties.
6. There is no other site on the narrow lot on which to place the garage.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific garage accessory structure shown on the plat prepared by Alexandria Surveys, Inc., dated February 16, 1993, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 4-1 with Mrs. Harris voting nay. 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 May 12, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 336, May 4, 1993, (Tape 1), Scheduled case of:

9:20 A.M. ANTHONY E. WESTREICH & TIMOTHY T. LANDRES, VC 93-Y-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit watchman's quarters accessory to golf driving range and golf course to be located 25 ft. from front lot line (100 ft. min. distance req. by Sect. 8-607). Located at 12908 Lee Jackson Hwy. on approx. 31.18 ac. of land zoned R-1, HC and WS. Sully District. Tax Map 45-2 ((1)) pt. 1. (Concurrent with SPA 92-Y-017).

9:30 A.M. ANTHONY E. WESTREICH & TIMOTHY T. LANDRES, SPA 92-Y-017 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 92-Y-017 for golf course and driving range to permit existing dwelling to remain and be used as a watchman's quarters. Located at 12908 Lee Jackson Hwy. on approx. 31.18 ac. of land zoned R-1, HC and WS. Sully District. Tax Map 45-2 ((1)) pt. 1. (Concurrent with VC 93-Y-011).

Chairman DiGiulian stated that the cases would be heard concurrently and called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Yates replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that because the cases were scheduled for two different times, the BZA would have to wait until 9:30 a.m. to hear the cases together.

Chairman DiGiulian stated that the BZA would pass over the scheduled cases and proceed to the after agenda items.

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Page 336, May 4, 1993, (Tape 1), Action Item:

Approval of April 27, 1993 Resolutions

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. Hammack and Mr. Kelley were absent from the meeting.

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Page 337, May 4, 1993, (Tape 1), ACTION ITEM:

Approval of March 23, 1993 and March 30, 1993 Minutes

Mrs. Thonen made a motion to approve the minutes as submitted. Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. Hammack and Mr. Kelley were absent from the meeting.

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Page 337, April 13, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Woodlawn Baptist Church, SP 93-Y-021

Mrs. Harris noted that staff had indicated that the earliest the application, which was presently scheduled for July 20, 1993, could be heard would be July 13, 1993.

Mrs. Harris made a motion to deny the request for an out-of-turn hearing. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Mr. Ribble not present for the vote. Mr. Hammack and Mr. Kelley were absent from the meeting.

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Page 337, April 13, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Cirque du Soleil at Tysons II

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and stated that the application was filed on May 3, 1993. She stated that after a brief review, staff had deemed the application to be in fairly acceptable order and noted that the plat was correct. Ms. Kelsey advised the BZA that the applicant would like to break ground by September.

Mrs. Harris made a motion to grant the applicant's request for an out-of-turn hearing and schedule the public hearing for June 22, 1993. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

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Page 337, April 13, 1993, (Tape 2), Action Item:

Request for Waiver of the Twelve Month Time Limitation
James A. Kelley and Sharon B. Kelley, VC 92-Y-116

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and stated that the applicant, who had a pending appeal, had indicated that he would like to file a variance and asked the BZA to defer the appeal until the variance could be heard. She noted that the BZA had previously denied a variance application and the applicant was now asking for a waiver of the twelve month time limitation so that he could lower the fence in specific locations and file a new application. Ms. Kelsey stated he was requesting that the appeal be deferred until the new application could be heard because should the application be approved, the appeal would be moot. She noted that staff concurred with the request.

Mr. Pammel made a motion to waive the twelve month time limitation for the filing of a new application. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack and Mr. Kelley absent from the meeting.

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Page 337, May 4, 1993, (Tape 1), Scheduled case of:

9:20 A.M. ANTHONY E. WESTREICH & TIMOTHY T. LANDRES, VC 93-Y-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit watchman's quarters accessory to golf driving range and golf course to be located 25 ft. from front lot line (100 ft. min. distance req. by Sect. 8-607). Located at 12908 Lee Jackson Hwy. on approx. 31.18 ac. of land zoned R-1, HC and WS. Sully District. Tax Map 45-2 ((1)) pt. 1. (Concurrent with SPA 92-Y-017).

9:30 A.M. ANTHONY E. WESTREICH & TIMOTHY T. LANDRES, SPA 92-Y-017 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 92-Y-017 for golf course and driving range to permit existing dwelling to remain and be used as a watchman's quarters. Located at 12908 Lee Jackson Hwy. on approx. 31.18 ac. of land zoned R-1, HC and WS. Sully District. Tax Map 45-2 ((1)) pt. 1. (Concurrent with VC 93-Y-011).

(The applicant's agent reaffirmed the affidavit earlier in the public hearing.) Chairman DiGiulian called for cases.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that the property is located on the north side of Rt. 50, west of its intersection with Rugby Road. She said that the 31.18 acre property is zoned R-1, WS and HC and noted that in June of 1992 the Board of Zoning Appeals approved SP 92-Y-017 to allow a commercial golf course and driving range on the property. Ms. Greenlief explained it had been the applicant's intent to relocate the existing dwelling on the property and use it as part of the proposed clubhouse, but found that moving the dwelling was not feasible. The applicant subsequently filed the special permit amendment to allow the dwelling to remain and be used as a watchman's quarters. She stated that concurrent with the special permit amendment application was a variance application to allow the dwelling to be located 25 feet from the front lot line. Sect. 8-607, which is the additional standards for golf driving ranges, states that any structure used in connection with the golf driving range must be located at least 100 feet from any lot line.

Ms. Greenlief said it was staff's belief, based on Sect. 8-003 of the Zoning Ordinance, that the BZA does not have the authority to vary, waive or modify any additional standard for special permit uses. Therefore, if the dwelling was to be used as part of the golf operation, it must be located at least 100 feet from any lot line. She said that while staff does not have any concerns with the use of the dwelling as a watchman's quarters, staff had concerns about the location of the dwelling and recommended denial of VC 93-Y-011 and SPA 92-Y-017.

Mr. Pammel stated that according to the plats, the applicant had provided 140 foot right-of-way. He noted that the watchman residence was 25 feet from the right-of-way and asked if there would be any additional dedication requirements. Ms. Greenlief said there would not. She explained that staff's concerns were based on Sect. 8-003 and the fact that the variance requested is to an Additional Standard which requires that any structure related to the golf driving range be located 100 feet from any lot line. She further explained that Sect. 8-003 stated that the BZA shall have no authority to vary, waive or modify any of the provisions or standards for which a special permit is required.

The applicants' agent, Philip G. Yates, with the firm of Dewberry and Davis, 8401 Arlington Boulevard, Fairfax, Virginia, addressed the BZA. He stated that while he agreed with staff's analysis of the use, he did not agree with the interpretation of Sect. 8-003. He submitted a copy of the provision to the BZA and asked staff to also place a copy of the provision on the viewgraph. Mr. Yates read the provision and said that he had been involved in the drafting of the provision. He expressed his belief that Paragraph 2 of Sect. 8-003 had been specifically added in order to allow applications of this type to be acted upon by the BZA. He explained that the first paragraph emphatically stated that when a special permit is heard, the BZA cannot waive, modify, or vary any of the standards, but that does not preclude an applicant from filing for a variance of one of the standards. He stated that he disagreed with staff's interpretation that Sect. 8-003 limits the BZA's authority to grant the subject variance. Mr. Yates stated that it was the applicant's contention the interpretation was further supported by Sect. 18-406 of the Zoning Ordinance which lists unauthorized variances.

Mr. Yates expressed his belief that the BZA has the authority to grant the variance and noted that staff had no objection to the proposed use of the dwelling as a watchman's quarters. He stated that the dwelling has existed for many years; it would provide security for the golf course; the neighbors supported the request; and, he asked the BZA to grant the variance.

In response to Mrs. Harris' question as to what "jurisdictionally separate" meant, Mr. Yates stated that it meant a separate complete application which would be filed and heard separately. He explained that staff took the position that the second paragraph of Sect. 8-003 meant the BZA has the authority to grant a variance to setbacks and issues other than additional standards related to the same property. Mrs. Harris expressed her belief the building would be subject to the special permit standards and the BZA could not vary the additional standards. She said it was her understanding of the provision that a variance could be granted for something on the property which was not connected to the special permit use. Mr. Yates expressed his belief if that were true, then there would be no need to include the statement in the provision. He noted the stipulation that one has the right to file a variance was set forth in Part 4 of Article 18.

Mrs. Thonen noted that there were no problems related to the use and expressed her belief that the BZA could approve the variance. She stated in doing so it would put the responsibility on staff to prove that the BZA did not have the authority to grant the variance.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 93-Y-011 for the reasons reflected in the Resolution and subject to the development condition contained in the staff report dated April 27, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-011 by ANTHONY E. WESTREICH AND TIMOTHY T. LANDRES, under Section 18-401 of the Zoning Ordinance to permit watchman's quarters accessory to golf driving range and golf course to be located 25 feet from front lot line, on property located at 12908 Lee Jackson Highway, Tax Map Reference 45-2((1))pt. 1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 4, 1993; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the contract purchasers of the land.
2. The present zoning is R-1, HC, and WS.
3. The area of the lot is 31.18 acres.
4. The applicant has presented testimony that the required standards for a variance have been satisfied.
5. The structure is located 25 feet from the property line as established by the dedication provided by the applicant in the plat submitted with SP 92-Y-017.
6. It would create a hardship to require the applicant to remove the structure and relocate it to another part of the property.
7. The applicant has specifically requested to use the dwelling as a residence for the watchman which is consistent with the Comprehensive Plan and supported by the community.
8. The applicant has presented testimony to the effect that under Sect. 8-003 of the Zoning Ordinance the BZA has the authority to grant a variance in a separate jurisdictional proceeding.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.

That the subject property has at least one of the following characteristics:

A. Exceptional narrowness at the time of the effective date of the Ordinance;
B. Exceptional shallowness at the time of the effective date of the Ordinance;
C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 dwelling shown on the plat prepared by Dewberry & Davis, dated January 26, 1993, submitted with this application and not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 4-1 with Mrs. Harris voting nay. 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 May 12, 1993. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel made a motion to grant SPA 92-Y-017 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 27, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 92-Y-017 by ANTHONY E. WESTREICH AND TIMOTHY T. LANDRES, under Section 3-103 of the Zoning Ordinance to amend SP 92-Y-017 for golf course and driving range to permit existing dwelling to remain and be used as a watchman's quarters, on property located at 12908 Lee Jackson Highway, Tax Map Reference 45-2((1))pt. 1, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 4, 1993; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the contract purchasers of the land
2. The present zoning is R-1, HC, and WS.
3. The area of the lot is 31.18 acres.
4. The applicant has presented testimony that the required standards for a special permit amendment have been satisfied.
5. The structure is located 25 feet from the property line as established by the dedication provided by the applicant in the plat submitted with SP 92-Y-017.
6. It would create a hardship to require the applicant to remove the structure and relocate it to another part of the property.
7. The applicant has specifically requested to use the dwelling as a residence for the watchman which is consistent with the Comprehensive Plan and supported by the community.
8. The applicant has presented testimony to the effect that under Sect. 8-003 of the Zoning Ordinance the BZA has the authority to grant a variance in a separate jurisdictional proceeding.

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, 8-606, and 8-608 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 & Davis dated January 26, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by Dewberry & Davis dated January 26, 1993 and these development conditions.

5. The hours of operation shall be limited to 7:00 a.m. to 9:30 p.m., seven days a week. There shall be no operation of loudspeakers, machinery, mowing equipment or mechanical ball gathering nor the lighting of the driving range prior to 9:00 a.m. or after 9:30 p.m.

6. There shall be no more than ten (10) employees on site at any one time.

7. There shall be one hundred and thirty-six (136) parking spaces provided as shown on the special permit plat. All parking for this use shall be on-site. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.

8. Right-of-way shall be provided to 140 feet from the centerline of Lee Jackson Memorial Highway as shown on the special permit plat. 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, whichever occurs first. Ancillary access easements shall be provided to facilitate the road improvements as determined by the Department of Environmental Management (DEM).

9. Right and left turn lanes and an acceleration lane shall be provided at the entrance to the site and shall be designed and constructed to a standard required by DEM and the Virginia Department of Transportation (VDOT).

10. A contribution toward the installation of a future traffic signal at the entrance to the site shall be provided if determined necessary by DEM and VDOT at the time of site plan review.

11. A service drive shall be provided along the site's frontage and shall be designed and constructed to a standard determined by DEM and VDOT unless the provision of service drive is waived by VDOT.

12. There shall be no illumination of the nine-hole golf course or the putting green. There shall be no more than eight (8) lights provided on the driving range; each no more than thirty (30) feet in height. The driving range lights shall be directed and/or shielded so as to minimize glare impacts on the adjoining properties. There shall be no more than twenty (20) parking lot lights; each no more than twelve (12) feet in height. Parking lot lighting shall be directed and/or shielded so as to minimize glare impacts on the adjoining properties. There shall be no more than seven (7) driveway lights; each no more than twelve (12) foot in height. The driveway lights shall be directed and/or shielded so as to minimize glare impacts on the adjoining properties.

13. The maximum number of tees provided on the driving range shall be sixty (60). The size of the covered tee area shall be no larger than that shown on the special permit plat.

14. If it is determined by the Fairfax County Health Department that neither of the two proposed septic fields can adequately serve the use, this special permit shall be considered null and void unless alternate septic field locations can be found that do not disturb screening, landscaping, wetlands, berming, parking or structures as shown on the plat or unless a connection to public sewer is made. Should public sewer be provided, the areas shown as proposed septic fields shall remain as grassed areas as shown on the plat.

15. Transitional screening, barriers and landscaping shall be provided as follows and as approved by the Urban Forestry Branch, DEM:

    Plantings equivalent to Transitional Screening 2 shall be provided within a fifty (50) foot wide screening yard along the western and northwestern lot lines, with the exception of the following areas: between golf course holes 1 and 2 where the stream and pond are shown on the plat; between golf course holes 3 and 4 where the stream and pond are shown on the plat; and within the area referenced by Note 11 on the plat along the western lot line. The existing vegetation in the areas where Transitional Screening 2 cannot be provided shall be preserved and shall be supplemented with evergreen trees to a level as close to Transitional Screening 2 as possible. All tees, greens, fairways and the putting green shall be located outside of this fifty foot wide screening area.

Plantings equivalent to Transitional Screening 2 within a fifty (50) foot wide screening yard shall be provided along the northern lot line adjacent to the Fairfax County Parkway. All tees, greens and fairways shall be located outside of this fifty foot wide screening area.

Plantings equivalent to Transitional Screening 2 within a fifty (50) foot wide screening yard shall be provided along the eastern lot line with the exception of the area between golf course holes 8 and 9 shown on the plat as a wetlands preservation area. The walkway over the wetlands area can be located as shown on the special permit plat. All tees, greens and fairways shall be located outside of this fifty foot wide screening area.

Along the southern lot line, in lieu of Transitional Screening 1 and 2, plantings shall be provided as shown on the special permit plat. Existing vegetation around the existing dwelling as shown on the special permit plat shall be preserved.

The six (6) berms shown between the golf course and the driving range shall be provided and landscaped as shown on the special permit plat. All parking lot landscaping, driving range landscaping, landscaping around the clubhouse and maintenance building, and landscaping on the south side of the parking lot and driveway shall be provided as shown on the special permit plat. The area of tree preservation shown in the southern corner of the site and along the western lot line shall be provided.

The barrier requirement shall be waived along all lot lines.

16. In order to prevent groundwater contamination, all surfaces used for chemicals, machines, vehicle storage or cleaning and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with an impervious geotextile liner designed to remove contaminants and pollutants as determined by the Department of Environmental Management (DEM). A written maintenance plan for the system shall be developed. The catchment system design and the maintenance plan for this system shall be approved by DEM and shall be implemented as approved. In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substances stored on the premises. The emergency spill response plan shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.

17. An Integrated Pest Management Plan (IMP) shall be developed in accordance with the Virginia Cooperative Extension Service Pest Management Guide (PMG) and a copy provided to DEM prior to site plan approval and implemented, as required by DEM, so that adverse impacts to water quality from increased levels of fertilizers, herbicides and pesticides can be prevented to the maximum extent feasible. This Plan shall include an on-going monitoring and written reporting method. The monitoring and reporting method for the Integrated Pest Management Plan shall be used to document the intent and success of the Integrated Pest Management program and shall be made available to the Office of Comprehensive Planning (OCP), if requested.

18. In order to mitigate impacts to existing wetlands, all wetland areas to be preserved within the limits of clearing and grading shall be shown on the site plan as wetlands preservation areas. These areas shall be designed and maintained to preserve the wetlands within hazard areas (features of the golf course designed to challenge play but not to include tees, greens or manicured fairways) of the golf course and driving range. Prior to the issuance of a Non-Residential Use Permit, a written wetland/habitat conservation plan shall be developed and approved by the Office of Comprehensive Planning and DEM to specifically address the golf course/driving range operational management of these areas to ensure these areas are managed to function as natural wetlands within the golf course/driving range and will remain as Wetland Preservation Areas for the life of the golf course.

19. Stormwater Management Best Management Practices (BMPs) shall be provided in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual to the satisfaction of the Director, DEM and as shown on the special permit plat. The BMP wet pond and the BMP dry pond located on the north and west boundary of the site shall be designed to contain a shallow marsh bench. The shallow marsh bench within the perimeter of these ponds shall be graded to form a 10 to 20 foot wide shallow bench designed to enhance the growth of emergent aquatic vegetation, to provide an area for sediment deposits near the inflow channel and to allow the establishment of a shallow marsh area. The design of the ponds and a list of plant species to be replanted in the wetlands areas disturbed by stormwater management facilities shall be in substantial accordance with the Landscaping Guide for Stormwater Management Areas, Table 9.2, Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs and/or the Maryland Department of Natural Resources document entitled Guidelines for Constructing Wetland Stormwater Basins or with other methods approved by DEM and shall be provided to and approved by the Urban Forestry Branch at the time of site plan review.

20. Approval from the Army Corps of Engineers shall be obtained, if necessary, for impacts to the wetlands areas on site.

21. The roughs and peripheral fairways of the golf course and driving range shall be maintained as a herbaceous grass meadow. Existing vegetation shall be preserved to the greatest extent possible.

22. The development may be phased, provided all parking transitional screening, landscaping, berming, stormwater management for the entire development, right-of-way dedication, and other road improvements are provided in conjunction with the first phase of development.

23. Any sales activity on the site shall be limited to the ancillary selling of beverages and food at the snack bar and golf-related accessories. The sale of alcohol shall not be permitted on the premises without prior approval of the BZA.

24. If underground storage tanks (USTs) will be utilized for the storage of petroleum products or other hazardous materials, the regulations of the Environmental Protection Agency (EPA) and the Fairfax County Fire and Rescue Services shall be followed.

25. Public water shall be provided to the site for this use.

26. A minor relocation of the entrance gate may be permitted at the discretion of staff.

27. There shall be no external changes to the existing dwelling which would alter its residential character.

28. The driveway to the existing dwelling shall be removed as shown on the special permit plat and the area shall be reseeded.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. 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 May 12, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 343, May 4, 1993, (Tape 1), Scheduled case of:

9:45 A.M. NEELIE A. THOMAS, SP 93-L-003 Appl. under Sect(s). 3-303 and 8-914 of the Zoning Ordinance to permit a child care center, school of general education and reduction in min. yard req. based on error in building location to allow dwelling to remain 9.5 ft. from side lot line and workshop/storage shed to remain 1.9 ft. from rear lot line. Located at 7834 Ashton St. on approx. 15,616 sq. ft. of land zoned R-3. Lee District. Tax Map 101-2 ((4)) 37A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Thomas replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit to establish a child care center and school of general education with a maximum daily enrollment of thirty children within a single family detached dwelling. Ms. Langdon stated that the center which would operate from 7:00 a.m. to 6:00 p.m., Monday through Friday, would provide full-time care for pre-school aged children, and before and after school care of elementary school children. She noted that tutorial services would also be available. She further noted that the applicant would not reside in the dwelling.

Ms. Langdon stated a modification of the transitional screening yard was requested along all lot lines to allow the existing vegetation, supplemented with 25 evergreen trees, to meet screening requirements, and to allow the proposed 3.5 foot tall chain link fence around the

play area to satisfy the barrier requirement. She said that a new driveway entrance and a four space parking area with access on Fielding Street was proposed.

Ms. Langdon said that the applicant was also requesting a reduction of minimum yard requirements based on an error in building location to allow the dwelling to remain 9.5 feet from a side lot line and to allow a workshop/storage shed to remain 1.9 feet from a rear and a side lot line. A minimum side yard of 12 feet is required for the dwelling and a minimum rear and side yard of 7.5 feet is required for the workshop/storage shed. Ms. Langdon explained that because of an error in the advertisement of the application, the error in building location for the workshop/storage shed must be re-advertised, therefore another public hearing must be held for that portion of the application.

She stated there were several concerns and outstanding issues related to the application. Ms. Langdon explained that the primary concern was the effect the use could have on the surrounding residential neighborhood. Staff believed that the level of activity associated with the proposed use will be out of character for the R-3 District and that the use had the potential to adversely impact the surrounding community because of the close proximity of the play area to adjacent residences. She explained that the proposed location of the parking spaces on Fielding Street, combined with the traffic volume generated by the proposed use, would have an adverse impact on the adjacent street system. Additionally, though the application meets the standards for the minimum number of parking spaces, six parking spaces are not adequate for a child care center for thirty children, five staff members, and the applicant. Ms. Langdon stated that the applicant only planned to provide the full width of the required transitional screening yards on the eastern and western lot lines, and would not provide full planting of vegetation within any of the screening yards. She said that the lack of screening would reduce the applicant's ability to mitigate visual and noise impacts on adjacent residences.

In summary, Ms. Langdon stated that staff believed the proposed use would not be in harmony with the recommendations of the Comprehensive Plan nor would it satisfy all of the General Standards for a child care center and school of general education; therefore, staff recommended denial of SP 93-L-003 for the child care center and school of general education.

The applicant, Neelie A. Thomas, 3403 Beechcraft Drive, Alexandria, Virginia, addressed the BZA and stated that she has had twenty years of experience in caring for children. She took issue with the staff's concern regarding the noise that would be generated by the use and noted that no one complains about the school which is located within one block of the property. She said that over 400 students attend that school. She expressed her belief that noise would not be a problem and noted that although she had provided child care for approximately 10 years, the neighbors had never lodged a complaint. She noted that the proposed screening and wood partition would buffer noise.

Ms. Thomas noted that although the parking was not consistent with residential use, the house would be used for business. She said that Alexandria Surveys, Inc., 6343 South Kings Highway, Alexandria, Virginia, had advised her that the proposed site was the only place the driveway could be located. Ms. Thomas stated that vehicles would be perfectly safe when they back out onto Fielding Street and noted that one block away all the residents back out in a similar manner.

She said that most of the children she had cared for were from single parent homes and their parents could not afford a vehicle. She noted eighty-five percent of the children were referred to her through the Fairfax County Office of Children and would walk to the facility and expressed her belief that the primary enrollment would continue to be referrals from the Office of Children.

In regard to business and permits, Ms. Thomas contended many people who live on Aspen Street conduct businesses out of their house without any permits. She said no one is concerned with the trucks that deliver packages, but are suddenly concerned with the child care center creating a hazard for the community. Ms. Thomas expressed her belief that the concerns expressed by staff were not real and that the use would not create problems. She disagreed with the traffic report and noted that many of the children would walk.

Ms. Thomas noted that while the neighborhood was comprised of older citizens who believe they should not be disturbed by noise from children, the children deserved an atmosphere where they would receive good quality care. She also disagreed with staff analysis that two oak trees would be harmed by the installation of the parking spaces and expressed her belief that a professional not staff, should make that determination. She further disagreed with staff's analysis that six parking spaces would not be adequate for the use. Ms. Thomas acknowledged that a SACC program was available at the local school but noted that the children who would be under her care were not of school age. In summary, Ms. Thomas asked the BZA to consider the welfare of the children and grant the request.

In response to Mrs. Harris as to how many children were presently being cared for at the facility, Ms. Thomas said that she no longer lives on the property. She explained that she had worked out of the location for approximately ten years and had cared for approximately eight children on a daily basis. She stated that the children would be dropped-off and picked-up at the proposed parking spaces on Fielding Street and the teachers would park in

the driveway which abutted Ashton Street. Ms. Thomas said that she did not believe there would be any traffic problems.

In response to Mrs. Thonen's question as to whether she was aware that a child care provider was only allowed to care for five children without a permit, Ms. Thomas said that she was. She said that although at times she cared for more than five children, she did not always do so.

Mr. Ribble said the applicant disagreed with staff's 140 vehicle trip per day analysis and asked staff to explain how they had arrived at that figure. Ms. Langdon explained that staff used a formula. She stated the vehicle would be counted each time it went into the center and each time it left the center both to drop off children in the morning and to pick up children in the afternoon. Therefore, there would be 60 vehicle trips in the morning and 60 vehicle trip in the afternoon for a total of 120 vehicle trips. She noted that the school's staff would account for the remaining 20 vehicle trips per day.

In response to Mr. Pammel's question as to how many of the children would come from the Office of Children referrals, Ms. Thomas stated ninety percent.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Thelma Hurst, 7902 Ashton Street, Alexandria, Virginia, addressed the BZA and said that she represented the residents of the Mount Vernon Woods Subdivision. Ms. Hurst presented a petition of opposition which contained over 150 signatures to the BZA. She stated that the community was opposed to the introduction of a commercial business into the heart of the residential community. Ms. Hurst explained that although Mount Vernon Woods school had an enrollment of over four hundred students, less than sixty of the students reside in the community. She noted the elderly character of the neighborhood and expressed her belief that the children would be brought in from outside the community. Ms. Hurst stated that numerous child care centers and a private school exist within a two mile radius and noted that the traffic generated by those facilities were not normally generated along strictly residential streets. In summary, Ms. Hurst asked the BZA to deny the request.

Mrs. Thonen stated that the subdivision had been developed in the 1950's and the 1960's and noted that the roads were substandard. She said that the majority of the residents were senior citizens.

Keith Spellars, 7832 Ashton Street, Alexandria, Virginia, addressed the BZA. He stated that although he did run a business out of his home, he had complied with all the Fairfax County Zoning Ordinance provisions. He explained that the applicant's house had been situated four and one-half feet closer to the lot line than permitted by the Zoning Ordinance and noted that because of the proximity of the two houses, noise would have a detrimental impact on his property. Mr. Spellars stated he was opposed to the request and expressed his belief that the traffic and noise generated by the use would have a adverse effect on his property value.

In response to Mrs. Harris' question as to whether Fielding Street was used to access Mount Vernon Woods Elementary School, Mr. Spellars stated it was the only street in his neighborhood that had direct access to the school. He noted that the school buses approached the school from another direction and did not use Fielding Street.

Chairman DiGiulian called for rebuttal.

Ms. Thomas again stated that the majority of the children would walk to the school. She expressed her belief that the noise would not have a detrimental impact on the area and noted that many of the residents have animals that create noise. Ms. Thomas asked the BZA to render a fair decision.

Mrs. Thonen made a motion to grant-in-part SP 93-L-003 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 27, 1993.

Mrs. Harris seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel referred to the staff report and noted that staff had specifically indicated that the application did not meet all of the Zoning Ordinance standards for the use, specifically Standards 1, 2, 3, 4, 5, and 7. Mrs. Thonen accepted the finding of fact and incorporated it in her motion.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the portion of the application relating to the workshop/storage shed remaining 1.9 feet from the rear lot line would have to be readvertised. She noted that since it had been staff's error; staff would be responsible for readvertising and renotification.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GRANTED-IN-PART

In Special Permit Application SP 93-L-003 by NEELIE A. THOMAS, under Sections 3-303 and 8-914 of the Zoning Ordinance to permit a child care center, school of general education and reduction in minimum yard requirement based on error in building location to permit dwelling to remain 9.5 feet from side lot line and workshop/storage shed to remain 1.9 feet from rear lot line **(THE BZA GRANTED A REDUCTION IN MINIMUM YARD REQUIREMENT BASED ON ERROR IN BUILDING LOCATION TO ALLOW DWELLING TO REMAIN 9.5 FEET FROM SIDE LOT LINE.) (THE BZA DENIED THE CHILD CARE CENTER AND SCHOOL OF GENERAL EDUCATION.)**, on property located at 7834 Ashton Street, Tax Map Reference 101-2((4))37A, 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 4, 1993; 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 15,616 square feet.
4. The house has been in existence for many years and there is no reason to deny the request.
5. The BZA denied the request for a school and child care center because of the amount of traffic generated by the existing school and parking.
6. To allow cars to back up onto Fielding Street would create an unsafe situation for the children and parents.
7. The application did not adequately address measures to filter out the noise which would be created by the children.
8. The neighborhood is comprised of senior citizens and while the BZA has compassion for children, the needs of the senior citizens must be taken into account.
9. The amount of traffic that would be generated by the use would not be in conformance with the Zoning Ordinance standards.
10. The application does not meet the general standards for landscaping or meet the Best Management Practices to mitigate the runoff from the parking area.
11. The applicant does not meet the Zoning Ordinance standards, specifically 1, 2, 3, 4, 5, and 7.

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, 8-914, and 10-104 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This special permit is approved for the location and the specified addition shown on the plat 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 prepared by Alexandria Surveys, Inc., dated December 29, 1992, submitted with this application, as qualified by these development conditions.

3. A building permit reflecting the location of the dwelling and workshop/storage shed shall be obtained within 90 days from the final approval date of this special permit. The applicant shall be responsible for the submission of building/construction plans or other submissions deemed appropriate by the County, if these are required.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mrs. Harris seconded the motion which carried by a vote of 5-0. 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 May 12, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 347, May 4, 1993, (Tape 1), Scheduled case of:

10:00 A.M. JAMES A. AND SHARON B. KELLEY, APPEAL 93-V-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that a fence in excess of four (4) feet in height is located in appellant's front yard in violation of Par. 3B of Sect. 10-104 of the Zoning Ordinance. Located at 1905 Belle Haven Rd. on approx. 14,400 sq. ft. of land zoned R-4. Mount Vernon District. Tax Map 83-3 ((14)) (13) 1. (NOTICES NEED TO BE DONE.)

Mr. Pammel made a motion to defer the appeal indefinitely. He said that the deferral would allow the appellant the opportunity to file a variance applicant. Mr. Pammel noted that earlier in the public hearing, the Board of Zoning Appeals had waived the twelve month waiting period for the refiling of an application. Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Hammack and Mr. Kelley were absent from the meeting.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and noted that the fence was in violation. She said the appellant had indicated the variance would be filed immediately and asked that staff be given the discretion to schedule both the variance and the appeal on the same day. She stated that staff intended to schedule both cases on July 13, 1993, if the variance is received in a timely manner.

The Chair so ruled.

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Page 347, ~~April 13,~~ May 4, 1993, (Tapes 1 and 2), Action Item:

Request for Date and Time for
Crosspointe Retail Limited Partnership Appeal

Chairman DiGiulian called the appellant's agent to the podium.

The appellant's attorney, Francis A. McDermott, with the law firm of Hunton and Williams, 3050 Chain Bridge Road, Suite 600, P.O. Box 1147, Fairfax, Virginia, addressed the Board of Zoning Appeals and presented an affidavit from John C. McGranahan, Jr. which attested that he had delivered the appeal at 8:58 p.m. on the evening of April 15, 1993. He explained that although staff did not dispute this fact, staff contended that because the appeal was filed after 5:00 p.m. on the thirtieth calendar day, the appeal was not timely filed.

Mr. McDermott stated that when he realized that it was after the regular office hours and the appeal had to be filed that day, he had contacted Jane W. Gwinn, Zoning Administrator, who had informed him that it had to be filed before the close of the regular business hours. He said that the firm had decided to at least submit the appeal before midnight and to discuss the Zoning Ordinance provision with the BZA. He read the relevant provision and expressed his belief that by filing the appeal before midnight all the Zoning Ordinance requirements were met.

In response to Mrs. Thonen's question as to his interpretation of what filing meant, Mr. McDermott pointed out that the Federal Government considers a letter to be filed on the date of the postmark.

Mr. McDermott stated that the firm proceeded on the assumption that the appeal could be filed thirty day after the receipt of the decision. He noted that the Zoning Ordinance was vague and merely stated that the appeal must be filed within thirty days of the decision. Mr. McDermott expressed his belief that the language of the Zoning Ordinance should be changed to be more detailed and noted that the BZA had the authority to determine the timeliness of the appeal.

Jane W. Gwinn, Zoning Administration, addressed the BZA and stated that it was the County Attorney's determination that if the thirtieth day fell on a Saturday, Sunday, holiday, or snow day, the next following business day would be considered the thirtieth day. She noted that although the BZA had accepted the Unciano Appeal A 92-L-012 as being timely filed because it was filed within thirty day of the day of receipt, the Circuit Court had ruled that it was not. Ms. Gwinn explained that the language regarding the filing had been adopted from the Virginia State Code that governs the policies of the Zoning Ordinance and that of the Circuit Court. She said that the Circuit Court requires cases being appealed to the Circuit Court to be filed with the Clerk prior to the close of business on the thirtieth day. Ms. Gwinn expressed her belief the interpretation stipulated that an appeal must be filed and received by staff prior to the close of business on the thirtieth day and is consistent with the policy of the Circuit Court and the Zoning Ordinance requirements.

Mr. Pammel noted that Mr. McGranahan had delivered the appeal to the County office on the evening of the April 15, 1993 and asked who had accepted the appeal. Ms. Gwinn stated that she did not know and noted that neither she nor Betsy Hurtt, Clerk to the Board of Zoning Appeals, were working at 8:58 p.m. on April 15, 1993.

Mr. McDermott stated that although a Fairfax County employee did accept the appeal, he would rather not name the person because he did not wish to cause any trouble.

Mr. Pammel made a motion to accept the appeal as timely filed and set a date of July 13, 1993 at 10:30 a.m. He stated that it was within the BZA's authority to establish a standard when an issue is in doubt as to when a document should be received. He noted that almost

everywhere it is standard procedure to accept a postmark as the file date. Mr. Pammel noted that as far as the County offices are concerned, there is actual business being transmitted well into the night. He expressed his belief that the appeal was timely filed because it had been delivered before midnight on the thirtieth day.

Mrs. Thonen seconded the motion which carried by a vote of 4-1 with Mrs. Harris voting nay. Mr. Hammack and Mr. Kelley were absent from the meeting.

Mr. Pammel made a request that staff consider mailing all interpretation letters by overnight guaranteed mail. He noted that the Post Office guarantees that the addressee would receive the document by the following day. Ms. Gwinn explained that Zoning Enforcement mails between three and four thousand letters a year; therefore, the overnight guaranteed mail would not be financially feasible. Mr. Pammel stated that mailing the letters certified, return receipt might be feasible and asked staff to consider measures that would resolve the issue. Ms. Gwinn said that staff would investigate the matter.

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Page 348, ~~April 13~~ May 4, 1993, (Tape 2), Action Item:

Request for Date and Time
Dar Al Hijrah Mosque Appeal

Chairman DiGiulian called the appellant's agent to the podium.

The appellant's attorney, Larry E. Becker, with the law firm of Lieding and Becker, P.C., 1427 Dolley Madison Boulevard, McLean, Virginia, addressed the Board of Zoning Appeals (BZA). In addressing the timeliness issue, he stated although several "Notices of Violation" were received in 1991 and the early part of 1992, the appellant was appealing the Zoning Administrator's interpretation of Development Condition 15 issued on March 18, 1993. He explained that previously the appellant had not understood the basis of the violations and although the March 18, 1993 letter clarified the issue, the appellant disagreed with the interpretation. Mr. Becker expressed his belief that the issue was significant and had profound consequences on special permits and asked the BZA to hear the appeal.

Jane W. Gwinn, Zoning Administrator, addressed the BZA and stated that three "Notices of Violation" had been issued to the appellant. She expressed her belief the violation had clearly stated that off-site parking was in violation of Development Condition 15.

Mr. Pammel made a motion to accept Dar Al Hijrah Mosque Appeal as timely filed. Ms. Gwinn suggested a date time of June 15, 1993 at 8:00 p.m. Mr. Pammel accepted the suggested date and time. Chairman DiGiulian seconded the motion and called for discussion.

Mrs. Harris stated that the letter of March 18, 1993 was merely reiteration of the violation and was not a new determination; therefore, she believed the appeal was not timely filed.

Mrs. Thonen too stated her belief that the March 19, 1993 letter was merely a reiteration of the violation and not a new interpretation.

Mr. Pammel disagreed with Mrs. Harris and Mrs. Thonen and expressed his belief that the interpretation letter constituted an interpretation; therefore, it was timely filed and should be accepted.

The motion failed by a vote of 2-3 with Chairman DiGiulian and Mr. Pammel voting aye; Mrs. Harris, Mrs. Thonen, and Mr. Ribble voting nay. Mr. Hammack and Mr. Kelley were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: June 1, 1993

APPROVED: June 8, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on May 11, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:03 a.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 349, May 11, 1993, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD E. & LISA R. WHITNEY, VC 93-Y-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.7 ft. from side lot line and 22.3 ft. side yard total (24 ft. min. side yard total req. by Sect. 3-207). Located at 12983 Hampton Forest Ct. on approx. 14,438 sq. ft. of land zoned R-2 (C) and WS. Sully District. Tax Map 55-4 ((7)) 60.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Richard E. Whitney, 12983 Hampton Forest Court, Fairfax, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicants were requesting a 1.7 foot variance to the total side yards in order to enlarge an existing one car garage into an attached two car garage.

Mr. Whitney said he and his wife have lived in the house since May 1986 and noted that he believed the lot is exceptionally narrow. He pointed out the 8 foot trail easement on the right side of the property and addressed each of the standards required for the granting of a variance.

In response to questions from Mr. Hammack, Mr. Whitney said the size of the garage could not be reduced because of a chimney which projects 2 1/2 feet from the side of the house.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 93-Y-013 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 6, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-013 by RICHARD E. AND LISA R. WHITNEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.7 feet from side lot line and 22.3 feet side yard total, on property located at 12983 Hampton Forest Court, Tax Map Reference 55-4((7))60, 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 11, 1993; 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-2 (C) and WS.
3. The area of the lot is 14,438 square feet.
4. The lot is narrow and deep as it is only 87.5 feet wide and 165 feet deep.
5. The area for which the variance is being requested is next to a 8 foot trail, which protects the adjoining property owner.
6. The garage addition could not be any narrower because of the chimney on the side of the house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Larry N. Scartz, Certified Land Surveyor, dated October 12, 1992 and amended February 8, 1993, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 350, May 11, 1993, (Tape 1), Scheduled case of:

9:10 A.M. RICHARD J. WILLIAMS, VC 93-B-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 7107 Leesville Blvd. on approx. 11,340 sq. ft. of land zoned R-3. Braddock District. Tax Map 80-1 ((2)) (3) 19.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Richard J. Williams, 7107 Leesville Boulevard, Springfield, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting a 6 foot variance in order to construct a one car attached garage and workshop.

Mr. Williams said he wished to build the structure to house automobiles and to provide a storage area/workshop. He said the property is exceptionally narrow and that he did not believe the addition would adversely impact the neighbors.

In response to questions from Mr. Hammack, Mr. Williams said he would use part of the proposed addition for a workshop to do his woodworking. He said the tools he used for woodworking were quite large and he needed ample room for maneuvering.

Mr. Hammack said he could not support a variance for such a large structure so close to the lot line as he believed it would impact the adjoining neighbor. He suggested constructing a separate workshop in another location on the lot. Mr. Williams said he planned to expand the kitchen in the future and if he redesigned the structure it would impact the future expansion.

Mrs. Harris discussed with the applicant the type of materials to be used in the construction of the proposed addition. She asked if he had seen the letter from his neighbor objecting to concrete block being used. Mr. Williams said he had not seen the letter. (Ron Derrickson, Planning Technician, provided him with a copy.) Mr. Williams said that he planned to use a brick facade for the front of the proposed addition and would be willing to use the same material for the side if his budget permitted.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to deny VC 93-B-014 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 93-B-014 by RICHARD J. WILLIAMS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6 feet from side lot line, on property located at 7107 Leesville Boulevard, Tax Map Reference 80-1((2))(3)19, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 11, 1993; 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 11,340 square feet.
4. The applicant's request for a structure with a depth of 74 feet within 6 feet of the adjacent lot line is too great and too substantial an impact on the adjoining neighbor.
5. The BZA has never granted a variance of that extent and that magnitude.
6. The applicant did not demonstrate a hardship which would allow the BZA to favorably consider the request.
7. The applicant has the option to redesign the structure, although it may impinge on future expansion.
8. The applicant could construct a one car garage or carport either without or with a lesser variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 1993.

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Page 352, May 11, 1993, (Tape 1), Scheduled case of:

9:20 A.M. DONALD R. COSTELLO, SP 93-B-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to allow carport to remain 3 ft. from side lot line (15 ft. min. side yard req. by Sect(s). 3-207 and 2-412). Located at 7013 Leesville Blvd. on approx. 11,234 sq. ft. of land zoned R-2 and HC. Braddock District. Tax Map 80-2 ((5)) (1) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dana Scott replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting special permit approval to allow a carport to remain 3 feet from the side lot line. Since the Zoning Ordinance requires a minimum side yard of 10 feet in the R-2 District and Sect. 2-412 allows a 5 foot extension into the side yard, the applicant was requesting a variance of 2 feet.

The Clerk pointed out that Mr. Scott was not on the affidavit. Chairman DiGiulian called the applicant to the podium to reaffirm the affidavit and to present the justification.

The applicant, Marilyn Costello, 7013 Leesville Boulevard, Springfield, Virginia, reaffirmed the affidavit. She distributed photographs to the BZA showing other carports in the neighborhood. Ms. Costello said she and her husband have lived on the property for seven years, the error was made in good faith, and there were no objections from the neighbors.

In response to a question from Mr. Hammack, Ms. Costello said they did not know that a building permit was required since the structure was not enclosed. She said to move the carport would cause a financial hardship.

Chairman DiGiulian asked Mr. Scott if he had additional comments. Mr. Scott said he believed Ms. Costello had presented the case well.

Mrs. Harris made a motion to grant SP 93-B-007 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 4, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-B-007 by DONALD R. COSTELLO, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow carport to remain 3 feet from side lot line, on property located at 7013 Leesville Boulevard, Tax Map Reference 80-2((5))(1)7, 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 11, 1993; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. The carport is in keeping with the neighborhood as most other houses have carports.

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 addition shown on the plat 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, entitled Plat Showing Physical Improvement Survey, prepared by R.C. Fields, Jr. & Associates, dated August 28, 1992, submitted with this application, as qualified by these development conditions.

3. A building permit reflecting the location of the carport addition shall be obtained within 90 days from the final approval date of this special permit. The applicant shall be responsible for the submission of building and construction plans or other submissions deemed appropriate by the County, if these are required.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 354, May 11, 1993, (Tape 1), ACTION ITEM:

Approval of Resolutions from May 4, 1993 Hearing

Mr. Hammack made a motion to approve the resolutions as submitted. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 354, May 11, 1993, (Tape 1), Action Item:

A Change of Name Request For
Burke Center Day Care School, Inc., SP 82-S-068

Mrs. Harris made a motion to allow the applicant in SP 82-S-068 to change its name from Burke Center Day Care School, Inc. to Kindercare, Inc. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

BOARD OF ZONING APPEALS RESOLUTION

The Fairfax County Board of Zoning Appeals (BZA) does hereby on this the 11th day of May 1993, allow a change in name of the applicant for SP 82-S-068, from BURKE CENTER DAY CARE SCHOOL, INC. to KINDERCARE, INC. All conditions of this special shall remain in effect. The Non-Residential Use Permit shall be amended to reflect this change.

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Page 354, May 11, 1993, (Tape 1), Action Item:

Additional Time Request for
Saint Mark Coptic Orthodox Church, SP 89-S-013

Mr. Pammel said this particular applicant had been granted several extensions and although he sympathized with the applicant he believed this should be the last extension. He made a motion to grant the applicant an extension to April 4, 1994.

Mr. Ribble pointed out that was only eleven months and Mr. Pammel revised his motion to reflect May 4, 1994.

Mr. Kelley said he could not support making this the last extension as it was difficult to predict what might occur in the future.

Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the applicant had experienced problems with obtaining approval from the Health Department for the sewer system on the site. She said this had caused the applicant a lengthy delay which they had not anticipated.

Mr. Ribble asked the maker of the motion if he would remove the limitation based on that information. Mr. Pammel agreed.

Mrs. Harris seconded the amended motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 354, May 11, 1993, (Tape 1), Action Item:

Request for Date and Time for
Centreville Land Corporation Appeal

Mr. Pammel said it appeared the two appeals, Centreville Land Corporation and Tarmac Mid-Atlantic, Inc., listed on the action item list were related. He asked staff for a clarification.

William Shoup, Deputy Zoning Administrator, said both appeals dealt with a Notice of Violation issued by the Zoning Enforcement Branch. He said the Centreville Land Corporation Appeal was filed by the landowner and the Tarmac Mid-Atlantic, Inc. Appeal was filed by the operator of the concrete batching plant. Mr. Shoup said the violation cited both the landowner and the operator for expanding the use beyond what the previous approval allowed.

Jane Kelsey, Chief, Special Permit and Variance Branch, said staff had submitted recent letters to the BZA from the appellants just today.

Chairman DiGiulian said since both appellants were requesting that the appeals be deferred to allow them an opportunity to file special exceptions he believed that was the way to proceed.

Mr. Shoup said it was staff's position that the Centreville Land Corporation Appeal was not filed within thirty days. He said the Notice of Violation was issued on April 25, 1993 and in order to meet the thirty day time limitation the appeal should have been filed no later than April 24th. Since April 24th fell on a weekend, the appeal could have been properly filed on April 26th. Mr. Shoup said the appeal was filed on April 27th; therefore, staff did not believe it was timely filed. He said the appellant argued that the appeal was filed within thirty days of receipt, but the Zoning Ordinance stipulates that the appeal must be filed within thirty days of the decision. Mr. Shoup pointed out that a Circuit Court Judge recently dismissed the Felipa Unciano court case confirming that an appeal must be filed within thirty days of the date of the decision.

Art Walsh, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, represented Centreville Land Corporation and said the appeal was filed on April 27th. He said staff's letter was dated April 25th and postmarked April 30th, which meant five days elapsed between the time the letter was dated and the letter was postmarked. Mr. Walsh said the appellants were in the process of filing a special exception and believed that would resolve all the issues. He asked that the BZA consider deferring decision on the timeliness issue until a later date because if the BZA ruled against the appellant it would require the appellant to file suit in Circuit Court.

Mr. Kelley said the issue had come up before and he was prepared to make a motion that the appeal was timely filed. Mr. Hammack agreed. Mr. Kelley said he was surprised that staff continued to bring up the issue as the BZA had previously discussed and decided the issue. He added that it was his understanding that once the letter was prepared and dated it still goes through staff review before it is mailed. Mr. Shoup said the letter was mailed the same date as noted on the letter. He said the problem has been discussed with County Mail Services, but has not yet been resolved.

Mr. Kelley made a motion that the appeal was timely filed. Mr. Hammack seconded the motion which carried by a vote of 5-1 with Mrs. Harris voting nay. Mrs. Thonen was absent from the meeting.

Mr. Hammack made a motion to grant the request for a deferral.

Chairman DiGiulian asked staff if the appeal needed to be scheduled for a specific date and time. Ms. Kelsey said a date and time was not necessary and suggested that it be deferred indefinitely since there was no way to know when the special exception would be filed or heard by the Board of Supervisors. Mr. Shoup and Mr. Walsh agreed.

Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

During the discussion regarding Tarmac Mid-Atlantic, Inc. Appeal, Mr. Hammack asked that the record reflect that the postmark was a very important part of his determination to support the appeal as being timely filed. He believed there was a burden on the County to get these decisions out and stated that throughout many other areas of the law the postmark on letters is the controlling time as to official notice. Mr. Hammack asked that it be made a part of the motion. Mr. Kelley agreed.

Mr. Pammel suggested that staff review the procedure for handling this type of letter since this issue has been raised before.

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Page 355, May 11, 1993, (Tape 1), Action Item:

Request for Date and Time for
Tarmac Mid-Atlantic, Inc.

Mr. Pammel said since this was related to the Centreville Land Corporation Appeal he would make a motion to indefinitely defer the appeal and schedule the two appeals simultaneously. Mrs. Harris asked if it was his intent to make a motion to accept the appeal as being timely filed. Mr. Pammel did so. Mr. Hammack seconded both motions which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 355, May 11, 1993, (Tape 1), Action Item:

Out of Turn Hearing Request
A. K. and Maria R. Xenos, VC 93-M-045

Jane Kelsey, Chief, Special Permit and Variance Branch, said staff had just received the application and the request for the out-of-turn hearing indicated that the property is under construction. She said the photographs do not show any construction.

Mrs. Harris made a motion to deny the request as it appears from the photographs that the addition is under roof. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Out of Turn Hearing Request
Alyce M. Pope and James Edward Carter

Mr. Ribble said it appeared the request for an out-of-turn hearing was based strictly on economics and made a motion to deny the request. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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9:50 A.M. WILLIAM E. & JOAN B. TAVENNER, SP 93-D-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard req. based on error in building location to allow addition to remain 4.9 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 7433 Tillman Dr. on approx. 9,088 sq. ft. of land zoned R-4. Dranesville District. Tax Map 30-3 ((16)) 33.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Keith C. Martin, attorney with the firm of WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY PC, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting special permit approval of a 51 percent error to permit an addition to remain 4.9 feet from the side lot line.

Mr. Martin said the applicants have lived on the subject property for over 31 years and were unaware that a variance was needed for the conversion of the existing carport into a garage. He said the County did not discover the violation for over a year after the completion of the garage and there were no objections from the neighbors. Mr. Martin believed the applicants met all the required standards.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 93-D-004 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-004 by WILLIAM E. AND JOAN B. TAVENNER, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition to remain 4.9 feet from side lot line, on property located at 7433 Tillman Drive, Tax Map Reference 30-3((16))33, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 11, 1993; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area 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 addition shown on the plat 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 prepared by Charles P. Johnson & Associates, P.C. dated January 22, 1993, submitted with this application, as qualified by these development conditions.

3. A building permit and all required inspections shall be obtained.

4. The addition shall be architecturally compatible with the existing dwelling.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 19, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 357, May 11, 1993, (Tape 1), Information Item:

Scheduling of BZA Meeting Dates

As there was time before the next scheduled case could be called, Jane Kelsey, Chief, Special Permit and Variance Branch, discussed scheduling with the BZA. She said the Dar Al-Hijrah, which is the subject of the June 15th revocation hearing, had submitted a special exception and special permit application. The applicant is also in the process of trying to submit a shared parking agreement which is being reviewed by the Department of Environmental Management (DEM) but additional information is needed. Ms. Kelsey said the BZA had indicated that if the applicant filed the appropriate applications it might wish to issue an intent to defer the hearing. She said it appeared that the special exception would probably not be heard by the Board of Supervisors until the latter part of July or the first of August. Ms. Kelsey said she had been trying to hold the BZA's schedule open to allow the case to be heard prior to the August recess.

Chairman DiGiulian asked if the special exception and special permit applications had been accepted. Ms. Kelsey said they had, but the shared parking agreement has not. Chairman DiGiulian said he believed it would be premature for the BZA to make a public statement with respect to deferring the June 15th hearing until the applicant actually finalizes the shared parking agreement. He suggested that the decision be held in abeyance until May 18th.

Mrs. Harris said there was no assurance that the Board of Supervisors would take action on the request prior to its August recess. Ms. Kelsey agreed. Chairman DiGiulian directed

staff to proceed with scheduling following the normal procedure.

Mr. Pammel noted there were no cases scheduled on June 1st. Ms. Kelsey said some of the BZA members had indicated that they would prefer not to have a meeting on that date since it was immediately following the Memorial Day holiday. The BZA cancelled the June 1st meeting.

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Page 358, May 11, 1993, (Tape 1), Scheduled case of:

10:00 A.M. THEODORE SIMPSON, APPEAL 92-D-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the parking lot lights at the McLean Bible Church are in compliance with Condition #11 of SPA 73-D-151-3. Located at 850 Balls Hill Rd. on approx. 5.45 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A.

Chairman DiGiulian said the BZA had issued an intent to defer this application at an earlier hearing. Mrs. Harris made a motion to defer A 92-D-018 to September 14, 1993, at 10:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 358, May 11, 1993, (Tape 1), Scheduled case of:

10:00 A.M. THE MCLEAN BIBLE CHURCH, APPEAL 93-D-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that off-site parking associated with The McLean Bible Church is in violation of Condition #5 of SPA 73-D-151-3. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A.

Mrs. Harris made a motion to defer A 92-D-018 to September 14, 1993, at 10:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mrs. Thonen 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 10:02 a.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: June 4, 1993

APPROVED: June 8, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Room of the Massey Building on May 18, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; and James Pammel. Mary Thonen and John Ribble were absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:00 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case, stating that the cases would be heard in the order in which they had been printed on the agenda.

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8:00 P.M. EDGAR O. ANTHONY, VC 93-P-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 15.4 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-407). Located at 2834 Monroe St. on approx. 7,010 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((4)) 94.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mrs. (Louise) Edgar O. Anthony, 2834 Monroe Street, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the subject property is developed with a single family detached dwelling; surrounding lots in the Greenway Downs Subdivision are also zoned R-4 and are developed with single family detached dwellings; the request results from the applicant's proposal to construct a carport 15.4 feet from the front lot line, resulting in a variance of 14.6 feet from the minimum front yard requirement.

Mrs. Anthony presented the statement of justification, referring the BZA to the plat to show that there was no other place on the property to accommodate off-street parking. She said they would like a carport on the side of the house, no closer to the street than the existing house; all of the houses in the neighborhood had been constructed in the same manner; and the carport would be built in conformance with the style of the present dwelling. Mrs. Anthony submitted photographs to the Board of the proposed construction and of a house belonging to a neighbor who had received a variance of the same type being requested by the applicant. She said that their carport would extend no further than their neighbor's carport. Mrs. Anthony called attention to the roof line of the proposed carport, stating that it would be in harmony with the existing roof line. In answer to a question from Chairman DiGiulian, Mrs. Anthony said that the house had been constructed around 1940.

Mrs. Harris said the blueprint appeared to show a wall across the back of the property. Mrs. Anthony explained that the wall was on new construction behind the subject property and behind the required minimum yard requirement.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Anthony asked for a waiver of the eight-day limitation if the Board saw fit to grant the variance request.

Mr. Hammack moved to grant VC 93-P-016 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 11, 1993.

Chairman DiGiulian noted that the original subdivision plat apparently had a 15-foot building setback line from Monroe Street.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-016 by EDGAR O. ANTHONY, under Section 18-401 of the Zoning Ordinance to permit construction of carport 15.4 ft. from front lot line, on property located at 2834 Monroe St., Tax Map Reference 50-2((4))94, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May

1. The applicant is the owner of the land
2. The present zoning is R-4.
3. The area of the lot is 7,010 square feet.
4. The subdivision is an older one.

5. The variance only allows the carport to be brought even with the existing extension on the front of the house.
6. The variance is consistent with other construction in the neighborhood and there would not be any change in the character of the area architecturally or with respect to setbacks; it would be in harmony with the existing 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 specified addition shown on the variance plat prepared by James H. Guynn, dated January 23, 1993 submitted with this application and not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The carport shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Pammel was not present for the vote. Mrs. Thonen and Mr. Ribble were absent from the meeting.

Mr. Kelley moved to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Pammel was not present for the vote. Mrs. Thonen 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 May 18, 1993. This date shall be deemed to be the final approval date of this variance.

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8:00 P.M. ROBERT F. KELLY, VC 93-B-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.5 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-207). Located at 4408 Argonne Dr. on approx. 15,008 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Robert F. Kelly, 4408 Argonne Drive, Fairfax, Virginia, replied that it was.

Board member Robert Kelley stated for the record that he was not related to the applicant.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located in the Rutherford Subdivision and surrounded by other single family detached dwellings on land also zoned R-2; the variance request was to allow an addition consisting of a bedroom, bathroom, sunroom and roof deck; the dwellings on adjacent Lots 19 and 20 are located approximately 25 and 40 feet, respectively, from the shared rear lot line.

The applicant, Mr. Kelly, presented the statement of justification, stating that they wished to add on to the back of their dwelling which is over thirty years old and badly in need of modernization. He said they had worked for many years to find alternate ways to improve the house without a variance, but could find no way except to request a variance of 3.5 feet into the 25-foot buffer zone, resulting in 21.5 feet at the closest point to the lot line. Mr. Kelly said the project would involve enlarging existing rooms.

Mr. Kelly stated that the reason why the variance was needed was the way that the lot line slopes sharply to the right rear side of the house and the fact that the house is set relatively deep on the lot, allowing them a by-right addition of only 2 feet. He said that neighbors were in support of the application and submitted statements from the four neighbors who might be impacted in any way by the addition. He requested a waiver of the eight-day limitation if the Board saw fit to grant the variance request.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris moved to grant VC 93-B-017 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 11, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-017 by ROBERT F. KELLY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 21.5 ft. from rear lot line, on property located at 4408 Argonne Dr., Tax Map Reference 69-2((6))2, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1993; 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 15,008 square feet.
4. The lot has an unusually shaped back lot line.
5. The house is set back considerably within the building restriction lines.
6. The requested variance is reasonable with two small triangles encroaching into the rear lot buffer for a total of approximately 72 feet.
7. The variance will not change the character of the neighborhood.
8. The variance will alleviate a clearly demonstrable hardship.
9. Remaining within the building restriction lines would afford the applicant an addition of only 2 feet.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;

E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by William E. Ramsey, P.C., dated February 24, 1993, revised to March 10, 1993 submitted with this application and not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

4. The outside stairs on the west side of the proposed deck shall be no wider than ten (10) feet measured from the top step to the bottom step.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Pammel was not present for the vote. Mrs. Thonen and Mr. Ribble were absent from the meeting.

Mrs. Harris moved to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Pammel was not present for the vote. Mrs. Thonen 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 May 18, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 362, May 18, 1993, (Tape 1), Scheduled case of:

8:00 P.M. EASTER SEAL SOCIETY OF VIRGINIA, INC., SP 93-Y-010 Appl. under Sect(s). 5-303 and 5-403 of the Zoning Ordinance to permit a music festival. Located on Poplar Tree Rd. and Park Meadow Dr. on approx. 26.65 ac. of land zoned I-3, I-4, WS and AN. Sully District. Tax Map 44-3 ((1)) pt. 10A and 44-3 ((6)) 8A and 12.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, William E. Donnelly, III, with the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located southeast of the intersection of Westfield Boulevard and Route 28 in the Westfield International Corporate Center; to the north, east and west, are other lots in the Center zoned I-4 which are either vacant or developed with office uses; to the south, across Poplar Tree Road, is E. C. Lawrence Park, zoned R-1; the site is currently developed with two office buildings, their attendant parking areas, and a vacant lot; the applicant was requesting approval of a special permit for a Group 8 Temporary Use for a summer music concert series; the hours of operation proposed are 5:00 p.m. to 9:00 p.m. each Thursday evening, commencing during May and concluding during September, with a maximum expected attendance of 3,000 per concert; parking for the concerts will be accommodated within the parking lots of the two existing office buildings located on Parcels 8A and 12; staff concluded that, with the implementation of the Proposed Development Conditions, the proposed use is in harmony with the recommendations of the Comprehensive Plan and will satisfy all the General Standards and the Standards for all Group 8 uses; staff recommended approval of this application, subject to the adoption of the Proposed Development Conditions.

Mrs. Harris questioned if the 5:00 p.m. starting time might conflict with the occupants of the two office buildings trying to leave the site. Mr. Donnelly said the arrival of concert attendees would be staggered, since the concerts would not actually begin before 6:00 p.m. He said that, based upon the applicant's experience, some attendees would arrive late and some would leave early. Mr. Donnelly said he did not have much to add, since staff had recommended approval of the application.

Mr. Donnelly requested a waiver of the eight-day limitation in order to implement the signing of all contracts before the starting date.

A short discussion ensued about the nature of the music to be presented at the concerts and, in answer to a question from Mr. Pammel, Mr. Donnelly stated that the applicant had a permit for alcoholic beverages and safeguards would be in place to see that the concert attendees would remain inside the designated perimeter.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SP 93-Y-010 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 11, 1993.

In answer to a question from Mr. Kelley, Carol L. Campbell, agent for the applicant, stated that a program would be available within a few days and some of the expected groups are: The Embers, The Clovers, The Hub Caps, The Spinners and The Platters, regional acts as well as national acts.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-010 by EASTER SEAL SOCIETY OF VIRGINIA, INC., under Sections 5-303 and 5-403 of the Zoning Ordinance to permit a music festival, on property located on Poplar Tree Lane, Tax Map Reference 44-3((1))pt. 10A and 44-3((6))8A and 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 May 18, 1993; 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 I-3, I-4, WS and AN.
3. The area of the lot is 26.65 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 8-801 and 8-804 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 dated March 22, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The summer music concert series use at the subject site shall be limited to a time period between May and September, including all site preparation and restoration time before and after the concert series. The Special Permit is approved for five (5) successive summers provided the use is operated in accordance with these conditions and there are no parking or other verified violations or disturbances to the surrounding area.

5. Hours for operation for performances shall be limited to 5:00 p.m. until 9:00 p.m. Thursday evenings.

6. The maximum number of tickets sold per performance shall not exceed 3,000.

7. An adequate number of police officers, security guards or Easter Seal personnel shall be provided by the applicant for each performance to provide safety and traffic control for off-site traffic direction and on-site parking coordination.

8. The applicant shall provide an adequate number of parking spaces to accommodate 3,000 patrons and shall provide a minimum of 1216 spaces. All parking shall be clearly designated.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

Mr. Kelley moved to waive the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mrs. Thonen 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 May 18, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 364, May 18, 1993, (Tape 1), Scheduled case of:

8:00 P.M. EDUARDO RAMIREZ & MARIA MAGDALENA SANGUINETTI, VC 93-S-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 6.4 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 5919 Fairview Woods Dr. on approx. 25,165 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 77-1 ((20)) 64. (DEF. FROM 4/27/93 TO ALLOW STAFF TO RESPOND TO QUESTIONS FROM THE BZA.)

Chairman DiGiulian requested a recap of the deferral history of this case. Mr. Kelley was temporarily outside the Board Room and Mr. Hammack explained that Mr. Kelley had requested information concerning whether or not the deck could have been constructed by right when the house was built. The Board concurred that the case had not been heard previously in anticipation of the additional information from staff, which had been received by the Board in the interim.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Maria Magdalena Sanguinetti Ramirez, 5919 Fairview Wood, Fairfax Station, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the applicants had raised the issue at the previous meeting that, if the proposed deck had been added at the time of construction, a variance would not have been required; the Board requested that staff

study the issue and determine if the proposed deck could have been constructed by right at the time of the construction of the dwelling.

Mr. Heine report his findings as follows: The property's current R-C and WSPOD zoning Districts were the result of the 1982 rezoning to protect the Occoquan Reservoir's watershed; the rezoning was challenged in the courts and a Consent Degree was issued on July 25, 1983. The Consent Degree stated that the petitioners had the right to develop under the R-1 District regulations as they existed in 1982; however, subsequent to the construction of the dwelling and issuance of a residential use permit, the R-C District regulations would take effect.

Mr. Heine further stated that the 1982 R-1 District Zoning Ordinance Regulations applicable to cluster developments, required a minimum side yard of 12.0 feet and allowed decks no larger than a building's first floor to extend 6.0 feet into any required yard and not nearer to any side lot line than a distance of 4.0 feet; therefore, by constructing a deck on the subject property at the time of the building construction, the requested variance would be unnecessary.

Ms. Ramirez presented the statement of justification, stating that the house had been built to have a deck; it has a walkout bay window and triple french doors, which are meant to access a deck; if the permit were not granted, the doors would have to be permanently closed without direct access to, or use of, the back yard. Ms. Ramirez cited the restrictions of the property line and the septic tank, which were taken into consideration in making the request. She said that they were never told about any changes in the zoning and the house actually was built to have a deck; the size of the proposed deck is comparable and, in many cases, smaller than other decks in the neighborhood that were built by the developer; the size of the deck is the minimum required to provide access from both doors.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant VC 93-S-009 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 20, 1993.

A waiver of the eight-day limitation was requested by the applicant and granted by the Board.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-009 by EDUARDO RAMIREZ & MARIA MAGDALENA SANGUINETTI, under Section 18-401 of the Zoning Ordinance to permit construction of deck 6.4 ft. from side lot line, on property located at 5919 Fairview Wood Dr., Tax Map Reference 77-1((20))64, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 18, 1993; 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-C and WS.
3. The area of the lot is 25,165 square feet.
4. A hardship is created by the unusual configuration of the lot and the questionable location of the dwelling thereon.
5. The property owners could have built the deck at the time the residence was constructed, according to the opinion submitted by staff per their interpretation of the Zoning Ordinance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific deck shown on the plat prepared by The BC Consultants; Planners, Engineers, Surveyors, Landscape Architects; dated June 4, 1992 submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

Mr. Pammel moved to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen 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 May 18, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 366, May 18, 1993, (Tape 1), Action Item:

Request for Reconsideration
Richard J. Williams
VC 93-B-014

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that she had the file on this case, should any of the Board members wish to review it. She furnished the staff report to the Board.

Mr. Pammel said that he remembered the case very well, stating that the variance was very significant, which he had indicated in his motion to deny at the hearing on May 11, 1993; he also indicated at the time that, if the applicant so desired, he assumed the Board would

grant a waiver of the twelve-month limitation for the applicant to rethink and resubmit the application; however, the applicant did not wish to do that.

Mr. Pammel moved that the request for reconsideration be denied. Mr. Hammack seconded the motion, stating that he remembered indicating to the applicant at the previous hearing that he could not support the request and asked if the applicant could reconfigure the requested variance or take some additional time and come back before the Board, to which the applicant had replied that he would not. Chairman DiGiulian concurred with the recollection.

Mrs. Harris referenced the applicant's request for reconsideration which stated that his plat used standard mathematical symbols to showed that he was agreeable to reducing the size. It was noted that the symbol meaning more or less was indicated on the plat. The Board concurred that the applicant indicated in his testimony that he was not willing to negotiate.

The motion to deny carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

Mr. Pammel moved to waive the twelve-month limitation for refiling to allow the applicant to prepare another application and bring it before the Board. Mrs. Harris seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Page 367, May 18, 1993, (Tape 1), Action Item:

Approval of Resolutions from May 11, 1993 Hearing

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Page 367, May 18, 1993, (Tape 1), Action Item:

Approval of Minutes from April 13 and April 27, 1993 Meetings

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Page 367, May 18, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Wakefield Chapel Recreation Association
SPA 76-B-022

Mr. Hammack moved to schedule the out-of-turn hearing for July 20, 1993. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that she had been unable to confer with Marilyn Anderson, Senior Staff Coordinator, prior to this request being included in the Board's package, precipitating her request that the granting of an out-of-turn hearing be contingent upon the applicant's submission of information necessary for staff to adequately staff and advertise the application.

Mr. Hammack amended his motion to state, "...provided the applicant files revised plats and revised statement of justification, which satisfies staff requirements, within the week."

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Page 367, May 18, 1993, (Tape 1), Action Item:

Jane C. Kelsey, Chief, Special Permit and Variance Branch, raised the issue of the Board's agendas for the period up to July 28, 1993, which was designated as a special extra hearing date, if needed, as she understood there were several applications coming in, requesting out-of-turn hearings, which would be outside the 90-day limitation if they are not scheduled until September. She asked if the Board would like staff to schedule those applications for July 28, 1993, without bringing the out-of-turn hearing requests before the Board. Chairman DiGiulian asked Ms. Kelsey, if they Board did not grant the out-of-turn hearings, could they then hear the cases in September. Ms. Kelsey said they could but it would be outside the 90-day limitation; any case accepted between May 18 and June 16, 1993, would require a hearing prior to the August recess. Ms. Kelsey said that, in the past, several cases had not been heard before the August recess and had been scheduled in September without a problem. She said it was her understanding that some of the applicants would request out-of-turn hearings because they were requesting permission for child care centers and learned too late

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that special permits were required. Chairman DiGiulian said that staff could reserve the date but the Board would like to hear the request before firm scheduling. Ms. Kelsey said that an effort was being made by staff to avoid overloading the Board's agendas.

The discussion of scheduling continued, during which Mrs. Harris and Mr. Hammack advised they would not be present for the July 7, 1993 hearing.

Ms. Kelsey said she would bring all requests before the Board and had reserved the Board Room for July 28, 1993, just in case it is needed.

Regarding the Mosque revocation hearing, Ms. Kelsey advised that the special permit and special exception have been scheduled, and the shared parking agreement has been submitted; however, the Department of Environmental Management (DEM) has requested another traffic count; they have one and have decided they need two. As of May 24, 1993, Ms. Kelsey said she expected that all required submissions will have been received. She asked if the Board would like to defer the revocation hearing. Chairman DiGiulian suggested waiting until everything had been submitted and defer decision until next week.

In answer to a question from Mr. Hammack, Ms. Kelsey said that the special exception had been scheduled to be heard by the Planning Commission on July 21, 1993, and the Board of Supervisors on August 2, 1993; the special permit had been scheduled to be heard on August 3, 1993; the parking study could be fit in anywhere because it did not require advertising.

Further discussion ensued, during which Mr. Kelley said he did not believe anything else should be scheduled for August 3, 1993, if the Mosque revocation hearing was set for that date. Chairman DiGiulian asked why the Mosque hearing could not be scheduled for September and it was decided to postpone the decision until the following week.

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As there was no other business to come before the Board, the meeting was adjourned at 8:55 p.m.

Geri B. Bepko
Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: June 4, 1993

APPROVED: June 8, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on May 25, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 369, May 25, 1993, (Tape 1), Scheduled case of:

9:00 A.M. GREGORY A. AND LAURIE L. DOLSON, VC 93-Y-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.5 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-107). Located at 2809 Bree Hill Rd. on approx. 20,654 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-2 ((10)) 38.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Dolson replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for David Hunter, Staff Coordinator, who was delayed in traffic. She stated that the applicants were requesting a variance to permit construction of a one story addition 23.5 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicants were requesting a modification of 1.5 feet to the minimum rear yard requirement.

The applicant, Gregory A. Dolson, 2809 Bree Hill Road, Oakton, Virginia, addressed the BZA. He stated that they were in the process of constructing a kitchen addition and were requesting the 1.5 foot variance so the new addition would align with the existing dining room wall. Mr. Dolson stated he had received verbal approval from his homeowners' association.

Mr. Hammack referred to the applicants' statement of justification and noted that the structure was constructed in violation of the Zoning Ordinance. Mr. Dolson explained that when he applied for the permits to construct the addition, he was informed that the existing dwelling had been erroneously constructed 1.5 feet closer to the rear lot line than the Zoning Ordinance allows. He noted that an administrative reduction to allow the dwelling to remain in its present location had been approved by the Zoning Administrator.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 93-Y-019 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 18, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-019 by GREGORY A. AND LAURIE L. DOLSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 23.5 feet from rear lot line, on property located at 2809 Bree Hill Road, Tax Map Reference 36-2((10))38, 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 25, 1993; 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-1 (Cluster).
3. The area of the lot is 20,654 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. An unusual condition exists in that the original structure was constructed in violation of the Zoning Ordinance.
6. The request is for a minimal variance to allow the applicant to construct the addition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;

D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 room addition shown on the plat prepared by Paciulli, Simmons and Associates, dated September 28, 1978, revised by Gregory Dolson, Professional Engineer, dated March 1, 1993, submitted with this application and not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 9, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 370, May 25, 1993, (Tape 1), Scheduled case of:

9:10 A.M. JAMES DOSS HALSEY, VC 93-D-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 1.5 ft. from side lot line and 6 ft. from rear lot line (10 ft. min. side yard req. and 17.75 ft. min. rear yard req. by Sect(s). 3-407 and 10-104). Located at 6607 Orland St. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-2 ((19)) 16.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Halsey replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for David Hunter, Staff Coordinator, who was delayed in traffic. She stated that the applicant was requesting a variance to permit construction of a 17.75 foot high detached garage 1.5 feet from the side lot line and 6.0 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 10 feet and a minimum rear yard equal to the height of the 17.75 foot high structure; therefore, the applicant was requesting modifications of 8.5 feet to the minimum side yard requirement and 11.75 feet to the minimum rear yard requirement.

The applicant, James Doss Halsey, 6607 Orland Street, Falls Church, Virginia, addressed the BZA and stated that he would like to construct a garage and workshop. Mr. Halsey stated that the storm drain easement on the property caused the need for a variance and noted that a lean-to tool shed would be placed on the back of the garage. He explained that since the small house had no basement, he needed the accessory structure to pursue his wood working hobby and for storage. Mr. Halsey said the walls would be insulated in order to mitigate the noise impact on the neighbors. He submitted pictures of similar garages in the area.

In response to Mrs. Harris' question as to whether the other garages had required variances, Mr. Halsey stated that one of the structures had been built in 1975 under a previous Zoning Ordinance and the other structures complied with the Zoning Ordinance.

Mr. Halsey noted that the property has exceptional topographic conditions and the proposed location would allow the direct extension of the driveway. He explained that the storm drain easement precluded the building of the garage on that side of the yard without a variance. Mr. Halsey said if the garage were to be located on the other side of the property, a new driveway would have to be installed or the existing driveway would have to be extended, requiring a large portion of the backyard to be paved. He stated that the adjoining neighbor had signed a temporary easement to allow him access to his property while the construction was in progress. In summary, Mr. Halsey said the neighbors supported the request.

In response to Chairman DiGiulian's question as to whether the wall or the roof overhang would be 1.5 feet from the side lot line, Mr. Halsey stated that the 1.5 feet reflects the overhang distance and no portion of the structure would be closer than 1.5 feet from the side lot line.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 93-D-020. The motion failed for the lack of a second.

Mrs. Harris made a motion to grant-in-part, VC 93-D-020. The motion failed for the lack of a second.

After a brief discussion, it was the consensus of the BZA to either defer the case or to deny the request and waive the twelve-month waiting period for the refiling of the same application.

Mrs. Thonen made a motion to defer VC 93-D-020 to July 7, 1993 at 9:15 a.m. to allow the applicant an opportunity to redesign the request.

Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 371, May 25, 1993, (Tape 1), Scheduled case of:

9:20 A.M. ROBERT B. FLINT, SP 93-Y-005 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit modification to min. yard req. to permit additions 8 ft. and 17 ft. from side lot lines (20 ft. min. side yard req. by Sect. 3-C03). Located at 15105 Bernadette Ct. on approx. 12,553 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 400.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Flint replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting approval of a special permit to allow construction of a garage/family room addition 8 feet from the western side lot line and a covered deck addition 17 feet from the eastern side lot line. The Zoning Ordinance requires a minimum 20 foot side yard; therefore, the applicant was requesting modifications of 12 and 3 feet to the minimum side yard requirement, respectively.

The applicant, Robert B. Flint, 15105 Bernadette Court, Chantilly, Virginia, addressed the BZA. He stated that the garage addition would provide not only storage space, but a much needed protected entrance to his house. He explained he was unable to use the front door entrance because of the wind and noted that he presently must use an entrance off the backyard deck. Mr. Flint stated that the family room would provide additional living space as well as a view of the parkland. In regard to the porch, he noted that wrap around porches were common in the neighborhood and said that both the garage/family room addition and the porch would be in harmony with the community. He expressed his belief that the renovations, as well as the paving of the driveway, would be beneficial to the neighborhood.

Mr. Flint stated that in response to his neighbor's concern regarding potential water runoff onto his property, he would assure the BZA that the driveway would be installed so all water would empty into the street. He noted that gutters would also ensure that runoff from the proposed addition would be maintained on the subject property. Mr. Flint expressed his willingness to provide landscaping so as to mitigate any sight impact on the neighbors.

In response to Mrs. Harris' question as to the relocation of the deck's stairs, Mr. Flint stated the stairs would probably be placed to the back of the proposed addition, but noted that the design had not been finalized.

In response to Mrs. Thonen's question regarding the impact the paving of the driveway would have on the retaining wall, Mr. Flint stated although there was a small gully between the two properties, there was no retaining wall.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

Max Story, Jr., 15107 Bernadette Court, Chantilly, Virginia, addressed the BZA and expressed his concern regarding potential drainage problems, as well as the visual impact created by the large addition. He noted the construction of the proposed addition would require that the applicant's driveway be raised, causing an additional detrimental visual impact on his property.

Mrs. Harris stated that the photographs depicted Mr. Story's garage was located on the same side as the proposed garage. Mr. Story said that the family used the garage as an entrance into the house. Mrs. Harris noted that the addition could have been built by-right at the time of the original construction. Mr. Story stated although that was true, he believed the builder would have placed the structure further back on the lot. Mrs. Harris expressed her belief that the topography of the land would have precluded placing the house further back on the lot. Mr. Story said that the topographical conditions on his lot were even more extreme; but, the builder had used fill and had placed the structure well back on the lot. In summary, Mr. Story asked the BZA to deny the request.

Chairman DiGiulian noted that Mr. Story's dwelling was 12.5 feet from the western side lot line and 13.4 from the eastern side lot line.

David McNeil, 15108 Bernadette Court, Chantilly, Virginia, addressed the BZA. He stated that although he supported the request for the porch addition, he could not support the request for the garage/family room addition. He explained that the proposed addition would have a detrimental visual impact on his property.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

In rebuttal, Mr. Flint stated that most of the neighbors had garages and porches. He emphasized that he would mitigate the visual impact with landscaping.

Mrs. Harris made a motion to grant-in-part (to grant the porch addition and to deny the garage/family room addition) SP 93-Y-005 for the reasons reflected in the Resolution and subject to the conditions contained in the staff report dated May 18, 1993.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

The BZA had a brief discussion regarding the application and the neighbors' concerns.

Chairman DiGiulian called the applicant back to the podium.

In response to questions from the BZA, Mr. Flint stated that he had purchased the property in the fall of 1989 and noted that the plat of development indicated that a garage could be placed in the proposed location. He explained that the four foot bump-out was the dining area and would remain. Again, he stated the plans were not finalized and said that he would be willing to modify the plans.

Mrs. Harris amended the motion to grant the request for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 18, 1993 with the addition of Development Condition 4.

> "4. The water runoff shall be maintained on the applicant's property and cannot have a detrimental effect on the neighbor's property."

Mr. Hammack asked that an additional development condition, which would ensure the addition would be screened, be incorporated into the motion. Mrs. Harris accepted the amendment and added Development Condition 5.

> "5. The foundation shall be screened with plantings."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-005 by ROBERT B. FLINT, under Section 3-C03 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit additions 8 feet and 17 feet from side lot lines, on property located at 15105 Bernadette

Court, Tax Map Reference 33-4((2))400, 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 25, 1993; 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, AN and WS.
3. The area of the lot is 12,553 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 or August 2, 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.
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 covered porch is a reasonable request and will not adversely impact the neighborhood or surrounding properties.
9. The applicant has testified that the proposed location is the only feasible site for the proposed garage.
10. The request is reasonable and could have been built during the original construction.
11. There will be 25 feet between the applicant's structure and the structure on the adjoining property.

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 and the specified additions shown on the plat 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 prepared by Alexandria Surveys, Inc., dated February 12, 1989, revised by Robert B. Flint, February 22, 1993 submitted with this application and not transferable to other land.

3. A building permit and all required inspections shall be obtained.

4. The water runoff shall be maintained on the applicant's property and cannot have a detrimental effect on the neighbor's property.

5. The foundation shall be screened with plantings.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 9, 1993. This date shall be deemed to be the final approval date of this special permit.

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9:35 A.M. CHARLIE S. CHOE, VC 93-D-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 10 having lot width of 188 ft. and proposed Lot 10A having lot width of 12 ft. (200 ft. min. lot width req. by Sect. 3-E06). Located at 713 Gouldman Ln. on approx. 6.95 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((8)) 10.

Chairman DiGiulian stated that he had been advised that the applicant's notices were not in order. Susan Langdon, Staff Coordinator, confirmed that they were not in order.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and stated that the Department of Environmental Management (DEM) has also advised staff that the property is on a private street; therefore, it could not be approved under the Subdivision Ordinance. She suggested a deferral date of September 21, 1993 at 8:00 p.m. Ms. Kelsey noted that the concerned citizens had been advised of the deferral.

The applicant, Charlie S. Choe, 713 Gouldman Lane, Great Falls, Virginia, addressed the BZA and expressed his belief that DEM had no problem with the application.

Chairman DiGiulian asked Mr. Choe to confer with staff so that the issue could be resolved before the next hearing date.

Mrs. Thonen made a motion to defer VC 93-D-015 to the suggested date and time. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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9:45 A.M. PLAZA 500 LIMITED PARTNERSHIP, SP 93-M-006 Appl. under Sect(s). 5-303 and 5-503 of the Zoning Ordinance to permit a health club. Located at 6295 Edsall Rd. on approx. 34.19 ac. of land zoned I-3 and I-5. Mason District. Tax Map 81-2 ((1)) 7.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Harrison replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit to allow a health club which is a Group 5 use within an existing non-residential structure. Ms. Langdon said the applicant was proposing to lease 18,104 square feet located on the ground floor level in an existing building of 1,489,691 square feet. She noted that the club would have a separate entrance, fifty-five parking spaces, a maximum occupancy of one hundred and fifty clients, and a maximum number of five employees. Ms. Langdon stated the proposed hours of operation were 6:00 a.m. to 10:00 p.m., Monday through Friday; and 8:00 a.m. to 8:00 p.m., Saturday and Sunday. She stated that it was staff's belief that the application was in conformance with the Comprehensive Plan and recommended approval with the implementation of the development conditions contained in the staff report dated May 18, 1993 with a modification to Condition 8.

> "8. A trail easement shall be provided in accordance with the Comprehensive Plan's Countywide Trails Plan. The specific type and right-of-way requirements for the trail shall be determined by the Director, Department of Environmental Management at the time of site plan review."

The applicant's agent, Stephen T. Harrison of D and K Management, Inc., 7200 Wisconsin Avenue, Bethesda, Maryland, addressed the BZA. He stated that the applicant would like to build a gymnasium within an existing warehouse. He explained that although the application met the parking requirement, the applicant was in the process of building an additional three hundred and fifty parking spaces on the site. Mr. Harrison expressed his belief that the additional parking spaces would not only provide adequate parking for other uses on the site, but would alleviate all parking concerns for the gymnasium.

In response to Mr. Ribble's question as to whether he agreed with the modified development conditions, Mr. Harrison stated that he did.

In response to Mrs. Harris' question regarding the additional parking spaces, Ms. Langdon stated that 55 parking spaces would be adequate for the use. She noted that Site Plan 844SP01 had been reviewed by DEM and returned to the applicant with comments.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Audrey Funk, 6106 Declaration Square, Alexandria, Virginia, President of the Jefferson Green Condominium Association, addressed the BZA. She expressed concern regarding the hours of operation on Saturday and Sunday, and the traffic which would be generated by the use. Ms. Funk explained that the residents of the Condominiums must cross Edsall Road to reach their pool and tennis courts. She expressed her belief that while the existing situation was dangerous, the traffic generated by the health club would only increase the risk to pedestrians crossing Edsall Road.

Ms. Funk stated that another neighbor, the Computer Learning Center, did not have adequate parking spaces. Ms. Harris explained that the BZA had no jurisdiction over the Computer Learning Center. Ms. Funk expressed her belief that the proposed use would only add to the traffic on Edsall Road and the parking problems created by the Computer Learning Center. She said that the applicant should provide a traffic light to ensure safe pedestrian crossings.

Mrs. Thonen expressed her belief that the owner of the shopping center had a responsibility to the businesses, as well as the neighbors, to ensure their safety.

Ms. Funk noted that the residents had no objection to the health club, but had concerns regarding the traffic pattern in the area.

In response to Mr. Ribble's question as to the concern with the gymnasium hours on Saturday and Sunday, Ms. Funk stated that the residents' pool and tennis court hours would coincide with the health club hours, thereby creating an additional traffic hazard on Edsall Road.

There being no further speakers in opposition, Chairman DiGiulian called for rebuttal.

Mr. Harrison stated that a great deal of the traffic was caused by vehicles cutting through the site. He noted that in an attempt to mitigate the situation, speed bumps have been installed. Mr. Harrison also noted that the entrance to Plaza 500 would be modified so that it would not impede traffic from Edsall Road. He explained that a study conducted by Fairfax County concluded that a traffic light was not warranted. In summary, Mr. Harrison stated that he did not believe that the gymnasium would create any additional traffic hazards and noted that the use would provide a recreational facility for the community.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 93-M-006 subject to the development conditions contained in the staff report dated May 18, 1993 with the deletion of Development Condition 8.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-006 by PLAZA 500 LIMITED PARTNERSHIP, under Sections 5-303 and 5-503 of the Zoning Ordinance to permit a health club, on property located at 6295 Edsall Road, Tax Map Reference 81-2((1))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 May 25, 1993; 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 and I-5.
3. The area of the lot is 34.19 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 8-503 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 Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips dated December 12, 1993, Revised January 25, 1993, for Suite 190, World Gym and its associated parking only, 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. Fifty-five (55) parking spaces shall be provided for this use as shown on the special permit plat. All parking shall be on site.

6. The hours of operation for the Health Club shall be limited to 6:00 a.m. to 10:00 p.m. Monday through Friday and 8:00 a.m. to 8:00 p.m. Saturdays and Sundays.

7. The maximum number of patrons on site at any one time shall not exceed 150. The maximum number of employees on site at any one time shall not exceed five (5).

8. Transitional screening and barrier requirements shall be addressed at the time of site plan review.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

Mr. Ribble moved to waive the minimum eight day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 1993. This date shall be deemed to be the final approval date of this special permit.

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The Board of Zoning Appeals recessed at 10:28 a.m. and reconvened at 10:45 a.m.

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Page 376, May 25, 1993, (Tape 2), Scheduled case of:

Request for a Waiver of the Minimum Eight Day Waiting Period
Plaza 500 Limited Partnership, SP 93-M-006

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals and stated the agent for Plaza 500 Limited Partnership, SP 93-M-006, had indicated that he would like to request a waiver of the minimum eight day waiting period.

The applicant's agent, Stephen T. Harrison, of D and K Management, Inc. 7200 Wisconsin Avenue, Bethesda, Maryland, addressed the BZA and requested a waiver of the minimum eight day waiting period.

Mr. Ribble moved to waive the minimum eight day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 376, May 25, 1993, (Tape 2), Scheduled case of:

10:00 A.M. SAINT THOMAS EPISCOPAL CHURCH, SP 93-D-001 Appl. under Sect(s). 3-103 and 8-915 of the Zoning Ordinance to permit a church and related facilities, nursery school and waiver of the dustless surface requirement. Located at 8991 Brook Rd. on approx. 5.28 ac. of land zoned R-1. Dranesville District. Tax Map 28-2 ((1)) 12 and 28-2 ((5)) A. (DEF. FROM 4/27/93 TO ALLOW THE APPLICANT TO REVIEW THE DEV. CONDS. AND WORK WITH STAFF.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Morris replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit to establish a nursery school and noted that the

application had been deferred on April 27, 1993 for staff to meet with the applicant to resolve concerns with the proposed development conditions. Ms. Langdon explained that the applicants had requested deletion of Development Conditions 4 and 8, and a modification to Development Condition 5.

Ms. Langdon noted that Development Condition 4 stated the Special Permit was subject to the provisions of Article 17, Site Plans. The Zoning Ordinance under Sect. 8-303, Standards for All Group 3 Uses, states that all uses, except home child care facilities, shall be subject to the approval of a site plan prepared in accordance with the provisions of Article 17. Both the submission of a landscape plan to provide transitional screening and the construction of a commercial entrance from Brook Road would require site plan approval; therefore, staff believed Development Condition 4 was valid.

With regard to Development Condition 5, Ms. Langdon stated that the applicant had submitted a request for a reduction of their maximum daily enrollment from 99 to 50. She said staff would support a change in Development Condition 5 to read: "The maximum number of seats in the main area of worship shall be 150. The maximum daily enrollment for the nursery school shall be 50."

Ms. Langdon stated that the applicant had also requested a modification of the transitional screening and barrier requirements along all lot lines to allow the existing vegetation to satisfy the screening requirement. She said that staff would support the request except along the northern property line adjacent to Lot 9. Ms. Langdon explained that even with the reduction in the daily enrollment, staff believed Transitional Screening 1 should be provided along the lot line between the church property and Lot 9 because there is no existing vegetation to screen this residential use from the noise and visual impacts of the proposed nursery school. In summary, Ms. Langdon stated that the application would be in harmony with the recommendation of the Comprehensive Plan; therefore, staff recommended approval subject to the development conditions contained in the staff report dated April 20, 1993 with a modification to Development Condition 7 to read: "The hours of operation for the nursery school shall be limited to 9:00 am to 1:00 p.m., Monday through Friday."

In response to Mrs. Thonen's question as to whether the reduced enrollment would require 64 parking spaces, Ms. Langdon explained that 64 parking spaces already exist on the property.

The Pastor of Saint Thomas Episcopal Church, John W. Morris addressed the BZA. He thanked the BZA for the deferral and Ms. Langdon for her assistance. He stated that while he could agree to Development Conditions 1, 2, 3, 5, 6, 7, and 11, he could not agree to the others. He explained that the church had received special permits in 1971 and 1974 and expressed his belief that the request before the BZA was for the same purpose and use. Pastor Morris noted that no construction, addition, or modification was planned for the site. He pointed out that the application had also been amended to reduce the maximum enrollment from 99 to 50. In summary, Pastor Morris requested the BZA to delete Development Conditions 4, 9, and 10; and modify Condition 8 so that a phased in landscaping plan could be developed in cooperation with the Fairfax County Urban Forester and be implemented over a 5 year period. He further requested that the barrier requirement be waived along the northern property line.

In response to Mr. Kelley's question as to how far the play area along the northern property line would be from Lot 9, Ms. Langdon stated that it would be approximately 25 to 30 feet.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen expressed her belief that because the applicant would have to return to the BZA in order to change the special permit, the deletion of Condition 4 would be acceptable. Ms. Langdon stated that Condition 4 dealt with the Site Plan which is a requirement of the Department of Environmental Management (DEM). Chairman DiGiulian expressed his belief that Condition 4 should be deleted because DEM may decide that the Site Plan could not be waived because it was a BZA requirement.

Mr. Kelley made a motion to grant SP 93-M-006 subject to the development conditions contained in the staff report dated May 18, 1993 with the modification as reflected in the Resolution.

Mr. Hammack seconded the motion.

Mrs. Harris made a motion to amend Development Condition 7, to be renumbered as Development Condition 6 and to be modified as followed:

> "6. The hours of operation for the nursery school shall be limited to 9:00 A.M. to 1:00 P.M., Monday through Friday for the nursery school."

The maker of the motion accepted the amendment.

The BZA had a brief discussion regarding the screening requirement.

Mrs. Harris expressed her belief that Development Condition 10 relied on the special permit going through the site plan process. Mr. Kelley stated that he did not believe that the addition of the nursery school was so great an intensification of use as to require the applicant to go through the site plan process.

In response to Mrs. Harris' question as to the size of the existing entrance, Ms. Langdon stated that to meet the standard requirements, the existing 24 foot entrance would have to be increased to 30 feet. Chairman DiGiulian noted that the church had been in existence for many years. Mr. Kelley expressed his belief that the logical entrance to the facility would be from Lewinsville Road. Pastor Morris affirmed that the principle entrance would be from Lewinsville Road.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-001 by SAINT THOMAS EPISCOPAL CHURCH, under Sections 3-103 and 8-915 of the Zoning Ordinance to permit a church and related facilities, nursery school and waiver of the dustless surface requirement, on property located at 8991 Brook Road, Tax Map Reference 28-2((1))12 and 28-2((5))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 May 25, 1993; 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 5.28 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, 8-305, 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 prepared by Bartlett Consultants, Ltd., dated June 30, 1992 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The maximum number of seats in the main area of worship shall be 150. The maximum daily enrollment for the nursery school shall be 50.

5. There shall be 64 parking spaces provided. All parking shall be on site.

6. The hours of operation for the nursery school shall be limited to 9:00 A.M. to 1:00 P.M., Monday through Friday for the nursery school.

7. The requirement of Transitional Screening 1 along the eastern and southern lot lines shall be modified to allow the existing vegetation to fulfill the applicable requirements provided that the existing vegetation is preserved to the maximum extent possible. Transitional Screening (25 feet) shall be provided along the northern lot line to buffer adjacent Lot 9. The provision of Transitional Screening 1 may be phased over a five year period as approved by the Urban Forestry Branch of the Department of Environmental Management (DEM). The barrier requirement shall be waived along all lot lines provided the play area is fenced with a chain-link fence along the eastern, southern and western sides and a six (6) foot board-on-board fence on the northern side.

8. The gravel surfaces shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), and shall include but not be limited to the following:

Travel speeds on the drive should be limited to ten (10) mph.

During dry periods, application of water shall be made in order to control dust.

Runoff shall be channelled away from and around the parking areas.

The applicant shall perform periodic inspections to monitor dust conditions, drainage functions, compaction and migration of the stone surface.

Routine maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-1 with Mrs. Harris voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 2, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 379, May 25, 1993, (Tape 2), Scheduled case of:

10:15 A.M. ST. AIDAN'S EPISCOPAL CHURCH, SPA 92-V-003 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 92-V-003 for church and related facilities and nursery school to permit parish hall addition, accessory structure (shed) and reduction in parking. Located at 8531 Riverside Rd. on approx. 7.47 ac. of land zoned R-3. Mount Vernon District. Tax Map 102-3 ((1)) 33.

Chairman DiGiulian noted that the notification requirements had not been met.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and explained that although the applicant had received the notice package, the notices had not been done in accordance with the Zoning Ordinance requirements. Chairman DiGiulian asked who was at fault and Ms. Kelsey replied that although the applicant had received the notification package, the notices had not been done correctly.

Chairman DiGiulian noted that the agenda was full and asked Ms. Kelsey for a September deferral date. Ms. Kelsey suggested September 28, 1993.

Mrs. Thonen made a motion to defer SPA 92-V-003 to the suggested date. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 379, May 25, 1993, (Tape 2), Action Item:

Approval of Resolutions from May 18, 1993 Hearing

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 379, May 25, 1993, (Tape 2), Action Item:

Request for Additional Time for
S. Congregation of Jehovah Witnesses, SPA 89-M-044-1

Mrs. Thonen made a motion to grant the applicant's request. Mr. Hammack seconded the motion which carried by a vote of 7-0. The new expiration date will be June 19, 1994.

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Page 380, May 25, 1993, (Tape 2), Action Item:

Approval of Minutes from April 6, and April 20, 1993 Hearings

Mrs. Thonen made a motion to approve the minutes as submitted. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 380, May 25, 1993, (Tape 2), Action Item:

Request for Date and Time for
Yahya M. Al-Hussain Appeal

Mr. Pammel made a motion to schedule the appeal for July 7, 1993 at 10:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 380, May 25, 1993, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Congregation Adat Reyim, SPA 85-S-057

Mrs. Thonen made a motion to deny the request. Mrs. Harris seconded the motion which carried by a vote of 7-0.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and suggested the case be scheduled for September 16, 1993. The BZA concurred.

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Page 380, May 25, 1993, (Tape 2), Action Item:

Status of Filing for Shared Parking Agreement
Dar Al-Hijrah Mosque, SP 84-M-009

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that the applicant's attorney, Larry E. Becker, 1427 Dolley Madison Boulevard, McLean, Virginia, had stepped out of the room but would return momentarily. She said that Mr. Becker had submitted a request that the BZA issue an intent-to-defer the Revocation Hearing scheduled for June 15, 1993 and noted that Mr. Becker had submitted the shared parking agreement information to the Department of Environmental Management (DEM).

Ms. Kelsey stated the special permit request was scheduled to be heard by the BZA on August 3, 1993 and suggested that the Revocation Hearing be scheduled after that date. In response to Chairman DiGiulian's question as to whether the Board of Supervisors would decide upon the shared parking agreement before the BZA heard the special permit, Ms. Kelsey explained that although the shared parking agreement would not have to be advertised, DEM would have to process it. She noted that the special exception would be heard by the Board of Supervisors on August 2, 1993.

Mr. Hammack made a motion to defer the Revocation Hearing to August 3, 1993. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 380, May 25, 1993, (Tape 2), Action Item:

Scheduling of Board of Zoning Appeals Hearing Dates

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals and stated that the July schedule was very full and noted that there were twenty-seven cases scheduled for July 27, 1993. She suggested the BZA schedule an additional meeting for July.

Chairman DiGiulian expressed his belief that staff should accept the applications in a timely manner so that the July meeting dates are not overloaded. Ms. Kelsey explained that the August recess limited the flexibility of staff to schedule the cases within the ninety day time frame.

Mr. Ribble asked staff to investigate the possibility of having legislation passed that would exclude the August recess from the ninety day time frame for hearing a case. Mr. Hammack agreed with Mr. Ribble and noted that Fairfax County could request an exemption from the ninety-day requirement during the August recess. Ms. Kelsey stated that the Virginia State Legislature would have to take action on the issue.

Ms. Kelsey explained that although staff does explain the submission requirements very thoroughly and even in some cases may suggest the applicants apply for a waiver of various requirements, applicants often are lax in complying with the submission requirements.

Mr. Kelley made a motion to schedule an additional meeting date for July 28, 1993. Hearing no objection, the Chair so ordered.

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County Attorney's Memorandum Regarding Felipa L Unciano Appeal

Mr. Pammel stated that in view of the ruling on the appeal, it is imperative that the "Notice of Violation", or any other correspondence to the party-at-fault be done in a timely fashion. He explained that citizens insist they do not receive the correspondence for five or six days after it is mailed, thereby creating a hardship.

The BZA had a brief discussion regarding the ruling handed down by Virginia Circuit Court Judge Stevens on the Felipa L. Unciano Appeal.

The BZA requested that Jane Kelsey, Branch Chief, Special Permit and Variance Branch, contact James P. Zook, Director, Office of Comprehensive Planning, to request that a procedure be implemented so that "Notices of Violation" are sent to the citizens in a timely manner.

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As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: June 22, 1993

APPROVED: June 29, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 8, 1993. The following Board Members were present: Vice President Paul Hammack; Martha Harris; Mary Thonen; Robert Kelley; and James Pammel. Chairman John DiGiulian and John Ribble was absent from the meeting.

Vice Chairman Hammack 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 Hammack called for the first scheduled case.

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Page 383, June 8, 1993, (Tape 1), Scheduled case of:

9:00 A.M. HENRY B. & CATHERINE W. WILLIAMS, VC 93-L-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 32.6 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located at 3416 Collard St. on approx. 9,750.00 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 32.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Henry B. Williams, 3416 Collard Street, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was proposing to construct a second story addition on to an existing dwelling which is located 32.6 feet from the front lot line. Since the Zoning Ordinance requires a minimum front yard of 35 feet, the applicants were requesting a variance of 2.4 feet. Ms. Langdon added that the applicants have obtained an administrative variance to allow the dwelling to remain in its present location. The dwellings on Lots 31 and 33 are located approximately 33.3 and 32.9 feet, respectively, from their front lot lines.

Mr. Williams thanked Ms. Langdon, Staff Coordinator, and Virginia Ruffner, with the Application Branch, Office of Comprehensive Planning, for their assistance during the variance process.

Mrs. Thonen said the BZA was always glad to hear compliments on behalf of staff.

Mr. Williams said he and his wife have lived on the subject property since 1977 and would like to construct the second story in order to provide separate bedrooms for their two daughters. He said one of his daughters was present since she was taking an 8th grade Civics class and he believed this would provide her with a good opportunity to see a local government in action. Mr. Williams said while planning the addition they had been very conscious of the neighbors and believed they had designed an addition that would enhance the neighborhood. He said their property is next to the last house on a dead end street and there are others houses in the neighborhood that are visibly closer to the street and noted that several houses have been remodeled. Mr. Williams addressed each of the standards required for a variance.

Vice Chairman Hammack called for speakers either in support or in opposition to the request and hearing no reply closed the public hearing.

Mr. Pammel made a motion to grant VC 93-L-021 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 1, 1993. The BZA waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-021 by HENRY B. AND CATHERINE W. WILLIAMS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 32.6 feet from front lot line, on property located at 3416 Collard Street, Tax Map Reference 92-2((19))32, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 8, 1993; 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-2.
3. The area of the lot is 9,750 square feet.
4. The County has already granted an administrative variance to allow the existing dwelling to remain as is and become conforming within the R-2 District.

5. The lot size in the R-2 District is 15,000 square feet and in this instance the lot size is 9,750 square feet, which is substantially less than required by the R-2 District and further illustrates there is an inconsistency between the existing zoning and the size of the lot, thus leading to the situation before the BZA today.
6. The applicant has indicated that this is a situation that also exists on other properties in the area.
7. The lot is unusually small.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Richard A. Schoppet, AIA, dated September 5, 1992, Revised February 17, 1993, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this variance.

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9:10 A.M. WILLIAM M. LIVINGSTON, VC 93-V-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 46.5 ft. & 41.2 ft. from street lines of a corner lot, deck 13.8 ft. from front & 5.6 ft. from rear lot lines, & dwelling to remain 5.3 ft. from rear & 26.3 ft. from front lot lines. Located at 5766 Mallow Trail and 11445 Potomac Rd. on approx. 12,498.00 sq. ft. of land zoned R-E. Mount Vernon District. Tax Map 119-4 ((2)) (17) 31, 32, 33 and 34. (OTH GRANTED)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, T. Farrell Egge, 6911 Richmond Highway, Suite 444, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was proposing to construct an addition 46.5 feet from one front lot line of a corner lot and 41.2 feet from another front line of a corner lot. The applicant was also requesting approval to allow a dwelling to remain 26.3 feet from a front lot line of a corner lot and 5.3 feet from the rear lot line and a roofed deck to be located 13.8 feet from a front lot line of a corner lot and 5.6 feet from the rear lot line. The Zoning Ordinance requires a minimum front yard of 50 feet and a minimum rear yard of 25 feet on a R-E lot. Accordingly, the applicant was requesting variances for the addition of 3.5 feet and 8.8 feet to the minimum front yard requirement, a variance for the dwelling of 23.7 feet to the minimum front yard requirement and 19.7 feet to the minimum rear yard requirement, and a variance for the roofed deck of 36.2 feet to the minimum front yard requirement and 19.4 feet to the minimum rear yard requirement.

In response to a question from Mrs. Harris with respect to the footprint of the building, Ms. Langdon said the dwelling and the deck were both presently under construction and would remain as they are. She added that the existing structure to the front of the lot will also remain.

Mr. Egge said he understood it was difficult for the BZA to visualize the subject property and that he had a two minute video he would like the BZA to view at the end of his presentation. Vice Chairman Hammack said the BZA was reviewing the photographs which were helpful.

Mr. Egge thanked the BZA for expediting the public hearing and thanked Ms. Langdon and Michael Congleton, Deputy Zoning Administrator, Office of Comprehensive Planning, for their assistance.

He said there is an old building located on Lots 33 and 34 and the applicant was operating a business and living in both houses until last September. Mr. Egge said the building on Lots 33 and 34 needed some renovations but unfortunately when the applicant expanded the second floor he exceeded the footprint, thereby generating the need for the variance. (He called the BZA's attention to the "hash marks" noted on the plat which depicted the addition and the deck.) Mr. Egge said because there is no septic associated with the second dwelling a variance would also have been necessary.

With respect to the deck addition, Mr. Egge said the deck addition would be an enclosed living area that would connect the two buildings, thus allowing the two buildings to use the one septic field. He said if the variance was not granted the value of the property would be diminished for resale since the applicant would not be able to sell the land in parcels because of the consolidation.

Mr. Egge said the original building sets back 26.3 feet from Mallow Trail and a 50 foot setback is required. He said the dwelling existed prior to the Ordinance but the variances were required because the applicant wished to expand the footprint.

Mrs. Harris asked if the speaker had photographs of the original building since the addition in the photographs the BZA was reviewing looked like an entirely new structure. Mr. Egge said the original structure was stripped and the existing structure was built on the original foundation. Mrs. Harris asked staff if this could be called an addition. Jane Kelsey, Chief, Special Permit and Variance Branch, said if the foundation was left intact, it was her understanding that it would be classed as a renovation to the existing building. She added this was part of the Building Code not the Zoning Ordinance, the yard requirements always have to be met regardless of whether it is a new building or an addition.

In response to a question from Mrs. Harris with respect to a building permit, Ms. Langdon said a building permit was not obtained for the addition. She said the Department of Environmental Management (DEM) had issued a Notice of Violation to the applicant and worked was stopped at that time.

Mr. Egge explained that the work stopped in January and the violation was not issued until March. Mr. Egge said it had been his understanding, following a discussion with DEM, that the violation would be held in abeyance until the variance could be processed.

Mrs. Harris asked what kind of business was being operated on site. Mr. Egge said the applicant and his associate are freelance photographers who work for the National Geographic

and other similar magazines. In response to a question from Mrs. Harris, Mr. Egge said the applicant has an home professional business license.

Mr. Egge explained that the problem with the 50 foot setback from Mallow Trail is unique because of the small alleyway which makes one side of the lot a front yard requiring a 50 foot setback. He said Mallow Trail is only a trail that people use to walk down to the water.

At this time the BZA viewed the video while Mr. Egge described the layout of the subject property and pointed out the location of the dwellings on the adjacent properties.

In response to a question from Vice Chairman Hammack as to the status of Mallow Trail, Mr. Egge said he had discussed the possibility of abandonment or vacation with Larry Berg, with the Office of Transportation, who had indicated that Mallow Trial looked like a good candidate. He added that the applicant would be looking at those possibilities in the future.

Vice Chairman Hammack said it was his understanding that the applicant was proposing to tie the two dwellings together with the intermittent structure and that the property would be conveyed as a single dwelling unit on one lot. Mr. Egge said that was correct. Vice Chairman Hammack discussed the type of work the applicant performed on site. The applicant, Mr. Livingston, and his associate came to the podium and explained they performed all their research and writing on the property. Mr. Livingston added that clients do not come to the site.

Vice Chairman Hammack called for speakers in support of the request.

Elizabeth Newcombe, said she had lived next door to the applicant for 15 years and that she supported the request because she believed the proposed improvements would enhance the neighborhood. She added that Mallow Trial is a path that was dedicated in 1929 at the time Gunston Manor was established and is used as a walkway to the beach.

Vice Chairman Hammack asked if the beach still existed. Ms. Newcombe said it did although a lot of land has been lost.

Mrs. Harris asked the speaker if she believed the applicant's proposal to be overwhelming compared to the other structures in the neighborhood. Ms. Newcombe said she had no objections and that she had removed trees on her property so the applicant could see the river from his property. Mrs. Harris commended her for being a good neighbor. Ms. Newcombe said the world was here for everyone to enjoy.

Vice Chairman Hammack called for speakers in opposition to the request. Hearing no reply, he asked staff if there should be a development condition which would restrict the sale of the property as one lot. Jane Kelsey, Chief, Special Permit and Variance Branch, said she would leave that to the BZA's discretion. She added by definition of a dwelling the two houses had to be connected with a roof, walls, and floor and once it becomes part of a building permit it becomes one building lot as defined by the Zoning Ordinance regardless of how many lots make up that building lot.

A discussion took place between the BZA and Ms. Kelsey about the removal of the structure at some later time and the septic. Ms. Kelsey said the structure could not be removed because it would then convert back to two dwellings on one building lot which is prohibited by the Zoning Ordinance. Mrs. Harris commented that the application was very confusing. Ms. Kelsey agreed and said although it is not staff's policy to make site visits to properties involved on yard variance applications, staff did visit this site because the application on its face was so confusing.

In response to a question from Mrs. Harris, Ms. Langdon said there was no documentation in the zoning files to show the exact location of the neighbor's house in proximity to the applicant's house but it was built very close.

Mr. Kelley said he would be opposed to any development condition that put any restriction on the future resale or disposition of the subject property as he believed it would be a terrible precedent for the BZA to set. Mrs. Harris said it appeared that the granting of the variance would restrict the property.

Ms. Langdon used the viewgraph to display a photograph showing the proximity of the house on the adjacent lot. Mr. Egge said most of the landscaping shown in the photograph was on the neighbor's property.

The BZA discussed with Mr. Egge how many employees worked on the site. Mr. Egge explained there was only the applicant and his finance who lived and worked on the site.

There was no further discussion and Vice Chairman Hammack closed the public hearing.

Mrs. Thonen made a motion to grant VC 93-V-026 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 1, 1993. The BZA waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-026 by WILLIAM M. LIVINGSTON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 46.5 feet and 41.2 feet from street lines of a corner lot, deck 13.8 feet from front and 5.6 feet from rear lot lines, and dwelling to remain 5.3 feet from rear and 26.3 feet from front lot lines, on property located at 5766 Mallow Trail and 11445 Potomac Road, Tax Map Reference 119-4((2))(17)31, 32, 33, and 34, 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 8, 1993; 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-E.
3. The area of the lot is 12,498 square feet.
4. The lots in the area are very small and usually have to be combined in order to get any type of building on them.
5. Mallow Trail will probably never be put in because the people in Gunston would never allow it because it would encroach on the environment.
6. The consolidation of the subject property into one buildable lot would be more appropriate rather than trying to force something onto the site that would not be appropriate for the area.
7. This property was built upon long before the Zoning Ordinance came into effect and the dwelling was constructed prior to the Ordinance and fell closer to the lot line of Lots 33 and 34 than allowed by the present Ordinance and therefore does not meet the Ordinance.
8. It is odd that there are no side lot lines on the subject property.
9. The applicant's request might be an improvement to the neighborhood by revamping what currently exists on the site.
10. The project is zoned R-E but does not have the square footage to meet the requirements of the R-E District.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 10, 1993, Revised March 18, 1993, submitted with this application and is not transferable to other land.

2. Buildings previously constructed without an approved Building Permit shall be inspected and certified by a professional engineer or architect to determine that the construction conforms to the Virginia Uniform Statewide Building Code (USBC) in effect at the time of construction. Any structure that does not meet the USBC in effect at the time of its construction shall obtain a current Building Permit that meets current Codes and regulations.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 388, June 8, 1993, (Tape 1), Scheduled case of:

9:20 A.M. RUTHERFORD AREA SWIMMING CLUB CORPORATION, SPA 72-A-112 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 72-A-112 for community swimming pool to permit building addition (pavilion) and reduction of parking. Located at 4609 Marley Rd. on approx. 2.12 ac. of land zoned R-2. Braddock District. Tax Map 69-2 ((10)) A.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, W. Mark Pierce, 4517 Sonata Court, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the subject property is currently developed with a bathhouse, filter house, metal shed, main/wading pool surrounded by a concrete deck and chain link fence, and 78 space asphalt parking lot. Ms. Langdon said the applicant was proposing to construct a pavilion and a reduction in parking. She said the pavilion would be to the southeast of the existing bathhouse and will be 34 foot wide by 36 foot long made of pressure treated wood with a concrete floor, open on all sides, with a roof 15 feet in height.

Ms. Langdon said the applicant proposes to restripe the parking area to meet current standards which will eliminate two spaces reducing the total to 76 parking spaces as opposed to the existing 78 spaces. She said a condition of the previously approved special permit S-112-72 required a minimum of 100 parking spaces. In closing, Ms. Langdon said staff recommended approval of SPA 72-A-112 subject to the development conditions dated June 1, 1993 which incorporated and superseded all applicable conditions of the previous special permit approval.

In response to a question from Mrs. Harris, Ms. Langdon said there are no recorded complaints with regard to off site parking.

The applicant's agent, Mark Pierce, thanked Ms. Langdon for her assistance while going through the special permit process. He said the applicant was a nonprofit organization with a membership of 240 members and the pool is open between Memorial Day and Labor Day between the hours of 11:00 a.m. until 9:00 p.m. Mr. Pierce said the construction of the pavilion will provide much needed shade. With respect to the parking spaces, Mr. Pierce said a few years ago the number of memberships was increased from 300 to 400 and at that time staff also requested that the number of parking spaces be increased to 100. He said most of the people utilizing the pool live in the neighborhood and either walk to the pool or ride bicycles.

Mrs. Harris expressed concern as to why the pool had not increased the parking spaces since it had been a part of the development conditions. Mr. Pierce said at that time the parking lot was gravel and the club had anticipated paving the lot and striping. He said he had been unable to talk to anyone who had been on the board at that time so he could not respond as to why it was not done, but he did not believe there was a parking problem.

Vice Chairman Hammack asked why the development conditions did not address swim meets. Ms. Langdon said the conditions with the original special permit did not address swim meets nor did the applicant's statement of justification. In response to a question from Vice Chairman Hammack, Mr. Pierce said swim meets begin at 9:00 a.m. Vice Chairman Hammack said he believed the development conditions should address the swim meets because technically the club would be in violation of the special permit by commencing the swim meets at 9:00 a.m. Mr. Pierce said he had no objection.

Vice Chairman Hammack discussed with Mr. Pierce and Jim Owendoff, treasurer of the pool, the possibility of the BZA deferring decision for approximately two weeks. He said this would allow staff an opportunity to prepare a development condition relating to the hours for the swim meets. Mrs. Harris pointed out that the conditions dated July 12, 1972 stipulated that the hours of operation were 9:00 a.m. to 9:00 p.m. and it appeared that it was merely an oversight when staff incorporated the previous development conditions. Vice Chairman Hammack asked when the swim team practiced and Mr. Pierce said practice started at 9:00 a.m.

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that the BZA could not expand the hours of operation, but it could revise the conditions to reflect the start time of 9:00 a.m. since that was previously approved. She added that since the request was not a major expansion staff did not pick up some of the standard development conditions that the BZA has, in the past, imposed on new pools.

Vice Chairman Hammack called for speakers in support or in opposition of the request and hearing no reply closed the public hearing.

Mrs. Harris made a motion to grant SPA 72-A-112 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 1, 1993, with the following modification:

"7. The hours of operation shall be limited to 9:00 a.m. to 9:00 p.m. daily, Memorial Day through Labor Day."

Vice Chairman Hammack said he would support the motion but that he also believed that the use had been expanded since 1972 if full testimony was brought out. He suggested that Development Condition Number 4 which required that the applicant go through the site plan process be deleted. The maker and seconder of the motion agreed. The BZA waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 72-A-112 by RUTHERFORD AREA SWIMMING CLUB CORPORATION, under Section 3-203 of the Zoning Ordinance to amend SP 72-A-112 for community swimming pool to permit building addition (pavilion) and reduction of parking, on property located at 4609 Marley Road, Tax Map Reference 69-2((10))A, 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 8, 1993; 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 2.12 acres.
4. The applicant has explained to the BZA's satisfaction the reasons as to why the parking was reduced and the hours of operation were approved in 1972.
5. The applicant's request will not create an intensity of the use of the pool; therefore, the BZA cannot limit the use of the pool based on an intensification.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-403 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application 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 Parallel Architects dated January 30, 1993, as revised through February 22, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. Seventy-six (76) parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.

5. The maximum number of memberships shall be 400.

6. The hours of operation shall be limited to 9:00 a.m. to 9:00 p.m. daily, Memorial Day through Labor Day.

7. All loudspeakers, noise and lights shall be directed onto the pool site. Should there be a request for an after hours party, permission must be granted by the Zoning Administrator and such parties shall be limited to six (6) such parties per year.

8. The maximum height of the pavilion shall be 15'6".

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 390, June 8, 1993, (Tape 1), Scheduled case of:

9:30 A.M. BARRY F. & KELLENE H. MOUNTAIN, VC 93-P-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 7530 Friar Tuck Ct. on approx. 11,190.00 sq. ft. of land zoned R-3. Providence District. Tax Map 60-1 ((2)) 30.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Barry F. Mountain, 7530 Friar Tuck Court, Falls Church, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicant was proposing to construct an addition which would include the enclosure and extension of an existing carport to be located 10 feet from the side lot line. The dwelling on adjacent Lot 31 is located approximately 23 feet from the shared lot line.

The applicant, Mr. Mountain, said he and his wife acquired the property in 1982 and it was one of the first contemporary houses built in Fairfax County and is similar to the Hollin Hills houses located in Alexandria. He addressed each of the standards required for the granting of a variance and said the denial of the variance would produce an undue hardship by creating the potential for undermining the retaining wall and jeopardizing its structural integrity caused by adjacent excavation, should it be necessary. Mr. Mountain said they currently have the right to connect the carport roof to the retaining wall as a overhang since a 3 foot overhang into a side lot is permitted. (He called the BZA's attention to the photographs.) Mr. Mountain said he had personally discussed the proposed addition with the neighbors and they had voiced no objections, in particular the owner of Lot 31 who had constructed a similar structure approximately ten years ago. He submitted a letter of support from Sue Mitchell, owner of Lot 35, into the record.

In response to questions from Mrs. Harris, Mr. Mountain said he maintains the property on the east side of the retaining wall. He said he planned to use the retaining wall as the foundation wall of the addition.

Vice Chairman Hammack called for speakers in support or in opposition to the request and hearing no reply closed the public hearing.

Mr. Kelley made a motion to grant VC 93-P-022 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 1, 1993. The BZA waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-022 by BARRY F. AND KELLENE H. MOUNTAIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10 feet from side lot line, on property located at 7530 Friar Tuck Court, Tax Map Reference 60-1((2))30, 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 8, 1993; 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 11,190 square feet.
4. The subject property has exceptional topographic conditions.
5. If the request was denied, it would produce an undue hardship.
6. The hardship is not shared by other properties in the immediate vicinity.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Matthew Arnold, AIA, dated September 10, 1992, submitted with this application and not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley said it appeared that it was becoming quite routine for the BZA to waive the eight day time limitation. Jane Kelsey, Chief, Special Permit and Variance Branch, said the BZA did not meet again until June 22nd; therefore, staff had made the applicants aware of the fact that it would be fifteen days before final approval rather than eight days.

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Page 392, June 8, 1993, (Tape 1-2), Scheduled case of:

9:45 A.M. KOREAN CENTRAL PRESBYTERIAN CHURCH, SPA 83-P-057-2 Appl. under Sect(s). 3-103, 8-914 and 3-403 of the Zoning Ordinance to amend SP 83-P-057 for church and related facilities to permit increase in land area, temp. trailers, additional parking spaces, waiver of dustless surface req., reduce min. yard req. based on error in bldg. and shed to remain 6 ft. from side lot line. Located at 2547 Cedar Ln. on approx. 12.93 ac. of land zoned R-1 and R-4. Providence District. Tax Map 49-1 ((1)) 35, 36, 37, 38 and 38A.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Mark Mittereder, AIA, ArchVest, Inc., 7360 McWhorter Place, Suite 200, Annandale, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicant was proposing to add two additional lots to the special permit property, Lots 35 and 36 on the south side of Amanda Place. On Lot 35, the applicant proposed adding two temporary trailers and 20 gravel parking spaces with a waiver of the dustless surface requirement for the parking spaces. Ms. Greenlief said the applicant was requesting a two year term for the trailers to allow the education building, which was approved on Lot 37 and is currently under construction, to be completed. She said also a part of the application was a request for an error in building location to allow a shed located on Lot 38A to remain 6 feet from the side lot line where 20 feet is required. Staff's main concern with the application was with the screening of the trailers and although there are some trees behind the trailers. They believed that a denser screen was necessary to screen the residents to the south. Ms. Greenlief said staff had included a development condition to that effect in Appendix 1. She said with the implementation of the development conditions staff recommended approval of SPA 83-P-057-2.

Mr. Mittereder said the application incorporated the additional land area into the special permit and asked for the additional parking spaces and up to two additional trailers to be used for Bible study classrooms. He said the applicant has agreed to provide additional screening along the south side of Amanda Place with a three foot high hedge and along the back of the trailers to provide an unbroken continuous screen. With respect to the development conditions, Mr. Mittereder asked that Condition Number 9 be revised to add the words "If required . . . " to the beginning of the condition. He said he believed this would clarify the condition.

Mrs. Harris said she believed the words "if deemed necessary by the Director of DEM" removed any gray area. She and the speaker discussed the condition. Mr. Mittereder said the applicant planned to file a site plan waiver and since it was a temporary use he believed it met the current requirement for such a waiver.

Vice Chairman Hammack called for speakers in support of the request. Mr. Mittereder asked the members from the church who were present to stand to show their support. The members did so.

Vice Chairman Hammack called for speakers in opposition to the request.

David DeFiore, 2600 Dennis Drive, Vienna, Virginia, said he was not necessarily in opposition but did have concerns with respect to the runoff. The BZA pointed out that staff had included development conditions that would address the runoff problem. Mr. DeFiore said he was also concerned with the potential for increased traffic on Dennis Drive, where he lives, since the site will be used more. Mrs. Harris said the development conditions required that all parking be on site. Mr. DeFiore said people could drop off their children and allow them to use the trail that leads from through the woods into the site.

In response to a question from Vice Chairman Hammack, Ms. Greenlief used the viewgraph to show the location of the trail.

Mr. Pammel pointed out that if the applicant desired to access Dennis Drive they would have to come back to the BZA and amend their application. Vice Chairman Hammack said the applicant was not proposing an expansion of the use; therefore, the BZA could not take any action since there is not a documented problem. He suggested that the speaker keep staff apprised of any problems that might be arise on Dennis Drive.

Jane Kelsey, Chief, Special Permit and Variance Branch, said at the previous Planning Commission and BZA hearings no one testified to any problem with the exception of Amanda Place. She said based on that testimony staff included Condition Number 5 which stipulated that overflow parking could be provided at the Thoreau Intermediate School so long as the applicant maintains a valid agreement and there shall be no parking on Amanda Place. Ms. Kelsey said the condition did not preclude parking on Dennis Drive or some other street within the subdivision because staff had not been aware of a problem. Mrs. Harris said the speaker had only expressed concern with the possibility of people dropping off their children.

Mr. DeFiore said the potential would be increased with the proposed location of the two additional trailers. Vice Chairman Hammack said the trailers were temporary. Mrs. Harris said the BZA could not prohibit people from driving down a street and dropping off their children. Ms. Kelsey said the dropoffs and deliveries should be restricted to the site. A discussion took place among the BZA regarding the safety issue with the children walking through the woods. Vice Chairman Hammack asked if wording could be added to Condition Number 5 to address that concern. Ms. Kelsey said Ms. Greenlief had suggested that perhaps a barrier or fence could be erected to prevent people from entering the site from Dennis Drive.

In rebuttal, Mr. Mittereder said the applicant had no intention of using the path as a dropoff point since it would be rather a lengthy walk and it would not really be safe for the children to walk through the woods. He believed the applicant would not object to expanding the language in the development conditions to include Dennis Drive.

In response to a question from Mrs. Harris, Mr. Mittereder said there were probably some instances when younger adults were dropped off for Bible study but there was no reason to go to Dennis Drive when they can be dropped off at the front door of the church.

Vice Chairman Hammack closed the public hearing.

Mr. Pammel made a motion to grant SPA 83-P-057-2 subject to the Development Conditions contained in the staff report dated June 1, 1993. The BZA waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 83-P-057-2 by KOREAN CENTRAL PRESBYTERIAN CHURCH, under Sections 3-103, 8-914, and 3-403 of the Zoning Ordinance to amend SP 83-P-057 for church and related facilities to permit increase in land area, temporary trailers, additional parking spaces, waiver of dustless surface requirement, reduce minimum yard requirement based on error in building and shed to remain 6 feet from side lot line, on property located at 2547 Cedar Lane, Tax Map Reference 49-1((1))35, 36, 37, 38, and 38A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 8, 1993; 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 and R-4.
3. The area of the lot is 12.93 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 8-903 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 Archvest dated May 11, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by Archvest dated May 11, 1993 and these development conditions.

5. The maximum number of seats in the main area of worship shall be 500; 188 parking spaces shall be provided as shown on the special permit plat. The twenty (20) spaces shown on Lot 35 may be removed when the trailers are removed. Overflow parking may be provided at the Thoreau Intermediate School so long as the applicant maintains a valid agreement with the appropriate County agency. There shall be no parking on Amanda Place.

6. Transitional Screening shall be modified along all lot lines to allow the existing vegetation and the proposed landscaping shown on the special permit plat to satisfy the requirements with the following addition:

   In lieu of the four white pines shown on the south side of the proposed trailers, a row of evergreen trees, six (6) feet in planted height, shall be provided beginning at the westernmost edge of the westernmost trailer and continuing to the easternmost edge of the easternmost trailer. The purpose of these plantings shall be to provide as close to an unbroken visual screen as possible. The exact type, location and number of trees shall be reviewed and approved by the Urban Forestry Branch.

   The barrier requirement shall be waived.

7. Limits of clearing and grading shall be as shown on the special permit plat. There shall no structures and no clearing or grading of vegetation in this area except for dead or dying trees.

8. The structural detention pond depicted on the special permit plat shall be designed and engineered to fulfill requirements for Best Management Practices (BMP's) to the satisfaction of the Director, Department of Environmental Management, (DEM).

9. Stormwater detention best management practices shall be provided for the construction on Lot 35 to ensure compliance with the Chesapeake Bay Preservation Ordinance if deemed necessary by the Director, DEM.

10. The two trailers shall be removed on or before June 15, 1995.

11. The gravel surfaces shall be maintained in accordance with the standard practices approved by the Director, DEM and shall include but may not be limited to the following. The approval of the dustless surface shall be for the time period specified in Article 8 of the Zoning Ordinance.

    Speed limits shall be limited to ten (10) mph.

    During dry periods, application of water shall be made in order 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.

Routine maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

There shall be pavement to a point twenty-five (25) feet into the entrance drive from Amanda Place to inhibit the transfer of gravel off-site.

12. Right-of-way to 26 feet from centerline along both sides of Amanda Place shall be dedicated for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the tie of site plan approval, whichever occurs first. Ancillary construction easements shall be provided to facilitate these improvements.

13. If the shed on Lot 38A is removed for any reason, it may be replaced provided the minimum required yards are met.

14. The tree preservation/tree replacement plan previously approved by the Urban Forestry Branch shall be implemented.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 395, June 8, 1993, (Tape 2), Scheduled case of:

10:00 A.M. ROBIN HAYTOWITZ, SP 92-M-070 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to allow workshop/shed to remain 0.7 ft. from rear lot line (13.4 ft. min. rear req. by Sect. 10-104). Located 6618 Barrett Rd. on approx. 10,051.00 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 64.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Robin Haytowitz, 3901 Cathedral Avenue, NW, #108, Washington, DC, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting approval to allow a storage shed/workshop to remain 0.7 feet from the rear lot line. The Zoning Ordinance requires that the minimum rear yard for accessory structures that are over 8.5 feet in height be equal to the height of the accessory structure. Mr. Heine said the applicant's shed is 13.4 feet; therefore, the applicant was requesting a variance of 12.7 feet.

In response to a question from Mrs. Harris, Mr. Heine said there was no building permit in the Zoning Administration files to indicate when the structure was constructed other than it was done by the previous owner.

Ms. Haytowitz said she purchased the property in good faith in April 1989 with the existing shed on the site with the understanding that the required permits had been obtained, and if she were required to remove or relocate the shed it would be very costly. She said she would be willing to acquire any construction permits that the previous owner failed to obtain in order to bring the shed into compliance.

Mrs. Harris noted a letter received from an adjacent neighbor indicating that debris had been dumped on his property from work being done in the shed and asked the speaker if she was aware of this. Ms. Haytowitz said she was not. Vice Chairman Hammack asked if she resided on the property. Ms. Haytowitz said she rented out the property and it was her intent to eventually live on the property but because of the real estate market she had been unable to sell her condominium in Washington, DC.

There were no speakers to address the request.

Mrs. Harris said there was a letter in opposition from Tomoyo Kuramoto. Mr. Kelley said he would like to ask Mr. Kuramoto several questions if he were present, such as why it took him to so long to file a complaint.

Vice Chairman Hammack asked the applicant how far away Mr. Kuramoto's house set from the lot line. Ms. Haytowitz used the viewgraph to locate the house. Mr. Heine said the house was approximately 110 feet from the shared lot line. Jane Kelsey, Chief, Special Permit and Variance, said there was a complaint contained in the file which dated back to 1982 indicating there was a drainage problem which was alleged to be caused by the shed.

Mr. Kelley asked the applicant if she had heard anything about drainage problems. Ms. Haytowitz said when she was contacted about the violation she was told at that time. She added the first inspector who visited the site said there was not a drainage problem.

A discussion took place between the BZA and the applicant with regard to the debris behind the shed. Ms. Haytowitz said she would be willing to have any debris removed from behind the shed. Mr. Kelley asked the applicant if she knew how long Mr. Kuramoto had lived on his property. The applicant said during a discussion with staff they had indicated the County records reflected approximately 16 years.

Mrs. Harris asked the applicant if she had copies of the neighbor's letters. Ms. Kelsey said usually until a complaint is closed, which is a criminal investigation, any documents that go to Zoning Enforcement are not available to the property owner.

Vice Chairman Hammack asked staff if they had noticed a drainage problem on the property. Mr. Heine said it was during the investigation of the drainage problem that the zoning inspector had discovered the shed was in violation.

Mr. Kelley again expressed concern as to why it took the neighbor such a long time to file a complaint. Vice Chairman Hammack said the back of the shed looked like it was deteriorating and asked what type of floor it had. Ms. Haytowitz said it was a wooden floor.

Mr. Kelley said he would make a motion to defer the case for additional information from staff and the neighbor. Mrs. Harris seconded the motion as she believed the applicant had bought the property in good faith and a deferral would allow staff an opportunity to further investigate the drainage problem. The motion carried by a vote of 4-0. Mrs. Thonen was not present for the vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting. Ms. Kelsey suggested July 13, 1993, at 11:00 a.m. Mrs. Harris asked staff to contact the neighbor and request that he be present at the July public hearing. Ms. Kelsey agreed.

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Page 396, June 8, 1993, (Tape 2), Scheduled case of:

10:15 A.M. HARRISON G. & JOAN K. WEHNER, SP 93-D-008 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to permit an accessory dwelling unit. Located at 9601 Georgetown Pl. on approx. 8.24 ac. of land zoned R-E. Dranesville District. Tax Map 13-1 ((1)) 72D.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Joan K. Wehner, 9601 Georgetown Pike, Great Falls, Virginia, replied that it was.

Mrs. Harris said she knew the applicants and was not certain whether she should participate in the public hearing. Following a discussion among the BZA members, it was determined that Mrs. Harris could participate.

Don Heine, Staff Coordinator, presented the staff report. He said the subject property is developed with a single-family detached dwelling, vineyard, garage, storage shed, and pond. The applicants were proposing to construct a single family detached accessory dwelling, 1 1/2 stories high containing 1,255.3 square feet floor area, while the principal dwelling contains 2,948 square feet of floor area. Mr. Heine said the Comprehensive Plan recommends residential use of the property at .2 to .5 dwelling units per acre and that special permit uses not adversely impact adjacent land uses or the area's low density character. Staff recommended approval of SP 93-D-008 subject to the implementation of the development conditions contained in the staff report.

Mrs. Wehner read a cover letter which they had sent along with a copy of their statement of justification to the same twelve surrounding neighbors who had received certified notification of the date and time of the public hearing. She said no one responded to the letter and to their knowledge there are no objections from the neighbors and the Great Falls Citizens Association supports the request. Mrs. Wehner said they would like to stay on the property into retirement and would like to build a small retirement home for the future. She said their house is an older one with no first floor bedrooms nor baths and the accessory dwelling would allow them to provide housing for one of their sons who would help them with their 20 year old vineyard. Mrs. Wehner said if their sons are not interested or available to live in the house it would be rented out to someone who hopefully would share labor in exchange for lower rent. She believed the proposed use complied with every applicable Ordinance requirements and met the General Standards for special permit uses and additional

standards for accessory dwellings. Mrs. Wehner said the addition of a single family dwelling unit would have little impact because of the large size of their lot, the neighbors who would be the most impacted approve of the use, they have lived in Great Falls since 1965 and have been involved in land use planning, the proposed structure would share one driveway, and the proposed location would leave open the remainder of the field hopefully for expansion of the Great Falls Vineyard. The unit would have its own septic field and well and the architecture will be compatible with the principal dwelling and the proposed dwelling will be landscaped and screened from the principal dwelling and the neighbors. Mrs. Wehner said the accessory dwelling is designed to have two bedrooms, the principal dwelling will be owner occupied, her husband is over 55 years of age, and the accessory dwelling will not be occupied by more than two persons not necessarily related by blood or marriage.

The co-applicant, Harrison Wehner, expressed concern with Conditions Numbers 1 and 9 and the paragraph following the last condition. He suggested that perhaps the wording in Condition 1 could be revised to stipulate that the accessory dwelling could be conveyed to a new owner if they met all the requirements.

Mr. Kelley said the respective buyer could make an application as a prospective buyer. Vice Chairman Hammack said special permits are not transferable and that he could not support such a change. Jane Kelsey, Chief, Special Permit and Variance Branch, said she believed that was the BZA's policy not a Zoning Ordinance requirement.

With respect to Condition Number 8, Mr. Wehner asked that the BZA not require the structure be removed if a new owner were not prepared to utilize the accessory dwelling until some time in the future. He questioned what type of document would be recorded in the Land Records in Circuit Court by the Clerk of the Board of Zoning Appeals.

Vice Chairman Hammack called for speakers in support of the request.

Richard Peters, President of the Great Falls Citizens Association, said the Executive Committee of the Association voted unanimously to support the request and concluded the proposed use not only met the general and additional standards, but was also in accord with the Board of Supervisors' policy on accessory dwelling units. (He read a portion of the policy into the record.) Mr. Peters said accessory dwelling units provide an valuable alternative to subdivision of the land while meeting the desire of many to have an arrangement under which family members, or other compatible occupants, can live in one unit while the owners occupy the other, thus having sources of help nearby as they advance in years. He said under the protection stipulated in the Zoning Ordinance the Association found the request entirely compatible with its objective of preserving the character of the community. Accordingly, the Association supported the request and recommended its approval. Mr. Peters expressed concern with the same conditions that the co-applicant had referenced in his presentation.

Mr. Kelley said the request looked like a subdivision to him and asked if the Association would support a subdivision on the subject property. Mr. Peters said they would not and they had informed the applicants of that position.

There were no speakers either in support or in opposition to the request and Vice Chairman Hammack closed the public hearing.

Mr. Pammel noted for the record that the BZA had received a letter in opposition to the request, but unfortunately it was unsigned. Mr. Kelley said he did not put any stock in anonymous letters.

Mrs. Harris made a motion to grant SP 93-D-008 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 1, 1993.

A discussion took place between the BZA and Mr. Peters with regard to the development conditions and as to the possibility of a future request for a subdivision variance. Mr. Kelley said he did not believe the BZA could deny a subdivision request in the future. Mr. Peters said he understood, but that the Association would encourage the BZA to do so.

The BZA waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-008 by HARRISON G. AND JOAN K. WEHNER, under Section 3-E03 of the Zoning Ordinance to permit an accessory dwelling unit, on property located at 9601 Georgetown Pike, Tax Map Reference 13-1((1))72D, 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 8, 1993; 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-E.
3. The area of the lot is 8.24 acres.
4. The BZA has not heard many applications that are truly accessory dwelling units and there are lots of safeguards built into the Ordinance and over the years there have been suspicions of people who have built accessory dwelling units that were questionably rented out or not used for the purpose for which they were built.
5. There has to be a mechanism in the Ordinance for people who have over 2 acres, who wish to stay on the property, their house has become too big, and they would like to have their children or someone else to help with the upkeep of the property, to exist there.
6. A subdivision of the property would require a variance.
7. The applicants' request is a lot more under the Ordinance with many safeguards.
8. The property will not be subdivided but will be maintained under one ownership and allow the applicants to stay on the property for a longer period of time, which is something that should be worked toward.

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 Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat titled Parcel A-1, Harrison G. & Joan K. Wehner; prepared by Andrew P. Dunn, Land Surveying-Planning; dated March 3, 1993 and Revised March 11, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The accessory dwelling unit shall be architecturally compatible with the principal dwelling and the general architecture of the dwellings in the surrounding area.

5. The 1 1/2 story accessory dwelling unit shall contain no more than two bedroom(s).

6. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

7. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

8. This special permit shall be approved for a period of five (5) years from its final approval date and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

9. Upon lapse of a special permit for the accessory dwelling allowed by this special permit, the accessory dwelling shall be removed from the property, or otherwise be brought into conformance with the Zoning Ordinance.

10. There shall be parking spaces provided on site as shown on the special permit plat.

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 special permit use for an 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mrs. Thonen not present for the vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 11:45 a.m. and reconvened at 11:54 a.m.

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Page 399, June 8, 1993, (Tape 2), Scheduled case of:

10:30 A.M. RAYMOND H. MILKMAN, SPR 82-P-098-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to renew SP 82-P-098 for home professional office. Located at 6726 Lucy Ln. on approx. 62,492.00 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-4 ((4)) 31.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Raymond H. Milkman, 6726 Lucy Lane, McLean, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting renewal of a special permit to continue to operate a home professional office that has been at the location since 1983. The initial special permit was approved in 1983 and renewed in 1988 with a five year term limitation. Mr. Heine said the office occupies 450 square feet in the basement of a dwelling that contains approximately 5,335 square feet of floor area. The applicant operates a non-profit research institute that specializes in program evaluation projects that are funded by the Federal Government and private industry. He said over the past five years the applicant estimates that there has been one visitor to the site per week. Staff recommended approval of SPR 82-D-098-2 subject to the implementation of the development conditions.

In response to a question from Mr. Kelley, Mr. Heine said there have been no complaints associated with the use.

Mr. Milkman said he was Director of the Laser Institute, a very small organization and the primary work is in the criminal justice, drug abuse, and economic development fields, specializing in planning and evaluation with most of the work being sponsored by the Federal Government. He cited a typical case that the Institute is currently working on dealing with drug offenders in the courts and outlined the process. Mr. Milkman said there is only one other employee beside himself, the visitors average one per week and park on site, the office is located on the rear of the house with a significant buffer between the use and the adjacent neighbor, and the wooden sign is attached to and blends in with the house. In closing, Mr. Milkman said he has an eleven year old daughter and having his office in his house allows him to be at home with her when she is out of school.

Vice Chairman called for speakers either in support or in opposition and hearing no reply closed the public hearing.

Mr. Kelley made a motion to grant SPR 83-P-098-2 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report with Condition Number 10 modified to read:

"10. This Special Permit is granted until January 18, 1998 and shall automatically expire without notice; however, the Zoning Administrator is permitted to allow one five (5) year extension."

Mr. Kelley said the applicant has been operating for ten years, there have been no complaints, there will be no changes, and believe the approval is justified. The BZA waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 82-P-098-2 by RAYMOND H. MILKMAN, under Section 3-103 of the Zoning Ordinance to renew SP 82-P-098, on property located at 6726 Lucy Lane, Tax Map Reference 21-4((4))31, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 8, 1993; 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 62,492 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-907 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 renewal plat prepared by Rice Associates, P.C., dated November 20, 1992, and approved with this application, as qualified by the 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. Transitional screening and barrier requirements shall be modified provided the existing trees and vegetation remain undisturbed.

5. The maximum number of employees shall be two (2).

6. The visitors to this property in connection with this use shall be limited to one (1) at a time with a total of no more than five (5) per week.

7. The hours of operation shall be limited to 9:00 A.M. and 5:00 P.M., Monday through Friday.

8. There shall be no exterior changes to the property in connection with this use.

9. Signage shall be limited to the existing sign which is 1 foot x 2 2/2 foot attached to the dwelling.

10. This Special Permit is granted until January 18, 1998 and shall automatically expire without notice; however, the Zoning Administrator is permitted to allow one five (5) year extension.

11. The home professional office shall be limited to 450 square feet of the lower level of the dwelling.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit renewal shall automatically expire, without notice, three (3) months after the date of approval* unless the use has been legally established by obtaining a Non-Residential Use Permit and meeting all applicable conditions of this approval. The Board of Zoning Appeals may grant additional time to obtain a new Non-Residential Use Permit if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit.

The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 4-0 with Mrs. Thonen not present for the vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 401, June 8, 1993, (Tape 2-3), Scheduled case of:

10:45 A.M. CHRIST PRESBYTERIAN CHURCH, SPA 86-C-055 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 86-C-055 for church and related facilities to permit nursery school. Located at 12410 Lee Jackson Hwy. on approx. 6.59 ac. of land zoned R-1, WS and HC. Sully District. Tax Map 45-4 ((1)) 9.

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, David S. Houston, attorney with the firm of McGUIRE, WOODS, BATTLE & BOOTHE, 8280 Greensboro Drive, Suite 900, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the site is currently developed with a 350 seat church sanctuary, narthex, education building, maintenance shed, 91 space asphalt parking lot, and a fenced play area consisting of approximately 3,868 square feet. On January 26, 1987, the BZA approved SP 86-C-055 for a church and related facilities to allow a new 350 seat sanctuary and a parking lot addition. On July 20, 1987, the BZA approved SP 87-C-040 in the name of Greenbrook Corporation t/a Greenbrook Creative Day Care for a nursery school with a maximum daily enrollment of 60 children, expired in 1992 and ceased operation on May 28, 1993. Mr. Hunter said the applicant was requesting special permit approval to establish a nursery school with a maximum daily enrollment of 96 students, there are no structural additions proposed, and the nursery school will operate in classrooms within the existing church building. The proposed hours of operation are 9:15 a.m. to 12:15 p.m., Monday through Friday, with 20 employees proposed, including one director, nine teachers, nine adult aides, and one part-time maintenance worker.

Mr. Hunter said the applicant was requesting that Conditions Numbers 11 and 12 be deleted. He said Condition Number 11 required the dedication of right-of-way on Route 50 in accordance with the Route 50 Fairfax County Parkway Interchange project. Condition Number 12 required the provision of a right turn deceleration lane on Route 50, one previously existed but was incorporated into a third through lane two years ago. Mr. Hunter said the number of parking spaces provided for the church use and the requested nursery school is less than required by the Zoning Ordinance. The applicant has submitted a request for a shared parking agreement to the Department of Environmental Management (DEM). The shared parking agreement must be approved by the Board of Supervisors prior to the establishment of the nursery school.

Staff recommended approval of SPA 86-C-055-2 subject to the implementation of the development conditions contained in the staff report dated June 1, 1993.

Mrs. Harris questioned why the County did not reconstruct a deceleration lane if it was responsible for removing it. Mr. Hunter said the BZA deleted the condition requiring the right turn deceleration lane. Jane Kelsey, Chief, Special Permit and Variance Branch, added that VEPCO had constructed the deceleration lane not the church.

The applicant's agent, Mr. Houston said the applicant was requesting approval to switch operators from a for profit organization to a non-profit church run school for 96 students during the morning hours with no new construction. He said the applicant agreed with the development conditions with the exception of Conditions 11 and 12. Mr. Houston called the BZA's attention to a letter from Supervisor Frey endorsing the request with the removal of Conditions 11 and 12, a petition with over a hundred signatures in support of the request, and fifty letters from parents of perspective students. He said the BZA had deleted the requirement for the deceleration lane, but during the Site Plan Process it resurfaced and a dedication was made. At this point in time, the Virginia Department of Transportation (VDOT) was requesting additional dedication. Mr. Houston said since there is no new construction or site plan involved and it is the same use, the applicant did not believe it would be appropriate or economically viable to provide a deceleration lane. He said there is no nexus between the applicant's request and the need for the right-of-way dedication and the deceleration lane.

Elizabeth Book, 12808 Melvue Court, Fairfax, Virginia, said she was the Director of Christ Presbyterian Preschool and had a three year old son who would attend the school. She said as soon as the announcement was made that the church planned to continue the preschool the enrollment was filled even with the knowledge that the preschool had not yet been approved by the BZA. Ms. Book said there is a great need for preschools in Western Fairfax County and the church would like to meet the community's need and provide a quality early childhood education program. (She read portions of the parents' letters into the record.)

In response to a question from Mrs. Harris about the Phase 2 drop off area shown on the plat, Ms. Book said there are no plans to continue the Phase 2 development. She said the parents would be required to bring the children into the building.

Vice Chairman Hammack called for speakers in support of the request. Mr. Houston asked the people in the audience who were in support of the request to raise their hand. The citizens did so.

Mr. Houston asked the BZA to approve the request with Conditions 11 and 12 deleted and waive the eight day time limitation.

Tom McDonald represented the Pender United Methodist Church and said both churches were established in the area before major growth occurred along the Route 50 Corridor. He said traffic safety must be kept on the top of the priority list to ensure that kids of today will be here to be leaders of tomorrow. Mr. McDonald expressed concern with the right turn deceleration and the service road as he believed there should be a major discussion with respect to the service road in order to accommodate traffic on both church sites. (A copy of his prepared statement is contained in the file.)

Harold Hicks, Pastor of the Pender United Methodist Church, said during the twelve years he has been pastor of the church it has had three major building projects and each time they have come up against staff and its requirements on churches. He said if the applicant was compelled to give up their land to build a deceleration lane based on their request to rename the preschool and expand the enrollment to 96 students he feared what other requirements churches might have to meet. Pastor Hicks said it appeared there is an attitude on the County's part that if it can get something out of churches than the County is free to go after them regardless of the rightness, the ethnics, the morals, or whatever is involved in persuading the churches to yield, which he considered "blackmail."

Mr. Kelley said he did not like the characterization of the staff or the BZA being anti-church. Pastor Hicks said that was perhaps Mr. Kelley had not gone through the ordeals of trying to build a church in Fairfax County and recommended that he try it. Mrs. Harris said staff was only trying to make entrances to the sites safe and under the Zoning Ordinance the BZA can either accept or refuse the input.

In response to a question from Mrs. Harris regarding the plat before the BZA, Mr. Houston said there was a revised plat submitted. Mr. Hunter said the date was not changed on the plat; however, the date stamped as received by staff was May 25, 1993.

There was no further discussion, and Vice Chairman Hammack closed the public hearing.

Mr. Pammel made a motion to grant SPA 86-C-055 subject to the Development Conditions contained in the staff report dated June 1, 1993 with the deletion of Conditions 11 and 12 and the conditions renumbered accordingly. He said within the area of dedicated right-of-way there is ample room for a service drive and the County should seriously think about a service drive across the entire frontage from West Ox Road to the Fairfax County Parkway.

Vice Chairman Hammack supported the motion as he did not believe there was a nexus between the number of students at the preschool school. He pointed out that it was the BZA's responsibility to ensure that the children were safe.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 86-C-055 by CHRIST PRESBYTERIAN CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 86-C-055 for church and related facilities to permit nursery school, on property located at 12410 Lee Jackson Highway, Tax Map Reference 45-4((1))9, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 8, 1993; 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, WS, and HC.
3. The area of the lot is 6.59 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 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 Brewer, Sinclair & Associates, P.C. dated Revised March 6, 1993 and stamped received May 21, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. There shall be 91 parking spaces provided as shown on the Special Permit Plat. All parking shall be on site.

5. A shared parking agreement shall be approved by the Board of Supervisors under Sect. 11-102 of the Zoning Ordinance. Without this approval, this special permit shall be null and void.

6. The maximum number of seats in the main area of worship shall be 350.

7. The maximum daily enrollment for the nursery school shall be 96.

8. Transitional Screening 1 shall be maintained along the rear and western side boundaries. Existing vegetation shall be used where possible and supplemented where necessary, as determined by the Urban Forester, to provide the required screening. Along the front property boundary, a twenty-five (25) foot transitional screening yard shall be maintained outside of the area to be dedicated for a service drive along Rt. 50. Plantings within this screening yard shall be maintained in conformance with a landscaping plan approved by the County Urban Forester.

9. The barrier requirement shall be waived.

10. Interior parking lot landscaping shall be maintained in accordance with Article 13.

11. Signs shall be permitted in accordance with Article 12, signs.

12. Parking lot lighting shall be on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent properties.

13. Best Management Practices (BMP) for the control of stormwater runoff shall be provided as determined by the Director of the Department of Environmental Management.

14. This approval is for Phase I only. Any development shown as phase II on the Special Permit Plat shall be subject to approval of an amendment to this special permit.

15. The maximum number of nursery school employees on site at any one time shall be twenty (20).

16. The hours of operation for the nursery school shall be limited to 9:15 A.M. to 12:15 P.M., Monday through Friday.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-0 with Mrs. Thonen not present for the vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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11:00 A.M. RICHARD A. & BRENDA S. LISI, SP 93-S-018 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to allow dwelling to remain 18.2 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-303). Located at 6494 Crayford St. on approx. 13,359.00 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((18)) 3A. (OTH GRANTED)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Brenda S. Lisi, 6494 Crayford Street, Burke, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicants were requesting approval of a special permit to allow a reduction to the minimum yard requirements based on error in building location to allow the dwelling to remain 18.2 feet from the rear lot line. Section 3-307 of the Zoning Ordinance requires a minimum rear yard of 25 feet in the R-3 District; therefore, the applicants were requesting a modification of 6.8 feet or 27.2 percent. Mr. Hunter said the applicants had hired two building contractors to construct the addition, but the contractors did not indicate a distance from the addition to the rear lot line on either plat submitted with the building permit applications; however, both building permits were approved by the County with the stipulation that the addition should be 25 feet from the rear lot line. The error was not discovered until the applicant received a house location while refinancing their home mortgage loan.

The applicant, Ms. Lisi, agreed with Mr. Hunter's comments and said that they had no idea there was a problem since the contractors had obtained approved building permits.

In response to a comment from Vice Chairman Hammack with respect to two building permits, Ms. Lisi said that the first contractor left the state with $10,000 of their money so they had to start over again. She said their house was now up for sale and they had lost two contracts while waiting for the special permit public hearing.

Ms. Lisi called the BZA's attention to the photographs and addressed each of the standards.

Mrs. Harris asked if the two people who had approved the building permits were still working for the County. Mr. Hunter said he did not know. Jane Kelsey, Chief, Special Permit and Variance Branch, said certified plats were not required for building permits and a homeowner can draw on them but the plats should show the dimensions and setbacks.

Ms. Lisi said that although the contractors did not show the setbacks she believed anyone could take a ruler and clearly see that it did not meet the 25 foot setback.

Vice Chairman Hammack called for speakers either in support or in opposition and hearing no reply closed the public hearing.

Mrs. Harris made a motion to grant SP 93-S-018 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 1, 1993. The BZA waived the eight day time limitation.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-S-018 by RICHARD A. AND BRENDA S. LISI, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow dwelling to remain 18.2 feet from rear lot line, on property located at 6494 Crayford Street, Tax Map Reference 88-1((18))3A, 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 8, 1993; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

AND, WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

2. That the granting of this special permit will not create an unsafe condition with respect to both other properties and public streets and that to force compliance with setback requirements would cause unreasonable hardship upon the owner.

3. Based upon the testimony of the applicant, they did everything in good faith in order to build the addition. All citizens do not know what a rear yard requirement is, but contractors in the County.

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 accessory structures shown on the plat 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 prepared by Christopher Consultants, Ltd., dated March 28, 1985, revised by Brian L. Wood, Land Surveyor, September 19, 1991, submitted 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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mrs. Thonen not present for the vote. Chairman DiGiulian and Mr. Ribble were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 405, June 8, 1993, (Tape 1), Action Item:

Approval of Minutes from May 4, May 11, and May 18, 1993 Hearings

Mr. Pammel made a motion to approve all items listed on the After Agenda List including an out-of-turn hearing for St. Aidan's Episcopal Church. Mrs. Harris seconded the motion. Jane Kelsey, Chief, Special Permit and Variance Branch, asked Mr. Pammel if he had meant Ridgemont Montessori Church. She said the BZA, at the May 25th meeting, had deferred St. Aidan's to September 28th because notices were not in order, but the church was asking the BZA to reconsider its action and change the deferral date to July 28th. Mr. Pammel said that was what he was recommending.

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Request for Additional Time for
St. Lawrence Catholic Church, SPA 82-L-081-1

The new expiration date will be May 8, 1995.

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Approval of Meeting Schedule

Ms. Kelsey called the BZA's attention to its heavy schedule up until the August recess and suggested they rearrange their schedules accordingly.

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Request for Out of Turn Hearing on
Ridgemont Montessori School, SPR 85-D-024

The out-of-turn hearing was scheduled for July 28, 1993.

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Request for Out of Turn Hearing on
Embassy School, SPA 89-C-026

The BZA granted the applicant's request for an out-of-turn hearing.

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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. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

Paul Hammack, Vice Chairman
Board of Zoning Appeals

SUBMITTED: June 29, 1993

APPROVED: July 7, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 22, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:12 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 407, June 22, 1993, (Tape 1), Scheduled case of:

9:00 A.M. DE MANDIS, INC., VC 93-V-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit a lot width of 75 ft. (80 ft. min. lot width req. by Sect. 3-306). Located N.W. of the intersection of Tenth St. and Olde Towne Rd. on approx. 13,500.00 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (40) 6, 7 and 8.

9:10 A.M. DE MANDIS, INC., VC 93-V-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 12 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307). Located on Olde Towne Rd. approx. 250 ft. E. of Potomac Ave. on approx. 14,400.00 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 83-4 ((2)) (35) 28, 29 and 30.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Sanders replied that it was.

Robby Robinson, Staff Coordinator, Special Exception and Rezoning Branch, presented the staff report. He stated that the subject property is located north of Olde Towne Road, between Potomac Avenue and 10th Street, in New Alexandria, an area of small lots which was established prior to the effective date of the Zoning Ordinance.

Mr. Robinson said that in April 1993, the Board of Supervisors approved Rezoning Application, RZ 91-V-019, which rezoned Lot 8 from C-3 to R-3 and also approved Special Exception Application, SE 91-V-026, for uses within the floodplain. He explained that the applicant's development proposed combining the existing lots into five buildable lots and constructing five single family detached dwellings on these lots.

Mr. Robinson said the applicant was requesting two variances. The first variance, VC 93-V-023, was a request to permit a lot width of 75 feet for the parcel consisting of Lots 6, 7, and 8. He explained that because Lot 8 was rezoned, the grandfather provision regarding the lot width requirement does not apply. The Zoning Ordinance requires a minimum 80 foot lot width; therefore, the applicant was requesting a modification of 5 feet to the minimum lot width requirements.

With regard to the second variance request, VC 93-V-024, Mr. Robinson stated the subject property was part of the five-lot development of single family detached dwellings and the entire site which is in the Potomac River floodplain. He also noted that there are some wetlands, although not extensive, along the western border of the proposed development and an Environmental Quality Corridor (EQC) has been delineated on a portion of the site. He said that much of the EQC is conterminous with the area which the applicant plans to leave in its natural state and a development condition imposed pursuant to SE 91-V-026 requires a conservation easement to be recorded for the area. He noted that the conservation easement obligates the area to remain in a natural state and prohibits the erection of structures of any type.

Mr. Robinson stated that VC 93-V-024 was a request to allow the construction of a dwelling 12 feet from the rear lot line of the parcel consisting of Lots 28, 29, and 30. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicant was requesting a modification of 13 feet to the minimum rear yard requirement.

The applicant's attorney, H. Kendrick Sanders, with the law firm of Gilliam, Sanders, and Brown, 3905 Railroad Avenue, Fairfax, Virginia, addressed the BZA. He stated that the property consisted of old grandfathered substandard lots which had been recorded many years ago. He noted that the lots could be developed and would not have to meet the current lot width requirement if they had meet the setback requirements. Mr. Sanders expressed his belief that the requests were for minimal variances and explained that the variances were needed in order to achieve any viable development.

Mr. Sanders stated that when the applicant applied for a special exception for the development in a floodplain, staff suggested that Lot 8, which was zoned commercial, be rezoned to residential so that it would conform to the Comprehensive Plan. He noted that the Board of Supervisors and the Planning Commission unanimously approved both the rezoning and the special exception for development in the floodplain. Mr. Sanders explained that the need for the variance was caused by the rezoning and said the lot could not be developed without the variance. He expressed his belief that the application represented one of the clearest cases for appropriate variances.

Mr. Sanders said that a private street would serve as an entrance to the development and although the lot is technically considered a corner lot with two rear yards, due to the orientation of the structure, one of the rear yards is in reality a side yard. He explained

that without the minimal variances, the existing recorded lots cannot be developed and also noted that the lots are constrained by minimal wetlands which precludes placing the houses anywhere else on the lots. In summary, Mr. Sanders stated that both the applications met all the necessary criteria for the granting of a variance and would be in harmony with the Comprehensive Plan.

In response to Mr. Kelley's question regarding the water runoff problems in the area, Mr. Sanders explained that the issue was extensively addressed during the rezoning and special exception process. He noted that the special exception development conditions, as well as the proffers on the zoning, addressed the issues of drainage, conservation easement, and wetlands. Mr. Sanders explained that there were strong commitments in the special exception conditions with regard to containing runoff, protecting the wetlands, and other conservation matters.

Mr. Ribble stated that Fairfax County has a floodplain control project along Belle Haven Road and plans to build a berm along the length of Belle Haven Road.

Mr. Sanders submitted two letters of support to the BZA.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 93-V-023 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated June 15, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-023 by DE MANDIS, INC., under Section 18-401 of the Zoning Ordinance to permit a lot width of 75 feet, on property located North West of the intersection of Tenth Street and Olde Towne Road, Tax Map Reference 83-4((2))(40)6, 7, and 8, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1993; 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 13,500 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The subdivision was recorded prior to the implementation of the Fairfax County Zoning Ordinance.
6. The lots are shallow and that was the manner in which they were recorded.
7. The applicant has proceeded through the process to the Board of Supervisors to obtain a legislative rezoning of a portion of the property from commercial to residential, that in part presents some of the problem experienced here today, but he did that at the request of the staff to comply with the Comprehensive Plan.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

6. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific dwelling shown on the plat prepared by Professional Design Group Inc., dated January 1991, as revised through October 28, 1992, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1993. This date shall be deemed to be the final approval date of this variance.

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Mr. Pammel made a motion to grant VC 93-V-024 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated June 15, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-024 by DE MANDIS, INC., under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 12 feet from rear lot line, on property located on Olde Towne Road approximately 250 feet East of Potomac Avenue, Tax Map Reference 83-4((2))(35)28, 29 and 30, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1993; 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 14,400 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The property is a corner lot and as a result of the width of the lot resulting from a subdivision recorded prior to the implementation of the Zoning Ordinance in Fairfax County, the applicant is unable to meet the prescribed setback requirements, therefore there is a hardship.
6. The applicant presented testimony that the floodplain, although minimal, is a constraining factor.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Professional Design Group, Inc. dated January 1991, as revised through October 28, 1992, and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Hammack not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 410, June 22, 1993, (Tape 1), Scheduled case of:

9:20 A.M. WRAY, ROGER O. & ELIZABETH K., VC 93-B-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 11117 Byrd Dr. on approx. 10,538.00 sq. ft. of land zoned R-3. Braddock District. Tax Map 57-3 ((7)) 408.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Wray replied that it was.

Donald F. Heine, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to allow construction of a two-car garage addition 6 feet from the side lot line. The Zoning Ordinance requires a minimum 12 foot side yard; therefore, the applicants were requesting a modification of 6 feet to the minimum side yard requirement.

The applicant, Roger O. Wray, 11117 Byrd Drive, Fairfax, Virginia, addressed the BZA. He stated that his research had indicated that at least three similar variances had been granted in the area.

In response to Mrs. Harris' question as to the nature of the variances, Mr. Wray stated that Lot 373 had received a 9 foot variance.

Mrs. Thonen noted that the letters of opposition received by the BZA had indicated that two similar garages had been built on corner lots and did not require variances. Mr. Wray noted that although Mrs. Thonen was correct, three variances had been granted on interior lots.

Mr. Ribble noted that the staff report had indicated that one variance had been granted for a fence and another variance was granted on a corner lot.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that only the two closest variances had been included in the staff report. She submitted a list of variances that had been granted in the community, but noted that staff did not research all of the variances to determine the amount of variance approved. Mr. Ribble said that the list was helpful and depicted the type of variances granted.

In response to Chairman DiGiulian's question as to whether the applicant knew the amount of the variances granted, Mr. Wray stated that he knew that the property at 4413 San Marcos Drive is an interior lot on a cul-de-sac and the garage came within 3 feet of the lot line. He further stated that the property at 11103 La Messa Drive was granted a 5.7 foot variance 6.3 feet from the lot line, and the property at 11110 La Messa Drive was granted a 6 foot variance.

Mrs. Thonen stated that although she had specifically looked for two-car garages when she visited the community, she could only find two which were located on corner lots. Mr. Wray stated that there were several two-car garages and two-car carports within a two block area of his dwelling.

Mr. Wray stated that the proposed garage would increase the property value of the house. He explained that the garage was needed to house the vehicle presently parked on the street and noted that the proposed site was the only practical location for the garage.

In response to Mrs. Harris' question regarding the topography of the property, Mr. Wray stated that the house was on a hill with the front yard sloping down towards Byrd Drive and the back yard sloping down toward Del Rio Drive.

In response to Mrs. Thonen's question as to whether the site for the proposed garage was flat, Mr. Wray confirmed that it was. He acknowledged that he was aware of the letters in opposition, but expressed his belief that the application met the necessary standards for the granting of a variance.

There being no speakers in support of the request, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Masako Huibregtse, 11115 Bryd Drive, Fairfax, Virginia; addressed the BZA. She stated that she was the adjoining neighbor and submitted a letter from her attorney, Thomas P. Dugan, with the law firm of Surovell, Jackson, Colten, and Dugan, P.C.d, 4010 University Drive, Third Floor, Fairfax, Virginia, regarding the request. Ms. Huibregtse submitted photographs of the applicants' property as well as her own property. She used the viewgraph to depict Lots 202 and 273, the corner lots that had previously received variances, and expressed her belief that the applicants' lot was typical of the lots in the area. She noted that the distance between her structure and the shared lot line is 20.2 feet and expressed concern regarding the loss of open space should the variance be granted. In summary, Ms. Huibregtse said that she has lived in the house for 18 years and asked the BZA to deny the request.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Mr. Wray said that he had approximated the distance between the neighbors' house and the lot line and apologized for any discrepancy. He explained that a 22 foot wide garage would not only allow space for two cars, but would balance the house and make it architecturally sound. Mr. Wray assured the BZA that the trees would not be disturbed.

In response to Mrs. Thonen's question as to when he purchased his property, Mr. Wray said that he had purchased the house in October 1991. He explained that they had chosen the neighborhood because of its community atmosphere, the pool, and the school. He said that his family intended on living in the house for many years and submitted a copy of a computer drafting of the house with the garage addition.

Mr. Pammel referred to Mr. Dugan's letter which stated: "It would appear that in the entire thirty plus year history of the Fairfax Villa subdivision, only one other variance (for a carport, not a garage) has been sought." He noted that the applicant had produced evidence that two variances and a special permit had been granted in the area. Mr. Kelley expressed his belief that the attorney's research was erroneous and Chairman DiGiulian agreed with Mr. Kelley's observation.

In response to Mrs. Harris' question as to how many cars he had, Mr. Wray said he had three. He explained that he had just purchased one of the cars and intended to depose of one. Mr. Wray stated that he had no intention of having an auto body repair shop on the premises and noted that he was not a vehicle mechanic. Mrs. Harris said that although there were two garages in the area, the predominance was either nothing or a carport. Mr. Wray stated that although a carport would be more in keeping with the neighborhood, he would prefer to build a garage.

Mrs. Thonen explained to Mr. Wray that in order to obtain a variance, he would have to prove a hardship. She expressed her belief that the applicants' lot was typical for the area and did not have a topographic hardship. She also noted that Mr. Wray probably realized that a variance would be needed in order to build a two-car garage when he purchased the house in 1991. Mr. Wray said he had realized a variance would be required, but noted there is an innumerable amount of property between the two houses.

In response to Mr. Kelley's question as to whether he bought the house with the intention of seeking a variance for a garage, Mr. Wray said that while he didn't buy the house specifically to build a garage, he had considerad the lot ideal for an addition.

Mrs. Thonen made a motion to deny VC 93-B-025 for the reasons reflected in the resolution.

Mrs. Harris seconded the motion.

Chairman DiGiulian called for discussion.

Mrs. Harris stated that the BZA must consider each variance on its own merit and could not grant a variance just because other variances had been granted in the neighborhood. She explained that to do so would amount to a change in the Zoning Ordinance. Mrs. Harris said the proposed 26.8 by 22 foot garage would be excessive for the area and would not be in keeping with the character of the community.

In response to Mr. Pammel's question as to whether a carport could encroach into the side yard, Ms. Kelsey stated that it could encroach 5 feet into a required yard. Mr. Pammel noted that the applicant could build a two-car carport by-right.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-025 by ROGER O. AND ELIZABETH K. WRAY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6 feet from side lot line, on property located at 11117 Bryd Drive, Tax Map Reference 57-3((7))408, 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 22, 1993; 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 10,538 square feet.
4. The applicants could build a 16 foot garage without a variance.
5. The construction of a two-car garage would leave little open space on the lot.
6. The applicants created their own hardship by purchasing a house knowing that a variance would be needed in order to build a two-car garage.
7. There are no restrictions that are not shared by all the other property owners in the area.
8. The standard lot has no characteristics such as topography or location that would justify the granting of a variance.
9. The neighbors have indicated that the variance would have a detrimental impact on the area.
10. The applicants have not presented testimony that demonstrated a hardship.
11. The application does not satisfy the necessary standards for the granting of a variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 Mr. Hammack not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1993.

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Page 413, June 22, 1993, (Tape 1), Scheduled case of:

9:30 A.M. LAWRENCE, MARK A., SPA 89-D-051 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 89-D-051 for home professional office to delete term. Located at 8612 Tebbs Ln. on approx. 6.27 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 48 and 52. (Concurrent with SPR 89-D-051).

9:45 A.M. LAWRENCE, MARK A., SPR 89-D-051 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to renew SP 89-D-051 for home professional office. Located at 8612 Tebbs Ln. on approx. 6.27 ac. of land zoned R-E. Dranesville District. Tax Map 20-1 ((1)) 48 and 52. (Concurrent with SPA 89-D-051).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. McDermott replied that it was.

Donald F. Heine, Staff Coordinator, presented the staff report. He stated that the applicant, a psychiatrist, was requesting approval of a Special Permit renewal to continue to operate a home professional office and to amend the Special Permit to delete the three year term limitation imposed upon the use.

Mr. Heine said that staff believed that a term limitation is needed to allow for the periodic review of the impact of the use, its adherence to the conditions of approval, and whether or not the use itself may have changed in intensity or character. However, staff believed that three years placed too much burden upon the applicant; therefore, staff recommended a five year term limitation.

In summary, Mr. Heine said that SPR 89-D-051 would in harmony with the recommendations of the Comprehensive Plan; therefore, staff recommended approval subject to the proposed development conditions contained in the staff report dated June 15, 1993.

The applicant's attorney, Francis A. McDermott, with the law firm of Hunton and Williams, 3050 Chain Bridge Road, Suite 600, Fairfax, Virginia, addressed the BZA and presented letters in support from the Vice President of the Georgetown Pike Citizens' Association, John B. Chomeau, PhD., 8538 Georgetown Pike, McLean, Virginia, and Keyvandokht Sayadian, 8607 Georgetown Pike, McLean, Virginia. He stated that the applicant would like both a renewal and a change in the special permit. Mr. McDermott expressed his belief that the applicant's office surroundings are particularly conducive to the type of professional assistance rendered by Dr. Lawrence. He noted that the property presently is developed with one residence and by-right could be developed with three residences. Mr. McDermott explained that if the property were to be developed with three residences, the vehicle trips per day would be increased because of the weekend vehicle trips generated by the residents.

Mr. McDermott referred to the photographs of the property and noted landscaping of the lot and the careful manner in which the paved driveway and the parking area have been located within the trees in order to minimize any detrimental impact on the neighbors. He further noted that the professional office could only be accessed from Towlston Road, which is a collector road. Mr. McDermott assured the BZA that the applicant's patients posed no threat to themselves or to the neighbors, and that group sessions would not be held on the property.

Mr. McDermott addressed the development conditions and expressed his belief that Condition 12, which requires a 30 foot dedication from the centerline of Towlston Road, is not supportable. He explained that the requirement would be excessive for the use.

In summary, Mr. McDermott asked that the BZA give serious consideration to deleting the term limit. He stated that in addition to the neighbors' letters of support, other neighbors were present to testify they supported the applicant's request that the BZA grant the use without term. Mr. McDermott explained that the term limit placed an emotional and financial burden on the applicant as well as the neighbors and noted that should a violation occur, the BZA could revoke the special permit.

Mr. Kelley said he did not believe a six acre parcel constituted justification for the granting of a special permit for a professional use. He asked Mr. McDermott if he believed that a professional individual with a residence on six acres was entitled to a home professional office. Mr. McDermott stated that the application was unique because of the limited trips generated by the use. He further stated that the site is extraordinary in size, is isolated and screened, and the use has had no detrimental impact on the neighbors. He noted that the application had the support of the community.

Mrs. Thonen thanked Dr. Lawrence for resolving the issues of concern that had been discussed during the previous hearing and asked how long the applicant had practiced on the site. Mr. McDermott stated that after receiving a "Notice of Violation" in approximately 1987, Dr. Lawrence had ceased practicing until he received special permit approval. Mrs. Thonen noted that the neighbors had expressed their support and had recommended a five year term for the use. She expressed her belief that a five year term with the Zoning Administrator being given the power to grant three five year terms would be a solution to the dilemma.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

H. E. Ahari, 8533 Georgetown Pike, McLean Virginia, addressed the BZA and stated that the use had no detrimental impact on the area. He said that small businesses were the backbone of Fairfax County and asked the BZA to grant the request without term.

Katherine Sodergren, 8621 Tebbs Lane, McLean, Virginia, addressed the BZA. She stated that the site is very secluded, well screened, and the use does not have a detrimental impact on the area.

In response to Mr. Kelley's question as to whether she believed that everyone who owned five acres or more should be allowed to have a home professional office, Ms. Sotagrin said she did not. She explained that the circumstances would be different for every use and believed that the applicant's use was unique. Ms. Sotagrin said that Dr. Lawrence has operated under the special permit without any problems for three years and she would like to keep the status quo rather than have the land further developed. Mr. Kelley explained that the BZA could not justify the granting of a application just because the neighbors find it appealing.

John Edwards, 829 Towlston Road, McLean, Virginia; Jack Sodergren, 8621 Tebbs Lane, McLean, Virginia; Robert Grindle, 8527 Georgetown Pike, McLean, Virginia; addressed the BZA and expressed their support for the application. They stated that the applicant is a good neighbor, extensive landscaping has been provided, the use has caused no problems in the neighborhood, and they supported the request for the use without term.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to deny SPA 89-D-051 for the reasons reflected in the Resolution.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel stated that he had visited the site and believed that the application was sound and the request to proceed without term was appropriate. He noted that the BZA had recourse if problems occur and expressed his belief that a term is not necessary on the very innocuous home professional office use.

Mr. Ribble stated that he would support the motion because while the use itself may not change, the neighborhood may.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 89-D-051 by MARK A. LAWRENCE, under Section 3-E03 of the Zoning Ordinance to amend SP 89-D-051 for home professional office to delete term, on property located at 8612 Tebbs Lane, Tax Map Reference 20-1((1))48 and 52, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1993; 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-E.
3. The area of the lot is 6.27 acres.
4. Although the neighbors have indicated their support for the applicant, there is a need to limit the term for home professional offices.
5. The BZA had previously imposed a 3 year limit on the application in order to see how it would work out.
6. The 3 year limit may be restrictive, but a home professional office should not be granted without a 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 as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-907 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mrs. Thonen seconded the motion which carried by a vote of 6-1 with Mr. Pammel voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1993.

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Mrs. Harris made a motion to grant SPR 89-D-051 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated June 15, 1993 with the modifications as reflected in the Resolution.

Chairman DiGiulian and Mr. Pammel suggested the maker of the motion amend Condition 13 to read:

13. This permit shall automatically expire without notice, five (5) years from the date of approval; however, if there is no documented violations, the Zoning Administrator has the authority to extend the use for one five (5) year extension.

Mrs. Harris accepted the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 89-D-051 by MARK A. LAWRENCE, under Section 3-E03 of the Zoning Ordinance to renew SP 89-D-051 for home professional office, on property located at 8612 Tebbs Lane, Tax Map Reference 20-1((1))48 and 52, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1993; 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-E.
3. The area of the lot is 6.27 acres.
4. The applicant, as well as the neighbors, has presented testimony that the use is compatible with the area.
5. The traffic is minimal.
6. The property has been landscaped and designed so that it does not intrude on the neighbors.
7. The application is for a reasonable use of the property.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-907 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 & Associates, P.C., Surveying, Civil Engineering, Land Planning; dated May 3, 1989 as revised September 25, 1989 through April 29, 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. No sign shall be permitted for this use.

5. The maximum number of employees including the applicant shall be one (1).

6. The hours of operation shall be limited to 8:00 a.m. to 5:00 p.m., Monday through Friday.

7. Parking for the residential use shall be on Lot 52 and shall be a minimum of two (2) parking spaces. Parking for the proposed Special Permit use shall be located exclusively on Lot 48, and shall contain two (2) spaces. Patients visiting the site shall be prohibited from entering the site from Tebbs Lane or from parking on Lot 52.

8. The existing vegetation along all lot lines shall be deemed to satisfy the transitional screening requirement. The landscaping provided to screen the client parking area on Towlston Road shall be maintained. The barrier requirement shall be waived.

9. The existing lighting for the client parking and the trail that is located near to the ground shall be maintained.

10. The home professional office is to be limited to 678 square feet within the dwelling.

11. There shall be no group therapy sessions or training sessions on the site and no more than one client shall visit the site per hour.

12. There shall be no residential development of Lot 48 or other use permitted of Lot 48 during the term of the Special Permit or extensions thereof.

13. This permit shall automatically expire without notice, five (5) years from the date of approval; however, if there is no documented violations, the Zoning Administrator has the authority to extend the use for one five (5) year extension.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use

Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit renewal shall automatically expire, without notice, nine (9) months after the date of approval* unless the use has been legally established by obtaining a Non-Residential Use Permit and meeting all applicable conditions of this approval. The Board of Zoning Appeals may grant additional time to obtain a new Non-Residential Use Permit if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 417, June 22, 1993, (Tape 1 and 2), Scheduled case of:

10:00 A.M. FIRST CHURCH OF CHRIST, SCIENTIST, SP 93-H-009 Appl. under Sect(s). 6-303 of the Zoning Ordinance to permit church and related facilities. Located at 11151 North Shore Dr. on approx. 38,233.00 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 18-1 ((4)) (12) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Johnson replied that it was.

David Hunter, Staff Coordinator, presented the staff. He stated that the applicant was requesting approval of a special permit to allow the construction of a 4,160 square foot church and related facilities on approximately 38,233 square feet of land. Mr. Hunter said that the 100 seat church would hold services on Sundays from 11:00 a.m. to 12 noon, and on Wednesday evenings from 8:00 p.m. to 9 p.m. He stated that the applicant also proposed to open a reading room on Tuesdays, Wednesdays, Thursdays, and Saturdays from 11:00 a.m. to 2:30 p.m., and on Thursday evenings from 7:00 p.m. to 9:00 p.m. He noted that 25 parking spaces would serve the facility.

Mr. Hunter said that the applicant was also requesting a modification of the transitional screening requirements along the northern and eastern lot lines, and a waiver of the barrier requirements along all lot lines.

Mr. Hunter explained that due to the desirability of encouraging motorists to use mass transit and the accessibility of a transit stop adjacent to the subject property, the Office of Transportation recommended that the applicant commit to allow ten weekday park-and-ride spaces within the proposed parking lot. He said that by letter dated June 7, 1993, the applicant had committed to providing ten park-and-ride spaces on-site. The provision of park-and-ride spaces on the applicant's property, in association with the approval of SP 93-H-009, would be subject to a park-and-ride License Agreement between the applicant and Fairfax County.

Mr. Hunter stated it was staff's belief that the application was in conformance with the Comprehensive Plan and recommended approval with the implementation of the development conditions contained in the staff report dated June 15, 1993.

The applicant's agent, Charles R. Johnson, P.E., 11480 Sunset Hills Road, Reston, Virginia, addressed the BZA. He stated the proposed use was low in intensity with limited hours of worship. Mr. Johnson said that the projected use for the reading room would be to accommodate two to three readers per day and would also allow for one or two business meetings a week. He explained that the applicant had worked diligently with the neighbors in order to present an application that would serve the needs of the congregation and also be beneficial to the community. Mr. Johnson stated that the application complies with the Zoning Ordinance requirements and asked the BZA to grant the request.

In response to Mr. Ribble's question as to whether he agreed with the proposed development condition, Mr. Johnson said he did.

In response to questions from the BZA as to whether the park-and-ride development condition could be imposed by the BZA, Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that it could. She explained that Fairfax County is trying to provide additional park-and-ride facilities and noted that the BZA has the authority to impose any reasonable condition on special permits. Ms. Kelsey said that the applicant would allow ten of the twenty-five required parking spaces to be used as park-and-ride accommodations.

In response to Mrs. Harris' question as to whether the staff had been helpful to the applicant when they submitted the application, Mr. Johnson said staff had been very helpful. She noted that the application fit well with the topography and with the area.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

The applicant's architect, Peter Hotz, 11816 Breton Court, Reston, Virginia, addressed the BZA. He explained to the BZA the process the applicant had gone through since they purchased the property in 1988. Mr. Hotz said the church had worked diligently with the neighbors, as well as Reston's Planning and Zoning Committee, to present an acceptable application and asked the BZA to grant the request.

John Bendell, President of the Forest Edge Cluster Association, addressed the BZA. He stated that although he was in support of the church, he had reservations concerning the park-and-ride agreement.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 93-H-009 subject to the development conditions contained in the staff report dated June 15, 1993 with the deletion of Development Condition 6.

Mrs. Harris seconded the motion. She stated that she too believed that a park-and-ride agreement should not be a condition under which the special permit is approved.

Mr. Kelley requested that staff provide information, both pro and con, on the park-and-ride issue. Chairman DiGiulian agreed with Mr. Kelley and asked staff to provide the BZA with a copy of the form or agreement the applicants are asked to signed. Mr. Hunter stated that he would be glad to provide the BZA with a copy of the standard agreement.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-H-009 by FIRST CHURCH OF CHRIST, SCIENTIST, under Section 6-303 of the Zoning Ordinance to permit church and related facilities, on property located at 11151 North Shore Drive, Tax Map Reference 18-1{{4}}{12}1, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 22, 1993; 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 PRC.
3. The area of the lot is 38,233 square feet.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 6-307 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 Charles R. Johnson, Consulting Civil Engineers and Land Surveyors, dated February, 1993, revised and stamped received May 13, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit for a Church and related facilities 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 25 parking spaces provided as shown on the Special Permit Plat. All parking shall be on site.

6. The maximum number of seats in the main area of worship shall be 100.

7. Transitional Screening 1 shall be modified along the northern and eastern property lines. Plantings along the northern and eastern property lines shall be provided in conformance with the landscape plan submitted with this application and approved by the County Urban Forester. Transitional Screening 1 shall be provided along the southern property line. Existing vegetation shall be used where possible and supplemented where necessary along the southern property line, as determined by the Urban Forester, to provide the required screening.

8. The barrier requirement shall be waived along all lot lines.

9. Interior parking lot landscaping shall be maintained in accordance with Article 13.

10. Signs shall be permitted in accordance with Article 12, signs.

11. Parking lot lighting shall be on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent properties.

12. Best Management Practices (BMP) for the control of stormwater runoff shall be provided as determined by the Director of the Department of Environmental Management to meet the requirement of the Chesapeake Bay Preservation Ordinance.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 419, June 22, 1993, (Tape 2), Scheduled case of:

10:15 A.M. LANGLEY SCHOOL, SP 93-D-012 Appl. under Sect(s). 3-303 and 8-915 of the Zoning Ordinance to permit a waiver of the dustless service requirement. Located at 1411 Balls Hill Rd. on approx. 6,480.00 sq. ft. of a 9.27 ac. of land zoned R-3. Dranesville District. Tax Map 30-1 ((22)) 2A; 30-1((1))42A and 43.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. McGranahan replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a Special Permit for a waiver of the dustless surface requirement for an existing gravel driveway which is used for emergency access only. He noted that the existing parking areas and travel aisles are paved. Mr. Hunter said that the existing gravel driveway consisted of approximately 6,407 square feet of a 9.27 acre site and that the Director, Department of Environmental Management (DEM), had granted a Dustless Surface Waiver Number 011403 for the driveway on February 1, 1991. The two year waiver expired on February 1, 1993.

Mr. Hunter stated that staff believed the application would satisfy the required standards if the maintenance requirements for gravel surfaces contained in the development conditions are implemented. Therefore, staff recommended approval subject to the development conditions contained in the staff report with the following modifications: Delete Development Condition 3 and the first paragraph after Development Condition 5. He explained that both the development condition and the standard paragraph relate to the acquisition of a Non-Residential Use Permit, which is not necessary for the application.

Francis A. McDermott, an attorney with the firm of Hunton and Williams, 3050 Chain Bridge Road, Suite 600, Fairfax, Virginia, introduced John C. McGranahan, an attorney with the same firm, to the BZA. He explained that Mr. McGranahan would represent the applicant at the public hearing.

Mr. McGranahan stated that Langley School is a private school of general education with a maximum of 450 students. He explained that the school was subject to a special exception amendment granted in 1991 which allowed improvements to the school. He noted that constructions had been completed and pursuant to the site plan, an existing gravel road had to be relocated. Mr. McGranahan said that concurrent with the site plan, the Director, DEM had granted a two year waiver of the dustless surface for the new gravel road.

Mr. McGranahan said that the road runs from the northern part of the property down along the eastern edge. He explained that the singular purpose of the road is to allow ready access by emergency vehicles to the play area. Mr. McGranahan noted that emergency vehicles could also access the gravel road via Evans Mill Road. He expressed his belief that the road was necessary to ensure the safety and health of the students.

Mr. McGranahan stated that although a neighbor, Mr. Whitfield, had sent a letter to the BZA expressing concern regarding dust, the development conditions would alleviate the citizen's concerns. He also noted that the road would be used exclusively for emergency vehicle access and has a chain across the front of the road to prevent regular access. Mr. McGranahan said that the dust impact was minimal because the road would be used on an average of three to four times a year and expressed his belief that the recent construction, not the road, had been the cause of the dust impact on the area. In summary, he stated that the community supported the request, the extensive landscaping would provide a barrier from any dust impact on the neighbors, and asked the BZA to grant the request.

In response to Mr. Kelley's question as to whether the road would be watered down, Mr. McGranahan stated that the road would be periodically inspected and the school would maintain the road. He assured the BZA that the road would be used for emergency vehicles only. Mr. McGranahan said that although Development Condition 5 related to the parking area, there are no parking areas near the road.

In response to Mr. Hammack's question as to whether construction vehicles had used the road during the recent renovations, Mr. McGranahan said they had not. He noted that one of the site plan requirements was that a sign be posted specifically prohibiting construction traffic from using the road. He noted that the chain also prevented any vehicles from using the road. Mr. McGranahan said that the applicant would agree to a sign being installed that said the road was for "emergency vehicles only."

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 93-D-012 subject to the development conditions contained in the staff report with the modifications as reflected in the Resolution.

Mr. Hunter asked the maker and the seconder of the motion if they would accept staff's recommendation regarding the deletion of Development Condition 3 and the first paragraph after Development Condition 5. Mr. Kelley and Mr. Hammack accepted the suggestion.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-012 by LANGLEY SCHOOL, under Sections 3-303 and 8-915 of the Zoning Ordinance to permit a waiver of the dustless service requirement, on property located at 1411 Balls Hill Road, Tax Map Reference 30-1((22))2A; 30-1((1))42A and 43, 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 22, 1993; 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 6,480 square feet of a 9.27 acre site.

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 prepared by Huntley, Nyce & Associates, P.C. dated January 29, 1993, revised March 27, 1993 and approved with this application, as qualified by these development conditions.

3. This approval is only for the existing 18 foot wide gravel road located within the 6,480 square foot area as depicted on the special permit plat.

4. The gravel surfaces 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. The approval of the dustless surface shall be for the time period specified in Sect. 8-915 of the Zoning Ordinance.

   Speed limits shall be limited to ten (10) mph.

   During dry periods, application of water shall be made in order to control dust.

   Runoff shall be channelled away from and around driveway.

   The applicant shall perform periodic inspections to monitor dust conditions, drainage functions and compaction-migration of the stone surface.

   Routine maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

5. A chain shall be installed at the entrance to the driveway. A sign shall be attached to the chain stating that the road is to be used for emergency vehicles only.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 30, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 421, June 22, 1993, (Tape 2), Scheduled case of:

10:30 A.M. TYSONS II DEVELOPMENT CO., L.P., SP 93-P-023 Appl. under Sect(s). 6-204 of the Zoning Ordinance to permit a circus. Located at 8025, 8075 and 8108 Galleria Dr. and 1750 and 1800 Tysons Blvd. on approx. 19.95 ac. of land zoned PDC, HC and SC. Providence District. Tax Map 29-4 ((10)) 5A, 5B, 5C, 2-A1 and 2-A2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Voyten replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of a special permit for Cirque Du Soleil, a live theatrical production incorporating choreography, music and athletics in a one-ring circus environment. Ms. Langdon said that the hours of operation would be from 1:00 p.m. to 1:00 a.m. daily with a maximum of two performances per day. Performances are scheduled to begin in October and conclude in November, with a maximum attendance of 2,500 patrons per performance. She explained that parking for the performances will be accommodated within two vacant lots which are located adjacent to the performance grounds.

Ms. Langdon stated it was staff's belief that the application would be in harmony with the recommendations of the Comprehensive Plan, and would satisfy the necessary standards; therefore, staff recommended approval with the revised development conditions dated June 21, 1993. She explained that because performances are to be scheduled every other year, the applicant had requested the following change to Development Condition 4: "The Special Permit is approved for six (6) successive years". She noted that staff supported the change which would allow performances for three seasons.

The applicant's representative, Bernard C. Voyten, Jr., Director of Development, Lerner Enterprises L.P., 11501 Huff Court, N. Bethesda, Maryland, addressed the BZA. He thanked the BZA and staff for their cooperation and said that representatives from Cirque Du Soleil were present to answer any questions the BZA may have. Mr. Voyten said that Cirque Du Soleil is a non-profit organization which presents theatrical productions set in an European style circus environment. He explained that Cirque Du Soleil currently has two North American shows, one of which is stationary at The Mirage in Los Vegas, Nevada, and the other is the touring show which is the subject of the special permit.

Mr. Voyten said that prior to appearing before the BZA, he had visited both locations and was assured that the production would be compatible and harmonious with existing uses in the Tysons area and commensurate with the quality and character of the Tysons II Development. He noted that neither Lerner Enterprises nor any of its affiliates have any financial interest in the proceeds of the charitable performances. Mr. Voyten explained that the local benefactors of the Cirque Du Soleil would be George Mason University and Capital Children's Museum. He noted that Cirque Du Soleil has also agreed to offer a private performance to the children sponsored by the "Make a Wish Foundation."

Mr. Voyten stated the applicant agreed with all but one of the development conditions. He explained that Development Condition 4 limited the production to six years and asked that the BZA grant the Zoning Administrator the authority to extend the permit for an additional 5.5 year period. Mr. Voyten said that currently Tysons II Development had three million square feet of vacant use and Cirque Du Soleil performance would consistently use less public infrastructure than previously approved development consistent with the Final Development Plan (FDP) of Tysons II. He explained that the trip generation of the circus would use approximately five percent of the allocated trips for which the infrastructure, bridges, and additional lanes have been built. He also noted that the additional demands, such as water, sewer, electricity, and space would be less than any other approved use. In summary, Mr. Voyten said that the performances would be conducted in an area which is completely commercial and would be in harmony with the area and asked the BZA to grant the request.

In response to questions from Mr. Hammack regarding the number of performances, Mr. Voyten said that the productions would be bi-annually and explained that with an extension there would be a total of six productions. He stated that although a few members of the security and maintenance staff would reside on site, Cirque Du Soleil would lease apartments to house the majority of their employees.

In response to Mr. Pammel's question regarding the development plan, Ms. Langdon stated the site is covered under RZ 84-D-049 which is a conceptual final development plan. She noted that Development Condition 4 requires the use would cease prior to the time limit if the site is developed under the rezoning application.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 93-P-023 subject to the development conditions contained in the revised development conditions dated June 21, 1993 with the modifications 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 93-P-023 by TYSONS II DEVELOPMENT CO., L.P., under Section 6-204 of the Zoning Ordinance to permit a circus, on property located at 8025, 8075, and 8108 Galleria Drive and 1750 and 1800 Tysons Boulevard, Tax Map Reference 29-4((10))5A, 5B, 5-C, 2-A1 and 2-A2, 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 22, 1993; 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 PDC, HC, and SC.
3. The area of the lot is 19.95 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 8-915 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 Dewberry and Davis, dated May 3, 1993, Revised June 3, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. The theatrical production use at the subject site shall be limited to a time period between September and December, bi-annually commencing 1993, including all site preparation and restoration time before and after the production. The Special Permit is approved for six (6) successive years provided the use is operated in accordance with these conditions and there are no parking or other verified violations or disturbances to the surrounding area. The Zoning Administrator is granted the authority to extend the permit for five and one-half (5.5) additional years to allow three (3) additional bi-annual performances provided that there are no parking or other verified violation or disturbances to the surrounding area. However, the use shall cease prior to that time if the site is developed in accordance with the proffered Conceptual Development Plan/Final Development Plan, accepted by the Board of Supervisors pursuant to the approval of RZ 84-D-049 for Tysons II Development Company.

5. The hours of operation for performances shall be limited to 1:00 p.m. until 1:00 a.m. daily. There shall be a maximum of two performances per day.

6. The maximum number of tickets sold per performance shall not exceed 2,500.

7. The maximum number of Cirque Du Soleil employees and performers associated with this use shall be limited to 125 on-site at any one time. In addition, temporary service personnel as needed are permitted and an adequate number of police officers, security guards or Cirque Du Soleil personnel shall be provided by the applicant for each performance to provide safety and traffic control for off-site traffic direction and on-site parking coordination.

8. The applicant shall provide an adequate number of parking spaces to accommodate 2,500 patrons which shall be a minimum of 650 spaces. All parking shall be clearly designated and access to parking clearly signed.

9. There shall be no carnival rides or games operated on-site.

10. All trash and debris shall be contained on the site and shall be picked up two (2) to three (3) times daily and placed in thirty (30) cubic yard closed containers that will be emptied weekly.

11. Any signs, banners or advertising must have prior approval from the Zoning Enforcement Branch. For further information, please contact 324-1300.

12. The gravel surfaces shall be maintained in accordance with the standard practices approved by the Director, Department of Environmental Management (DEM), and shall include but not be limited to the following. The approval of the dustless surface shall be for the time period specified in Sect. 8-915 of the Zoning Ordinance.

    Travel speeds shall be limited to ten (10) mph.

    During dry periods, application of water shall be made in order to control dust.

    Runoff shall be channelled away from and around the parking areas.

    The applicant shall perform periodic inspections to monitor dust conditions, drainage functions, compaction and migration of the stone surface.

    Routine Maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not present for the vote.

Mr. Pammel made a motion to waive the eight-day waiting period. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 22, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 424, June 22, 1993, (Tape 2), Action Item:

Request for Intent-to-Defer
Dar Al Hijrah Mosque, SP 84-M-009

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that the memorandum presented to the BZA outlined the reasons for the applicant's request for deferral.

Mrs. Thonen noted that the Planning Commission has scheduled a hearing on September 15, 1993 and the Board of Supervisors has scheduled its hearing on September 27, 1993. She indicated that the BZA should defer the case to an October date.

Ms. Kelsey suggested a date of October 5, 1993 for SP 84-M-009. She noted that the BZA could also set a date for the Revocation Hearing and suggested a date of October 12, 1993.

Mrs. Thonen made a motion to schedule the special permit hearing and the revocation hearing on the suggested dates.

In response to Mr. Hammack's question as to why the special permit hearing and the revocation hearing could not be held on the same day, Ms. Kelsey stated that it could.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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Page 424, June 22, 1993, (Tape 2), Action Item:

Request for Date and Time for
Jim Spears Appeal

Mr. Pammel made a motion to schedule the appeal for September 28, 1993 at 10:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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Page 424, June 22, 1993, (Tape 2), Action Item:

Request for Waiver of the Twelve-Month Limitation
Golf Ventures, Inc., SP 92-S-032

Mr. Pammel made a motion to waive the twelve-month limitation for the filing of the same application. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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Page 424, June 22, 1993, (Tape 2), Action Item:

Request for Withdrawal
Hilltop Sand and Gravel Company, Inc. Appeal, A 93-L-001

Mr. Pammel made a motion to allow the withdrawal of A 93-L-001. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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Page 425, June 22, 1993, (Tape 2), ACTION ITEM:

Request for Out-of-Turn Hearing
Hrair Kazanjian, VC 93-L-063

Mrs. Thonen made a motion to grant an out-of-turn hearing for September 14, 1993. Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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Page 425, June 22, 1993, (Tape 2), Action Item:

Request for Intent-to-Defer
Crosspointe Appeal, A 93-S/V-008

Mr. Pammel made a motion to issue an intent to defer the case to September 28, 1993 at 10:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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Page 425, June 22, 1993, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Joseph H. Kaufman, M.D., VC 93-V-070

Mrs. Thonen made a motion to grant an out-of-turn hearing. Mr. Kelley seconded the motion and suggested the case be scheduled for August 3, 1993. The motion carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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Page 425, June 22, 1993, (Tape 2), Action Item:

Request for Re-schedule
Worldgate Associates Limited Partnership Appeal, A 93-D-007

Mrs. Thonen made a motion to re-schedule A 93-D-007 which is currently scheduled for July 13, 1993 to August 3, 1993. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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Page 425, June 22, 1993, (Tape 1), Scheduled case of:

10:30 A.M. TYSONS II DEVELOPMENT CO., L.P., SP 93-P-023 Appl. under Sect(s). 6-204 of the Zoning Ordinance to permit a circus. Located at 8025, 8075 and 8108 Galleria Dr. and 1750 and 1800 Tysons Blvd. on approx. 19.95 ac. of land zoned PDC, HC and SC. Providence District. Tax Map 29-4 ((10)) 5A, 5B, 5C, 2-A1 and 2-A2.

Jane C. Kelsey addressed the BZA and explained that although the applicant had not requested a waiver of the eight-day waiting period requirement during the hearing, they had previously indicated that they wished to do so.

Mr. Pammel made a motion to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Ribble not being present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: July 27, 1993

APPROVED: August 3, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 29, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 427, June 29, 1993, (Tape 1), Scheduled case of:

9:00 A.M. SUSAN H. & NELSON H. KILE, JR., VC 93-S-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of roofed deck 13 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 16-102 and 3-207). Located at 9122 Wood Pointe Way on approx. 5,907.00 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((14)) (A) 70.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Nelson H. Kile, Jr., 9122 Wood Pointe Way, Fairfax Station, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that applicant proposed to build a 10-foot high roofed deck, resulting in the request for a variance of 12 feet.

Mr. Kile submitted written material to the Board and presented the statement of justification, stating that the open deck had already been approved by the Department of Environmental Management (DEM) and the Crosspointe Homeowners Association; the building permit had been issued and construction had begun on the open deck. Mr. Kile said that the variance was required because of the exceptional shallowness of the lot; the back yard is only 25 feet deep, restricting them from building a roof of any size over the already-approved deck. He said that the Crosspointe Homeowners Association owns the common area behind the applicants' property, providing over 35 feet of additional space between the applicants and their neighbors to the rear in the Timber Ridge Development. Mr. Kile said that the situation is not of so general or recurring in nature as to make practical the formulation of a general regulation; the grading is such that they have a walkout basement which many homes in the area do not have; the raised deck is attached to the main level; the conditions are uncommon and require a variance to install the roof over the raised deck. Mr. Kile claimed that a denial of the request would impose an undue hardship since it would prohibit the construction of a covered porch of any size on the lot, which is required to provide protection from the sun. He said that his father-in-law spends a great deal of time with them and has been treated for skin cancer, resulting from overexposure to the sun. Mr. Kile claimed that strict application of the Ordinance would restrict reasonable use of the property in that many other Crosspointe and Timber Ridge homes have roofs over a section of their deck, including neighbors on Lots 138 and 140 on Chestnut Ridge Road. Mr. Kile alluded to a letter of opposition from a neighbor named Atkinson and stated that granting of this request would not impose upon the neighbor's privacy.

Mr. Kile also requested a waiver of the eight-day waiting period if the request were to be granted.

Mrs. Harris asked the applicant if the other decks he referred to had required variances and he did not know. Mrs. Harris remarked that the applicants' lot looked quite standard in size and configuration, compared to the other lots in the area on Woodpointe Way; she did not remember having had a variance in that area come before the Board. Mr. Kile said that the references he had made were to dwellings in Timber Lake where the lots are deeper.

Mr. Hammack moved to deny VC 93-S-028 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 93-S-028 by SUSAN H. & NELSON H. KILE, JR., under Section 18-401 of the Zoning Ordinance to permit construction of roofed deck 13 ft. from rear lot line, on property located at 9122 Wood Pointe Way, Tax Map Reference 97-4((14))(A)70, 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 29, 1993; 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 PDH-2.
3. The area of the lot is 5,907 square feet.
4. Small lots create a problem and evoke sympathy for the applicant; however, to grant this request would establish a bad precedent in an area where all the lots are virtually identical in size and have the same setback requirements.
5. A medical problem is not justification for a variance under land use law where it would be considered a convenience.
6. The lot is not in any way different from any other lots in 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**.

Mrs. Harris seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1993.

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Page 428, June 29, 1993, (Tape 1), Scheduled case of:

9:10 A.M. RANDALL A. WOODS, VC 93-M-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure (garage) to be constructed 4 ft. from side and 4 ft. from rear lot lines (12 ft. min. side yard req. by Sect. 3-307 and 13 ft. min. rear yard req. by Sect. 10-104). Located at 3228 Dashiell Rd. on approx. 10,010.00 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 50.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Randall A. Woods, 3228 Dashiell Road, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is north of Kearns Road in the Bel Air Subdivision; surrounding lots are also zoned R-3 and developed with single family detached dwellings; the applicant requested a variance of 8 feet to the minimum side yard requirement and 9 feet to the minimum rear yard requirement;

surrounding uses consist of a dwelling on adjacent Lot 49 to the west, approximately 15.8 feet from the shared side lot line, and a dwelling on adjacent Lot 258 to the south, approximately 60 feet from the shared rear lot line.

Mr. Woods submitted photos of dwellings in the area with similar accessory garages. The Board members asked the applicant how far from the property lines the structures were located and most of them were approximately 4 feet from the lines. Mr. Woods said he intended to place the structure all the way in the back of his lot and place a driveway in the same area. There is an existing shed on the plat which Mr. Woods said would be removed.

Mr. Woods said that, if the request were not granted, he would have to build the garage in his back yard, causing 75% of the yard to be concrete, consisting of the driveway and the garage itself, sitting 12 feet from the side and 13 feet from the rear lot lines. Mr. Woods had no opposition from neighbors to his proposed structure.

Mr. DiGiulian remarked to the applicant that the topography in the rear yard appeared to limit the applicant in the placement of the garage any further into the rear yard, and the applicant concurred.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen moved to grant VC 93-D-034 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 22, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-029 by RANDALL A. WOODS, under Section 18-401 of the Zoning Ordinance to permit accessory structure (garage) to be constructed 4 ft. from side and 4 ft. from rear lot lines, on property located at 3228 Dashiell Rd., Tax Map Reference 60-2((15))50, 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 29, 1993; 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 10,010 square feet.
4. The value of the property is not a consideration; however, the lot being narrow and long makes it very hard for the applicant to meet the standards.
5. The topography, according to environmental standards, is not conducive to moving the addition into the middle of the yard.
6. The strict application of the Ordinance would create a hardship because of the fact that it would be really difficult to put the garage anywhere else.
7. The character of the Zoning Ordinance would not be changed by granting this variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specified garage addition shown on the plat prepared by Coldwell, Sikes and Almirall, dated March 13, 1993, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The garage addition should be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 430, June 29, 1993, (Tape 1), Scheduled case of:

9:20 A.M. TIMOTHY AND SANDRA FLYNN, VC 93-V-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 6409 E. 14th St. on approx. 7,000.00 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 83-4 ((2)) (25) 7 and 8.

Chairman DiGiulian stated that he had a handwritten letter from the applicant requesting withdrawal of the application.

Mrs. Thonen moved that the applicant be allowed to withdraw VC 93-V-035. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the meeting.

It was not yet time for the next scheduled case and the Board considered the Action Items in the interim.

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Page 430, June 29, 1993, (Tape 1), Action Item:

Approval of Resolutions from June 22, 1993

Mrs. Thonen moved to approve. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the meeting.

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Page 431, June 29, 1993, (Tape 1), ACTION ITEM:

Request for Date and Time for Patrick R. Cain Appeal

Jane C. Kelsey, Chief, Special Permit and Variance Branch, called the Board's attention to the memo from William E. Shoup, Deputy Zoning Administrator, indicating that the Board of Zoning Appeals (BZA) had no jurisdiction to hear the appeal. Since Mr. Shoup was not yet present, probably having anticipated that the Board would bring this matter up at the end of the meeting, Ms. Kelsey suggested deferring the item until later in the meeting.

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Because of a lapse of time between the scheduled items, the Board recessed at 9:35 a.m. and reconvened at 9:50 a.m.

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Page 431, June 29, 1993, (Tape 1), Scheduled case of:

9:30 A.M. VULCAN MATERIALS COMPANY, SPA 82-V-091-2 Appl. under Sect(s). 3-103, 3-C03 and 5-603 of the Zoning Ordinance to amend SP 82-V-091 for stone quarrying, crushing, sales and associated quarrying activities to increase land area. Located approx. 2,500 ft. W. of Route 123, S. of Peniwill Dr., E. of Elkhorn Run and N. of the Occoquan River on approx. 298.50 ac. of land zoned R-1, R-C, I-6 and NR. Mount Vernon District. Tax Map 112-2 ((1)) pt. 8, pt. 9, 11, 12, 13; 106-3 ((1)) pt. 48; and 106-4 ((1)) pt. 54. (Concurrent with SPR 82-V-091).

9:45 A.M. VULCAN MATERIALS COMPANY, SPR 82-V-091 Appl. under Sect(s). 3-103, 3-C03 and 5-603 of the Zoning Ordinance to renew SP 82-V-091 for stone quarrying, crushing, sales and associated quarrying activities to continue use. Located approx. 2,500 ft. W. of Route 123, S. of Peniwill Dr., E. of Elkhorn Run and N. of the Occoquan River on approx. 298.50 ac. of land zoned R-1, R-C, I-6 and NR. Mount Vernon District. Tax Map 112-2 ((1)) pt. 8, pt. 9, 11, 12 and 13; 106-3 ((1)) pt. 48; and 106-4 ((1)) pt. 54. (Concurrent with SPA 82-V-091-2).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mrs. Thonen replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the site is surrounded by vacant land to the north zoned R-1; the Occoquan River to the south; vacant land, the D.C. Penal Institute and property belonging to the Fairfax County Water Authority to the east; to the west is land zoned R-1 which is either vacant or developed with single family detached dwellings; the land is owned by Vulcan Materials, Vulcan Lands, Inc., the District of Columbia and Newton Asphalt Company of Virginia; ingress/egress to the site is gained via an easement through the Fairfax County Water Authority property. Ms. Langdon said that the special permit requires renewal every five years and the special permit amendment was being requested to bring under SP 82-V-091 approximately 75 acres of the quarry recently approved for expansion under SP 92-V-027, allowing the entire quarry to operate under one special permit; approval was also being requested to move the portable crusher from the permitted site location to other areas within the pit, so that the crusher could be moved close to source of stone; permission was also being requested for Saturday hours, 7 a.m. to 6 p.m., to operate drilling and crushing equipment; Saturday hours of operation are presently being allowed by the Zoning Administrator. Ms. Langdon said that, with the implementation of the Proposed Development Conditions, staff believed the proposed use would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the General Standards and Standards for all Group 1 uses. For these reasons, Ms. Langdon said that staff recommended approval of both applications with the addition of a new condition and changes to Conditions 6 and 21 as outlined in the applicant's letter dated June 29, 1993, distributed to the Board that morning and reflected in the Resolution.

10:00 A.M. VULCAN ANNUAL REPORT

Ms. Langdon said that, in addition, staff was submitting to the Board for consideration the 1992 Annual Report for Vulcan Quarry. She said that Fairfax County monitors the Quarry operation for compliance with the requirements of the Zoning Ordinance, the Public Facilities Manual and all proffers and development conditions that govern the use; monitoring is performed by personnel from the Zoning Administration Division and Environment and Development Review Branch of the Office of Comprehensive Planning, the Air Pollution Control Division of the Fairfax County Health Department and the Public Utilities and Urban Forestry Branches of the Department of Environmental Management. Based on the analyses of the foregoing personnel, Ms. Langdon said staff believed that the use was in compliance with all applicable proffers and development conditions.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-V-091-2 by VULCAN MATERIALS COMPANY, under Sections 3-103, 3-C03 and 5-603 of the Zoning Ordinance to amend SP 82-V-091 for stone quarrying, crushing, sales and associated quarrying activities to increase land area, on property located approx. 2,500 ft W. of Route 123, S. of Peniwill Dr., E. of Elkhorn Run and N. of the Occoquan River, Tax Map Reference 112-2((1))pt. 8, pt. 9, 11, 12, 13; 106-3((1))pt. 4B; and 106-4((1))pt. 54, 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 29, 1993; 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, R-C, I-6 and NR.
3. The area of the lot is approx. 298.5 acres.

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 prepared by CTI Consultants, Inc. and Stevenson Engineering Associates, Inc., dated February 19, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This permit is granted for a period of five (5) years from the approval date of SPA 82-V-091-2 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.

   As may be acceptable to the Zoning Administrator, findings and conclusions made by the Zoning Administrator or his/her designee during the annual review process required by Sect. 8-104 of the Fairfax County Zoning Ordinance may also be used to demonstrate compliance with the applicable Zoning Ordinance provisions as is required to complete the Notification Form From Local Governing Body or similar forms which may be necessary to process any new or modified local, state, or federal permits including, but not limited to, State Air Permits.

5. The Director, Department of Environmental Management shall determine if a site plan is necessary under the provisions of Article 17, Site Plans. It a plan is necessary, it shall be in conformance with the approved Special Permit plat and these development conditions. Prior to the issuance of a Non-Residential Use Permit for the 75.3 acre expansion area, Tax Map 106-3((1)) pt. 4B, the following submissions shall be made to the Department of Environmental Management:

   A grading plan shall be submitted for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 2-603 of the Zoning Ordinance. This grading plan shall be engineered so as to preserve existing drainage patterns outside the pit area to the greatest extent possible and shall also reflect phasing of clearing and grading to preserve the existing vegetation and prevent excessive erosion.

   A landscape plan shall be submitted to the Urban Forestry Branch, DEM, for review and approval for the area of the property that is outside the limits of clearing and grading as shown on the special permit plat. This landscape plan shall also contain a tree preservation plan reflecting an intent to preserve existing vegetation to the greatest extent possible along the northeastern and eastern lot lines. The proposed

berm as shown on the special permit plat along the northeastern lot line shall be relocated as far to the south within the area of the 200 foot buffer area as feasible. A minimum of 100 feet of existing vegetation shall be preserved between the berm and the northeastern lot line. If any of the vegetation within the 100 foot buffer or beyond the limits of clearing for the berm along the eastern lot line is lost during clearing and grading for the berms, replacement vegetation and/or replacement trees shall be provided. The number, species and location of these trees shall be as determined by the Urban Forestry Branch, DEM. This plan shall detail proposed plantings on the berms which are reflected on the approved special permit plat. The density and species of plantings shall be substantially as shown on the special permit plat subject to approval by the Urban Forestry Branch, DEM. All evergreen trees placed on the berm, at a minimum, shall have a planting height of four (4) feet.

6. After removal of overburden from ten (10) acres or more on Lot 4B, and prior to the commencement of any stone excavation in the expansion area, a berm shall be constructed in the eastern portion of Lot 4B as shown on the special permit plat (southwest of Lot 23). Prior to the excavation of stone on Lot 4B, in an area beyond 700 feet from the southern boundary of Lot 4B, the berm adjacent to and south of Penniwill Drive shall be constructed, except as qualified by condition 5, as shown on the special permit plat (west of parcel 23). All berms shall have a minimum height of fifteen feet as shown on the special permit plat. The Zoning Administrator, in consultation with DEM, may permit modifications, changes or adjustments to th berm size, height, width, or location, if justified by sound engineering, environmental, or safety reasons.

7. The EQCs shall be as shown on the special permit plat subject to final delineations at the time of grading plan approval. The boundaries of the EQC shown on the special permit plat may be adjusted subject to the approval of DEM and the Environment and Development Review Branch, OCP, based on factors such as actual field survey, drainage issues, tree or vegetation preservation concerns. The areas denoted as EQCs on the special permit plat shall be permanently marked with orange fencing to ensure grading and earth moving equipment does not disrupt the EQC. There shall be no clearing, grading, or structures in the areas identified as EQCs in the final delineation shown on the approved grading plan.

8. The vegetation preserved in the EQC's and to be provided in and around the berms shall be deemed to fulfill all requirements for Transitional Screening. Species and exact location of trees shall be as determined by the Urban Forestry Branch, DEM. The chain link fence surrounding the site shall be deemed to fulfill the barrier requirement.

9. Landscaping and screening shall be provided in accordance with the master reclamation plan submitted with this application subject to the approval of the Urban Forester.

10. The bond of $2,000 per acre to insure restoration of the property shall be continued for the duration of this operation. The permittee shall comply with all requirements of the approved Restoration Plan and amendments thereto.

11. The area of stone excavation (i.e. the actual quarry pit area) shall not exceed 136 acres as is shown on the approved special permit plat.

12. A stormwater management and erosion and sediment control plan shall be prepared and implemented for the expansion area as approved by DEM.

13. The applicant shall coordinate with the Special Projects Branch of the Department of Environmental Management regarding best management practices (BMP) requirements of the Chesapeake Bay Preservation Ordinance. The applicant shall comply with those standards as determined by DEM.

14. Drilling or crushing shall be limited to the hours between 7:00 a.m. and 6:00 p.m., Monday through Saturday. Blasting shall occur only between the hours of 10:00 a.m. and 6:00 p.m., Monday through Friday and all blasts shall be adjusted to wind and other atmospheric conditions in order to minimize as far as possible any adverse effect upon any privately-owned occupied dwellings. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four hours prior to each blast. Work on Sundays shall be confined to repairs on the processing plant, items of equipment and the operation in general.

15. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 0.4 inches per second in the earth at any privately-owned occupied structure not on the quarry property, except not more than one in ten shots can go over 0.4 with the limit being no more that 0.6

16. The peak overpressure from any blast shall be limited to 0.0092 psi (130dB) at any privately-owned occupied structure not on quarry property.

17. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any privately-owned structure not on quarry property.

18. Airborne noise produced by the quarry from sources other than blasting shall not exceed at any privately-owned occupied structure not on quarry property, 58 dBa in residential areas, or 65 dBa in commercial areas.

19. All blasting material shall be handled and stored in accordance with standards and regulations established by the United States Bureau of Mines. The applicant shall indicate the location of all explosives magazines to the Zoning Enforcement Branch of the Office of Comprehensive Planning. No magazine shall be stored within the northern expansion area.

20. No blasting, drilling or extraction shall be permitted on the parcel leased from the United States of America and known as Tax Map 112-2((1))13.

21. Equipment labeled on the approved plat as a future primary crushing station and a portable multi-purpose crusher may be located at the discretion of the applicant, provided it is located within the pit area and is operated pursuant to these conditions. An adequate dust suppression system shall be provided on the crusher to prevent point source emissions from the crusher, screens, shakers and the various conveyers during all periods of operation including, but not limited to: testing; maintenance; and the actual crushing of extracted materials stone and concrete and/or re-crushing of the same.

22. In the event any new feasible equipment or means of controlling the dust from blasts becomes available to the industry, these shall installed and used.

23. Dust control equipment shall be installed, maintained and operated on all portions of its processing plant so as to adequately control dust.

24. All conveyors shall continue to be covered, if necessary, to meet applicable standards.

25. Paved roads and other paved areas within the confines of the quarry shall be watered and cleaned with heavy duty cleaning equipment to prevent dust or mud from entering the public street.

26. All trucks transporting material excavated from the site to any off site location shall be covered.

27. Vulcan Materials Company, Inc. will take all steps appropriate or as required for deadening sounds of vibrating screens and plant operations during all periods of plant operation.

28. This approval includes the barge loading facilities and the operation thereof located on the north side of the Occoquan River adjacent to the site.

29 Two-way communication equipment shall be provided for use by zoning inspectors while conducting site inspections.

30. The Zoning Administrator, or designated agent, shall be permitted to inspect the premises monthly to determine that the quarry is being operated in compliance with all the foregoing restrictions.*

31. A copy of water quality data submitted to the Commonwealth of Virginia under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Office of Comprehensive Planning on an annual basis.

32. Prior to the commencement of operations in the expansion area, an additional air quality monitoring station 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 ambient PM10 and TSP air quality standards.

33. The applicant shall provide the Office of Comprehensive Planning with a record of any complaints or violations related to State and Federal permits for air quality compliance and water quality control.

34. The permittee shall absorb one hundred percent of the cost of enforcement service as determined by the Zoning Administrator.

35. Penniwill Drive shall only be used for emergency vehicle access.

36. SEA 82-V-046, APAC-Virginia, Inc., lessee of Tax Map 112-2((1)) 12, is not a part of this application and a change in this use or corresponding SEA would not necessarily require a change to this special permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless a new Non-RUP has been issued. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 82-V-091 by VULCAN MATERIALS COMPANY, under Sections 3-103, 3-C03 and 5-603 of the Zoning Ordinance to renew SP 82-V-091 for stone quarrying, crushing, sales and associated quarrying activities to continue use, on property located approx. 2,500 ft W. of Route 123, S. of Peniwill Dr., E. of Elkhorn Run and N. of the Occoquan River, Tax Map Reference 112-2((1))pt. 8, pt. 9, 11, 12, 13; 106-3((1))pt. 4B; and 106-4((1))pt. 54, 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 29, 1993; 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, R-C, I-6 and NR.
3. The area of the lot is approx. 298.5 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 prepared by CTI Consultants, Inc. and Stevenson Engineering Associates, Inc., dated February 19, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This permit is granted for a period of five (5) years from the approval date of SPA 82-V-091-2 with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.

   As may be acceptable to the Zoning Administrator, findings and conclusions made by the Zoning Administrator or his/her designee during the annual review process required by Sect. 8-104 of the Fairfax County Zoning Ordinance may also be used to demonstrate compliance with the applicable Zoning Ordinance provisions as is

required to complete the Notification Form From Local Governing Body or similar forms which may be necessary to process any new or modified local, state, or federal permits including, but not limited to, State Air Permits.

5. The Director, Department of Environmental Management shall determine if a site plan is necessary under the provisions of Article 17, Site Plans. It a plan is necessary, it shall be in conformance with the approved Special Permit plat and these development conditions. Prior to the issuance of a Non-Residential Use Permit for the 75.3 acre expansion area, Tax Map 106-3((1)) pt. 4B, the following submissions shall be made to the Department of Environmental Management:

   A grading plan shall be submitted for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 2-603 of the Zoning Ordinance. This grading plan shall be engineered so as to preserve existing drainage patterns outside the pit area to the greatest extent possible and shall also reflect phasing of clearing and grading to preserve the existing vegetation and prevent excessive erosion.

   A landscape plan shall be submitted to the Urban Forestry Branch, DEM, for review and approval for the area of the property that is outside the limits of clearing and grading as shown on the special permit plat. This landscape plan shall also contain a tree preservation plan reflecting an intent to preserve existing vegetation to the greatest extent possible along the northeastern and eastern lot lines. The proposed berm as shown on the special permit plat along the northeastern lot line shall be relocated as far to the south within the area of the 200 foot buffer area as feasible. A minimum of 100 feet of existing vegetation shall be preserved between the berm and the northeastern lot line. If any of the vegetation within the 100 foot buffer or beyond the limits of clearing for the berm along the eastern lot line is lost during clearing and grading for the berms, replacement vegetation and/or replacement trees shall be provided. The number, species and location of these trees shall be as determined by the Urban Forestry Branch, DEM. This plan shall detail proposed plantings on the berms which are reflected on the approved special permit plat. The density and species of plantings shall be substantially as shown on the special permit plat subject to approval by the Urban Forestry Branch, DEM. All evergreen trees placed on the berm, at a minimum, shall have a planting height of four (4) feet.

6. After removal of overburden from ten (10) acres or more on Lot 4B, and prior to the commencement of any stone excavation in the expansion area, a berm shall be constructed in the eastern portion of Lot 4B as shown on the special permit plat (southwest of Lot 23). Prior to the excavation of stone on Lot 4B, in an area beyond 700 feet from the southern boundary of Lot 4B, the berm adjacent to and south of Penniwill Drive shall be constructed, except as qualified by condition 5, as shown on the special permit plat (west of parcel 23). All berms shall have a minimum height of fifteen feet as shown on the special permit plat. The Zoning Administrator, in consultation with DEM, may permit modifications, changes or adjustments to th berm size, height, width, or location, if justified by sound engineering, environmental, or safety reasons.

7. The EQCs shall be as shown on the special permit plat subject to final delineations at the time of grading plan approval. The boundaries of the EQC shown on the special permit plat may be adjusted subject to the approval of DEM and the Environment and Development Review Branch, OCP, based on factors such as actual field survey, drainage issues, tree or vegetation preservation concerns. The areas denoted as EQCs on the special permit plat shall be permanently marked with orange fencing to ensure grading and earth moving equipment does not disrupt the EQC. There shall be no clearing, grading, or structures in the areas identified as EQCs in the final delineation shown on the approved grading plan.

8. The vegetation preserved in the EQC's and to be provided in and around the berms shall be deemed to fulfill all requirements for Transitional Screening. Species and exact location of trees shall be as determined by the Urban Forestry Branch, DEM. The chain link fence surrounding the site shall be deemed to fulfill the barrier requirement.

9. Landscaping and screening shall be provided in accordance with the master reclamation plan submitted with this application subject to the approval of the Urban Forester.

10. The bond of $2,000 per acre to insure restoration of the property shall be continued for the duration of this operation. The permittee shall comply with all requirements of the approved Restoration Plan and amendments thereto.

11. The area of stone excavation (i.e. the actual quarry pit area) shall not exceed 136 acres as is shown on the approved special permit plat.

12. A stormwater management and erosion and sediment control plan shall be prepared and implemented for the expansion area as approved by DEM.

13. The applicant shall coordinate with the Special Projects Branch of the Department of Environmental Management regarding best management practices (BMP) requirements of the Chesapeake Bay Preservation Ordinance. The applicant shall comply with those standards as determined by DEM.

14. Drilling or crushing shall be limited to the hours between 7:00 a.m. and 6:00 p.m., Monday through Saturday. Blasting shall occur only between the hours of 10:00 a.m. and 6:00 p.m., Monday through Friday and all blasts shall be adjusted to wind and other atmospheric conditions in order to minimize as far as possible any adverse effect upon any privately-owned occupied dwellings. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four hours prior to each blast. Work on Sundays shall be confined to repairs on the processing plant, items of equipment and the operation in general.

15. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 0.4 inches per second in the earth at any privately-owned occupied structure not on the quarry property, except not more than one in ten shots can go over 0.4 with the limit being no more that 0.6

16. The peak overpressure from any blast shall be limited to 0.0092 psi (130dB) at any privately-owned occupied structure not on quarry property.

17. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any privately-owned structure not on quarry property.

18. Airborne noise produced by the quarry from sources other than blasting shall not exceed at any privately-owned occupied structure not on quarry property, 58 dBa in residential areas, or 65 dBa in commercial areas.

19. All blasting material shall be handled and stored in accordance with standards and regulations established by the United States Bureau of Mines. The applicant shall indicate the location of all explosives magazines to the Zoning Enforcement Branch of the Office of Comprehensive Planning. No magazine shall be stored within the northern expansion area.

20. No blasting, drilling or extraction shall be permitted on the parcel leased from the United States of America and known as Tax Map 112-2((1))13.

21. Equipment labeled on the approved plat as a future primary crushing station and a portable multi-purpose crusher may be located at the discretion of the applicant, provided it is located within the pit area and is operated pursuant to these conditions. An adequate dust suppression system shall be provided on the crusher to prevent point source emissions from the crusher, screens, shakers and the various conveyers during all periods of operation including, but not limited to: testing; maintenance; and the actual crushing of extracted materials stone and concrete and/or re-crushing of the same.

22. In the event any new feasible equipment or means of controlling the dust from blasts becomes available to the industry, these shall installed and used.

23. Dust control equipment shall be installed, maintained and operated on all portions of its processing plant so as to adequately control dust.

24. All conveyors shall continue to be covered, if necessary, to meet applicable standards.

25. Paved roads and other paved areas within the confines of the quarry shall be watered and cleaned with heavy duty cleaning equipment to prevent dust or mud from entering the public street.

26. All trucks transporting material excavated from the site to any off site location shall be covered.

27. Vulcan Materials Company, Inc. will take all steps appropriate or as required for deadening sounds of vibrating screens and plant operations during all periods of plant operation.

28. This approval includes the barge loading facilities and the operation thereof located on the north side of the Occoquan River adjacent to the site.

29 Two-way communication equipment shall be provided for use by zoning inspectors while conducting site inspections.

30. The Zoning Administrator, or designated agent, shall be permitted to inspect the premises monthly to determine that the quarry is being operated in compliance with all the foregoing restrictions.*

31. A copy of water quality data submitted to the Commonwealth of Virginia under the National Pollutant Discharge Elimination System (NPDES) shall be submitted to the Office of Comprehensive Planning on an annual basis.

32. Prior to the commencement of operations in the expansion area, an additional air quality monitoring station 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 ambient PM10 and TSP air quality standards.

33. The applicant shall provide the Office of Comprehensive Planning with a record of any complaints or violations related to State and Federal permits for air quality compliance and water quality control.

34. The permittee shall absorb one hundred percent of the cost of enforcement service as determined by the Zoning Administrator.

35. Penniwill Drive shall only be used for emergency vehicle access.

36. SEA 82-V-046, APAC-Virginia, Inc., lessee of Tax Map 112-2((1)) 12, is not a part of this application and a change in this use or corresponding SEA would not necessarily require a change to this special permit.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless a new Non-RUP has been issued. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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Mr. Hammack addressed the matter of the 1992 Annual Report for Vulcan Quarry ad made a motion to accept the Report as submitted by Barbara A. Byron, Director of the Zoning Evaluation Division of the Office of Comprehensive Planning.

Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 438, Tape 1, (Tape 1), Scheduled case of:

Request for Date and Time for Patrick R. Cain Appeal

Mrs. Thonen referenced her previous motion to defer this appeal until the following week and stated that it had just been brought to her attention that the appellant and William E. Shoup, Deputy Zoning Administrator, Zoning Administration Division, had plans to be at the meeting at the end of the regular agenda; for that reason, she made a motion to reconsider the item and decide whether or not the appeal was timely filed.

Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

Since Mr. Shoup was not yet present, it was decided to defer consideration until Mr. Shoup arrived.

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There was a lapse of time before the next scheduled item; the Board recessed at 10:05 a.m. and reconvened at 10:20 a.m.

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10:15 A.M. WILLIAM H. DEMPSEY, III, & KAREN L. HOLZBERG, VC 93-D-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of 8 ft. high fence in front yards of a corner lot (4 ft. max. height allowed by Sect. 10-104). Located at 1213 Buchanan St. on approx. 19,521.00 sq. ft. of land zoned R-2. Dranesville District. Tax Map 30-2 ((20)) (B) 2 and 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Karen L. Holzberg and William H. Dempsey, III, 1213 Buchanan Street, McLean, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located in the Walter Heights Subdivision; the surrounding properties are also zoned R-2; the properties to the north and west are developed with single family detached dwellings; property to the east is vacant; the property to the south, across Chain Bridge Road, is developed with Trinity Church; the requested variance is to allow an 8' high brick wall in both front yards of a corner lot; the front yard that abuts Chain Bridge Road would have an 8' high wall, the corner portion would be 8' high, and the portion of the wall along Buchanan Street would be 4' high. Ms. Greenlief said that this variance was being requested under a very complicated section of the Ordinance and questions would be welcome.

Mrs. Thonen referenced a letter which the Board had, stating that the wall which the applicant proposed would be like the one at McLean and Madison and asked Ms. Greenlief if she knew what that was about. Ms. Greenlief said that there was a brick wall fronting on Chain Bridge Road which had been approved in conjunction with a rezoning for townhomes. She said that she believed the applicant had pictures of it. Mr. Hammack said that the wall in question was part of the development and Mr. Ribble said it had been part of the development plan.

Ms. Holzberg and Mr. Dempsey jointly presented the statement of justification, stating that Mr. Dempsey had contacted the County before purchasing the property and, after detailed discussion, had been led to believed that they could build an 8' wall for a sound barrier. When they went to apply for a permit, she said that the personnel they dealt with had a different interpretation of a couple of the Ordinances. Ms. Holzberg said they would not have purchased the property without the expectation that the wall could be built for sound attenuation. She said the permit was denied them for two reasons: The property next door is undeveloped and County personnel claimed that the eventual owners might choose to build a driveway off Route 123, even though there is a recorded easement for ingress/egress accessing Buchanan Street through the subject property. All the plans shown to them by developers so far had used that easement; the Ordinance made reference to the "only" driveway and, in this case, she believed the easement would make it unnecessary to use Route 123 for the "only" driveway. Ms. Holzberg went to great length in expanding upon the reasons why the request should be granted, with Mr. Dempsey using the viewgraph for backup and to argue that vision would not be compromised. Ms. Holzberg argued that they should be treated the same as the County treated developers.

Mrs. Harris commented upon Ms. Holzberg's comparison of this request to other walls off Route 123, stating that the examples were not in conjunction with single family dwellings; they also were set back from the road considerably more than the proposed wall would be; the comparison between the brick wall and what would be behind it visually would be much different; the examples have a great deal of landscaping in front of them; the photos were familiar to Mrs. Harris who said she knew the site well; while the wall might be similar, the proposed wall might not allow the house to be seen. Ms. Holzberg said that they planned to landscape in front of the proposed wall for beauty's sake, as well as for the pollution factor.

Mrs. Harris asked the applicants who they had spoken to in the County that had told them an 8' fence would not be a problem. Mr. Dempsey said that, when he had spoken to someone at the office where he had acquired the permits, he had asked to speak to someone about putting up a wall, before they purchased the property. He said they would be allowed to build an 8' high wall by simply getting a permit, if the property next to them was not currently undeveloped.

Mr. Ribble referenced the fact that Mr. Dempsey had referred to his conversation with the County employee as a detailed conversation; he asked Mr. Dempsey if he was correct in understanding that he did not know who he had spoken with. Mr. Dempsey said he did not know; he said he had spoken to one of the people who would be reviewing sites for construction; he attempted to describe the location of the area in the County facility where he had spoken on the phone with the County employee referred to. Mr. Dempsey said that, after telling him that he would be able to build a wall only 4' high and reading to him from the Ordinance, the County employee was said to have checked further and sent him copies of the section of the Ordinance stating that he could build a wall 8' high. Mr. Ribble asked if she sent copies without sending her name and Mr. Dempsey said that she had. Mr. Ribble asked when all of this had occurred. Mr. Dempsey said they had purchased the property in March of 1992 and he probably would have spoken with County personnel in about January or February of 1992; he said the only factor causing some confusion was that the property was a corner lot; the County employee was said to have looked at the plat of the property and seemed to believe there would be no problem with a wall 8' high. Mrs. Thonen said that is true when the property is on a thoroughfare and the fence does not block vision, as a result of a new County Ordinance.

Chairman DiGiulian asked Mr. Dempsey if it was true that, if the two immediately adjacent vacant lots to the east of the property built driveways out to Route 123, the proposed wall would not block their line of site to the thoroughfare. Mr. Dempsey exhibited a drawing showing lines of sight and it appeared that they cleared any obstruction from the wall.

Katrina Marrigan, 1207 Buchanan Street, directly behind the applicants; stated that she was in support of the application for the reasons given by the applicants, especially sound attenuation. She said she believed there was an aesthetic advantage and that a single-dwelling owner should be treated the same as a developer.

Mr. Ribble asked the speaker when she had purchased the property. Ms. Marrigan said she had purchased the property in August of 1990. Mr. Ribble asked if there was noise when she purchased and she said that there was.

Mrs. Harris asked the speaker if she did not believe that the proposed wall gave the property a stockade type of appearance and Ms. Marrigan said that she did not; she cited various other walls in subdivisions that she believed looked very good. Mrs. Harris asked about the other single family homes along Route 123 which have wooden fences or landscaping, pointing out that the 8' height had been legal only for the last six months or so for single family dwellings. Ms. Marrigan said she did not see what the difference was between a development and a single family dwelling; in Evermeade there are single family dwellings with walls and she could not imagine them without them because their back yards back up to Route 123 and the safety of the children is a consideration.

Jane Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the applicant wished to respond to a question Mrs. Harris had asked of Ms. Marrigan.

Mr. Dempsey stated, with respect to other properties that do not have brick walls, that most of them are zoned R-1 and the dwellings are set back from the road a considerable distance, while the applicants dwelling is not set back much more than 80 to 100 feet from the road and is brick.

Mrs. Thonen acknowledged that the BZA was in possession of many letters concerning the application which would be made part of the file.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to deny VC 93-D-034 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 93-D-034 by WILLIAM H. DEMPSEY, III, & KAREN L. HOLZBERG, under Section 18-401 of the Zoning Ordinance to permit construction of 8 ft. high fence in front yards of a corner lot, on property located at 1213 Buchanan St., Tax Map Reference 30-2((20))(8)2 and 3, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 1993; 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-2.
3. The area of the lot is 19,521 square feet.
4. The noise problem is recognized.
5. The applicant may have other options, such as seeking an Ordinance change or seeking approval from another body.
6. A "helter skelter" plan could not be supported, wherein a wall is allowed on one lot and not on the one next door.
7. The request is not in keeping with this old neighborhood.
8. Other ways to alleviate the noise might be with trees.
9. The applicants evoked sympathy in that there seemed to be a misunderstanding as to what was told to them by a County employee whom they could not identify.

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. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1993.

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Page 441, June 29, 1993, (Tape 1), Scheduled case of:

10:30 A.M. ANACONDA GOLF COMPANY, INC., SP 93-Y-011 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a miniature golf course, baseball hitting range, golf driving range and putting tees. Located at 14531 Lee Rd. on approx. 28.87 ac. of land zoned I-5, AN and WS. Sully District. Tax Map 34-3 ((1)) 34.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elizabeth D. Baker, planner with the law firm of Walsh, Colucci, Stackhouse, Emrich, et al, 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the subject property is located on the west side of Route 28 and the east side of Lee Road, south of Route 50; the applicant proposed building a recreation center with a lighted miniature golf course, a lighted driving range, a lighted putting green, and 2 lighted batting cages; 134 parking spaces were proposed.

Ms. Greenlief said that staff's main concern with the application was the fact that it is located in the Dulles Suburban Center, which is a newly adopted designation in the Bull Run Planning District; the Comprehensive Plan criteria for this area includes high quality design and the highest level of screening and landscaping. She said that, given the nature of the proposed use, high quality building design is not easily attainable as there will not be a structure, such as an office building, built to high quality design standards; therefore, increased emphasis must be placed on landscaping the site, not necessarily to screen the use, but to enhance its appearance. Ms. Greenlief said that staff is satisfied with the amount of interior parking lot landscaping provided; the only area where staff believes additional treatment is necessary is along Lee Road; the Comprehensive Plan calls for streetscape treatments in the Dulles Suburban Center area; the landscape plan shows a single row of Bradford Pear trees spaced fairly far apart, approximately 30 feet; staff believes that the wide spacing will not meet the goal of providing a line of street trees along Lee Road; therefore, staff has included a development condition that requires a second row of flowering deciduous trees, staggered behind the first row; staff has also recommended the continuation of the treatment along Lee Road to the north of the entrance drive. Ms. Greenlief said there are two development conditions which need revising: The first one is Condition 6, pertaining

to landscaping. In the staff report, the last sentence states: "...These trees shall have a minimum caliper of 2 inches at the time of planting...." That sentence has been moved up into the body of the Condition, now referring to the maples and the Bradford Pears. A last sentence had also been added, referring to the relocated existing trees and shrubs on the property, stating that they be a minimum of 3 feet in height.

Ms. Greenlief said that the other change is to Condition 8, pertaining to lighting on the site; the applicant's agent pointed out that the Condition required that the lights be directed downward, which may be impossible for the driving range lights. Ms. Greenlief said she looked at other driving range conditions done previously and staff had not required that the lights be directed downward; therefore, the condition had been modified.

With the proposed conditions and recommended changes, staff recommended approval of the application.

Ms. Baker represented the applicant and presented the statement of justification, stating that the site previously had been used for similar uses and it was the applicant's intent to redevelop and revitalize those past uses; property adjoining the site to the north, south, east and west is planned and zoned for industrial uses; there are no residential communities adjacent to the site and the applicant expected no negative impact on the surrounding area; the application had also been taken before the West Fairfax Citizens Association and had received their support; the applicant had reviewed the Development Conditions in the staff report, as well as the changes which Ms. Greenlief had presented, and had no problem with any of the Conditions.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SP 92-Y-011 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 21, 1993, as amended.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-011 by ANACONDA GOLF COMPANY, INC., under Section 5-503 of the Zoning Ordinance to permit a miniature golf course, baseball hitting range, golf driving range and putting tees, on property located at 14531 Lee Rd., Tax Map Reference 34-3((1))34, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 29, 1993; 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 I-5, AN and WS.
3. The area of the lot is 28.87 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 8-503, 8-603, 8-604 and 8-607 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 Architects At Work dated March 23, 1993 revised through May 13, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat by Architects At Work dated March 23, 1993, revised through May 13, 1993 and these development conditions.

5. One hundred and thirty-four (134) parking spaces shall be provided for the use as shown on the special permit plat. All parking for this use shall be on site.

6. The landscaping shall be provided as shown on the landscape plan prepared by Architects At Work and dated May 13, 1993, revised May 27, 1993 with the exception of the following. In addition to the Bradford Pear trees shown along Lee Road, a second row of flowering deciduous trees to the east and in between the trees shown shall be provided from the intersection of the southern and western lot lines to a point where the existing tree line begins along the western lot line. The purpose of this streetscaping shall be to provide a continuous line of landscaping treatment along the Lee Road frontage of the site and to emphasize the entrance to the use. These trees shall have a minimum caliper of 2 inches at the time of planting. All landscaping and plantings shall be reviewed and approved by the Urban Forestry Branch at the time of site plan review. This shall include review and approval of the viability and suitability of the relocated trees and shrubs shown on the landscape plan. The relocated trees and shrubs shall have a variety of heights but shall be a minimum of three (3) feet in height.

7. There shall be no clearing or grading within the limits of EQC as shown on the special permit plat, except for dead or dying trees and shrubs.

8. All lights on the site shall be no higher than thirty (30) feet and shall be directed so as to prevent light to glare onto adjacent property. All lights, with the exception of driving range lights, shall be directed downward and shielded, if necessary.

9. There shall be no vertical dividers (a low wall of any material used to separate the tees) on the sand tees within 100 feet of the southern lot line.

10. A right turn lane and a left turn lane shall be provided on Lee Road to the satisfaction of the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT).

11. Right-of-way along the Sully Road frontage of the site shall be dedicated for public street purposes per VDOT plan #0028-029-111, PE-103 RW-203 and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan review, whichever occurs first. Ancillary easements shall be provided to facilitate these improvements.

12. Frontage improvements shall be provided along Lee Road as determined necessary by the Director, DEM at the time of site plan review.

13. Prior to site plan approval, the applicant shall demonstrate to the satisfaction of the Director, DEM, that coordination with the Agricultural and Natural Resource Section of the Department of Extension and Continuing Education has occurred and that fertilizer, herbicide and pesticide management efforts will be pursued so that adverse impacts to water quality can be prevented to the maximum extent possible to the satisfaction of the Agricultural and Natural Resource Section.

14. Stormwater Management Best Management Practices (BMP's) constructed to Water Supply Protection Overlay District standards shall be provided as deemed necessary by the Director, DEM, at the time of site plan review.

15. There shall be no access to the use from Sully Road. Access may be provided from Sully Road on the private service drive to Lot 30 to the north of the subject property.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. If this development is phased, the last phase of construction shall begin within five (5) years from the date of approval of this special permit. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 444, June 29, 1993, (Tape 1), BZA Policy:

Mrs. Thonen addressed the waiting time between applications heard and Jane Kelsey, Chief, Special Permit and Variance Branch, advised that the reason why that had occurred was that one of the applicants had three applications that were inadvertently scheduled at separate times instead of being scheduled at the same time, as was the practice; plus the fact that cases had been deferred, leaving gaps in the schedule.

Chairman DiGiulian requested that an effort be made to schedule variances 10 minutes apart and special permits 15 minutes apart. Mrs. Thonen said that she would rather have all cases scheduled 10 minutes apart. Mr. Kelley said that the Board was overreacting to one day's schedule changes and reviewed the reasons for the lapses in the schedule, saying that he believed staff was not responsible for the unforeseen change of events.

Mrs. Thonen made a motion to schedule variances 10 minutes apart and special permits 15 minutes apart. Mr. Ribble seconded the motion, which carried by a vote of 6-0. Mr. Pammel was not present for the meeting. Chairman DiGiulian said that, when there was more than one case involving a single applicant, they should be scheduled at the same time and heard concurrently.

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Page 444, June 29, 1993, (Tape 1), Scheduled case of:

11:00 A.M. NORTHERN VIRGINIA GOLF CENTER, SPA 85-S-059 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 85-S-059 for golf driving range to permit golf course, increase parking spaces, building additions, additional golf tees and modify development conditions. Located at 5801 Clifton Rd. on approx. 57.03 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-1 ((1)) 13B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dennis V. Schoegler, 3273 Blue Heron Drive, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the subject property is located in the southeastern quadrant of the intersection of Clifton and Braddock Roads; the site is developed with a golf driving range, associated parking, associated practice putting greens and chipping targets, a clubhouse and a 76 car parking lot; the applicant was requesting approval of a special permit amendment to expand the existing 57 tee golf driving range to allow a 120 tee golf driving range (78 of which will be two-tiered) and a 9-hole commercial golf course; nine practice greens will be added to the existing practice greens for a total of 24; a total of 5 chipping targets are also proposed.

Mr. Hunter said that the application also included the addition of an indoor practice facility, an expanded pro shop, a new maintenance building, a temporary operations trailer, and additional parking spaces; the applicant also was requesting modification of Development Conditions 5, 6, 8, 10 and 12, imposed with SP 85-S-059, in order to reduce the amount of Transitional Screening to be provided; to increase the maximum number of parking spaces to 160; to increase the hours of operation from 7:30 a.m. to 9:30 p.m. to allow operation from 6:00 a.m. to 11:00 p.m., seven days per week; to delete the limitation of the use of lights illuminating the driving range; and, to delete the requirement for a minimum amount of vegetated open space. Mr. Hunter said that 27 employees (teachers) are proposed to be employed at the facility. It is noted that the applicant has reduced the size of the new clubhouse to 7,200 square feet and the 50-seat grill proposed to be located within the new clubhouse has been deleted from the application. In addition, the Health Department has verified the adequacy of the existing septic system for the expanded uses. Condition 8, imposed with SP 85-S-059, limited the hours of operation to 7:30 a.m. to 9:30 p.m., seven days per week; staff was of the opinion that the level of activity which would be generated by extending the hours of operation as proposed by the applicant is not consistent with the recommendations of the Comprehensive Plan for this area; therefore, staff did not concur with the requested extension of the hours of operation; staff believed the hours of operation could be extended to 7:00 a.m., but the facility should continue to close at 9:30 p.m. Development Condition 5, imposed with SP 85-S-059, required that existing vegetation be supplemented to provide Transitional Screening along all lot lines. The applicant had not implemented the Condition and, in 1988, a request was made by the applicant for an interpretation of the Condition. The applicant was now proposing to modify the required Transitional Screening 2 along the western property line by providing a 4-foot high landscape berm along Clifton Road, adjacent to the expanded parking lot, and along Braddock Road for a distance of approximately 540 feet; both berms would be planted with large evergreen shrubs. Staff supported the modification of the Transitional Screening requirement along portions of

Clifton Road and Braddock Road to include the berm. Mr. Hunter referred to page 2 of the special permit plat, stating that the berms would be planted with evergreen shrubs of a minimum height and spread of 6 feet at maturity, and would be planted 6 feet on center; the applicant was also to provide a row of deciduous and evergreen trees along the western edge of the 12-foot high double-deck tees in order to mitigate their visual impact; it was staff's opinion that the amount of screening proposed by the applicant was sufficient to mitigate the impact of the increased intensity on site; the applicant also requested delay in providing the supplemental planting berm along Braddock Road until such time as Braddock Road is improved; due to the presence of existing vegetation along Braddock Road, staff did not object to the request.

Regarding Condition 10, pertaining to the lights illuminating the driving range, limiting the height to 30 feet and requiring that they be connected to an automatic shutoff device turning the lights off at 10:00 p.m. daily, the applicant has committed to limiting the height of the lights to 25 feet, and locating the lights for the parking lot outside the 100-foot building restriction line, as required by Section 8-607. He said that the light poles located in the putting green and chipping tee areas, as well as those in the parking lot, will be limited to 12 feet in height; no lights are proposed for the golf course, and a 100-foot wooded buffer has been provided between the golf course and the neighboring R-C properties; staff recommended that the required shutoff device and the 10:00 p.m. closing time remain as a condition of the special permit use.

Mr. Hunter went on to state that Condition 12 required a provision of vegetated open space over 95% of the property. Staff agreed to support the deletion of the Condition, so long as the site is developed in accordance with the proposed special permit plat, in that only about 3 acres of the property will be developed. Staff concluded that, because the subject property is located at the boundary of a very low density residential area, as recommended by the Plan, the combination of proposed uses should be sufficiently mitigated; it was also staff's conclusion that the application would be in harmony with the very low density character of the area and, with he environmental recommendations of the Plan, with the implementation of the revised Proposed Development Conditions; therefore, staff recommended approval of SPA 85-S-059, subject to the revised Proposed Development Conditions dated June 29, 1993.

Mr. Hunter said that Connie Crawford of the Environmental Staff of the Office of Comprehensive Planning was present to answer questions.

Mr. Kelley referenced Condition 23, asking if it would prohibit him from stopping in to have a sandwich and a coke. Mr. Hunter said that the grill Mr. Kelley was referring to had been deleted from the application. He left it to the applicant to advise whether or not there would be vending machines on site to accommodate the public.

Mrs. Harris said she had been reviewing previous approvals of the site and asked if the last approval had been in 1985. Mr. Hunter answered that was correct. Mrs. Harris asked when the chipping greens had been approved, to which Mr. Hunter replied that they had been approved with the previous special permit on September 19, 1978. She asked if Mr. Hunter had gone out and found the chipping greens to be as they were approved at that time, since they had been completely redone about a year ago. Mr. Hunter acknowledged that he was aware of that and that there had been activity on site which was not within the confines of the special permit and left the question for the applicant to address. He said staff was aware that work had been done on site and it was staff's opinion that, since there was a pending special permit on the property, all of the new uses would come under the new special permit, if approved. Mrs. Harris asked if what already existed was incorporated with the present request. Mr. Hunter said that 9 lighted putting greens were to be added to the existing 15; the special permit approved in 1985 did not condition the number of putting greens; but, as he understood it, there are 15 existing putting greens and 5 chipping tees. Mrs. Harris said she noticed a lot of development work being done on the property during the past year.

Mr. Schoegler represented the applicant and presented the statement of justification and introduced Henry Seymour, the property owner.

Mr. Seymour said that he lives at 8515 Hampton Way, Fairfax, Virginia; had owned and operated the facility under consideration since 1980; had some problems with the downzoning of about five years ago that hurt their progress and had inspired them to try to bring everything together at this time. He said he had no objection to any of the Conditions except the Condition dealing with the hours of operation. Mr. Seymour presented about 3,000 petition signatures for the original application. He said that closing at 9:30 p.m. would provide a security problem; from 1,000 to 2,000 Fairfax County Department of Recreation students go through their program each year; if they start at 8:00 p.m. and finish around 9:00 to 9:15 p.m., there are some people that still would like to hit balls until about 9:30 p.m. to 10:45 p.m.; turning the lights off would create a security problem. Mr. Seymour said he would like to turn the range lights off at 10:30 p.m. and turn the security lights off at 11:00 p.m.

Mr. Seymour said that the County softball fields across the street have their lights on until 12:00 Midnight and there is a lot of commotion there; they light up his property after 11:00 p.m.

Mrs. Harris asked if Mr. Seymour had contacted the Clifton Betterment Association to give them his plans. Mr. Schoegler said they had not; they had contacted everyone who abutted the property. Mrs. Harris said that she was tempted to ask for a deferral until they did contact the Association because she knew that there are many people who are concerned about development in the area and she was very surprised that they had not been contacted. She said their input would have been valuable to the Board's determination because the Association has been in existence for 100 years. Mr. Seymour said that he had coffee with the Mayor of Clifton most mornings and had no knowledge of the Association.

In answer to a question from Mr. Kelley, Mr. Seymour said that the holes were all par 3 and would average 100 yards in length; they would use Bermuda grass tees, backed up by mats in the event that the grass did not survive the use.

Speaking in support of the application was: Mr. Frank M. Kea of Annandale, Virginia, who said he had drawn up the plat and represented the client in terms of planning and design and had worked long and hard with the staff to bring the application into compliance with the Comprehensive Plan and Zoning regulations. Also speaking in support were: Bill Mahue, Roberts Road, Fairfax, Virginia; Stewart Gruble, 11501 Yale Road, Oakton, Virginia; and Al Bruckman, 8224 Brittany Drive, Annandale, Virginia. All paid tribute to the teaching skills and experience of Mr. Seymour and the great advantages offered by his facility to people of all ages.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to defer the application for at least two weeks, stating that she went by the facility each day and was concerned about the development and the last chance for the citizens most directly affected to give their point of view. Mrs. Harris said she had called someone she knew who is on the Town Council and asked if they had heard of this application and they had not. She said that the site was at the entrance to Clifton and would increase the intensity. Mrs. Harris said the Town Council had agreed to consider this issue at their next Tuesday night meeting.

Mr. Ribble seconded the motion.

Mr. Kelley opposed the motion, stating that there were no speakers in opposition to the application, which had been posted visibly on a major thoroughfare. He said he believed that, if the Town Council was opposed to the application, they should have appeared at the BZA meeting or at least should have written to the Board. Mr. Kelley said he believed the Board should not try to generate opposition. He remarked that staff was recommending approval, the applicant was happy with the Conditions, and he believed the Board should be happy with it.

Chairman DiGiulian said that he agreed with Mr. Kelley; the people who were most directly affected had been notified by Registered Mail; if Clifton Road is the entrance to Clifton, it would follow that enough people from Clifton and the surrounding area had ridden by and seen the purple sign and, if anyone objected, the Board would have heard about it. For those reasons, Chairman DiGiulian said he would not support the motion to defer.

Mrs. Thonen said she was sure the contiguous property owners had been notified and Chairman DiGiulian remarked that the applicant had testified to that effect. Mrs. Thonen believed that sufficient notice had been given.

Mr. Hammack said he believed that staff had indicated that some work had been done on the site during the past year; there was some testimony that, perhaps, this applicant was not in compliance with their other special permit, they had not done some screening required under the 1985 approval. He said the application involved a significant increase in the intensity and use of the property. He said he would support the deferral to allow any additional input from Clifton residents.

Mrs. Harris said she did not wish to imply that the ultimate decision would be negative, nor that this was an unusual situation, except that she knew there were no contiguous residential neighbors because of the type of site under consideration.

Chairman DiGiulian said that he saw on the map what appeared to be many residential properties whose owners were indicated to have received notification and the Board had received no opposition at all.

Ms. Kelsey provided the Board with a map on the viewgraph, showing the residential property owners, the Homeowners Association, the adjacent park property, a large parcel to the south, three large parcels to the east and 6 properties within the subdivision on the corner, all of whom were notified by the applicant; no citizens associations had been notified.

Chairman DiGiulian called for a vote, which failed by a vote of 2-4; Chairman DiGiulian, Mrs. Thonen, Mr. Kelley and Mrs. Thonen voted nay.

Mr. Hammack moved to grant SPA 85-S-059 for the reasons outlines in the Resolution, subject to the revised Proposed Development Conditions dated June 29, 1993.

Mrs. Thonen seconded the motion.

Mrs. Harris said she had some problems with the application in a couple of areas: As was pointed out by the applicant, Clifton Road is a scenic byway, the two-tiered driving range is not in keeping with the visual aesthetics of the area, the putting tees could be mitigated by some of the existing landscaping, having the parking increased from 76 to 160 would be too extreme. Mrs. Harris said that cutting down the two-tiered driving range could decrease the number of parking spaces required.

Mrs. Kelley asked the applicant how far from the road the two-tiered driving tees would be located.

Ms. Kelsey advised that it showed on the viewgraph that, at the closest point, they were 115 feet from the road, which Mr. Kea confirmed, stating that there also was quite a bit of landscaping to go between the decks and the road. Mrs. Harris asked if that was where the dry pond is and Mr. Kea said, no, that was where the wet pond was. Mrs. Harris asked, because of the wet pond, where the vegetation would be placed. Mr. Kea said there would be quite a number of both evergreen and deciduous trees in the area, plus existing vegetation along Clifton Road between the proposed wet pond and the double-decker tees. Mr. Kea said they did not want to entirely screen the wet pond because they viewed it as an amenity for passersby.

Mrs. Thonen said she would hesitate to ever suggest reducing on-site parking because of the potential for a problem with overflow parking.

Mr. Kelley asked staff if they believed the double-tiered driving tees would be adequately screened. Mr. Hunter said that staff was satisfied that the applicant had shown them that, as shown on page 2 of the special permit plat, the two-tiered tees would be screened with 24 transplanted or new evergreens with a minimum height of 6 feet and 14 transplanted or new deciduous trees of typical 12-foot height. Mr. Hunter asked Mr. Kea if he was correct in his understanding that the tiers would be no higher than 12 feet. Mr. Kea confirmed that the bottom of the upper level was at 12 feet to accommodate the swing on the lower level. Mr. Hammack then remarked that the 12-foot trees, at planting, would reach to the bottom of the upper level and Mr. Kea said that was correct. Mr. Kea said that the evergreen and deciduous trees are large shade trees that should grow to 30-40 feet in height.

Mrs. Harris asked Mr. Hammack if he meant, in his motion, to leave the hours of operation as stated in the Conditions, or if he wished to change the hours of operation to what the applicant had requested. Mr. Hammack said that he left the hours as recommended by staff: 7:00 a.m. to 9:30 p.m., with an automatic timer that turns the lights off at 10:00 p.m.

Mrs. Thonen asked staff if they had a problem with extending the hours for a safe exit from the grounds. She said that keeping the lights on for safety reasons appeared to be a good idea. Mr. Hammack said that he did not see why the grounds could not be cleared in half an hour. Chairman DiGiulian said he questioned the need to turn off the lights at the prescribed time when they had heard testimony that the County softball facility across the street was lighted until midnight. Mr. Hunter said that staff had no jurisdiction over what the County did with its facilities. Chairman DiGiulian said he understood that, but he could not see how the applicant's facility would impact on adjacent properties any more than the County facility, unless they had a different kind of lighting fixture. Mr. Hunter said that the lights at Braddock Park are halogen bright lights. Ms. Kelsey said that staff had checked with the Park Authority and found that they had received complaints about the lights at Braddock Park and requests that they be turned off earlier.

Mr. Hammack said that he did not want to change the house of operation or lighting.

The motion carried by a vote of 5-1. Mrs. Harris voted nay. Mr. Pammel 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 85-S-059 by NORTHERN VIRGINIA GOLF CENTER, under Section 3-C03 of the Zoning Ordinance to amend SP 85-DS-059 for golf driving range to permit golf course, increase parking spaces, building additions, additional golf tees and modify development conditions, on property located at 5801 Clifton Rd., Tax Map Reference 66-1((1))13B, 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 29, 1993; 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 57.03 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 8-603, 8-606 and 8-607 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 entitled "Northern Virginia Golf Center", prepared by Frank M. Kea, RLA, dated February 3, 1993, revised through May 27, 1993, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit for a Golf Driving Range and Commercial Golf Course and accessory uses 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. A maximum of nine (9) holes for the golf course, one hundred-twenty (120) tees for the driving range, twenty-four (24) putting greens and five (5) chipping targets shall be provided, all as shown on the Special Permit Plat.

6. A total of 160 parking spaces shall be provided. All parking for this use shall be on site and in the locations shown on the Special Permit Plat. Accessible parking spaces shall be provided in the parking lot in accordance with the Zoning Ordinance and the Public Facilities Manual.

7. There shall be no more than 21 employees on site at any one time.

8. All lights illuminating the driving range, the putting greens and chipping targets, and the parking lot shall be connected to an automatic cut-off device which will turn the lights off at 10:00 P.M. daily. All lights used on-site shall be Quartz Halogen, Metal Halide or equivalent. Illumination of the driving range tee boxes shall be with no more than a total of twenty-seven (27) poles, each light pole no higher than twenty-five (25) feet high. Illumination of putting greens and chipping targets shall be with no more than a total of seventeen (17) poles, each light pole no higher than twelve (12) feet high. No light poles shall be located within the 100-foot building restriction line along Clifton Road. Illumination of the parking lot areas shall be on standards not to exceed twelve (12) feet in height. All lights shall be focused inward and shielded so that no light is directed toward adjacent properties or the street and shielded to prevent the projection of light or glare onto adjacent properties and roadways.

   There shall be no illumination of the 9-hole golf course.

9. The hours of operation of the golf course, driving range, putting greens, chipping areas and any related uses shall be limited to 7:00 a.m. to 9:30 p.m. seven days a week.

10. A 100-foot wide wooded area to remain as an undisturbed buffer shall be maintained along the eastern, southern and the eastern half of the northern property boundaries. The 100-foot wide buffer indicated on the Special Permit Plat dated February 3, 1993, revised through May 27, 1993 may be placed under a conservation easement granted to Fairfax County for BMP calculation purposes if so approved by the Director, DEM

    Transitional Screening 2 shall be modified along the western and the northwestern property lines as shown on the Special Permit Plat. A landscaped berm with a 1:3 slope shall be used to satisfy a portion of the transitional screening requirement along Clifton Road as shown on Page 2 of the Special Permit Plat, labeled the Transition Yard Landscaping Exhibit and as approved by the Urban Forestry Branch of DEM. In addition, twenty-one (21) transplanted or new evergreen trees with a minimum caliber of two (2) inches, a minimum of ten feet high and fourteen (14)

transplanted or new deciduous trees a minimum of twelve feet high shall be planted between the two-tiered Tees and the Stormwater Management/BMP pond located along Clifton. The purpose of these trees shall be to satisfy a portion of the modified transitional screening requirement and to soften the visual impact of the two-tiered tees. All transitional screening shall be provided in accordance with the Transition Yard Landscaping Exhibit submitted with the Special Permit Plat and as approved by the Urban Forestry Branch of the Department of Environmental Management (DEM), and shall be deemed to fulfill the transitional screening requirements of the Zoning Ordinance. The barrier requirement shall be waived along the entire periphery of the property.

Provision of the modified Transitional Screening along Braddock Road as shown on page Two of the Special Permit Plat, to include a planted four-foot high berm, may be delayed until such time as construction begins on the applicable segment of the Braddock Road improvement project.

11. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

12. The limits of clearing and grading shall remain consistent with the limits designated on the SP Plat. A limits of clearing and grading and a tree preservation plan shall be submitted to the Fairfax County Urban Forestry Branch for review and approval prior to Site Plan approval. The tree preservation plan shall incorporate large groups of trees into the preservation areas and shall be configured to integrate the transitional habitat areas. No modifications to the limits of clearing and grading from what is shown on the Special Permit Plat shall be made at site plan approval for any trails not shown on the Fairfax County Trails Plan, additional golf paths, utility easements or other golf course related facilities. The areas on-site which have been cleared without a clearing and grading permit shall be restored as deemed appropriate by the County Urban Forester.

13. Stormwater management Best Management Practices (BMPs) in accordance with standards established for the Water Supply Protection Overlay District in the Public Facilities Manual shall be provided as approved by the Director, DEM. The proposed stormwater management ponds shown on the special permit plat shall be designed as wet ponds, except for the proposed pond adjacent to the new maintenance building which is to be a dry pond, and shall provide all stormwater management and BMP requirements for this development as approved by the Director, DEM. The proposed VDOT stormwater management dry pond shown in the northwestern corner of the site shall provide all stormwater management and BMP requirements for the applicable improved portions of Braddock Road unless otherwise agreed to by VDOT and the applicant. This special permit shall become null and void should the site not be designed in such a way that all uses on the property are adequately served by the BMP ponds provided on the site as approved by the Director, DEM.

14. Transitional Habitat Areas shall be provided as a part of each fairway as shown on the Special Permit Plat. In addition, a portion of the perimeter of all of the stormwater management BMP ponds shall be graded to form a 10 to 20 foot wide shallow bench designed to enhance the growth of emergent aquatic vegetation, to provide an area for sediment deposits near the inflow channel, and to allow the establishment of a shallow marsh area.

    At least two hardy primary wetland species shall be planted over at least 30% of the shallow marsh bench area. These species shall be planted in three or four mono-specific stands around the perimeter of the marsh bench. Three secondary wetland species shall be randomly interdisbursed with the primary species. The wetland species are designed to enhance natural propagation of the marsh and provides additional assurance that the marsh will be successfully established. The selected wetland species shall be approved by the Urban Forestry Branch and shall be in substantial accordance with the Landscaping Guide for Stormwater Management Areas, Table 9.2, Chapter 9 of the Metropolitan Washington Council of Governments (COG) document entitled Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs.

15. The applicant shall prepare a written Integrated Pest Management (IPM) Plan for the application of fertilizers, herbicides and pesticides which shall be submitted to the Director, DEM, prior to site plan approval. The IPM Plan shall be developed using principals consistent with the guidelines established by the Virginia Cooperative Extension Service Pest Management Guide (PMG) and shall be designed to manage the application of fertilizer, herbicides and other chemicals to protect water quality in the Occoquan Watershed and to encourage the application of fertilizers primarily during the fall months of the year when impacts of nutrients in the reservoir are less severe. The IPM Plan shall include an on-going monitoring and reporting method that will document the progress of the plan. The monitoring and reporting method for the IPM shall be used to document the intent and success of the IPM program and shall be made available if required by the Director, OCP.

16. In order to prevent groundwater contamination, all impervious surfaces used for chemicals, machines, vehicle storage, cleaning and maintenance, and maintenance associated with the chemical and maintenance buildings shown on the plat shall be designed to drain into a subsurface drainage catchment system or a BMP with an impervious geotextile or clay liner designed to remove contaminants and pollutants and shall be approved by the Director, DEM. A written maintenance plan for the system shall be developed by the applicant and shall be approved by the Director, DEM. In addition, an emergency spill response plan shall be developed to address accidental spills of any hazardous substances stored on the premises. The emergency spill response plan shall be approved by the Fairfax County Fire and Rescue Department and the Fairfax County Health Department.

17. The site shall be served by private well and a private septic system. The septic system shall be of a size and design approved by the Fairfax County Health Department. Without an approved septic system, this special permit amendment and all uses approved herein shall become null and void. If a private water irrigation system is used to irrigate the golf course, driving range and putting area, the irrigation system shall be designed to include utilization of the wet ponds that are to be developed as part of this development and its design shall be developed and submitted to the Health Department for approval. A written irrigation plan shall be developed demonstrating the specific volumes of well and irrigation pond water necessary to sustain turf maintenance operations during periods of draught. The plan shall demonstrate that the specific well water volumes used for turf irrigation shall not deplete the minimum acceptable volume of well water necessary to achieve a satisfactory operation level as approved by the Fairfax County Health Department.

18. Right-of-way along the site's frontage on Braddock Road shall be dedicated in accordance with VDOT Project #0620-029-117 in order to provide a six-lane divided roadway. The right-of-way shall be dedicated to the Board of Supervisors and conveyed in fee simple at the time of site plan approval or upon demand by Fairfax County, whichever first occurs.

    Right-of-way along the Clifton Road frontage as shown on the special permit plat shall be dedicated to the Board of Supervisors and conveyed in fee simple at the time of site plan approval or upon demand by Fairfax County, whichever occurs first.

    A right-turn deceleration lane shall be provided on Clifton Road at the site entrance as approved by the Director, DEM and VDOT.

19. Ancillary easements, deemed necessary for road improvement purposes by DEM or VDOT, shall be provided for Braddock Road and for Clifton Road along the full frontage of the property upon demand by the Director, DEM, or VDOT.

20. Prior to the issuance of any Non-Residential Use Permit (Non-RUP), a left-turn deceleration lane shall be provided at the site's entrance on Clifton Road as approved by the Director, DEM, and VDOT.

21. All signs associated with this use shall meet the requirements of Article 12, Signs, of the Zoning Ordinance.

22. The clubhouse shall not exceed 7,200 square feet and two stories within the area shown on the special permit plat for the clubhouse. Said clubhouse may be established in a temporary trailer at the location shown on the special permit plat and the trailer shall be removed upon issuance of the Non-Residential Use Permit for the newly constructed clubhouse facility or five years from the date of approval of this special permit amendment, whichever occurs first.

23. All chemicals for intensive turf maintenance shall be stored in the maintenance building. No materials shall be stockpiled outdoors.

24. A water source, such as a faucet or a shower, shall be provided at the location of the maintenance building.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

It should be noted that the Department of Public Works has indicated that the subject property is not currently served by sanitary sewer. Should the Board of Zoning Appeals approve SPA 85-S-059, it in no way gaurantees that sewer is or will be available to serve this site when the applicant or successors wish to develop.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and been diligently prosecuted. If the development is phased, the last phase of construction shall begin no later than five (5) years from the date of approval of this

special permit. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 5-1. Mrs. Harris voted nay. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 451, Tape 1, (Tape 1), Scheduled case of:

Request for Date and Time for Patrick R. Cain Appeal

(This case was continued earlier in the public hearing.)

Chairman DiGiulian noted that he had a memo from the Zoning Administration Division to the effect that the appeal was not timely-filed and that the County Attorney had determined that the Board of Zoning Appeals did not have the authority to hear the appeal. Chairman DiGiulian further noted the presence of the appellant in the Board Room and asked him to come to podium and address his appeal.

Patrick R. Cain, 1731 Gilbert Street, Falls Church, Virginia, referenced the material he had submitted to the Board that morning and the memo dated June 15, 1993, from William E. Shoup, Deputy Zoning Administrator, stating that the appeal was not timely-filed and, in his opinion and the opinion of the County Attorney's Office, the BZA has no jurisdiction to hear the appeal.

Mr. Cain said he did not believe the County was justified in sending the Notice of Violation and that was his reason for filing the appeal. He said that he went to the Zoning Office on June 2, 1993, to file the appeal and submit a request for information; he had not received the Notice of (alleged) Violation until May 13, 1993; a woman in Zoning provided him with the appeal forms and he started filling them out in the office when the woman returned with instructions for filing and showed him where it said that he also had to furnish a narrative; the woman said that, since the letter was dated May 10, he had until June 10 to submit; Mr. Cain advised that he had a telephone conversation with Mr. Shoup during which Mr. Shoup indicated that he would talk with the person in the appeals office, as it was a common mistake they made by assuming every month has 30 days; Mr. Shoup had told him by phone of the decision to deny, followed by a letter; he had also called him the previous day to remind him to be at the meeting.

Chairman DiGiulian asked the appellant if it was his position that the 30 days did not begin running until the notice was received, and if it was his position that the appeal process began when he had appeared in the Zoning Office on June 2, 1993. The appellant said that was correct.

Mr. Shoup said he had talked with the person the appellant may have spoken with in the Zoning Office and, although she could not recall exactly what she had told him, she said it was possible that she had said that he had until June 10 to submit. He did not recall telling Mr. Cain that it was a common mistake, but he recalled indicating that there may have been a mistake made by the staff person in not taking the time to count the number of days to allow for the possibility of a month with 31 days, thereby changing the deadline date. Mr. Shoup said that was a possibility but he could not say for certain that it actually happened. Mr. Shoup said it had always been the position of the Zoning Administrator that an appellant had thirty days from the date of the letter to file an appeal; in this case, it should have been filed no later than June 9, and it was filed on June 10; it had consistently been their position that it was not timely filed when this occurred.

Mr. Hammack asked Mr. Shoup what had happened to the case where they read into the statute, the Code of Virginia, that the County appealed and said that they were wrong in their interpretation. He recalled that the law said that the first day was not counted. He said the case had not been pursued by the County. Ms. Kelsey said she believed Mr. Hammack was referring to the veterinary clinic on Centreville Road; the owner had sold the property and was no longer there; therefore, the appeal had been dropped. Mr. Hammack asked why it should be dropped; if the permit was not valid, how could he sell it? Mrs. Harris said she believed it was possible that the property had not been sold, but that the owner had simply moved. Mr. Shoup said he would have to research that and report back to the Board.

Mr. Hammack noted that, if the first day were not counted, the appellant's filing could be considered to be within the thirty-day limit.

The discussion continued along this vein in an attempt to determine what the 30-day limitation included.

Mr. Hammack suggested writing to the Attorney General to request an interpretation, since the County Attorney was having difficulty with the statute. Chairman DiGiulian said that, if that was a motion, he thought it was a good idea.

Mrs. Harris asked Mr. Shoup why the person to whom the appellant had submitted the appeal did not accept the portion completed and have the appellant come back with the narrative portion. Mr. Shoup clarified that the appeal had to be submitted with all components included before it could be formally accepted and considered to be filed in a timely manner; he said the Ordinance was clear on that issue.

In answer to a question from Mr. Hammack, Mr. Shoup said that the narrative portion should detail the decision being appealed for total clarification.

Mrs. Harris referenced the application form used to file appeals and asked if, in addition to the items requiring information in reply to questions, a narrative was an option or a requirement. Mr. Shoup said that Section 18-304 of the Zoning Ordinance sets forth 4 enumerated items that must be submitted in order to represent a complete application: The first is 4 copies of the application form. The second is four copies of a statement signed by the appellant, setting forth the following information listed -- the order, requirement, decision, or determination which is the subject of the appeal; the date, to the best of the appellant's knowledge, upon which the decision was made; and the appellant's grounds for the appeal and the reasons therefore, The third is any supportive data. The fourth is the application fee. He said that all four components must be submitted before an appeal can be accepted as a complete application. Chairman DiGiulian said that this information was not included with the Notice of Violation and a discussion ensued. Mr. Shoup said that, when an application form was filled out by an appellant, the narrative could be written out at the same time.

Mrs. Harris moved to accept the appeal, because she believed it had been submitted within the allotted time and had the necessary information, which was submitted in what the appellant thought was a timely manner according to the information he had received.

Mr. Ribble seconded the motion.

Chairman DiGiulian referenced Mr. Hammack's comment about consulting the Attorney General and asked him if the Board could stay the opinion until a reply was received from the Attorney General regarding the correct method of counting 30 days. Mr. Hammack said that it was possible for the Board to do that and that he would be happy to write to the Attorney General if the Board would authorize him to do so.

Chairman DiGiulian said he believed it would be a good idea to write to the Attorney General so that the Board would know what to do in this case and in any future cases that might occur. He did not believe it would hurt the appellant in any way if the decision on whether or not to hear the appeal was put on hold until the ruling had been received, because the appellant could continue to operate as he had been doing in the interim.

Ms. Kelsey advised the Board that there had been citizen complaints about the violation. Mr. Hammack said that did not make much difference as far as the legal issue was concerned.

Mrs. Harris withdrew her previous motion to accept the appeal.

Mr. Hammack said that he would compose a letter to go out over Chairman DiGiulian's signature, requesting an interpretation of the 30-day stipulation. Mr. Hammack so moved.

Mrs. Thonen said she still worried about the citizens who were complaining about the violation because she had no idea how long it would take to receive a response from the Attorney General.

Mr. Kelley suggested that the letter be written and the appeal be put on the agenda for August 3, 1993. The Board would then consider the timeliness of the appeal, if a response has been received. Otherwise, the Board may again defer making a decision on the timeliness of the appeal.

Mr. Ribble seconded Mr. Hammack's motion, which carried by a vote of 6-0. Mr. Pammel was not present for the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:05 p.m.

Geri B. Bepko
Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: September 7, 1993

APPROVED: September 14, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 7, 1993. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Kelley; James Pammel; and John Ribble. Martha Harris and Paul Hammack were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 453, July 7, 1993, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL O. GRAHAM, VC 93-B-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.2 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 9117 Saranac Ct. on approx. 15,000.00 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 22.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Daniel O. Graham, 9119 Saranac Court, Fairfax, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was proposing to construct a one story addition 12.2 feet from the side lot line. Since the Zoning Ordinance requires a 15 foot side yard, the applicant was requesting a variance of 2.8 feet from the minimum side yard requirement. Mr. Hunter said that research of the Zoning Administration Division's files indicated that the distance from the shared lot line to the dwelling on adjacent Lot 21 is 14 feet.

The applicant, Mr. Graham, said the lot has exceptional topographic conditions and there is a serious drainage problem on the west side of the property which precludes construction in that area. He said to construct the addition on the rear of the lot would require the removal of two mature trees and block the windows on the house, and to place the structure on the front will change the look of the neighborhood. Mr. Graham said he would like to build on the side of the lot so the addition will connect to the driveway as he planned to turn the addition into a garage after his children are grown.

Chairman DiGiulian called for speakers, either in support or in opposition, to the request.

The adjoining property owner, Paul C. Johnson, 9113 Saranac Court, Fairfax, Virginia, said his house actually sits 25 feet from the shared lot line rather than 28 feet. He believed 37 feet between the applicants' house and his was not sufficient and asked that the request be denied.

In response to questions from Mr. Ribble, Mr. Johnson said the original grading plan showed the location of his house to be 28 feet from the shared lot line. He said it was his understanding that all the houses on the court were built at the same time.

Chairman DiGiulian noted another opposition letter had been received by the BZA.

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that the applicant had not seen the opposition letters. The BZA provided Mr. Graham with copies of the letters.

In rebuttal, Mr. Graham said the chief purpose for requesting the variance was to maintain the architectural integrity of the existing house. He said he was merely asking for the same consideration as other neighbors who have received variances allowing structures to within 2 feet of the lot line.

Mr. Ribble and the applicant discussed the location of Mr. Johnson's driveway. Mr. Graham said the neighbor's driveway ran along the shared lot line and was over the lot line at one point.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 93-B-031 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 29, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-031 by DANIEL O. GRAHAM, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.2 feet from side lot line, on property located at 9117 Saranac Court, Tax Map Reference 69-2((6))22, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1993; 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 15,000 square feet.
4. The applicant has met the required standards for a variance in this application.
5. The subject property does have some topographical problems.
6. The location of the driveway and the other conditions as stated indicate that the applicant had met the standards.
7. The applicant should not be penalized because the neighbor's house was built a little bit closer to the shared lot line then it should have been since both houses were built at the same time.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 variance plat prepared by Kenneth White, Land Surveyor, dated March 18, 1993 submitted with this application and not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-0-1 with Mr. Pammel abstaining. Mrs. Harris and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this variance.

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9:10 A.M. JOHN R. & MARLENE D. DOYLE, VC 93-L-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.3 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 7208 Lamar Dr. on approx. 21,781.00 sq. ft. of land zoned R-1. Lee District. Tax Map 90-4 ((5)) 58. (Concurrent with SP 93-L-020).

9:10 A.M. JOHN R. & MARLENE D. DOYLE, SP 93-L-020 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow accessory structure (workshop/shed) to remain 4.2 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-103). Located at 7208 Lamar Dr. on approx. 21,781.00 sq. ft. of land zoned R-1. Lee District. Tax Map 90-4 ((5)) 58. (Concurrent with VC 93-L-038).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. John R. Doyle, 7208 Lamar Drive, Springfield, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the request for a special permit resulted from an error in building location to allow an existing accessory structure to remain 4.2 feet from a side lot line. A minimum side yard of 20 feet is required by the Zoning Ordinance on an R-1 lot. The request for a variance resulted from the applicants' proposal to construct a garage addition to be located 11.3 feet from the side lot line; therefore, the applicants were requesting a variance of 8.7 feet from the minimum side yard requirement for the garage addition.

The applicant, Mr. Doyle, said they purchased the property 18 years ago with the accessory structure on the property and if the special permit was denied it would be a hardship on them to remove or relocate the shed. He added there are no objections from the neighbors.

In response to questions from the BZA, Mr. Doyle said the shed/workshop was on the property when they purchased the house. He said the neighbors to the rear of the property have a similar shed.

With respect to the variance, Mr. Doyle said they had always planned to construct a garage and the width was necessary because of a double fireplace which protrudes on that side of the house.

There were no speakers, either in support or opposition, to the request and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SP 93-L-020 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 29, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-L-020 by JOHN R. AND MARLENE D. DOYLE, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow accessory structure (workshop/shed) to remain 4.2 feet from side lot line, on property located at 7208 Lamar Drive, Tax Map Reference 90-4((5))58, 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 7, 1993; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. The positioning of the house on the lot was done in error therefore everything on the whole lot is in error.

I. The applicant has lived on the property for eighteen (18) years and if he had not applied for the variance the building error would probably not have been discovered.

J. There are no objections from the neighbors.

K. The error is not so large that it cannot be viewed as minimal.

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 structure shown on the plat 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 prepared by Javier A. Arencibia, Architect, dated February 3, 1993, revised February 10, 1993, submitted with this application, as qualified by these development conditions.

3. All required inspections and permits shall be obtained.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this special permit.

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Mrs. Thonen made a motion to grant VC 93-L-038 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 29, 1993.

Mr. Pammel said this was another situation when the zoning does not coincide with the development of the area. The property is zoned R-1 and developed at half acre or R-2; therefore, if the subject property was in the proper zoning category the variance would be minimal at best. Mrs. Thonen asked that the comment be made a part of the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-038 by JOHN R. AND MARLENE D. DOYLE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.3 feet from side lot line, on property located at 7208 Lamar Drive, Tax Map Reference 90-4((5))58, 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 7, 1993; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 21,781 square feet.
4. The location of the house makes if almost impossible to place the addition anywhere else on the lot.
5. There are no objections from the neighbors.
6. The subject property was acquired in good faith.
7. The granting of the variance will not impact the surrounding neighbors.
8. To strictly enforce the Zoning Ordinance would product an undue hardship on the applicants.
9. This is another situation where the zoning does not coincide with the development area; therefore, if it was in the proper zoning category the variance would be minimal at best.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 structures and additions shown on the plat prepared by Javier A. Arencibia, Architect, dated February 3, 1993, revised February 10, 1993, submitted with this application and not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this variance.

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9:15 A.M. JAMES DOSS HALSEY, VC 93-D-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 1.5 ft. from side lot line and 6 ft. from rear lot line (10 ft. min. side yard req. and 17.75 ft. min. rear yard req. by Sect(s). 3-407 and 10-104). Located at 6607 Orland St. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-2 ((19)) 16. (DEF. FROM 5/25/93 TO ALLOW THE APPLICANT TO REVISE HIS REQUEST.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James Doss Halsey, 6607 Orland Street, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said on May 25, 1993, the public hearing for VC 93-D-020 was held to allow a 17.75 foot high accessory structure (detached garage and workshop) to be located 6.0 feet from the rear lot line and 1.5 feet from a side lot line. The BZA deferred decision on the application to give the applicant time to amend his application by reducing the amount of variance requested. Subsequently, the applicant has amended his application and has deleted the lean-to tool shed from the rear of the proposed garage/workshop. Therefore, the applicant was now requesting a variance of 11.0 feet from the rear lot line and 1.5 feet from a side lot line.

The applicant, Mr. Halsey, said he would like to explain what he has changed on his proposal and then discuss what areas he would be willing to negotiate the dimensions.

Mr. Kelley pointed out to the applicant that he was not before the BZA to negotiate but to present a proposal that it could either grant or deny.

Mr. Halsey said he had deleted the shed from the rear of the structure making the location of the shed 11 feet from the rear lot line as opposed 6 feet. He said he and the next door neighbor, Mrs. Depue, were willing to replace the temporary construction easement with a permanent maintenance easement in order to address the BZA's concern that 1 and 1/2 feet is not enough room to maintain the side of the structure. The structure will be constructed of low maintenance vinyl siding and the fence will remain in its present location which will alleviate the need to mow the lawn between the fence and the structure. Mr. Halsey said he would be willing to lower the height of the structure, to negotiate the depth and the overall width of the structure, and to redesign the roof so that it will slope away from the neighbor's property.

Mr. Kelley suggested that the application be moved to the end of the agenda to give the applicant an opportunity to prepare a proposal that the he could present to the BZA. Chairman DiGiulian said he had not been present at the previous public hearing and he would like to hear testimony with respect to a hardship. He asked the BZA members for their input. Mr. Pammel said he believed the applicant had addressed the hardship issue at the previous public hearing which dealt with the storm drainage easement. Chairman DiGiulian asked Mr. Kelley if his comment was a formal motion. Mr. Kelley said he did not want to hear the word "negotiation."

Mr. Halsey used the viewgraph to point out the location of the storm sewer easement on the property which he believed was a hardship and he had chosen a design to alleviate the hardship in a minimal way. (He called the BZA's attention to the documents he had submitted at the beginning of the public hearing.) Mr. Halsey said if he were to build the structure it would be just as close to the rear lot line and require the removal of two mature trees and the expansion of the existing driveway, which would be cost more.

Mr. Ribble said the BZA could only consider a hardship related to the land, not financial. Mr. Halsey said he was not aware of that.

Chairman DiGiulian asked why the structure could not be built within the building restriction lines and still not encroach on the storm sewer easement. Mr. Halsey said that would require him having to pave a good portion of the rear yard. Mr. Pammel asked what other property constraints prevented building the structure on the other side of the property. Mr. Halsey said the lot was exceptionally narrow and the only place the structure could be built and still meet the setbacks was in the middle of the back yard.

In response to a question from Mr. Pammel, Mr. Halsey said he would be willing to reduce the height of the structure to 12 feet.

There was no further discussion and Chairman DiGiulian called for speakers in support of the application.

Martha Depue, 6605 Orland Street, Falls Church, Virginia, supported the request and said the applicant was a great neighbor and all the improvements that he had made has been first class.

Chairman DiGiulian called for speakers in opposition and hearing no reply closed the public hearing.

Mr. Pammel said he believed the applicant had demonstrated a hardship as the lot is only 65 feet wide and there is an existing storm drainage easement in the rear portion of the back yard that seriously constrains where the structure could be located. He made a motion to grant VC 93-D-020 in part and allow the height of the structure to be no more than 12 feet. The motion failed for the lack of a second.

Mrs. Thonen made a motion to deny VC 93-D-020 for the reasons noted in the Resolution. Chairman DiGiulian said the applicant had shown a hardship but the size of the proposed structure is too excessive and too close to the lot line. Mr. Ribble said he would also support the motion because he believed the bulk of the proposed structure would be tremendous for the lot.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-020 by JAMES DOSS HALSEY, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 1.5 feet from side lot line and 6 feet from rear lot line, on property located at 6607 Orland Street, Tax Map Reference 40-2((19))16, 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 7, 1993; 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 10,400 square feet.
4. The accessory dwelling would be almost the size of the main dwelling which would have an impact.
5. The structure could be located in the back yard without a variance.

This application does not meet all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mr. Kelley seconded the motion which carried by a vote of 4-1 with Mr. Pammel voting nay. Mrs. Harris and Mr. Hammack were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993.

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Page 460, July 7, 1993, (Tape 1), Scheduled case of:

9:20 A.M. GARY LUCIER, VC 93-L-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit enclosure of carport 10.2 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 7502 Havelock St. on approx. 10,637.00 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (62) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gary Lucier, 7502 Havelock Street, Springfield, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting a variance to allow the enclosure of a carport which is located 10.2 feet from the side lot line. In the R-3 District, the Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 1.8 feet was required.

The applicant, Mr. Lucier, said he acquired the property in good faith in 1985 after renting the property for four years. He said the property is exceptionally narrow and he would like to enclose the carport to provide additional living space for his family. Mr. Lucier said the carport is too short to effectively cover either of his vehicles and the exhaust fumes enter the house via the heating system located in the utility room which is adjacent to the carport. He said the neighbors have no objections and many have signed a petition in support of the request, the utility room that was built with the house in 1954 is directly behind the carport and sits 10.2 from the shared lot line, and the proposed construction will match as closely as possible the design of the existing house. He said he had included a petition in support signed by the neighbors and had submitted his building plans as well. Mr. Lucier said if it was the BZA's intent to grant the request he would ask that the eight day waiting period be waived.

In response to a question from Chairman DiGiulian, Mr. Lucier said the proposed construction would be no closer to the lot line than the existing carport.

There were no speakers, either in support or in opposition, to the request and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 93-L-036 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-036 by GARY LUCIER, under Section 18-401 of the Zoning Ordinance to permit enclosure of carport 10.2 feet from side lot line, on property located at 7502 Havelock Street, Tax Map Reference 80-3((2))(62)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 July 7, 1993; 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 10,637 square feet.
4. The BZA tries to look at the enclosures of carports as a necessity and approve the requests.
5. The proposed structure will be no closer to the lot line than the existing carport.
6. Many of the neighbors support the applicant's request.

7. The applicant meets the nine required standards, in particular the subject property is narrow.
8. The carport was originally built in its present location.
9. The variance is a minimal request.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by Dove & Associates, Architects, Engineers, Planners, Surveyors, dated December 21, 1992 and revised through April 5, 1993 submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 7, 1993. This date shall be deemed to be the final approval date of this variance. The Board took action to waive the eight-day waiting period.

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9:30 A.M. CLIFTON E. & ANNE G. JAMES, VC 93-D-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.7 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 6811 Felix St. on approx. 11,962.00 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((27)) 36.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Clifton E. James, 9100 Brink Road, Gaithersburg, Maryland, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the applicants were requesting a variance to allow the addition of a two-car attached garage to be located 5.7 feet from a side lot line. In the R-3 District the Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a variance of 6.3 feet was requested

The applicant, Mr. James, said he believed the reluctance to grant a variance was to protect the architectural integrity of the neighborhood; however, he believed the variance he was requesting would improve the architectural quality of the neighborhood. Although his son presently resides in the house, Mr. James said he and his wife plan to move into the house when he fully retires. When he purchased the house he was on active duty with the Air Force with a salary of less than $10,000 per year and could not afford a house with a garage. Mr. James said he could build a two-car garage without a variance but the wall would be parallel to the diagonal lot line and would set back closer to the neighbors' property line as projected from Broyhill Street; however, architecturally it would be considered undesirable. He said he could construct a carport but considered that structure to be more in line with the 1960's and 1970's architecture; but for the 1990's, and in keeping with improving the neighborhood, he should build a garage. Mr. James said his corner lot has a 40 foot setback from both Felix Court and Broyhill Street and the lot line where the garage is proposed is neither parallel to Broyhill or perpendicular to Felix. He said at the back of the garage the 12 foot setback will be met, it is only the front corner of the proposed garage that will encroach into the setback. Mr. James discussed the photographs and pointed out that the neighbors' lot line is covered with natural vegetation and the proposed garage will set 31 feet from the neighbors' house.

In response to a question from Mr. Ribble, Mr. James said there are other two car garages in the neighborhood.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 93-D-037 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 22, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-037 by CLIFTON E. AND ANNE G. JAMES, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.7 feet from side lot line, on property located at 6811 Felix Street, Tax Map Reference 30-4((27))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 July 7, 1993; 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 11,962 square feet.
4. The applicants met the nine required standards for a variance, in particular the subject property is a corner lot with converging lot lines toward Felix Court.
5. The location of the house on the lot limits where the structure could be built; therefore, the proposed location is the most appropriate
6. The proposed structure will be architecturally in keeping with the neighborhood and will enhance the neighborhood since he agreed with the applicant that carports were more appropriate in the 1960's and 1970's.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;

B. Exceptional shallowness at the time of the effective date of the Ordinance;
C. Exceptional size at the time of the effective date of the Ordinance;
D. Exceptional shape at the time of the effective date of the Ordinance;
E. Exceptional topographic conditions;
F. An extraordinary situation or condition of the subject property, or
G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specific addition shown on the plat prepared by Douglas O. Crawford, Land Surveyor, revised April 16, 1993, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 463, July 7, 1993, (Tape 1), Scheduled case of:

9:40 A.M. DOUGLAS & LILLIAN RYAN, VC 93-P-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 8508 Cottage St. on approx. 11,527.00 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (0) 10.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lillian Ryan, 8508 Cottage Street, Vienna, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicants were proposing to enclose an existing carport for a garage and storage area to be located 6.5 feet from the side lot line. Ms. Greenlief said a 12 foot minimum side yard is required, thus the

applicants were requesting a 5.5 foot variance. The dwelling on adjacent Lot 11 is located approximately 15 feet from the shared lot line. Ms. Greenlief said the BZA has approved the following variance applications in the neighborhood: Lot 47, 8405 Cottage Street, V-156-71, to allow garage to be 2.0 feet from side lot line; Lot 26, 2631 Wooster Court, #21156 (1963), to allow garage 36.1 feet from front lot line; and, Lot 9, 2616 Bowling Green Drive, VC 85-P-021, to allow enclosure of carport to 6.9 feet from side lot line.

The applicant, Ms. Ryan, said they purchased the property in October 1992 and at that time they observed that many of the houses in the neighborhood had garages or additions and bought the property with the plans to turn the carport into a garage right away. She said the property is characterized by an extraordinary situation because of the substantial carport which was built 6.5 feet from the lot line and they need the garage to house three canoes, one of which is an antique, and one kayak. Ms. Ryan said the garage would alleviate the possibility of theft, it would be constructed under the existing carport roof, and it would not change the footprint of the house.

Chairman DiGiulian asked if she had received a copy of the letter from the neighbors at 8510 Cottage Street. Ms. Ryan said she had not seen the letter, but that she was aware of their opposition. Chairman DiGiulian said they were not opposed but were suggesting that some plantings be added along the side wall and move the existing fence to the rear of the garage to line up with their fence. Ms. Ryan said she had no problems with the neighbors' request.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Pammel expressed concern with the application and noted that the Zoning Ordinance allows carports to encroach 5 feet into side yards and when the applicant's carport was constructed it met that requirements. He said there are many similar situations throughout the County where homeowners would like to convert conforming carports into garages, which then does away completely with the side yard distance between the structure and the side lot line. Based on that concern, Mr. Pammel made a motion to deny VC 93-P-041. The motion failed for the lack of a second.

Mr. Ribble made a motion to grant VC 93-P-041 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 29, 1993, with two additions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-041 by DOUGLAS AND LILLIAN RYAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.5 feet from side lot line, on property located at 8508 Cottage Street, Tax Map Reference 49-1((9))(0)10, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1993; 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 11,527 square feet.
4. The applicants have met the nine required standards for the granting of a variance; in particular, there is an extraordinary situation in that the applicants are enclosing an existing carport into a garage.
5. The lot is narrow.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.

3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated April 12, 1993, submitted with this application and not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

4. The applicants shall plant six (6) evergreen bushes along the garage wall to soften the visual impact on the neighbors on Lot 11.

6. The applicants shall move their front fence from the current position to the back where it can be matched with the front fence line of the neighbors on Lot 11.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Thonen seconded the motion which carried by a vote of 4-1 with Mr. Pammel voting nay. Mrs. Harris and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 465, July 7, 1993, (Tape 1), Scheduled case of:

9:50 A.M. INTERNATIONAL TOWN AND COUNTRY CLUB, INC., VC 93-Y-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing structure to remain 21.1 ft. from front lot line (40 ft. min. front yard req. by Sect. 3-107). Located at 13200 Lee Jackson Mem. Hwy. on approx. 222.32 ac. of land zoned R-1, HC and WS. Sully District. Tax Map 45-1 ((1)) 11 and 35-3 ((1)) 11. (Concurrent with SPA 82-C-037-4).

9:50 A.M. INTERNATIONAL TOWN AND COUNTRY CLUB, INC., SPA 82-C-037-4 Appl. under Sect(s). 3-107 of the Zoning Ordinance to amend SP 82-C-037 for country club to permit existing additions/structures, existing parking and existing tennis court lights to remain and to permit proposed additions/structures, change in hours and proposed tennis court lights. Located at 13200 Lee Jackson Mem. Hwy. on approx. 222.32 ac. of land zoned R-1, HC and WS. Sully District. Tax Map 45-1 ((1)) 11 and 35-3 ((1)) 11. (Concurrent with VC 93-Y-030).

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Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joseph H. Scott, Jr., Vice President of the International Town & Country Club, 13200 Lee Jackson Memorial Highway, Fairfax, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicant was requesting an amendment to the existing special permit to allow a list of several structures, some of which have been built, others of which have not been built. Ms. Greenlief said there were a group of structures which were approved previously through amendments, but site plan approval and Non-Residential Use Permits were not obtained for the structures; therefore, the applicant has brought all those structures back to the BZA through this amendment application. She said there were also some structures which were built without approval and some which are proposed and these were all listed in the staff report on page 1.

Ms. Greenlief said concurrent with the special permit amendment application was a variance application to allow an existing dwelling to remain 21.1 feet from the front lot line. The dwelling has existed on the property since the 1800's but variance approval was never sought in conjunction with the country club use. Staff had no concerns with the applications and based upon the implementation of the proposed development conditions, staff recommended approval of SPA 82-C-037-4.

A discussion took place between Mr. Pammel and staff as to the number of buildings that have been constructed without following the proper procedures. Mr. Kelley said he had been a guest at the club and he believed a good example would be a structure constructed at the midway point on the golf range where drinks are served. Mr. Pammel said he was not concerned with that type of structure but was interested if the process had been ignored on larger structures. Ms. Greenlief said the majority of the structures were the type mentioned by Mr. Kelley with the largest being the tennis bubble which was approved with an amendment, but the applicant failed to complete the site plan process.

The applicant's agent, Mr. Scott, said a building permit was obtained for the tennis bubble but building permits were not obtained for the additions to the clubhouse which were enclosed structures used for storing different items.

Ms. Greenlief called the BZA's attention to a letter from the applicant to the Zoning Inspector listing the structures that were constructed without building permits and will be inspected.

Mr. Scott agreed with the staff report for the current submissions and said he was available to answer any questions the BZA might have.

Mr. Kelley asked if the applicant agreed with the development conditions and the speaker said that he did.

There were no speakers to the request, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 93-Y-030 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 29, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-030 by INTERNATIONAL TOWN AND COUNTRY CLUB, INC., under Section 18-401 of the Zoning Ordinance to permit existing structure to remain 21.1 feet from front lot line, on property located at 13200 Lee Jackson Memorial Highway, Tax Map Reference 45-1((1))11 and 35-3((1))11, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1993; 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, HC, and WS.
3. The area of the lot is 222.32 acres.
4. The Hutchinson House, which is the residence for the groundskeeper, meets all the required standards as it was built in the 1800's.
5. The house has not moved, but Lee Jackson Highway has moved closer to the house.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the dwelling shown on the plat prepared by Land Design, dated February, 1993, submitted with this application and not transferable to other land.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley and the applicant discussed the hours of operation contained in Condition Number 11. Mr. Scott said the club would like to expand its hours to allow for celebrations such as New Years Eve. Mr. Kelley asked if 2:00 a.m. would be adequate and the speaker said it would.

Mr. Kelley made a motion to grant SPA 82-C-037-4 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 29, 1993, with Conditions Number 4 and 11 modified.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-C-037-4 by INTERNATIONAL TOWN AND COUNTRY CLUB, INC., under Section 3-107 of the Zoning Ordinance to amend SP 82-C-037 for country club to permit existing additions/structures, existing parking and existing tennis court lights to remain and to permit proposed additions/structures, change in hours and proposed tennis court lights, on property located at 13200 Lee Jackson Memorial Highway, Tax Map Reference 45-1{{1}}11 and 35-3{{1}}11, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1993; 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, HC, and WS.
3. The area of the lot is 222.32 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 8-403 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 (prepared by Land Design, dated February, 1993) and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit is subject to the provisions of Article 17, Site Plans. 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 waiver of the Site Plan.

5. The existing chain link fence shall be deemed to satisfy the barrier requirement along the northern, eastern and western lot lines. The barrier requirement shall be waived along the southern lot line.

6. The existing vegetation along all lot lines shall be deemed to satisfy the transitional screening requirement and shall be retained.

7. Two hundred and one (201) parking spaces shall be provided on site as shown on the special permit plat. All parking for this use shall be on site.

8. The maximum number of members shall be 800.

9. The use of the dwelling shall be limited to a residence for the groundskeeper or other person employed by the country club and required to be on site as part of their employment.

10. All lighting for this use shall be directed downward and shielded, if necessary, to prevent light and glare from projecting off of the property. The combined height of the light standards and fixtures for the proposed four lights on the tennis courts shall be no higher than thirty (30) feet as shown on the special permit plat. The combined height of the light standards and fixtures for the existing six tennis court lights shall be no higher than fifty (50) feet. The lights around the tennis courts shall not be lighted during the months when the tennis bubble is erected.

11. The hours of operation for the tennis courts and pro shop shall be limited to 7:00 a.m. to 11:00 p.m., daily. The maximum hours of operation for the clubhouse and pool shall be 6:00 a.m. to 12 midnight, daily. However, the clubhouse may remain open no more than four (4) occasions per year until 2:00 a.m. The maximum hours of operation for the golf course shall be 7:00 a.m. to 10:00 p.m., daily.

12. Right-of-way along Lee Jackson Memorial Highway for the construction of a service drive shall be dedicated and shall convey to the Board of Supervisors in fee simple within 90 days of request.

13. Appropriate building permits and inspections shall be obtained for all those structures existing and approved with this application.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, six (6) months after the approval* date of the Special Permit unless at least one of the requests approved pursuant to SPA 82-C-037-4 has been legally 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. Establishment of commencement of construction and diligent prosecution for at least one of the requests approved pursuant to SPA 82-C-037-4 shall be deemed to establish all uses approved pursuant to SPA 82-C-037-4. 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 and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 469, July 7, 1993, (Tape 1), Scheduled case of:

10:00 A.M. YAHYA M. AL-HUSSAIN, APPEAL 93-P-006 and APPEAL 93-P-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination of the Director of the Zoning Evaluation Division that a rezoning application for property located at Tax Map 39-3 ((1)) 78B, which relies on the attributes of RZ 84-P-017 to satisfy Zoning Ordinance requirements for the proposed rezoning, cannot be accepted until a proffered condition amendment is filed and accepted for RZ 84-P-017. Located at 2251 Central Ave. on approx. 40,924.00 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((1)) 78B.

Jane Kelsey, Chief, Special Permit and Variance Branch, said the appellant was requesting a withdrawal and Barbara A. Byron, Director, Zoning Evaluation Division, acting as the agent for the Zoning Administrator had approved the withdrawal.

Mrs. Thonen made a motion to allow the withdrawal of appeals 93-P-006 and 93-P-011. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

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The BZA recessed at 10:45 a.m. and reconvened at 10:55 a.m.

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Page 469, July 7, 1993, (Tape 1), Scheduled case of:

10:15 A.M. CONGREGATION BETH EMETH, SPA 84-C-008-4 Appl. under Sect(s). 3-103 and 8-915 of the Zoning Ordinance to amend SP 84-C-008 for synagogue, related facilities and nursery school to permit dustless surface waiver, increase parking & nursery school and add child care, summer camp, building addition, shed and temporary trailers. Located at 12523 Lawyers Rd. on approx. 5.20 ac. of land zoned R-1. Hunter Mill District (Formerly Centreville District). Tax Map 35-2 ((1)) 15A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marie B. Travesky, 3900 Jermantown Road, Suite 300, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the site is currently developed with a synagogue with a seating capacity of 200, a 87 space gravel parking lot, and a 5,000 square foot fenced play area. The applicant was requesting approval of a special permit to allow a change in enrollment for their nursery school program. Presently, the program is allowed a maximum daily enrollment of fifty (50) children with no more than twenty-four (24) children on site at any one time. Ms. Greenlief said the applicant was requesting a change to allow a maximum daily enrollment of forty-five (45) children with no limit on the number of children allowed on site at one time. Additionally, the applicant was requesting permission to locate two (2) temporary classroom trailers to house their religious education programs and a storage shed on site and was requesting a waiver of the dustless surface requirement to allow the parking area to remain gravel. She said there are no structural additions proposed with the application and the nursery school will operate in classrooms within the existing building.

Staff concluded that, with the implementation of the Proposed Development Conditions, the change in nursery school enrollment, the temporary trailers, the shed and the modification of the dustless surface requirement would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the General Standards and the Standards for all Group 3 and Group 9 Uses. For these reasons, staff recommended approval of SPA 84-C-008-4 subject to the adoption of the Proposed Development Conditions dated June 29, 1993.

The applicant's agent, Ms. Travesky, said the request was a very minimal one and noted that the nursery school operates between the hours of 9:15 a.m. and 1:15 p.m. and were requesting approval to allow all forty-five children on site at any one time. She said construction of the synagogue preceded the construction of the houses to the northeast and west side of the subject property, was occupied in 1988, and the nursery school was approved in June 1990. The applicant scaled down the original application following meetings that were held with members of the community.

Chairman DiGiulian noted an opposition letter from Barbara Vesage, an adjacent neighbor. Ms. Travesky said Lois Jacobs, president of the congregation, would address Ms. Vesage's comments.

Lois Jacobs, president of the congregation, said the applicant was requesting a small expansion of the nursery school, an outdoor shed, and temporary additional classroom space and thanked staff for its assistance during the process. Ms. Jacobs said the synagogue was only 14 years old and has many young families as members whose numbers have grown which has required the synagogue to expand in order to have adequate space to provide religious education for all the children. She said the applicant would continue the carpool program in order to minimize any increase in traffic as outlined in the synagogue's handbook, make every effort to maintain the foundation plantings and the staggered transitional buffer strip in a healthy condition, and monitor the gravel surfaces. Ms. Jacobs said weather conditions often make it difficult or impractical to ensure the proper condition of the gravel surfaces, but the applicant understood this was a concern of staff as well as the neighbors. She said ninety tons of gravel was added to the site late in the winter but it was too cold at that time to put down the necessary chemicals but the process will be completed no later than the middle of August. Ms. Jacobs said the neighbor had not discussed with the applicant her concern about the density of the underbrush along the shared lot line prior to this application. She said to her knowledge it had never been cleared even by the previous property owner. Upon learning of the neighbor's concern, the synagogue hired a crew to begin the removal of the undergrowth in front of the neighbor's house and along her fence around her kennel area. Ms. Jacobs said a member of the congregation, who volunteers as the synagogue's operation manager, met with Ms. Vesage after the initial clearing to determine if it was adequate and was told that the neighbor wanted the entire fence line cleared which will cost the church approximately $1,500. In a June 24, 1993 letter, Ms. Vesage told staff that she has to frequently chase people out of her driveway, and since the students are not old enough to drive overflow parking rarely occurs in conjunction with the nursery or religious school. However, when the problem was brought to the synagogue's attention, permanent signs were put up on either side of the neighbor's driveway and the parking is monitored. During the synagogue's 13th birthday in anticipation of a large crowd, the synagogue did not allow any parking on site and arranged for attendees to park at the nearby elementary school and ride shuttles to the synagogue. Ms. Vesage also expressed concern with the school bus being parked on the applicant's property during the past school year, and Ms. Jacobs assured the BZA that there would be no school buses parked on the applicant's property during the upcoming school year. In closing, Ms. Jacobs asked people in the audience to stand to show their support of the applicant's request and several people did so.

Mrs. Thonen said the neighbor's most recent letter indicated it was her understanding that the applicant was not requesting a waiver of the dustless surface requirement. Ms. Jacobs said she could not explain why the neighbor was under that impression. Chairman DiGiulian said it appeared that the area of the parking lot adjacent to Ms. Vesage's was paved. Ms. Jacobs said that was correct.

A discussion took place between Mr. Pammel and Ms. Jacobs with respect to the kennel on the neighbor's property. The speaker said she did not know the number of dogs on Ms. Vesage's property.

In response to Mr. Kelley's question about complaints with regard to dust on the applicant's property, Ms. Langdon said there were no recorded complaints in the street files in Zoning Administration.

Mr. Ribble asked the speaker to elaborate on what took place during the applicant's meeting with the neighbors. Ms. Jacobs said the neighbor's main complaint dealt with dust.

Chairman DiGiulian called for speakers in opposition to the request, and hearing no reply closed the public hearing.

Mr. Pammel made a motion to grant SPA 84-C-008-4 subject to the implementation of the Development Conditions contained in the staff report dated June 29, 1993.

Mr. Kelley asked the maker of the motion to add a sentence to Condition Number 4 indicating that the BZA supports a site plan waiver. Mr. Pammel agreed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 84-C-008-4 by CONGREGATION BETH EMETH, under Sect(s). 3-103 and 8-915 of the Zoning Ordinance to amend SP 84-C-008 for synagogue, related facilities and nursery school to permit dustless surface waiver, increase in nursery school

enrollment, shed and temporary trailers, on property located at 12523 Lawyers Road, Tax Map Reference 35-2((1))15A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1993; 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 5.20 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 Matthews, Wheatley and Allison, dated March 1, 1990, as revised through June 10, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. Before application is made for a building permit, the Director, Department of Environmental Management shall determine if a site plan is necessary under the provisions of Article 17, Site Plans. If a plan is necessary, it shall be in conformance with the approved Special Permit plat and these development conditions. The Board of Zoning Appeals supports a waiver of the Site Plan.

5. The nursery school shall be limited to a total maximum daily enrollment of forty-five (45) children.

6. The hours of operation for the nursery school shall be limited to 9:15 a.m. to 1:15 p.m., Monday through Friday.

7. The applicant shall continue the carpool program as outlined in the Congregation Beth Emeth "Parent Handbook" to encourage carpools for the nursery school program. The applicant shall distribute information to all parents of nursery school children listing all student's names, parents' names, addresses and phone numbers and encourage the formation of carpools.

8. The maximum seating capacity of the synagogue shall be limited to a total of 200.

9. All transitional screening as shown on the Special Permit Plat, foundation plantings and the five (5) foot wide staggered transitional buffer strip planted around the perimeter north, east and west of the play area shall be maintained in a healthy condition. Any dead or dying vegetation shall be replaced.

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 as shown on the Special Permit Plat 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 temporary classroom trailers shall be removed five (5) years from the date of this Special Permit approval.

13. 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).

14. The gravel surfaces shall be maintained in accordance with the standards practices approved by the Director, Department of Environmental Management (DEM), and shall include but may not be limited to the following. The approval of the waiver of the dustless surface requirement shall be for the time period specified in Sect. 8-915 of the Zoning Ordinance.

    Speed limits shall be limited to ten (10) mph.

    During dry periods, application of water shall be made in order 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.

    Routine maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

    There shall be pavement to a point twenty-five (25) feet into the entrance drive from Lawyers Road to inhibit the transfer of gravel off-site.

15. All required handicapped parking areas shall be paved with a dustless surface.

16. 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.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 472, July 7, 1993, (Tape 1), Scheduled case of:

10:30 A.M. SHERRI & JOEL DEEM, VC 93-V-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.5 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 8225 Higham Rd. on approx. 39,608.00 sq. ft. of land zoned R-1. Mount Vernon District. Tax Map 99-4 ((3)) 72.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joel Deem, 8225 Higham Road, Lorton, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicants' request for a variance resulted from their proposal to construct a family room addition to be located 13.5 feet from the side lot line. A minimum side yard of 20 feet is required by the Zoning Ordinance on an R-1 lot, thus the applicants were requesting a variance of 6.5 feet to the minimum side yard requirement. Ms. Langdon said with regard to surrounding uses, the dwelling on adjacent Lot 73 to the north is located approximately 26.9 feet from the shared side lot line.

The applicant, Mr. Deem, said since purchasing the property approximately five years ago he has married and had two children. He has lived in the same neighborhood since 1968 and would like to remain if he is allowed to expand the house to accommodate his family's growth. Most of the houses were originally built with approximately 1,500 square footage and two stories, but his is only 1,000 square feet with one story. Mr. Deem said the narrowness of the lot and the location of the septic tank and field behind the house only allows for expansion to the side. He added there are no objections from the neighbors.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 93-V-040 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-040 by SHERRI AND JOEL DEEM, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.5 feet from side lot line, on property located at 8225 Higham Road, Tax Map Reference 99-4((3))72, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 7, 1993; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owner of the land.
2. The present zoning is R-1.
3. The area of the lot is 39,608 square feet.
4. The applicant has met the nine standards required for a variance.
5. The applicant has testified that the lot is narrow and the placement of the septic field prevents the addition from being located in another location.
6. The house is a small one story structure and the other houses in the neighborhood are two story with more square footage.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical

difficulty or unnecessary hardship that would 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 prepared by Alexandria Surveys, Inc., dated September 9, 1992, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 15, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 474, July 7, 1993, (Tape 1), Action Item:

Reconsideration for
William H. Dempsey, III and Karen L. Holzberg, VC 93-D-034

Mr. Kelley made a motion to defer this request to July 13, 1993. Mrs. Thonen said she believed the BZA had to take action at its next scheduled meeting.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that perhaps the BZA could defer the final decision date to August 3rd to allow the Zoning Administrator an opportunity to determine whether or not the wall along the applicants' front lot line could be allowed by right. She said if the Zoning Administrator makes this determination there is also a question about one small triangular portion of the lot and its proximity to Route 123, which may require a variance.

Mr. Ribble said it would be helpful for the BZA to have a copy of the staff report when its discussing a case. Chairman DiGiulian agreed. He added that the Zoning Administrator can make a decision at any time but the BZA has to make a decision based upon the information it is given at the time of the public hearing. Ms. Kelsey agreed and said the applicants were advised that reconsiderations were based on information that was not brought out at the time of the public hearing.

Ms. Kelsey added that neither staff nor the applicant had been aware at the time of the public hearing that the lot next door had been the subject of a variance request. The variance requested approval to construct a house on the lot which showed access in the rear of the lot and the applicant was checking with the Virginia Department of Transportation (VDOT) to determine if this is allowed, and if VDOT would deny access from that lot to Route 123. If access is denied, the applicants' would be allowed to have a 6 foot fence in their front yard.

Following a discussion among the BZA, Mrs. Thonen made a motion to deny the reconsideration. Mr. Ribble seconded the motion.

Mr. Kelley said he would support the motion, but he would like the BZA to consider Ms. Kelsey's request that the decision not become final until August 3rd. Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble did not agree.

Mr. Pammel said he had not been present for the public hearing, but he would be interested in rehearing the case.

The motion carried to deny the request for reconsideration carried by a vote of 4-1 with Mr. Pammel voting nay. Mrs. Harris and Mr. Hammack were absent from the meeting.

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Page 475, July 7, 1993, (Tape 1), ACTION ITEM:

Approval of Resolutions from June 29, 1993 Hearing

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Ribble seconded the motion with carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

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Page 475, July 7, 1993, (Tape 1), Action Item:

Request for Approval of Minutes from June 8, 1993 Hearing

Mrs. Thonen made a motion to approve the Minutes as submitted. Mr. Ribble seconded the motion with carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

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Page 475, July 7, 1993, (Tape 1), Action Item:

Request for Out of Turn Hearing for Richard H. Goehner, VC 93-B-067

Mrs. Thonen said the case was presently scheduled to be heard on September 28, 1993 and asked staff if the case could be moved up. Jane Kelsey, Chief, Special Permit and Variance Branch, said the case could be moved to September 14th which was already a heavy agenda. Mr. Ribble said the applicant had indicated that he wanted to take advantage of his vacation time to enclose the porch, which he not believe was an extenuating circumstance.

Mrs. Thonen made a motion to deny the request. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

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Page 475, July 7, 1993, (Tape 1), Action Item:

Request for Out of Turn Hearing for Mary L. Michailidis, VC 93-V-077

Mrs. Thonen said it appeared that the applicant had been told that she would not need a variance because the setback was only 10 foot and was then told it was 15 feet. She made a motion to schedule the application for September 14th. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

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Page 475, July 7, 1993, (Tape 1), Action Item:

Request for Out of Turn Hearing for
Thomas J. and Liane E. Young, VC 93-Y-084

Mrs. Thonen said it appeared that the applicant had been given incorrect information. Mr. Pammel asked if the case could be scheduled for August 3rd. Jane Kelsey, Chief, Special Permit and Variance Branch, said it would be extremely different for staff to prepare a staff report. Mr. Pammel said since the mistake was rather significant and moved to schedule the case for August 3rd. Mrs. Thonen and Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Harris and Mr. Hammack were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:33 a.m.

Betsy S. Hurtt
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: July 27, 1993

APPROVED: August 3, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 13, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:35 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 477, July 13, 1993, (Tape 1), Scheduled case of:

9:00 A.M. PAUL AND WILMA J. ROBERTS, VC 93-M-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.6 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 3219 Annandale Rd. on approx. 24,669.00 sq. ft. of land zoned R-2. Mason District. Tax Map 60-2 ((35)) 2.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Roberts replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a variance to allow construction of a garage addition 5.6 feet from the side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicants were requesting a modification of 9.4 feet to the minimum side yard requirement.

The applicant, Paul Roberts, 3219 Annandale Road, Falls Church, Virginia, addressed the BZA. He stated the proposed site was the only place that the garage could be located. He explained that on one side of the property was an existing swimming pool and on the other side was a storm drain easement. He also noted that if the garage were to be located in the backyard, four large trees and a shed would have to be removed. Mr. Roberts said that the distance from the proposed garage to the structure on the adjoining lot would be approximately 98 feet and noted that the neighbor's numerous trees and shrubs would provide screening.

Mr. Roberts stated that after he purchased the run down property, he consulted with an architect who had advised him to construct the garage addition. In summary, he expressed his belief that the garage addition would be aesthetically pleasing, as well as beneficial to the community, and asked the BZA to grant the request.

In response to Mr. Hammack's question as to where the structure on Lot 1 is located, Mr. Roberts said that the house is centered on the lot and faces towards Holloman Road. He stated that the neighbor's structure was approximately 98 feet from the shared lot line.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 93-M-032 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 6, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-032 by PAUL AND WILMA J. ROBERTS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.6 feet from side lot line, on property located at 3219 Annandale Road, Tax Map Reference 60-2((35))2, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 13, 1993; 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-2.
3. The area of the lot is 24,669 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The applicant has testified as to constraints on both sides of the property that prevent the construction of a garage to the rear of the property.
6. There will be no detrimental impact to the adjacent property located on Lot 1.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by Coldwell, Sikes & Almirall, dated April 8, 1993, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 6-0-1 with Mr. Pammel abstaining from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 478, July 13, 1993, (Tape 1), Scheduled case of:

9:10 A.M. RUSSELL K. H. & NADINE EGGERS, VC 93-D-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.1 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 6935 Southridge Dr. on approx. 10,882.00 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((31)) 78.

Chairman DiGiulian stated that the Board of Zoning Appeals (BZA) had received a letter requesting withdrawal.

Mrs. Thonen made a motion to allow the withdrawal of VC 93-D-042. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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9:20 A.M. JOHN L., JR. & ELIZABETH G. SULLIVAN, VC 93-V-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.6 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 1913 Belfield Rd. on approx. 8,040.00 sq. ft. of land zoned R-4 and HC. Mount Vernon District. Tax Map 83-3 ((14)) (2) 5.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Sullivan replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report that had been prepared by Mary Ann Godfrey, Staff Coordinator, with the Zoning Evaluation Division. She stated the applicants were requesting a variance to allow construction of an addition 8.06 feet from the side lot line. Ms. Kelsey noted the existing dwelling is also 8.06 feet from the side lot line. She explained that the house was constructed in 1938 prior to the adoption of the first Zoning Ordinance in Fairfax County. And although the existing dwelling can remain, any addition must conform to the current Zoning Ordinance. The Zoning Ordinance requires a minimum 10 foot side yard; therefore, the applicants were requesting a modification of 1.94 feet to the minimum side yard requirement.

The applicant, John L. Sullivan, Jr., 1913 Belfield Road, Alexandria, Virginia, addressed the BZA. He stated that he was requesting the addition in order to increase the kitchen area by approximately 188 square feet and explained that the topography of the lot precluded placing the addition anywhere else on the property. Mr. Sullivan said the addition would be no closer to the side lot line than the existing structure and noted that the neighbors supported the request. In summary, he stated that the addition would be beneficial to the area, would be architecturally compatible with the existing dwelling and with other dwellings in the neighborhood.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 93-V-043 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated June 24, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-043 by JOHN L., JR. AND ELIZABETH G. SULLIVAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.6 feet from side lot line, on property located at 1913 Belfield Road, Tax Map Reference 83-3((14))(2)5, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 13, 1993; 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 and HC.
3. The area of the lot is 8,040 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The topographical hardship precludes the placement of the addition at any other location.
6. The addition will be a continuance of the existing building line and will encroach no further into the side yard than the existing building.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable

the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 prepared by R. W. Shaw, Jr., Architect, dated May 3, 1993, to add the addition submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 480, July 13, 1993, (Tape 1), Scheduled case of:

9:30 A.M. ATHANASIOS K. XENOS, VC 93-M-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of second story addition 9.7 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 3505 Maple Ct. on approx. 12,000.00 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (E) 14.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Xenos replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated the applicant was requesting a variance to allow a second story addition to the existing dwelling to be located 9.7 feet from the side lot line. Mr. Heine said that the Zoning Ordinance requires a minimum side yard of 12 feet; therefore, a modification of 2.3 feet to the side yard was requested.

The applicant, Athanasios Xenos, 3505 Maple Court, Falls Church, Virginia, addressed the BZA and stated that he had bought the narrow property in 1979. He noted that the structure on the adjoining property is 41.7 feet from the shared lot line. Mr. Xenos said that the addition would be no closer to the lot line than the existing dwelling, the neighbors supported the request, and asked the BZA to grant the variance. He also requested that the BZA waive the eight-day waiting period.

In response to Chairman DiGiulian's question as to whether the addition would be any closer to the side lot line than the existing dwelling, Mr. Xenos said it would not.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 93-M-045 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 7, 1993. Mr. Pammel seconded the motion which carried by a vote of 7-0.

Mrs. Thonen made a motion to waive the eight-day waiting period. Mr. Pammel and Mr. Ribble seconded the motion which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-045 by ATHANASIOS K. XENOS, under Section 18-401 of the Zoning Ordinance to permit construction of second story addition 9.7 feet from side lot line, on property located at 3505 Maple Court, Tax Map Reference 61-2((17))(E)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 July 13, 1993; 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 and HC.
3. The area of the lot is 12,000 square feet.
4. The house location plat for the dwelling was approved with a 8.6 foot side yard although the property was in the suburban residence district which required a minimum of 15 foot side yard.
5. The addition will not come any closer to the side lot lines than the existing dwelling.
6. The dwelling on adjacent Lot 15 is located approximately 41.7 feet from the shared property line.
7. The lot is narrow and the structure was built before the 1978 Zoning Ordinance, but a permit was still granted to build the house even though it did not meet the 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 location and the specific addition shown on the plat prepared by Coldwell & Associates, Inc., dated June 1, 1979, revised by William R. McHugh, Architect, undated, stamped received by Zoning Evaluation Division, DCP on May 4, 1993, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 7-0.

Mrs. Thonen made a motion to waive the eight-day waiting period. Mr. Pammel and Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 13, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 482, July 13, 1993, (Tape 1), Scheduled case of:

9:45 A.M. CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, SP 93-H-017 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. Located at 1645 and 1653 Beulah Rd. on approx. 6.01 ac. of land zoned R-1. Hunter Mill District. Tax Map 28-1 ((1)) 11 and 12.

David Hunter, Staff Coordinator, addressed the BZA stating that although it appeared the applicant had addressed all of staff's concerns with a submission of a revised special permit plat dated July 9, 1993, and received by staff on July 12, 1993, Mr. Hunter requested a two week deferral to allow the plat to be fully analyzed by the appropriate County officials. He explained that although staff had previously recommended denial, staff could not render a recommendation based on the new plat without further review and investigation.

Mrs. Thonen expressed her support for a deferral. She noted that the neighbors had raised concerns regarding the application and expressed her belief that the applicant should work with the community to resolve outstanding issues.

The applicant's agent, Manning B. Mahaffee, 3rd, with the firm of Greenhorne and O'Mara, Inc., 11211 Waples Mill Road, Fairfax, Virginia, addressed the BZA. He stated that the applicant had no objection to a two week deferral.

In response to Mrs. Harris' question as to whether a two week deferral would allow the applicant time to work with the community to resolve outstanding issues, Mr. Mahaffee stated that it was his belief the opposition to the church was general, rather than being opposed to specific issues. He expressed his belief that the application was in conformance with the Zoning Ordinance and that the new plat would alleviate many of the neighbors' concerns. Although, he could not guarantee that all the citizens' concerns could be resolved within two weeks, Mr. Mahaffee said that he believed staff's concerns had been resolved.

In response to Mr. Ribble's question as to whether Mr. Mahaffee wanted the BZA to hear the application in two weeks, Mr. Mahaffee said he did.

Mrs. Harris said that although she realized that all the neighbors' concerns could not be resolved within a two week period, she asked if the applicant would be willing to work with the community. Mr. Mahaffee said they would make the plans available to the citizens.

Chairman DiGiulian called for speakers to the deferral and the following citizens came forward.

Page 483, July 13, 1993, (Tape 1), CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, SP 93-H-017, continued from Page 482)

Gene Klein, 1657 Beulah Road, Vienna, Virginia; Leon B. Noory, the owner of property at 1626 White Pine Drive, Vienna, Virginia, who resides at 3500 Everest Drive, S.E., Hillcrest Heights, Maryland; John R. Ross, 1609 Sereno Court Vienna, Virginia; an unidentified woman who said she represented the Sun Valley Home Owners Association; Reginald J. Ohlson, 1700 Wind Haven Way, Vienna, Virginia; Storm C. Rhode, represented the Cinnamon Creek Home Owners Association, 9702 Cinnamon Creek Drive, Vienna, Virginia; Constance Barrett, 1453 Beulah Road, Vienna, Virginia; and Mariano Echevarria, 1625 Beulah Road, Vienna, Virginia; addressed the BZA. With the exception of Mr. Ross who expressed his belief that it was the volume of traffic on the road that created the problems and that the church would not significantly add to the traffic impact, the citizens requested that the BZA defer the case to a night meeting in September. They explained that they worked during the day and would have to take time off to attend another day meeting. They expressed their belief that more time was needed to address their concerns with the application.

Chairman DiGiulian called Mr. Mahaffee back to the podium.

Mr. Mahaffee said both the Bishop of the church and the architect had been led to believe that a two week deferral would be granted. He explained that they were going away for a week and expressed his concern as to whether the deferral was to allow the applicant the opportunity to work with the citizens to resolve outstanding issues or would merely allow opposition to collect. Mr. Mahaffee stated that he would be agreeable to a deferral to allow the applicant the opportunity to confer with the community to resolve any differences, but again expressed his belief that the outstanding issues had been resolved.

Mrs. Harris expressed her belief that the neighbors should be given the opportunity to study the plans and negotiate with the applicant. She noted that officials of the church, as well as the neighbors, had vacation plans during the next few weeks. Mr. Mahaffee again expressed his desire to have the case heard within the next two weeks.

Chairman DiGiulian asked for a date and time for a night meeting in September, Jane Kelsey, Chief, Special Permit and Variance Branch, suggested a date and time of September 21, 1993 at 8:00 p.m.

Mrs. Thonen made a motion to defer SP 93-H-017 to the suggested dated and time. Mrs. Harris and Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 483, July 13, 1993, (Tape 1), Scheduled case of:

10:00 A.M. WORLDGATE ASSOCIATES LIMITED PARTNERSHIP, APPEAL 93-D-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination of the Zoning Administrator that Proffered Condition Amendment PCA 86-D-093-6 requesting a change in dwelling unit type is not exempt from the Affordable Dwelling Unit Program under Par. 3 of Sect. 2-803 and therefore is subject to the multiple family dwelling unit requirement that 6.25% of the total number of units must be affordable. Located at 2140 Monroe St. on approx. 8.85 ac. of land zoned PDC. Dranesville District. Tax Map 16-3 ((2)) pt. 2 and 16-4 ((2)) pt. 23. (INTENT TO DEF. ISSUED ON 6/22/93)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that the appellant's letter of July 12, 1993, had requested withdrawal of the appeal.

Mrs. Harris made a motion to allow the withdrawal of Appeal, A 93-D-007. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 483, July 13, 1993, (Tape 1), Action Item:

Approval of Resolutions from July 7, 1993 Hearing

Mrs. Harris made a motion to approve the Resolutions as submitted. Mrs. Thonen seconded the motion with carried by a vote of 7-0.

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Page 483, July 13, 1993, (Tape 1), Information Item:

Discussion Regarding the Scheduling of Cases

Mr. Pammel noted there was a forty-five minute span between the cases and recommended that the Board of Zoning Appeal (BZA) adopt a similar procedure to that of the Planning Commission. He explained that problems arise when applicants ask for a deferral or a withdrawal. Mr. Pammel expressed his belief that a new procedure would be more efficient.

Mr. Kelley stated that while it would be more convenient for the BZA members, the citizens attending the hearings would be inconvenienced.

Page 484, July 13, 1993, (Tape 1), Discussion Regarding the Scheduling of Cases, continued from Page 483)

After a lengthy discussion, it was the consensus of the BZA to request that staff schedule the cases in groups with variances first, special permits second, and appeals last. It noted that variances should be allotted ten minutes each, and special permits and appeals should be allotted fifteen minutes each.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, explained that sometimes cases are rescheduled in order to accommodate the applicants and this often gives the impression that an excessive amount of time has been assigned to a case. She said that staff would try to be diligent when variances or special permits are deferred and schedule them before appeals. Ms. Kelsey also noted the schedule tries to accommodate Staff Coordinators so that their cases are heard in succession. Chairman DiGiulian said that the Government Center was very close to staff's office and expressed his belief that the new procedure would better serve the residents of Fairfax County. Ms. Kelsey agreed that the citizens' needs should be the priority.

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The Board of Zoning Appeal recessed at 10:25 a.m. and reconvened at 11:00 a.m.

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Page 484, July 13, 1993, (Tape 2), Scheduled case of:

10:30 A.M. CROSSPOINTE RETAIL LIMITED PARTNERSHIP, APPEAL 93-S/V-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination of the Zoning Administrator that the calculation for the permitted land area for secondary commercial uses in the area encompassed by Rezoning Application RZ 85-W-052 must be based on the number of dwelling units approved with the rezoning and Conceptual Development Plan for RZ 85-W-052. Located on Village Shops Dr. on approx. 3.326 ac. of land zoned PDH-2. Springfield and Mount Vernon Districts. Tax Map 97-4 ((14)) 3A, 3B, 3C, 3D and pt. 5A. (INTENT TO DEF. ISSUED 6/22/93)

Mrs. Harris made a motion to defer Appeal, A 93-S/V-008 to September 28, 1993 at 10:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 484, July 13, 1993, (Tape 2), Scheduled case of:

10:45 A.M. BRENDA W. JONES, T/A BMS INVESTMENT,INC., SP 93-M-019 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a child care center and nursery school. Located at 7806 Little River Trnpk. on approx. 17,000.00 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 59-4 ((5)) 5.

Mrs. Harris noted that a letter requesting withdrawal had been received by the Board of Zoning Appeals and moved to allow the withdrawal of SP 93-M-019. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 484, July 13, 1993, (Tape 2), Scheduled case of:

11:00 A.M. ROBIN HAYTOWITZ, SP 92-M-070 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to allow workshop/shed to remain 0.7 ft. from rear lot line (13.4 ft. min. rear req. by Sect. 10-104). Located 6618 Barrett Rd. on approx. 10,051.00 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 64. (DEF. FROM 6/8/93 FOR ADDITIONAL INFORMATION)

Mrs. Harris stated that she believed a letter of opposition from a neighbor had been received and asked staff for a copy. Ron Derrickson, Planning Technician, provided a copy of the letter to the BZA.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ms. Haytowitz said it was.

Donald Heine, Staff Coordinator, presented the staff report. He said the applicant was requesting a reduction to the minimum yard requirement based on error in building location to allow a 13.4 foot high workshop/storage shed to remain 0.7 feet from the rear lot line. Mr. Heine stated that the BZA had deferred the case from the June 8, 1993 public hearing to allow staff to determine if the location of the workshop/storage shed contributed to a drainage problem on Lot 25 to the east of the subject property, and to allow the applicant the opportunity to remove debris from behind the shed. He further stated that the deferral would allow the owner of Lot 25 the opportunity to attend the public hearing. He noted that June 8, 1993 minutes were submitted as part of the staff report addendum dated July 6, 1993.

Mr. Heine stated that on April 15, 1992, the Zoning Enforcement Branch, inspected the subject property in response to a complaint that a shed on the property was causing drainage problems

on Lot 25. He said an inspection revealed that piles of dirt and incomplete grading in the rear yard could possibly be a source of the drainage problem on the nearby property. Mr. Heine said the request of the Zoning Inspector, the applicant graded and seeded the rear yard to alleviate any drainage problem that may have existed due to the piles of dirt on the property. He noted that this action was verified by the Zoning Enforcement Branch during a reinspection of the site on August 2, 1992, when it was also determined that the location of the shed was not the cause of the drainage problem on Lot 25.

Mr. Heine explained that the Zoning Inspector also observed that the shed exceeded the maximum size permitted by the Zoning Ordinance and had been located too close to the rear lot line. A Notice of Violation was issued to the applicant on May 26, 1992.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that in response to the BZA's request, Ms. Kuramoto, the owner of Lot 25, was present for the hearing.

The applicant, Robin Haytowitz, 3901 Cathedral Avenue, N.W., #108, Washington, District of Columbia, addressed the BZA. She stated that she did not live on the property and had not been previously aware of the debris behind the shed and had removed it shortly after the initial public hearing. Ms. Haytowitz said that the previous owner had built the addition, but had failed to regrade the yard. She explained that as soon as she became aware of the problem, she had the yard regraded. Ms. Haytowitz said that, as she had stated at the previous public hearing, she had bought the house under the impression the previous owner had complied with the Fairfax County Zoning Ordinance requirements and had obtained the necessary building permits.

In response to Mr. Hammack's question as to what type of work was taking place in the shed/workshop, Ms. Haytowitz said that the shed/workshop was empty and locked.

Mr. Hammack noted the shed/workshop was not used and asked if this would change staff's determination that the building was an accessory structure. Mr. Heine said that it would not. Ms. Kelsey stated that although it has been staff's policy not to take a position on error in building applications, staff believed that the shed/workshop met the criteria for the accessory structure size requirement.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Tomoyo Kuramoto, 6566 Marlo Drive, Falls Church, Virginia, addressed the BZA. She stated that under the current Zoning Ordinance a shed cannot exceed eight and one-half feet and the applicant's shed/workshop is thirteen feet and four inches high.

Chairman DiGiulian explained that staff had determined that the building is not a shed, but an accessory structure; therefore, it met the Zoning Ordinance requirement.

In response to Mrs. Harris' question as to whether she was residing on her property when the shed/workshop had been constructed, Ms. Kuramoto stated that although she bought the property in 1963 or 1964, she has not always resided there. She explained that she had no idea when construction had taken place. Ms. Kuramoto said that although the appropriate County Officials had determined that the area where there is a drainage problem is a part of the flood plain, she believed that the shed/workshop caused the problem. In summary, she stated that the problem still exists and there is still debris in the area.

Ms. Kelsey addressed the BZA and stated that Arthur Singer, Zoning Inspector, Zoning Enforcement Branch, Office of Comprehensive Planning, was present to clarify the County's position regarding the drainage problem.

Mr. Singer stated that the shed/workshop did not encroach on Lot 25 and explained that a dedicated easement abuts both the applicant's property and Ms. Kuramoto's property.

Chairman DiGiulian called for rebuttal.

Ms. Haytowitz noted that the regrading had been accomplished approximately one year ago and the debris had been removed the day after the first public hearing. She expressed her willingness to inspect the site with Ms. Kuramoto and to address any outstanding issues. Chairman DiGiulian noted that the Zoning Inspector had visited the site, which has had many heavy rains since the regrading took place, and found that the applicant's property did not contribute to the drainage problem.

Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SP 92-M-070 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 16, 1993. Mr. Kelley seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Hammack stated that he would support the motion because the applicant had purchased the property in good faith. He expressed concern regarding the fact that while a shed would have

to be removed, the Zoning Ordinance allows a large structure which is determined to be a shed/workshop to remain.

Mrs. Harris agreed with Mr. Hammack and noted that had the applicant been requesting a variance to build the structure, she would have voted to deny the request. She expressed her belief that the Zoning Ordinance requirements for the granting of a variance and the granting of a special permit under the mistake section should be more compatible.

Mrs. Thonen expressed her belief that the structure was too high, too close to the lot line, and much too large to be an accessory structure. She explained she would support the application because to require the present owner to remove the building would be not be right.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 92-M-070 by ROBIN HAYTOWITZ, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirement based on error in building location to allow workshop/shed to remain 0.7 feet from rear lot line, on property located at 6618 Barrett Road, Tax Map Reference 60-2((15))64, 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 13, 1993; and

WHEREAS, the Board has made the following conclusions of law:

That the applicant has presented testimony indicating compliance with Sect. 8-006, General Standards for Special Permit Uses, and Sect. 8-914, Provisions for Approval of Reduction to the Minimum Yard Requirements Based on Error in Building Location, the Board has determined:

A. That the error exceeds ten (10) percent of the measurement involved;

B. The non-compliance was done in good faith, or through no fault of the property owner, or was the result of an error in the location of the building subsequent to the issuance of a Building Permit, if such was required;

C. Such reduction will not impair the purpose and intent of this Ordinance;

D. It will not be detrimental to the use and enjoyment of other property in the immediate vicinity;

E. It will not create an unsafe condition with respect to both other property and public streets;

F. To force compliance with the minimum yard requirements would cause unreasonable hardship upon the owner; and

G. The reduction will not result in an increase in density or floor area ratio from that permitted by the applicable zoning district regulations.

H. Since the shed/workshop existed on the property prior to the current applicant owning the property, the non-compliance was done in good faith.

I. The BZA does not know why the former property owner built the shed/workshop in that location; but, certainly the present property owner had nothing to do with the size or location of the accessory structure.

J. The applicant has demonstrated the intention to not be detrimental to the adjacent property owners by regrading to correct drainage problems and by the removal of debris.

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 addition shown on the plat 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, entitled Physical Survey, prepared by Furstenau Surveying, dated August 5, 1992, submitted with this application, as qualified by these development conditions.

3. A building permit and all required inspections shall be obtained.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Under Sect. 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit unless construction has commenced, 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 21, 1993. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel suggested that a procedure be developed by Fairfax County whereby at the time of title transfer the permits are identified. He explained that if a property owner built something without the proper permits, the omission would be identified and the property could not be conveyed until the property came into compliance.

The BZA had a brief discussion regarding the process for selling a property in Fairfax County.

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As there was no other business to come before the Board, the meeting was adjourned at 11:25 a.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: September 7, 1993

APPROVED: September 14, 1993

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 20, 1993. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:15 p.m. and Mr. Hammack gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 489, July 20, 1993, (Tape 1), Scheduled case of:

8:00 P.M. ALYCE M. POPE AND JAMES EDWARD CARTER, VC 93-M-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into three lots, proposed Lot 1 having lot width of 64.35 ft. (80 ft. req. by Sect. 3-306) and proposed Lot 2 having lot width of 90.74 ft. (105 ft. req. by Sect. 3-306) and permit dwelling to remain 22.9 ft. from front lot line (30 ft. req. by Sect. 3-307). Located at 3708 & 3710 Munson Rd. on approx. 1.44 ac. of land zoned R-3. Mason District. Tax Map 61-4 ((1)) 40 and 41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that the notices were not in order and that the applicant's agent, Henry Mackell, would have to be added to the affidavit and the modification would have to be approved by the County Attorney's Office. Ms. Kelsey suggested deferring the case until September 28, 1993, at 9:20 a.m. The applicant indicated that the date and time was acceptable.

Mrs. Harris noted that the photos submitted showed only two of the three houses said to be on the property. She asked if the applicant could provide a photo of the third house on the property. The applicant's agent said that they would furnish the Board with anything they requested.

Mr. Hammack moved to defer VC 93-M-046 until September 28, 1993 at 9:20 a.m. Mrs. Harris seconded the motion which carried by a vote of 4-0. Mr. Ribble and Mr. Pammel was not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 489, July 20, 1993, (Tape 1), Scheduled case of:

8:00 P.M. EDWARD G. STACY, VC 93-D-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6 ft. high fence to remain in the front yard of a corner lot & shed to remain 0.8 ft. from street line of a corner lot (4 ft. max. height for fence in front yard and no accessory structure permitted in front yard by Sect. 10-104). Located at 1380 Butter Churn Dr. on approx. 11,768 sq. ft. of land zoned R-3 (C). Dranesville District. Tax Map 11-1 ((5)) 8.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edward G. Stacy, 1380 Butter Church Drive, Herndon, Virginia, replied that it was.

Robby Robinson, Staff Coordinator, presented the staff report, stating that the subject property is a corner lot; the property is surrounded by single family detached dwellings on the north, south, east and west, also zoned R-3 (Cluster).

Mr. Stacy presented the statement of justification, stating that the fence was constructed in 1984 by the Long Fence Company for the previous owners, from whom the applicant purchased the property; the fence is the same style and height as that of four of the neighbors, leading him to believe that they were all erected at approximately the same time; however, none of the neighbors have corner lots with two front yards. Mr. Stacy had a letter supporting the application from the neighbor who would be most affected by the fence, located directly behind the applicant. Regarding the shed, which he installed in 1991, he said his application letter addressed his belief that a permit was not necessary for a shed of this size and his previous ignorance of the two-front-yard limitation. He presented an approval by the Homeowners Association. Mr. Stacy said that the shed and the fence pose no problem to traffic flow, both of them being approximately 50 feet from the corner.

In response to a question from Mr. Hammack, Mr. Stacy said he had spoken with someone in the Office of Comprehensive Planning when he inquired about the construction of a shed and the possible need for permit; he said he was told that he did not require a permit.

Mrs. Harris asked the applicant to address the hardship issue. Mr. Stacy said the hardship was a financial one; also, in answer to a question from Chairman DiGiulian, the applicant agreed that another hardship was created as a result of the applicant purchasing the property with the fence already in place and assuming it could stay there. Mr. Hammack asked if the neighbors who had fences of the same type had them in their front or side yards; Mr. Stacy said they did not. He said there is a neighbor on a pipestem who has a fence that goes all the way out to the drive-in area for the people behind him. Mr. Stacy said that none of the immediate neighbors' dwellings were oriented the same way as his dwelling.

There were no speakers and Mr. DiGiulian closed the public hearing.

Mr. Robinson advised the Board that, on February 2, 1993, the BZA approved VC 92-D-095, to allow a 6-foot high fence to remain in the front yard of a corner lot at 1400 Bakers Creek Court tax map number 11-1((5)24A-1, also within the Crestbrook Subdivision. Mr. Stacy said the property is about one block up the street from his property.

Mr. Hammack asked Mr. Stacy if there was any location on his property to which he could move the shed. Mr. Stacy said he could, perhaps, move it to the back; however, that would place it so close to the neighbor's house that he believed it would better to leave it where it was. In answer to a question from Mr. Hammack, Mr. Stacy said the shed rested on a 4-inch prepared gravel base with plastic underneath.

Mr. Hammack moved to grant VC 93-D-053. He said the request was a difficult one to consider; the applicant allegedly had been given inaccurate information by someone in the County and he purchased the property with the existing fence in place; neither fact being his fault. Mr. Hammack believed the applicant had acted in good faith and that he met the other standards: In particular, he has a double front yard which is an unusual situation; the lot is also irregular in shape and there is no other place on the lot that would lessen the impact of the shed on immediate contiguous neighbors; the fence is in the front yard which would be a back yard if it were not for the convoluted definitions in the Ordinance; there are no site distance problems. The motion failed for lack of a second.

Mrs. Harris moved to grant-in-part VC 93-D-053, as outlined in the Resolution, for the reasons set forth in the Resolution, subject the Proposed Development Condition contained in the staff report dated July 13, 1993. Only the fence was allowed to remain.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-053 by EDWARD G. STACY, under Section 18-401 of the Zoning Ordinance to permit 6 ft. high fence to remain in the front yard of a corner lot and shed to remain 0.8 ft. from street line of a corner lot, **(THE BOARD ALLOWED ONLY THE FENCE TO REMAIN)** on property located at 1380 Butter Churn Dr., Tax Map Reference 11-1((5))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 July 20, 1993; 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(C).
3. The area of the lot is 11,768 square feet.
4. Said property was acquired in good faith.
5. The property has the unusual characteristics of having had the fence in place when the applicant purchased the property.
6. The property has the unusual characteristic of double front yards.
7. The strict application of the Ordinance would create a hardship if the fence were not allowed to remain.
8. The fence creates no sight distance problems.
9. The fence does not interfere with the character of the neighborhood.
10. The variance will be in harmony with the intended spirit and purpose of the Ordinance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** with the following limitations:

1. This variance is approved for the location of the fence shown on the plat prepared by Harold A. Logan, dated February 23, 1993, submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-0-1. Mr. Pammel abstained and Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 491, July 20, 1993, (Tape 1), Scheduled case of:

8:00 P.M. TRUSTEES OF WOODLAWN BAPTIST CHURCH, SP 93-V-021 Appl. under Sect(s). 3-103 and 8-915 of the Zoning Ordinance to permit a church and related facilities and waiver of the dustless surface requirement. Located at 9001 Richmond Hwy. on approx. 5.16 ac. of land zoned R-1, HC and HD. Mount Vernon District. Tax Map 109-2 ((1)) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, William C. Thomas, Jr., Esquire, with the law firm of Fagelson, Schonberger, Payne & Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the subject property is located on the south side of Richmond Highway, east of its intersection with Woodlawn Road; the Ft. Belvoir military reservation is located to the west and south; property owned by the National Trust for Historic Preservation and associated with Woodlawn Plantation is located to the north and east; the property lies within the Highway Overlay District (HC) and within the Woodlawn Historic District (HD); the property is developed with a two-story Christian Education Building, a gravel parking area, a playground, a wood frame shed, and a cemetery; an abandoned asphalt road once used by Ft. Belvoir also traverses the southwestern corner of the site; the original church sanctuary was demolished in the fall of 1992; the applicant was requesting permission to construct a new 250-seat sanctuary, related facilities and a waiver of the dustless surface requirement; the proposed structure is approximately 3,500 square feet in size; 73 parking spaces also are proposed. The applicant proposed to construct a memorial in the location of the demolished church to consist of an area approximately 43 feet by 30 feet and to be enclosed with an 8-foot high brick wall; this area will house the bell from the bell tower of the old church. The applicant was also requesting a modification of the screening requirements and a waiver of the barrier requirement along all property lines. Further, the applicant proposed to convene worship services on Sundays at 11:00 a.m. and 7:00 p.m., Sunday School at 9:45 a.m.; weekly Bible

study committee meetings and similar church activities on week-day evenings. Mr. Hunter said that, in staff's opinion, if the Proposed Development Conditions contained in Appendix 1 of the staff report are implemented, the subject application will meet the applicable Zoning Ordinance standards for the use and will be in conformance with the recommendations of the Comprehensive Plan. Staff, therefore, recommended approval of this application, subject to the Proposed Development Conditions contained in the staff report. It is noted that the Fairfax County Architectural Review Board has approved the demolition of the former sanctuary and has also approved the special permit plat.

Mrs. Harris asked Mr. Hunter if all of the recommendations made by the Architectural Review Board on September 10 were included on the plat and/or the Development Conditions and he replied that they were.

Mr. Thomas presented the statement of justification, stating that they had met with staff and the Architectural Review Board at great length, before reaching an agreement that the existing structure, which dated back to 1870, should be demolished.

Mr. Thomas stated that the applicant accepted the Conditions outlined in the staff report. He advised that on August 29, 1993, the church would be celebrating its 125th anniversary at the same location and would like the Board to grant this request so that they may continue to stay at that location.

Mr. Hammack asked if the proposed church was of the same size as the old church in terms of seating capacity. Mr. Thomas said that the original church was larger in square footage but similar in seating capacity. Mr. Hammack asked if the church might have to dedicate right-of-way because it was replacing a existing use with a comparable use, and there was no nexus with an expansion of the use. He also questioned the need to provide alternative access across Ft. Belvoir and asked if Mr. Thomas had looked into that aspect of the proposal. Mr. Thomas said the church had requested that Ft. Belvoir allow them to relocate the access point, if feasible; the church was desirous of continuing the discussions along those lines; he noted that Ft. Belvoir was presently in a state of flux and might not be in a position to make a commitment and the church would have to use the existing access point. Mr. Thomas said he agreed that the dedication issue is one that was addressed by the Office of Transportation; the church regarded it as a part of the process and the area in question is a part of the approved plan for the widening of Route 1. In answer to a question by Mr. Hammack, Mr. Thomas said that the church had not previously been under special permit. Mr. Hammack noted that the existing church could have been refurbished without requiring a special permit. Mr. Thomas said he knew that to be true; however, it was not feasible.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SP 93-V-021 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 15, 1993, as amended: Condition 4 - add a sentence stating, "...The Board of Zoning Appeals has no objection to the waiver of the site plan...." Condition 12 was removed in its entirety. Mr. Kelley said he could not imagine that Route 1 had any other place to go; he did not anticipate that Ft. Belvoir or the adjacent stables would give up any land. For those reasons, he did not believe that the Condition should be imposed.

Mr. Pammel said that, if the applicant was willing to give up the right-of-way for future improvements of Route 1 and had agreed to the Condition, he did not understand why the Board wished to delete Condition 12. Mr. Kelley suggested that the reason why the applicant was willing to accept the imposition of Condition 12 was that they may have believed the application would not get staff approval if they did not accept the Condition. Mr. Pammel submitted that Ft. Belvoir was in a state of transition, there would be some major office development there as they go into another mode and he believed there would be dedications for the improvement of Route 1, consistent with Development 12; he believed the Board should impose the dedication. Chairman DiGiulian said he was not sure the applicant was willing but, rather, that they felt obligated to agree to the Condition in order to have their special permit granted. Chairman DiGiulian said he could not find a nexus between what previously existed and what they now propose; he believed that what they now were proposing did not create the need for additional right-of-way.

Mrs. Harris said she understood Mr. Pammel's reasoning, but she agreed with Mr. Kelley for the reasons stated by Chairman DiGiulian; also, the applicant would not increase the intensity, which might have required road improvements.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-V-021 by TRUSTEES OF WOODLAWN BAPTIST CHURCH, under Sections 3-103 and 8-915 of the Zoning Ordinance to permit a church and related facilities and waiver of the dustless surface requirement, on property located at 9001 Richmond Hwy, Tax Map Reference 109-2{{1}}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 20, 1993; 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-1, HC, HD.
3. The area of the lot is 5.16 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, 8-915, and 7-206 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 Schiller & and Associates, P.C., dated June 17, 1991, revised through April 20, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. This Special Permit for a Church and related facilities 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 waiver of the site plans.

5. There shall be 73 parking spaces provided as shown on the Special Permit Plat. All parking shall be on site.

6. The maximum number of seats in the main area of worship shall be 250.

7. Transitional Screening 1 shall be modified along all property lines to allow existing vegetation, supplemented where necessary, in accordance with the combination Special Permit Plat and Landscape Plan and as determined by the Urban Forester, to provide the required screening. If a trash dumpster is to be located on the property, its location shall not be in a required parking space and shall be located in a manner which can be screened from view so as not to detract from the historical character of the church.

8. The barrier requirement shall be waived along all lot lines.

9. Interior parking lot landscaping shall be provided and maintained in accordance with Article 13, Landscaping and Screening.

10. Signs shall be permitted in accordance with Article 12, Signs.

11. Parking lot lighting shall be on standards not to exceed twenty (20) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent properties.

12. The applicant shall make good faith efforts to provide an alternative access to the site across Ft. Belvoir property to the Route 1/Woodlawn Road intersection in order to retain full access to the site.

13. Best Management Practices (BMP) for the control of stormwater runoff shall be provided as determined by the Director of the Department of Environmental Management to meet the requirement of the Chesapeake Bay Preservation Ordinance.

14. Approval of the dustless surface requirement is granted for the gravel surfaces indicated on the plat submitted with this application and shall be for the time period specified in Sect. 8-915 of the Zoning Ordinance. The gravel surfaces shall be maintained in accordance with the Public Facilities Manual standards, and shall include but may not be limited to the following guidelines:

Speed limits shall be limited to ten (10) mph.

During dry periods, application of water shall be made in order 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.

Routine maintenance shall be performed to prevent surface uneveness and wear-through of subsoil exposure. Resurfacing shall be conducted when stone becomes thin.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 494, July 20, 1993, (Tape 1), Scheduled case of:

8:00 P.M. VINCENT L. & TRACEY A. L. WOOD, SP 93-Y-025 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit modification to minimum yard req. to permit construction of deck 17 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 15113 Elk Run Rd. on approx. 20,835 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 427.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Vincent L. Wood, 15113 Elk Run Road, Chantilly, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the site was south of Lee Jackson Memorial Highway and east of Pleasant Valley Road in the Pleasant Valley Subdivision; the site and surrounding lots are zoned R-C and developed with single family detached dwellings; the request was for a variance of 3 feet to the minimum side yard for the proposed deck; however, prior to rezoning to the R-C district, the property was zoned R-2 (Cluster), with a minimum side yard requirement of 8 feet and total side yard requirement of 24 feet, which this proposed deck meets; a dwelling on adjacent Lot 426 is located approximately 20.5 feet from the shared side lot line.

Mr. Wood said the staff report as presented by Ms. Langdon provided all the information required; the problem was that all of the houses in the neighborhood were fairly well spread out, except for his and his next door neighbor's; the back of his dwelling, where they propose to build the deck, is 17 feet from the property line and the deck would be no closer to the property line than the house now is. Mr. Wood said that the deck would be built by a builder who had built many of the other decks in the neighborhood and knew the conformance standards.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant SP 93-Y-025 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 13, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-025 by VINCENT L. & TRACEY A.L. WOOD, under Section 3-C03 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C

lot to permit construction of deck 17.0 ft from side lot line, on property located at 15113 Elk Run Rd, Tax Map Reference 33-4((2))427, 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 20, 1993; 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-C, WS, AN.
3. The area of the lot is 20,835 square feet.
4. The applicant has met Items 1 through 4.

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 specified deck shown on the plat 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 prepared by Paciulli, Simmons & Associates, Ltd., dated July 8, 1986, finalized July 29, 1986, revised by Vincent and Tracey Wood, dated May 11, 1993, revised June 28, 1993, submitted with this application and not transferable to other land.

3. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

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 permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 495, July 20, 1993, (Tape 1), Scheduled case of:

8:00 P.M. WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC., SPA 76-A-022 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-A-022 for community pool and tennis courts to permit basketball court and tennis hitting wall. Located at 4627 Holborn Ave. on approx. 5.88 ac. of land zoned R-2. Braddock District. Tax Map 70-1 ((1)) 16. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Frans Hagen, 4413 Woodchuck Court, Annandale, Virginia, President of the Wakefield Chapel Recreation Association, Inc., replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the site is south of the intersection of Holborn Avenue and Toll House Road; the pool operates from 9:00 a.m. to 9:00 p.m. daily and the tennis courts may be used 8:00 a.m. to 10:00 p.m. daily;

the application was requesting that the basketball court/tennis hitting wall would also be available for use between 8:00 a.m. and 10:00 p.m. daily. Turkey Run crosses the property along the southern and eastern lot lines and its associated floodplain covers the southern portion of the property; however, the floodplain and the limits of the Environmental Quality Corridor (EQC) are not designated on the special permit plat. In addition, a large part of the area has been identified as a Resource Protection Area (RPA) under Fairfax County's new Chesapeake Bay Preservation Area maps. The proposed location of the basketball court/tennis hitting wall is within the RPA and the applicant must obtain permission from the Department of Environmental Management (DEM) to locate the proposed courts within the RPA. Ms. Anderson referenced Proposed Development Condition 6 that allows for a minor modification of the location of the basketball court/tennis hitting wall if it is required for compliance with the Chesapeake Bay Preservation Ordinance when the plat goes through DEM. It was, therefore, staff's conclusion that the application was in harmony with the Comprehensive Plan and in Conformance with the Zoning Ordinance and staff, therefore, recommended approval, subject to the Proposed Development Conditions.

Mr. Hagen made a presentation describing the Association in terms of quality, safety, pride, family orientation, good management, financial soundness, and swim and tennis competition.

Don Woodworth, 4220 Holborn Avenue, Annandale, Virginia, Secretary of the WCRA Board of Directors and agent for the application, presented the statement of justification. He presented a history of the development of the Association and described their proposed expansion. Mr. Woodworth described the proposed basketball court as a single, small, paved surface, half to be used for tennis and half for basketball. The unlighted court will be 70 feet long and 42 feet wide with baskets at both ends, which he said was much smaller than the usual competitive basketball court of 94 feet by 50 feet, but tennis will be given priority at the eastern end of the court. Mr. Woodworth said that they have endeavored to minimize the impact of the improvement on the neighbors by having unlighted courts to prevent nighttime use; they will plant a landscape buffer between the courts and Holborn Avenue to eliminate distractions to the neighbors; their plan includes a substantial buffer area, including at least 7 new large cedar trees which, in addition to the 3 existing deciduous trees near the entrance, should provide substantial screening from the street. Mr. Woodworth referenced submission of letters to Mr. Hagen from Mr. Dau, who opposed the plan, along with other neighbors who believe that the court will be noisy and may attract outsiders to play on the court. Mr. Woodworth said that the noise from the courts could not reach the level of the noise that emanates from the pool on an active day; the screening should reduce the noise to a level that is less than is generated in the driveway courts at the homes of some of the concerned neighbors; none of the homes on Holborn Avenue is directly adjacent to the court, all are located across Holborn Avenue and across a 55-foot setback from Holborn Avenue that will be between the street and the court area. Mr. Woodworth said he did not anticipate that the threat of outsiders coming to play on the court would become a serious problem. He referenced several other public courts in the immediate area which are not heavily used; he did not believe that outside players would bypass the many unused public courts in the area to play on an out-of-the-way undersized court on private property; they have posted the property with "no trespassing" signs and have authorized Fairfax County Police to prevent trespassing; the Police have said they would handle any complaints on a priority basis, arriving at the site in less than five minutes; the Board is firmly committed to enforcing the no-trespassing policy and members would personally intervene, if necessary. Mr. Woodworth expanded upon the high standards of the Association and their desire to have a beautiful recreation area, of which they are very proud.

Speaking in favor of the application were: Ed Somensatto, 8507 Braeburn Drive, Annandale, Virginia, member of the Association's Board; Kevin Greene, 8331 Toll House Road, Annandale, Virginia, read a letter on behalf of his father, Rear Admiral James B. Greene, Jr., who was unable to attend and whose house is one of the closest to the recreational facility; Jane Crightner, 4413 Duncan Drive, Annandale, Virginia; and, James Menard, Vice President of Operations for the Association, 4620 Duncan Drive, Annandale, Virginia.

They endeavored to assure the BZA that the Club is viewed as a courteous neighbor, to keep the members informed, to provide the children with greater choices of recreation and fun, to explain their goals in writing and verbally to neighbors who are concerned, and to have meetings with the membership and neighbors. A petition with 120 signatures of support was submitted. Supporters believed that granting permission for this request would make up somewhat for what was perceived by some as an injustice to the children of the community by the County in the closing of the Chapel Square School and turning the basketball courts into parking lots. Another consideration was the safety of the children who would not have to cross major streets to reach the recreational area; they reviewed the landscaping plans and claimed them to be more than adequate.

Mr. Hammack asked Mr. Menard if there was any history of trespassing or unauthorized use associated with the tennis court or any of the other facilities on site. Mr. Menard said there was no history of problems with the tennis courts to the point that they were not locked. Mr. Woodworth said that they had anecdotal reports of strangers playing, on occasion; they have never found any regular use that could be a problem.

Mrs. Harris asked if the applicant was going to replace the trees they would relocate away from the tennis court. Mr. Menard said they would not replace the trees in the original location; there are two layers of trees; the upper berm is planted with arborvitae, a dense cedar-like tree that is already grown completely across, shielding the screen; on the lower

berm, located on top of some residual asphalt, the soil has not been thick enough to hold the trees and they had to bring one of them back and cable it after it blew over, which is why they planned to move them. Mrs. Harris asked if those trees were required by the County. Mr. Menard said the second layer was not required, to his knowledge. Mr. Hagen confirmed that they had not been required by the County.

Mrs. Harris asked if there would be a fence around the basketball court and/or tennis hitting wall to prevent the children from running into the street after balls. Mr. Hagen said they could not get to the street because of a pathway along the area, an existing hedge, and a proposed levee; beyond that there will be trees.

The following people spoke in opposition to the application: Rick Dau, 4602 Holborn Avenue, Annandale, Virginia, representing 15-20 homeowners; Georgia Woody, 4610 Holburn Avenue, Annandale, directly across from the proposed facility; and Leo Kelly, 4606 Holburn Avenue, Annandale, Virginia.

Issues raised in opposition were: Many members reside outside of the immediate area; less than 5% of the membership are property owners who would directly be affected by the facility; the impact of the proposed actions of one property owner upon adjacent property owners, especially those within a 500-foot radius; more than 50% of the area homeowners, or owners-in-part, are directly opposed to the application; the homes on Holborn Avenue are the homes most directly affected because they are closest to the proposed facility, some face it, and access to the facility is via Holborn Avenue; the Holborn Avenue property owners are relatively unprotected by the terrain and vegetation when compared to the other properties; of the 13 homes which share the block with the facility, 12 were opposed to the application; the new facility will be noisy and increase the year-round noise and traffic in the immediate neighborhood, especially during the evening hours; the courts/hitting wall will be uncontrolled and unsupervised most of the year; the vegetation barrier is considered to be of no value to noise reduction, which engineering calculations and references substantiate and a copy of which was submitted with Mr. Dau's statement; the hours of operation until 10:00 p.m. were unacceptable; the potential for outsiders using the courts does exist; and the belief that existing courts in the area are sufficient. A petition in opposition was submitted. Complaints were made about players using the courts during late hours and keeping others from sleeping and noise from boom boxes being played at 11:45 p.m. requiring police intervention.

Mr. Hammack asked Mr. Dau if any members of the group he was representing had any documented cases of excessive noise or unauthorized use as a result of the tennis facility or of the general facility. Mr. Dau said noise had been reported on occasion and, about two weeks ago, the Police had been called; tennis is considered to be a quiet sport, unlike basketball. Mr. Hammack noted that the basketball court appeared to be about 150 to 200 feet away from the closest residence. He asked Mr. Dau if anyone in his group actually had gone out and listened to the noise being generated by basketball. Mr. Dau said they had.

In answer to a question from Mr. Kelley, Mr. Dau said there are members who reside as far away as Springfield and he would guess a circle around the facility would extend about a mile or a mile and a half in radius.

Mr. Hammack asked Ms. Woody where her sons played basketball and she answered that they play on courts outside the neighborhood and in her driveway where she has a basketball court. He asked if the court in Chapel Woods, where her sons played, was close to residences and she replied that it was.

Mr. Woodworth came to the podium to speak in rebuttal. He said that there were calls to the Fairfax County Police on each of the last two Saturdays, pointing out that the calls had been made since the neighborhood meeting regarding the new project. Mr. Woodworth said that the Police representative, Capt. Lubas, reported that both of the calls were recorded as "unfounded," one for trespassing and the other for loud noise. Mr. Woodworth submitted that a teen party a couple of Saturdays ago had been well chaperoned, with no consumption of alcohol, and no rowdy behavior. He also related details about a recent adult party.

Mr. Woodworth said that, despite Mr. Dau's interest, his property is not listed in the area of adjacent owners which the Association was required to notify of the hearing; however, they did notify him because they knew he was interested. Mr. Woodworth said that, standing on the sidewalk of Mr. Dau's house, one could not even see the area where the proposed addition would be. He said that two of the three opposing neighbors present had basketball courts in their front yards which he believed to be just as noisy as what the Association planned to construct.

Mr. Kelley addressed Mr. Woodworth's acknowledgement of the complaints, alluding to Mr. Woodworth's earlier statement that the Club had a clean bill of health. Mr. Woodworth said that the Police determined the complaints to be "unfounded" and they were well within their noise rights at the time of the social events. The Police had investigated the complaints without finding any justification for the calls. They did not find anyone making noise, any vandalism or theft, or any indication that some unauthorized person had been in the area.

Mr. Hammack asked Mr. Woodworth if the parking lot was open and accessible all year round, 24 hours per day. Mr. Woodworth said the lot gate is locked each evening at the close of the pool hours. Mr. Hammack asked Mr. Woodworth if they had timers on their tennis court lights

and Mr. Woodworth said they did. He said the Pool Manager opened the parking lot gate in the morning and closed it at night; the lot is kept locked during the rest of the year, when the pool is not in use. The tennis court also has a gate but is not kept locked.

Mr. Pammel moved to grant SPA 76-A-022 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 13, 1993, as modified and reflected in the Resolution; Conditions 4, 8 and 11 were modified.

Mr. Pammel added a sentence to Condition 4 advising that, in the event DEM determined that a site plan is required, the BZA requested a waiver of the site plan.

Mr. Hammack requested that the hours of operation of the basketball court and tennis hitting wall be modified to grant neighbors a rest from the noise, with a sign posted to that effect. Mr. Pammel accepted that modification as part of his motion.

Mrs. Harris requested that the basketball court/tennis hitting wall be fenced in for security reasons and to keep children from running into the street after balls. Mr. Pammel accepted that modification as part of his motion. (This condition underwent further clarification at the meeting of July 28, 1993.)

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 76-A-022 by WAKEFIELD CHAPEL RECREATION ASSOCIATION, INC., under Section 3-203 of the Zoning Ordinance to amend SP 76-A-022 for community swimming pool and tennis courts to permit basketball court and tennis hitting wall, on property located at 4627 Holborn Ave., Tax Map Reference 70-1((1))16, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 20, 1993; 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 5.88 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 8-403 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. 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 prepared by Blevins, Olson & Associates, dated April 24 and April 25, 1993, and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. Prior to the issuance of a grading or building permit, whichever occurs first, the Director, Department of Environmental Management (DEM), shall determine if a site plan is necessary under the provisions of Article 17, Site Plans. If a site plan is necessary, it shall be in conformance with the approved Special Permit Amendment plat and these development conditions, shall delineate the Environmental Quality Corridor (EQC) and the Resource Protection Area (RPA) associated with Turkey Run, and all limits of clearing and grading shall remain consistent with the limits of the EQC. If DEM determines that a site plan is required, the Board of Zoning Appeals recommends a waiver of that site plan.

5. Prior to the issuance of any grading or building permit, the applicant shall provide stormwater management Best Management Practices (BMPs) that meets the requirements of the Chesapeake Bay Preservation Ordinance as approved by the Director, DEM.

6. The location of the basketball court/tennis hitting wall shall be as shown on the approved Special Permit Plat and shall comply with the Chesapeake Bay Preservation Ordinance as determined by the Director, DEM. This application shall become null and void in the event the basketball court/tennis hitting wall is not permitted by the Director, DEM, pursuant to the terms of the Chesapeake Bay Preservation Ordinance. A minor modification in the location of the basketball court/tennis hitting wall, as allowed by Sect. 8-004 of the Zoning Ordinance, may be permitted if doing so is required by the Director, DEM, in order for the proposal to comply with the Chesapeake Bay Preservation Ordinance.

7. The maximum number of family memberships shall be 500.

8. The regular hours of operation for the swimming pool shall be limited to 9:00 A.M. to 9:00 P.M. daily. The hours of operation for the tennis court shall be limited to 8:00 a.m. to 10:00 p.m.; the operation of the basketball court and tennis hitting wall shall be limited to 9:00 A.M. to 9:00 P.M. daily, with a sign posted to that effect.

9. Ninety-two (92) parking spaces shall be provided as shown on the special permit plat. All parking shall be on site.

10. All lights and noise, including loudspeakers, shall be confined to the subject site.

11. All existing landscaping and screening shall be maintained to the satisfaction of the Director, Department of Environmental Management. A six (6) foot high solid wood fence shall be provided along the northern lot line, with all other barriers waived around the site's periphery. An eight (8) foot high chain link fence shall be provided around the basketball court, with a gate that can be locked.

12. Any after hours parties shall be limited to six (6) per year. Approval of each party shall be required by the Zoning Administrator prior to each separate party.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 499, July 20, 1993, (Tape 1), Action Item:

Approval of Resolutions from July 13, 1993

Mr. Ribble moved to approve the Resolutions as submitted by the Clerk. Mr. Kelley seconded the motion, which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 499, July 20, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Stephen W. & Deborah J. Weatherford, VC 93-L-065

Mr. Hammack asked staff if the application had been completely filed. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that it had been. She said that the application was not complicated and did not require staffing. Mr. Hammack moved to grant the request for an out-of-turn hearing. The new hearing date was scheduled for September 14, 1993. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 500, July 20, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Larry & Paulette Campbell, VC 93-D-085

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that this was a subdivision variance and was outside of the 90 days because of the Mosque application having pushed everything forward. She suggested a date of October 26, 1993. Ms. Kelsey further advised that the site plan had expired.

Mr. Hammack moved to deny the request for an out-of-turn hearing. Mrs. Harris seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 500, July 20, 1993, (Tape 1), Information Item:

Dar Al-Hijrah Mosque
Scheduled for Hearing on October 5, 1993

Jane C. Kelsey, Chief, Special Permit and Variance Branch, noted that the applicant wished to have a letter removed from the file. It was the consensus of the Board that the request be denied and that the letter be forwarded to the Commonwealth Attorney.

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As there was no other business to come before the Board, the meeting was adjourned at 10:00 p.m.

Geri B. Bepko
Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John P. DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: September 7, 1993

APPROVED: September 14, 1993

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