The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 27, 1993. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:05 and Mrs. Thonen 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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Page 1, July 27, 1993, (Tape 1), Scheduled case of:

9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-P-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8 ft. from one side lot line and 10 ft. from other side lot line (20 ft. min. side yard req. by Sect. 3-107). Located 1600 Seneca Ave. on approx. 7,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-3 ((2)) 231. (Concurrent with VC 93-D-049, VC 93-D-050, VC 93-D-051 and VC 93-D-052).

9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-P-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 19.27 ft. from street line of a corner lot, 12 ft. from side lot line and 5 ft. from edge of pavement of access easement (40 ft. min. front yard req. and 20 ft. min. side yard req. by Sect. 3-107; 25 ft. min. yard req. from access easement). Located 1600 Seneca Ave. on approx. 7,878 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-3 ((2)) 230. (Concurrent with VC 93-D-048, VC 93-D-050, VC 93-D-051 and VC 93-D-052).

9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-P-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 7 ft. from side lot line, 10 ft. from other side lot line and 17 ft. from edge of pavement of access easement (20 ft. min. side yard req. by Sect. 3-107 and 25 ft. min. yard req. from access easement). Located 1604 Seneca Ave. on approx. 7,593 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-3 ((2)) 235. (Concurrent with VC 93-D-048, VC 93-D-049, VC 93-D-051 and VC 93-D-052).

9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-P-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 6 ft. from one side lot line and 12 ft. from other side lot line and 5 ft. from edge of pavement of access easement (20 ft. min. side yard req. by Sect. 3-107 and 25 ft. min. yard req. from access easement). Located 1600 Seneca Ave. on approx. 7,000 sq. ft. of land zoned R-1 and HC. Dranesville District. Tax Map 30-3 ((2)) 232. (Concurrent with VC 93-D-048, VC 93-D-049, VC 93-D-050 and VC 93-D-052).

9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-P-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8 ft. from one side lot line and 10 ft. from other side lot line (20 ft. min. side yard req. by Sect. 3-107). Located 1606 Seneca Ave. on approx. 6,500 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-3 ((2)) 236. (Concurrent with VC 93-D-048, VC 93-D-049, VC 93-D-050 and VC 93-D-051).

Vice Chairman Ribble noted that the Board of Zoning Appeals (BZA) had received a revised plat and proposed modifications to the application and asked the applicant's attorney to address the revisions. Lynn Strobel, with the firm of Stackhouse, Emrich, and Lubeley, P.C., 13th Floor, Arlington, Virginia, addressed the BZA and asked for a one hour delay so that she could confer with the applicant's engineer before deciding whether to go forward with the case or request a deferral.

Mr. Kelley made a motion to hold the case over to 10:00 a.m. Mr. Pammel seconded the motion.

Vice Chairman Ribble asked if anyone from the audience objected to the deferral. A man from the audience expressed his opposition to a delay and Vice Chairman Ribble informed him that he would have to come to the podium to speak to the request.

Ms. Strobel stated that she believed that a ten minute delay would be sufficient.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and apologized for the confusion. She stated that staff supported the deferral because the applicant was not given sufficient time to review the addendum to the staff report which staff had finalized at 6:00 p.m. last night. Ms. Kelsey explained that staff had considered the applications to be simple yard variances, but had conducted additional research in response to concerns raised by the neighbors. She noted that the results of the research were contained in the addendum. Ms. Kelsey further noted that the additional research had also motivated staff to recommend additional development conditions, which the applicant had received by fax the previous evening.

In response to Mrs. Harris' question as to whether the concerned citizens had been privy to the new plats and addendum, Ms. Kelsey stated that the addendum information had been faxed to Supervisor Hanley's office the previous evening. She expressed her belief that Supervisor

Hanley had relayed the information to the concerned citizens. Ms. Kelsey explained that the citizens had not seen the plats which were received by staff just prior to the public hearing. She said that the new plats reflected smaller structures and lesser variances.

Mr. Hammack expressed his support for the one hour delay and explained that he, too, would like to study the addendum and plats. The BZA members had a brief discussion regarding the issue.

Earl Allison, 1624 Seneca Avenue, McLean, Virginia, the man who had spoken from the audience, came to the podium and addressed the BZA. He stated that although the neighbors were aware of the new plats, they had not seen them. He noted they had received the staff report as well as the addendum. Mr. Allison said that many of the neighbors had taken leave from their jobs to attend the public hearing and would be inconvenienced by the delay. He expressed his belief that the applicant should decide immediately whether the case could be heard at 10:00 a.m. or be deferred to another day.

Ms. Strobel asked the BZA to defer the case to August 3, 1993. In response to Vice Chairman Ribble's question, Ms. Kelsey stated that the August 3, 1993 schedule could accommodate an additional case.

Mr. Hammack made a motion to defer the cases to August 3, 1993 at 9:00 a.m. The motion carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

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Page 2, July 27, 1993, (Tape 1), Scheduled case of:

9:10 A.M. DONALD F. & BERNICE L. REILLY, VC 93-M-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20 ft. from street line of a corner lot (35 ft. min. front yard req. by Sect. 3-207). Located at 3800 Lakeview Terrace on approx. 12,000 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 119.

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. Mr. Reilly replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated the applicants were requesting a variance to allow construction of a carport addition 20 feet from the front lot line. The Zoning Ordinance requires a minimum 35 foot front yard; therefore, the applicants were requesting a modification of 15 feet to the minimum front yard requirement.

The applicant, Donald F. Reilly, 3800 Lakeview Terrace, Falls Church, Virginia, addressed the BZA. He said he would like a carport to provide protection for his cars and to provide enclosed storage space, and noted that the existing carport would be converted into a formal entrance to the house. Mr. Reilly explained that the proposed carport would be attached to the eastern side of the house by a 20 foot extension of the existing roof. He stated that because of topographical problems on the lot, the proposed site is the most practical location for the carport. In summary, Mr. Reilly said the renovation would be beneficial to the neighborhood, the application met the necessary criteria for the granting of a variance, and asked the BZA to grant the request.

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

Mr. Hammack made a motion to grant VC 93-M-047 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 20, 1993.

Mrs. Harris seconded the motion and Vice Chairman Ribble called for discussion.

Mr. Pammel noted that the topographic conditions of the lot, as shown on the photographs and topographic map, clearly indicated a hardship and the inability to locate the carport elsewhere on the lot.

Vice Chairman Ribble stated that the applicants had presented a well thought out plan.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-047 by DONALD F. AND BERNICE L. REILLY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20 feet from street line of a corner lot, on property located at 3800 Lakeview Terrace, Tax Map Reference 61-3((14))119, 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 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 12,000 square feet.
4. It is a close application, but there are topographical conditions which exist on the property.
5. The granting of the variance would not set a precedent.
6. There would be no detrimental impact on the other residences in the community.
7. The application meets the standards necessary for the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location and the specific (carport) structure shown on the plat entitled Lakeview Drive Elevation, prepared by Divito and Associates, undated and stamped received by Zoning Evaluation Division on May 6, 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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 Chairman DiGiulian absent from the meeting.

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*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 4, July 27, 1993, (Tape 1), Scheduled case of:

9:20 A.M. FRANCHON M. & GLORIA S. SMITHSON, VC 93-Y-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 0.8 ft. from side lot line (8 ft. min. side yard req. by Sect. 3-307) with both sides totaling 10.9 ft. (20 ft. total min. side yards req. by Sect. 3-307). Located at 13028 Grey Friars Place on approx. 10,695 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 35-1 ((2)) 633.

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. Mr. Smithson replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to allow construction of a deck 0.8 feet from the side lot line with both side yards totaling 10.9 feet. The Zoning Ordinance requires a minimum 8 foot side yard and total minimum side yards of 20 feet; therefore, the applicants were requesting modifications of 7.2 feet to the minimum front yard requirement and 9.1 feet to the minimum total side yard requirement.

The applicant, Franchon M. Smithson, 13028 Gray Friars Place, Herndon, Virginia, addressed the BZA. He stated that, although french doors were installed to service a deck, financial consideration had prevented him from having the deck built during the original construction of the house. Mr. Smithson said when he was financially able to contract for the deck, he was told that because of the location of the house on the lot a variance would be needed. He explained the area to the rear of the house has been designated as the side yard. In summary, he stated that the deck would not have a detrimental impact on the neighbors, the deck would conform with other decks in the neighborhood, the homeowners association supported the request, the proposed location was the only practical place to build the deck, and asked the BZA to grant the request.

Vice Chairman Ribble asked if the abutting property most affected by the deck was common ground. Mr. Smithson said it was.

In response to Mr. Hammack's question as to the size of the deck which the contractor would have been allowed to install, Mr. Smithson said that the proposed deck would be smaller. He noted that the deck would be similar in size or smaller than other decks in the area.

In response to Mr. Pammel's question as to whether the other decks in the area were as close to the side lot lines as the proposed deck would be, Mr. Smithson said they were not.

Mr. Hammack stated that he traditionally guarded lot lines, and although the deck would abut common property, he could not support an application for a deck which was only 0.8 feet from the lot line. He noted that the deck could not be constructed or maintained without trespassing onto the common ground and asked if the applicant would reconfigure the deck. Mr. Smithson said that if the BZA required a reconfiguration of the deck he would comply, but noted that the proposed deck was consistent with other decks in the area and with what could have been constructed by the builder.

Mr. Pammel noted that the BZA had a previous application where the builder could have constructed the deck by-right and asked staff if the application before the BZA was a similar situation. Mr. Heine said it was not.

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

Mr. Pammel made a motion to grant VC 93-Y-054 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 20, 1993.

Mr. Kelley seconded the motion and Vice Chairman Ribble called for discussion.

Mr. Hammack said that, although he appreciated the applicants' desire to build a deck that would be comparable to other decks in the area, he opposed the request because he believed the deck could be reconfigured and moved to the south so that a lesser variance would be needed. He expressed his belief that lot lines should be protected.

Mr. Pammel noted that because the proposed deck would abut the common area, there would be no impact on the neighbors.

Vice Chairman Ribble said he supported the motion because only one point of the deck would be 0.8 feet from the side lot line.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-054 by FRANCHON M. AND GLORIA S. SMITHSON, under Section 18-401 of the Zoning Ordinance to permit construction of deck 0.8 feet from side lot line with both sides totaling 10.9 feet, on property located at 13028 Grey Friars Place, Tax Map Reference 35-1((2))633, 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 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-3 (cluster).
3. The area of the lot is 10,695 square feet.
4. The applicants have testified there are extenuating circumstances in that the house was built to accommodate a deck in the proposed location.
5. The deck cannot be located on the north side of the property.
6. The request is an appropriate request.
7. The unusual configuration of the lot has caused constraints on the property.
8. The application meets the necessary standards for the granting of a variance.
9. The unusual shape of the lot, the location of the house on the property, and the orientation of the house in relationship to the lot lines 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 (deck) addition shown on the plat prepared by Huntley, Nyce and Associates, Ltd., dated December 2, 1988, revised April 29, 1993, submitted with this application and is not transferable to other land.

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

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

Mr. Kelley seconded the motion which carried by a vote of 4-2 with Mrs. Harris and Mr. Hammack voting 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 August 4, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 6, July 27, 1993, (Tape 1), Scheduled case of:

9:30 A.M. RAYMOND M. NOWAKOWSKI, VC 93-M-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport and addition (shed and deck) 5.5 ft. from side lot line (15 ft. min. side yard req. by Sect(s). 3-207). Located at 6830 Pacific Lane on approx. 21,131 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((17)) 12.

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

Donald Heine, Staff Coordinator, presented the staff report and noted the applicant was requesting two variances. He stated the first request was to allow construction of an addition consisting of a combined deck and shed 5.5 feet from the side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicant was requesting a modification of 9.5 feet to the minimum side yard requirement. Mr. Heine said the second request was to allow construction of a carport 5.5 feet from the side lot line. The Zoning Ordinance allows carports to extend 5 feet into the required 15 foot side yard; therefore, the applicant was requesting a variance of 4.5 feet to the minimum side yard requirement.

The applicant, Raymond M. Nowakowski, 6830 Pacific Lane, Annandale, Virginia, addressed the BZA and stated that for the past five years he has been in the process of renovating the house which he purchased in 1982. Mr. Nowakowski stated that the steep topographic conditions of the lot precluded placing the addition and carport elsewhere on the property. He explained that parking on the street was inadvisable because the street provided the main access for two schools and also had a deep concrete drainage ditch running parallel to his property. Mr. Nowakowski said the proposed location is the only practical site for the carport and would have no detrimental impact on the neighbors. He explained he had retained an architect to ensure that the carport would be architecturally and aesthetically pleasing.

Mrs. Harris asked whether he needed the full 24 feet for the new carport, the existing carport, and the shed. She explained that the terrain should be left as open as possible and expressed her belief that the large shed would have a detrimental visual impact on the neighbor. Mr. Nowakowski said he had not realized the 8 by 4 foot shed would be a problem and although it would be an asset when he was gardening, it was not vital.

In response to Mr. Hammack's question regarding the rectangular section of the deck, Mr. Nowakowski said it would be an eating area. He explained that the location of the deck was necessary in order to maintain the aesthetic line. Mr. Nowakowski said that the abutting neighbor supported the application and noted that the neighbor's lot was elevated.

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

Mrs. Thonen made a motion to grant VC 93-M-044 subject to the development conditions contained in the staff report dated July 20, 1993.

Mr. Kelley seconded the motion and said he was impressed with the applicant's preparation for the addition, his thoughtfulness of the neighbors in taking the aesthetics into account, and expressed his belief that it was a good application.

Mr. Hammack stated that he was in opposition to the request. He believed the request was too great and expressed his belief that the request was for the applicant's convenience and the deck and carport could be reconfigured. Vice Chairman Ribble asked if Mr. Hammack would support a lesser variance, Mr. Hammack said he probably would.

Mrs. Harris said her main objection was the shed. She, too, expressed her belief that the deck and carport could be reconfigured.

Mr. Pammel made a substitute motion to grant-in-part VC 92-M-044 to allow a 22 foot carport 7.5 feet from the side lot line and denied the shed.

Mrs. Harris seconded the substitute motion.

In response to Mr. Kelley's question as to how close to the lot line the shed could be located by-right, Ms. Kelsey said that the 9 foot high shed attached to the deck would be considered an addition; therefore, it must meet the accessory structure requirement of 15 feet from the side lot line and a distance of its height from the rear lot line. She noted that if the shed was 8 foot high it could be placed anywhere on the lot other than the deck. Ms. Kelsey explained that by placing the shed on the deck, it changed the definition of the deck to an addition.

In response to Mrs. Harris' question as to what the setback requirements would be for the deck without the shed addition, Ms. Kelsey said the 4 foot high deck could be constructed 10 feet from the side lot line.

The substitute motion carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

Vice Chairman Ribble advised the applicant that a new plat would be necessary before the Resolution could be approved. Ms. Kelsey noted that the last meeting before the August recess would be held on August 3, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-044 by RAYMOND M. NOWAKOWSKI, under Section 18-401 of the Zoning Ordinance to permit construction of carport and addition (shed and deck) 5.5 feet from side lot line **(THE BZA ONLY GRANTED A DECK 7.5 FEET FROM THE SIDE LOT LINE AND A 22 FOOT WIDE CARPORT 7.5 FEET FROM THE SIDE LOT LINE) (THE BZA DENIED THE SHED)**, on property located at 6830 Pacific Lane, Tax Map Reference 71-2((17))12, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 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 21,131 square feet.

This application (deck and carport) meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

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

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8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 additions shown on the plat prepared by Kenneth W. White, Certified Land Surveyor, dated September 17, 1982, and revised on July 26, 1993 by William J. Middleton, Jr., Architect, submitted with this application and is not transferable to other land.

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 6-0 with Chairman DiGiulian absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 4, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 8, July 27, 1993, (Tape 1), Scheduled case of:

9:45 A.M. KATHRYN C. NESBIT, SP 93-P-027 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a home professional office. Located at 10920 Blue Roan Rd. on approx. 40,000 sq. ft. of land zoned R-1 (C). Providence District. Tax Map 47-1 ((8)) 23.

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. Ms. Nesbit replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit to operate a home professional office for a pediatric physical therapy practice. Mr. Heine said the physical therapy practice would provide medically prescribed treatment for infant children to ten years of age. He noted that the use will occupy 333 square feet of the first floor of a dwelling that contains approximately 4,000 square feet of gross floor area.

Mr. Heine said it was staff's belief that, with a three year term limitation to allow for periodic review of the impact of the use, the application would be in harmony with the recommendations of the Comprehensive Plan, and would satisfy the necessary standards. Therefore, staff recommended approval subject to the development conditions contained in the staff report dated July 20, 1993.

Mrs. Harris noted that the clients' entrance was at the back of the house and asked whether a walkway would be provided, Mr. Heine said he believed the clients would access the house through the garage.

The applicant, Kathryn C. Nesbit, 10920 Blue Roan Road, Oakton, Virginia, addressed the BZA. She stated that the entrance would be to the rear of the house and expressed her belief that a walkway was not necessary.

In response to Mrs. Harris' question as to whether it would be dangerous for handicapped children to walk on grass, Ms. Nesbit said the ground was level and she did not consider the situation dangerous. Mrs. Thonen noted the children were handicapped and may even be in wheelchairs or walkers. Ms. Nesbit again expressed her belief that a walkway was not necessary. Mrs. Thonen disagreed and noted that adverse ground conditions such as mud and snow could present a dangerous situation for handicapped children.

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Ms. Nesbit expressed her belief that the application met the general standards. She noted that there would be no changes to the residential appearance to the property, the hours and intensity of business would be limited, there would be no employees, and there would be a maximum of two cars in the driveway for a brief period of time. She further noted that the landscaping, screening, and parking are sufficient. Ms. Nesbit explained that pediatric physical therapy treatment involved play designed for children's muscle development. She stated that the treatment area is designed as a comfortable playroom and no medical devices are involved in the treatment.

Ms. Nesbit stated that she had operated a similar establishment in Fairfax City for six years and noted that letters of support had been received from her former neighbors, as well as from her current neighbors. She explained that there are other businesses such as piano teachers, voice teachers, tax accountants, interior designers, and day care providers within the Miller Highs area and expressed her belief that these services, as well as her own service, are compatible with the residential character of the area. In summary, Ms. Nesbit stated that she established her private practice when she decided to stay at home to raise her family and expressed her desire to continue to operate a very limited practice.

In response to questions from the BZA, Ms. Nesbit said that when she purchased the property she had been aware of the covenant which strictly prohibited any type of business, commerce, profession, or trade in the residence. She explained that the Homeowners Association does not pursue complaints regarding covenants. She stated that she had been given the opportunity to review the letters in opposition to the request.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

Harold Mills, 10916 Blue Roan Road, Oakton, Virginia, addressed the BZA. He stated that the home professional office would have no detrimental impact on the neighborhood and explained that the neighbors would be at work during the hours of operation.

In response to Mrs. Harris' question as to where the houses on Lots 22, 23, and 24 are located, Mr. Mills used the viewgraph to depict the location of the houses.

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

Mary Ann Green, 11011 Blue Roan Road, Oakton, Virginia, addressed the BZA. She expressed her concern that the establishment of a home professional office in the neighborhood might set a precedent. The BZA explained that each case is considered on it own merits; therefore, the granting of the request would not set a precedent.

In response to Mrs. Harris' question as to whether the outdoor play equipment would be used for therapy, Ms. Nesbit said it would not. She explained that a inside waiting area is provided for the clients. Ms. Nesbit stated that she has been operating the business in her home for approximately one year.

In response to Mr. Kelley's question as to the availability of commercial space near her residence, Ms. Nesbit said she did not know. Mr. Pammel stated that the nearest commercial area would be in the Oakton Village area.

Vice Chairman Ribble closed the public hearing.

Mrs. Harris made a motion to deny SP 93-P-027 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 93-P-027 by KATHRYN C. NESBIT, under Section 3-103 of the Zoning Ordinance to permit a home professional office, on property located at 10920 Blue Roan Road, Tax Map Reference 47-1((8))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 July 27, 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 40,000 square feet.
4. The application is difficult because there are some home professional offices that blend into the neighborhood.

5. The BZA has only supported home professional offices that have been secluded and shielded from adjoining property so as to not change the residential character of the neighborhood.
6. Because of the placement of the houses contiguous to the applicant's property and the configuration of the house in relation to the street, the traffic generated by the use cannot be shielded from the adjoining neighbors.
7. The use would not be in harmony with the residential character of the neighborhood.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-907 of the Zoning Ordinance.

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 5-1 with Mr. Pammel voting 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 August 4, 1993.

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Page 10, July 27, 1993, (Tape 1), Scheduled case of:

10:00 A.M. ROBERT GOLDBERG, SP 93-H-022 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to permit deck to remain 0 ft. from side lot line (2.6 ft. min. side yard req. by Sect. 2-412). Located at 11502 Turnbridge Ln. on approx. 4,773 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 11-4 ((11)) (3) 2.

Vice Chairman Ribble noted staff had indicated that the case would be administratively withdrawn.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals. She stated that although the Zoning Administrator was in the process of reviewing the case, staff believed the case would be administratively withdrawn.

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Page 10, July 27, 1993, (Tape 1), Scheduled case of:

10:15 A.M. NEELIE A. THOMAS, SP 93-L-003 Appl. under Sect(s). 3-303 and 8-914 of the Zoning Ordinance to permit reduction in min. yard req. based on error in building location to allow workshop/storage shed to remain 1.9 ft. from rear and side lot lines. Located at 7834 Ashton St. on approx. 15,616 sq. ft. of land zoned R-3. Lee District. Tax Map 101-2 ((4)) 37A.

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. Ms. Thomas replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the original hearing held on May 4, 1993, had included a request for a child care center and school of general education and reduction of minimum yard requirements based on an error in building location. Ms. Langdon explained that because of an error in the advertisement of the workshop/storage shed portion of the application, the BZA could not take action on that part of the application. Subsequently, the workshop/storage shed portion of the application was re-advertised correctly.

Ms. Langdon said the applicant was requesting a special permit for an error in building location to allow an existing workshop/storage shed to remain 1.9 feet from a side lot line and 1.9 feet from the rear lot line. The Zoning Ordinance requires a minimum side yard of 12.0 feet and a minimum rear yard of 7.5 feet; therefore, the applicant was requesting modifications of 10.1 feet to the minimum side yard requirement and 5.6 feet to the minimum rear yard requirement.

Neelie Thomas, 3403 Beechcraft Drive, Alexandria, Virginia, addressed the BZA. She stated that the workshop/storage shed had been in existence when she purchased the property in 1979.

Mrs. Thonen noted that the area was developed in the late 1940's and early 1950's.

In response to Mrs. Harris' question as to the purpose of the workshop/storage shed, Ms. Thomas said the shed is used for storage purposes and her husband does carpentry work in the workshop area. She stated that although the shed is equipped with electricity, it is not used late at night. Ms. Thomas noted that there have been no complaints regarding the building.

In response to Mr. Hammack's question as to the distance between the shed and the structure on the adjoining property, Ms. Thomas stated that although she did not know the exact distance, the house on the adjoining property was a substantial distance from the workshop/storage shed.

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

Mr. Kelley made a motion to grant SP 93-L-003 subject to the development conditions contained in the April 27, 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-003 by NEELIE A. THOMAS, under Sections 3-303 and 8-914 of the Zoning Ordinance to permit reduction in minimum yard requirement based on error in building location to allow workshop/storage shed to remain 1.9 feet from rear and side lot lines, on property located at 7834 Ashton Street, Tax Map Reference 101-2((4))37A, 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 27, 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 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 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 August 4, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 12, July 27, 1993, (Tape 1), Action Item:

Request for Reconsideration
Wakefield Chapel Recreation Association, Inc., SPA 76-A-022

Mrs. Harris expressed concern regarding the development condition pertaining to the fence and said that the Board of Zoning Appeals (BZA) should clarify the issue.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and said that the applicant had requested guidance as to what type of fence was required.

After a brief discussion, it was the concession of the BZA to defer the issue until the next public hearing date.

Mr. Kelley made a motion to defer the request until the July 28, 1993 public hearing. Mr. Hammack seconded the motion which carried by a vote of 6-0.

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Page 12, July 27, 1993, (Tapes 1 and 2), Scheduled case of:

10:30 A.M. Q BALL, INC., SP 93-S-028 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit a billiard hall. Located at 6230 K, L, M Rolling Rd. on approx. 6.94 ac. of land zoned C-6 and HC. Springfield District. Tax Map 79-3 ((4)) 42 and 43.

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. Ms. Fried replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said that the applicant was requesting approval of a special permit to allow establishment of a billiard parlor within the existing West Springfield Shopping Center. She said the applicant was proposing to lease 7,755 square feet located in the 80,913 square foot shopping center for the billiard parlor use. Ms. Langdon explained that some fast foods and refreshments would be offered to patrons as an ancillary use. She noted that no additional exterior construction or additional gross floor area was proposed. Ms. Langdon said that the hours of operation would be from 11:00 a.m. to 2:00 a.m., seven days a week, and there would be a maximum occupancy of fifty people with a maximum of two employees present at any one time.

Ms. Langdon stated that staff believed the proposed use would be in harmony with the recommendations of the Comprehensive Plan and would satisfy the required standards. Therefore, staff recommended approval subject to the development conditions contained in the staff report dated July 20, 1993.

In response to Mrs. Harris' question as to closing time for other businesses in the area, Ms. Langdon said she did not know. Mrs. Thonen expressed her belief that most of the shops close by 11:00 p.m.

Mrs. Thonen expressed her concern regarding the patrons' ages. She explained that she did not believe young people should be allowed to congregate at the billiard parlor during school hours.

The applicant's attorney, Barbara H. Fried, 6551 Loisdale Court, Suite 900, Springfield, Virginia, addressed the BZA. She stated that billiard parlors had become an accepted social sport with approximately thirty-eight million participants. Ms. Fried said that, although during the day anyone under the age of seventeen must be accompanied by an adult, she believed the sport would provide excellent entertainment for young people during the early evening and on weekends.

In addressing the hours of operation, Ms. Fried said other businesses in the area such as restaurants, video rentals, health clubs, and food stores have late hours. She said that similar business ventures in the area are either open to 2:00 a.m. or open twenty-four hours a day.

In response to Mr. Hammack's question as to whether alcoholic beverages would be available, Ms. Fried said they would.

The BZA had a brief discussion regarding the serving of alcoholic beverages at the billiard parlor.

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

The representative of the West Springfield Terrace Apartments, David Linstaedt, 4264 Sleepy Lake Drive, Fairfax, Virginia, addressed the BZA. He stated that while they were not opposed to the function, they believed the additional restrictions should be imposed on the use. Mr. Linstaedt said that the neighborhood, which had been on the edge, was recovering due to the efforts and investments of his company and asked the BZA to protect the community from unsavory elements.

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

In rebuttal, Ms. Fried said that the billiard parlor's method of operation was similar to others in the area. She said that she had lived in the neighborhood for twenty-six years and did not believe it was a neighborhood on the edge. Ms. Fried stated that she had been involved with the management of the shopping center since it was constructed in 1977 and believed it was a good stable neighborhood. She expressed her belief that the use would be beneficial to teenagers in the area and would be well managed.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to grant SP 93-D-028 subject to the development conditions contained in the staff report dated July 20, 1993.

Mrs. Harris seconded the motion.

Vice Chairman Ribble called for discussion.

Mrs. Thonen requested the maker of the motion add additional conditions regarding the dress code and the hours in which people under the age of seventeen could use the facility. Mr. Hammack stated that the conditions would be very hard to enforce.

After a brief discussion, it was the consensus of the BZA not to impose additional restrictions on the use.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-S-028 by Q BALL, INC., under Section 4-603 of the Zoning Ordinance to permit a billiard hall, on property located at 6230 K, L, M Rolling Road, Tax Map Reference 79-3((4))42 and 43, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 27, 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 C-6 and HC.
3. The area of the lot is 6.94.

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 and 7-600 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 March 31, 1993, Revised Parking Tabulations dated July 7, 1993 and approved with this application, as qualified by these development conditions. This approval shall only govern the 7,755 square foot area to be occupied by the approved billiard parlor at 6230 K, L, and M Rolling Road.

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. 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 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.

6. Any signage erected on the building shall be of a size and materials which is compatible with existing signage in the shopping center and shall be subject to the issuance of appropriate sign permits under Article 12 of the Zoning Ordinance.

7. The hours of operation shall be limited to a time period between 11:00 a.m and 2:00 a.m., daily.

8. The maximum number of employees shall be two (2).

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 a Non-Residential Permit issued. The Board of Zoning Appeals may grant additional time 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 5-1 with Mrs. Thonen voting 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 August 4, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 14, July 27, 1993, (Tape 2), Scheduled case of:

10:45 A.M. MARBAR, INC., SPA 92-L-054 Appl. under Sect(s). 4-803 of the Zoning Ordinance to amend SP 92-L-054 for billiard hall to permit increase in hours of operation. Located at 8794 L, M, N, O and P Sacramento Dr. on approx. 3.66 ac. of land zoned C-8 and HC. 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. Ms. Fried replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report. She stated that the applicant was requesting to amend a development condition imposed at the time SP 92-L-054 was approved by the BZA on November 27, 1992. The amended development condition would increase the hours of operation to allow the billiard hall to operate until 2 a.m. seven days a week, instead of operating until 2 a.m. on Friday and Saturday nights and until 11 p.m. the other nights of the week.

Ms. Anderson stated that staff believed the proposed use would be in harmony with the recommendations of the Comprehensive Plan and would satisfy the required standards. Therefore, staff recommended approval subject to the development conditions contained in the staff report dated July 20, 1993.

The applicant's attorney, Barbara M. Fried, 6551 Loisdale Court, Suite 900, Springfield, Virginia, addressed the BZA. She stated that there is a restaurant/nightclub in the shopping center which is open until 2:00 a.m. and explained the extension of hours was needed in order to compete with other billiard halls in the area. Ms. Fried said the billiard hall was very attractive and she believed it was beneficial to the area. In summary, Ms. Fried asked the BZA to grant the request.

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

Mr. Pammel made a motion to grant SPA 92-L-054 subject to the development conditions contained in the staff report dated July 20, 1993.

Mrs. Harris seconded the motion.

Vice Chairman Ribble called for discussion.

Mr. Pammel said that the billiard hall hours would be consistent with other similar establishments in the area.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 92-L-054 by MARBAR, INC., under Section 4-803 of the Zoning Ordinance to amend SP 92-L-054 for billiard hall to permit increase in hours of operation, 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 July 27, 1993; and

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

1. The applicant is lessee of the land.
2. The present zoning is C-8 and HC.
3. The area of the lot is 3.66 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 8-907 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 and Associates, P.C. dated May 27, 1992, revised August 25, 1992 and approved with this application, as qualified by these development conditions. This approval shall only govern the 8,000 square foot area occupied by the approved Billiard Hall and associated parking.

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. If this Special Permit is subject to the provisions of Article 17, Site Plans as determined by the Director, DEM, 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 2:00 a.m., seven days a week, and the maximum number of employees at any one time shall be two (2).

6. A minimum of nineteen (19) parking spaces shall be allocated for this use.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley 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 August 4, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 16, July 27, 1993, (Tape 2), Action Item:

Approval of Resolutions from July 20, 1993 Hearing

Mrs. Harris made a motion to approve the Resolutions with the exception of Wakefield Chapel Recreation Association Inc., SPA 76-A-022 on which action was deferred until July 28, 1993.

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

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Page 16, July 27, 1993, (Tape 2), Action Item:

Request for Additional Time
Northern Virginia Primitive Baptist Church, SP 88-P-088
9640 Blake Lane
Tap Map Reference 48-3((1))51

Mr. Pammel made a motion to deny the request for additional time. He stated there was a clear indication that construction had not been diligently pursued.

Mrs. Harris seconded the motion.

Lori Greenlief, Staff Coordinator addressed the Board of Zoning Appeals (BZA) and stated that the applicant's representative was present at the hearing. She noted that they had submitted additional information regarding the request.

Vice Chairman Ribble called the applicant's representative to the podium to speak to the request.

The applicant's architect, Donald L. Crigler, with the firm D. F. Crigler Associates Architects, 10201 Main Street, Fairfax, Virginia, addressed the BZA. He stated that the applicant had retained his firm in April 1993 in an attempt to resolve difficulties with the site plan and building permit process and explained that when the applicant posted their bond, the County had requested the plan be revised. Mr. Crigler noted that the applicant was remiss in diligently pursuing the project because of financial difficulties, but expressed his belief that if given the additional time, the outstanding issues would be resolved. In summary, Mr. Crigler asked the BZA to grant a three month extension.

Mr. Hammack stated that, although they have been dilatory, the applicant has hired an architect and additional time should be granted.

Mr. Pammel withdrew his original motion.

Mr. Hammack made a motion to grant the additional time request. Mrs. Harris seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting. She expressed her concern regarding the delays and advised Mr. Crigler that the application should be diligently pursued.

After a brief discussion regarding the request, the BZA granted six months additional time. The new expiration date will be December 7, 1993.

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Page 16, July 27, 1993, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Michael and Eleanor Pinkert, VC 93-D-068

Mrs. Harris noted the letter from the applicants' agent had indicated that the scheduled hearing date was one-hundred and twenty-three (123) days from the date of acceptance. Marilyn Anderson, Senior Staff Coordinator, addressed the Board of Zoning Appeals (BZA) and stated that the cases were being scheduled outside of the usual ninety (90) days time frame.

Page 17, July 27, 1993, (Tape 2), MICHAEL AND ELEANOR PINKERT, VC 93-D-068, continued from Page 16)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that, with the BZA's concurrence and due to the Mosque special permit hearing on October 5, 1993 and the Mosques revocation hearing on October 12, 1993, staff had to schedule cases outside of the ninety (90) day time frame. She noted that staff had attempted to schedule yard variances within the usual ninety (90) day time frame.

Mrs. Harris made a motion to grant the out-of-turn hearing for VC 93-D-068 and scheduled the hearing for September 14, 1993. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Chairman DiGiulian was absent from the meeting.

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Page 17, July 27, 1993, (Tape 2), Information Item:

Dar Al Hijrah Mosque, SP 84-M-009

In response to Mr. Hammack's question as to the status of Dar Al Hijrah Mosque, Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that the Mosque had addressed some of staff's concerns and had submitted new plats and the special exception application, as well as a request for a shared parking agreement. She noted that the application would be restaffed on Thursday, July 29, 1993, and staff had scheduled a meeting with the applicant on Friday, July 30, 1993.

Ms. Kelsey noted that the Board of Supervisors had scheduled the special exception and the shared parking agreement for September 27, 1993, the Planning Commission had scheduled the special exception and the special permit for September 15, 1993, and the Board of Zoning Appeals had scheduled the special permit for October 5, 1993 with the Revocation Hearing scheduled for October 12, 1993.

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As there was no other business to come before the Board, the meeting was adjourned at 11:15 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: September 14, 1993

APPROVED: September 21, 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 28, 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 9:04 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 19, July 28, 1993, (Tape 1), Action Item

Request for Reconsideration
Wakefield Chapel Recreation Association, Inc., SPA 76-A-022

Marilyn Anderson, Senior Staff Coordinator, said staff had received a letter from the applicant requesting a reconsideration. She said at the July 20th public hearing the BZA added a condition that required the installation of a fence; however, the condition was not specific as to the type, height, and location. Ms. Anderson said the applicant was present as well as some of the citizens who spoke in opposition to the request.

Mrs. Harris said in looking at the plat it appeared that the basketball court is directly next to the tennis court. She asked staff to delineate where the floodplain is located. Ms. Anderson said the floodplain was not shown on the plat, but there was a condition that stipulated that the applicant would have to delineate the location when the plat is submitted to the Department of Environmental Management (DEM). She pointed out the approximate location on the viewgraph.

Chairman DiGiulian said he would rule, if there were no objections, that if the BZA chose to reconsider its action of July 20th that a new public hearing must be held. He said the citizens had left that public hearing with an understanding of the granting and that he did not believe it was proper for the BZA to change the conditions. Mr. Pammel made a motion that the BZA hold another public hearing on the Wakefield Chapel Recreation Association.

Ms. Anderson corrected her earlier statement by stating that the line she had pointed out on the plat as the floodplain was the RPA line under the new Chesapeake Bay Ordinance. She showed the correct location of the floodplain and noted that it may be affected by the Chesapeake Bay Ordinance.

Chairman DiGiulian said if there was a possibility that DEM might not approve the fence, he would like input from DEM prior to the new public hearing.

Mrs. Harris seconded the motion because the applicant's letter had requested that the condition be removed, not just clarified.

Chairman DiGiulian asked staff for a date and time. Ms. Anderson suggested September 14th at 10:00 a.m.

Mr. Kelley made a substitute motion to deny the reconsideration. Mrs. Thonen seconded the motion.

Mrs. Harris expressed concern that the BZA did not have a response from DEM as to whether or not they would allow the fence, since it was an integral part of the BZA's decision. Ms. Anderson said she had requested the information from DEM and suggested that perhaps the BZA could proceed with the regular agenda and she would contact DEM.

Chairman DiGiulian said he would prefer DEM's response be in writing after they have had an opportunity to review the plat. He added if the BZA wanted to hold a reconsideration hearing DEM's input could be reviewed at that time. If not, he said there was no choice but to deny the request for reconsideration. The motion carried by a vote of 5-1-1. Mrs. Harris voted nay and Mr. Hammack abstained.

In response to the request for a clarification, Mrs. Harris said she had envisioned having a 6 foot high chain link fence around the structure that would have a gate that could be locked. Chairman DiGiulian said he believed that the fence was necessary because the area is flat and the fence would deter children from running into the street to retrieve a ball that had missed the backstop. Mr. Pammel suggested a 8 foot high fence and Mrs. Harris accepted the change. The other members agreed with the clarification. Ms. Anderson thanked the BZA.

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Page 19, July 28, 1993, (Tape 1), Scheduled case of:

9:00 A.M. WARREN C. & YVONNE E. MEDING, VC 93-S-056 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 8206 Old Oaks Dr. on approx. 10,530 sq. ft. of land zoned R-3. Springfield District. Tax Map 79-4 ((2)) 204.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Warren C. Meding and Yvonne E. Meding, 8206 Old Oaks Drive, Springfield, Virginia, replied that it was.

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Robby Robinson, Staff Coordinator with the Zoning Evaluation Division, presented the staff report. He said the applicants were requesting a variance to allow construction of an addition 6.0 feet from the side lot line in order to enclose and enlarge an existing carport for use as a garage. Since the Zoning Ordinance requires a minimum side yard of 12 feet, the applicants were requesting a 6.0 foot variance. He noted that the amount of variance was incorrectly stated as 4.0 feet in the staff report; however, the notice and legal ads were correct.

In response to a question from Mrs. Harris regarding other two car garages in the neighborhood, Mr. Robinson said he could not say whether or not the garages had been built with variances.

The applicants, Mr. and Mrs. Meding, displayed photographs on the viewgraph depicting other two car garages in the neighborhood and their proximity to the lot lines. Mr. Meding said the rear yard slopes and is heavily wooded with large mature oak trees, the proposed construction would stay in line with the roof line of the existing house, and the materials for the addition would match the existing house. He said the next door neighbor has no objections to the proposed construction and noted that it would be adjacent to the neighbor's carport. Mr. Meding said they could not build on the other side of the lot since the width of the yard from the side lot line to the house is only 12.7 feet.

Chairman DiGiulian said it appeared that the rear of the lot has a severe grade which precluded construction. Mr. Meding said if they were to build the addition in the rear of the lot it would require substantial grading and probably result in a two story structure in order to be able to drive straight into the garage. Mrs. Meding said it would also require additional paving and removal of several of the trees.

Mr. Hammack said in one of the photographs it looked like there was a pond in the rear lot. Mrs. Meding said they did not have a pond. She did not believe that the granting of the variance would be out of line with the neighborhood, that it would be in harmony with the intended spirit and purpose of the Zoning Ordinance, and that it would not be contrary to public interest.

There were no speakers, either in support or in opposition, to the request and Chairman DiGiulian closed the public hearing.

Mr. Hammack said he had some difficulty with the case since all the lots were the same size. He said that although it might be true that two variances were granted in 1991, the applicants could enclose the existing carport making it into an oversized one car garage, or perhaps a smaller two car garage requiring a minimal variance. Mr. Hammack said he understood there is a topographical problem in the rear yard, but all lots in the neighborhood are very much alike. He made a motion to deny the request.

Mrs. Harris said the total distance from the house to the side lot line is 24 feet, and the width of the enclosed carport would only be 18 feet. Mr. Hammack said he would still have to make a motion to deny since he believed it was a convenience. Mrs. Harris seconded the motion. The vote was 3-4 and the motion failed. Mrs. Harris, Mr. Hammack, and Mr. Pammel voted aye; Chairman DiGiulian, Mrs. Thonen, Mr. Kelley, and Mr. Ribble voted nay.

Mr. Kelley made a motion to grant for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 21, 1993.

Mrs. Thonen said she would support the motion because there is a retaining wall in the rear of the lot and there is no other place to locate the addition. She added that 18 feet is not a very large two car garage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-056 by WARREN C. AND YVONNE E. MEDING, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6 feet from side lot line, on property located at 8206 Old Oaks Drive, Tax Map Reference 79-4((2))204, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 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 10,530 square feet.
4. There is a precedent in the area for two car garages as evidenced by the pictures submitted by the applicant.

021

5. The topographical conditions are evident.
6. The addition could be not located elsewhere on the lot.
7. It will not be detrimental to other properties.

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

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

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

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

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

1. This variance is approved for the location of the addition shown on the plat prepared by Alexandria Surveys, Inc., dated May 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 commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 4-3 with Mrs. Harris, 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 August 5, 1993. This date shall be deemed to be the final approval date of this variance.

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Mr. Kelley asked staff if the BZA needed to be concerned with the eight day time limitation for the cases being heard at this public hearing. Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out there was not a problem since the BZA was scheduled to meet on August 3rd. She said there would be a problem on August 3rd since that was the last meeting before the BZA recessed.

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9:10 A.M. MARCUS & MARLENE EINSTEIN, VC 93-M-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located 6400 Lakeview Dr. on approx. 17,200 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 142.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Marlene Einstein, 6400 Lakeview Drive, Falls Church, Virginia, replied that it was.

Robby Robinson, Staff Coordinator with the Zoning Evaluation Division, presented the staff report. He said the applicants were requesting a variance of 4.9 feet to allow construction of an addition 10.1 feet from the side lot line. The applicants were proposing to enclose and extend an existing carport and to construct a second story addition over the carport.

The applicant, Ms. Einstein, said they purchased the 35 year old house in October 1992 and would like to enclose the carport to provide additional living space. She said the lot is 17,200 square feet with a width of 63.8 feet, the back yard slopes down into Lake Barcroft, and there is a sanitary sewer easement that runs along the rear of the lot. Ms. Einstein said the proposed improvement would bring the house up to par with others in the neighborhood, make the house more functional, provide security for their vehicles, and the distance between their house and the neighbors' will remain the same since they are only enclosing and enlarging the existing carport. She pointed out that the neighbors' house sits more to the front of the lot and that she did not believe the proposed addition would have an adverse impact. Ms. Einstein said they had discussed the proposal with the neighborhood Architectural Review Committee and the request was approved subject to the BZA granting the variance.

Mrs. Harris said the staff report stated that the original dwelling was constructed with a variance only 10.2 feet from the lot line rather than 13 feet. Ms. Einstein said they were aware of that, and although the realtor had been aware of the fact that they planned to enclose the carport, she had not indicated that they would need a variance.

There were no speakers in support of the request and Chairman DiGiulian called for speakers in opposition to the request.

Barbara Beach, represented the Bracken family who own the adjacent property at 6402 Lakeview Drive. She said Mr. and Mrs. Bracken purchased their property in 1980 when Mr. Bracken retired from the Navy and although the Brackens currently reside in Massachusetts, they plan to reside at the property when Mr. Bracken retires. Ms. Beach said Lake Barcroft is a scenic community and the water, light, privacy, and trees create an open environment making it a special place to live in the County. Ms. Beach said the applicants' request threatens the special look of the immediate neighborhood and asked that it be denied as it did not meet the necessary conditions. The applicant currently has a 2 foot variance on one side of the lot and the current carport should have required a variance from the 15 foot side yard setback. She displayed photographs on the viewgraph showing the view of the applicants' carport from the Brackens' property and noted how the proposed addition will impact the adjacent neighbor. Because of the differences in the topography of the two properties, the applicants' carport is actually adjacent to the Brackens' second story and with the design of the current carport the impact is far less than the proposed structure. Ms. Beach displayed the plats of the two properties side by side on the viewgraph and pointed out that the sanitary sewer easement runs along the rear of all the lots abutting Lake Barcroft. She pointed out that the applicants' lot is one of the largest in the immediate neighborhood and there is nothing extraordinary about the property when it is compared to the rest of the neighborhood.

In rebuttal, Ms. Einstein said she had talked with the appropriate County agency to determine if the easement could be reduced but she was not successful.

Chairman DiGiulian said the proposal was not just to enclose the carport and go up, but to extend the carport by 10 feet towards the front of the lot. Ms. Einstein said that was correct.

Mr. Ribble asked if they had discussed the easement with their realtor. Ms. Einstein said they did not know about the easement until the day prior to settlement since they had not looked at the survey.

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

Mr. Pammel made a motion to deny the request for the reasons noted in the Resolution.

Mrs. Harris seconded the motion and pointed out that if the variance was granted the total variance side would be 37.8 feet in length, which is an extraordinarily long distance.

Mrs. Thonen said she could have supported enclosing the carport but not the extension and the second story.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-057 by MARCUS AND MARLENE EINSTEIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.1 feet from side lot line, on property located at 6400 Lakeview Drive, Tax Map Reference 61-3((14))142, 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 28, 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 17,200 square feet.
4. The applicant has premised their request based on a number of factors, including the narrowness of the lot and the terrain. Although the terrain is a typical characteristic throughout the entire Lake Barcroft area, it is not unusual within that particular area of the County.
5. The lot does have an unusual configuration with lot lines tapering in as you approach the front of the property, but at the location of the house the width is approximately 75 feet.
6. There is adequate area in the front yard of this particular lot to provide an addition.
7. What the Board of Zoning Appeals is confronted with is a situation where there is a carport that encroaches into the side yard lines by the area that is permitted by the Zoning Ordinance, which is 5 feet, and at some point in time there is always a possibility of a citizen coming in requesting that the carport be enclosed.
8. This particular applicant has requested an enclosure as well as a second story of structure above the enclosed carport, which makes a rather substantial structure that would impact the adjacent property owner.

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

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

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

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

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

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 August 5, 1993.

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Page 24, July 28, 1993, (Tape 1), Scheduled case of:

9:20 A.M. PHILLIP BANKS, SP 93-M-014 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in bldg. location to permit an accessory structure (garage) to remain 4.4 ft. from rear lot line and 3.4 ft. from side lot line (21.7 ft. min. rear yard req. by Sect. 10-104 and 12 ft. min. side yard req. by Sect. 3-307). Located at 3221 Dashiell Rd. on approx. 10,780 sq. ft. of land zoned R-3. Mason District. Tax Map 60-2 ((15)) 69.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Phillip James Banks, 3221 Dashiell Road, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting approval of a special permit to allow a reduction to the minimum yard requirements based on error in building location to permit an accessory structure, garage, to remain 4.4 feet from the rear lot line and 3.4 feet from the side lot line on the west. Section 3-307 requires a minimum 12.0 foot side yard in the R-3 District; therefore, an error of 17.3 feet or 80.0 percent to the minimum rear yard requirement and 8.6 feet or 72.0 percent to the minimum side yard requirement was made at the time of construction. Mr. Hunter noted that the Code Enforcement Branch, Department of Environmental Management, issued a notice of violation to the applicant on April 15, 1992 because the structure was built in 1991 without a building permit. A trial regarding failure to clear the violation is scheduled in the General District Court on October 26, 1993. Although the applicant has indicated that the structure is a garage, it appears that the structure was designed for other uses, particularly since the garage door is not accessible to a vehicle. Mr. Hunter said Development Condition Number 4 requires the provision and maintenance of evergreen shrubs along the rear and side lot lines adjacent to the existing structure should the BZA approve the application.

In response to questions from Mrs. Harris, Mr. Hunter said there is a driveway that could be extended to the structure. He said the structure is used as a workshop, with space on the first floor to park a car, but there are no living facilities in the structure.

The applicant, Mr. Banks, stated that since he had only replaced a metal shed with one similar to other such structures in the neighborhood, he did not believe there was a problem. He said the structure was fairly well screened and does have a garage door, but he only uses it as a workshop and for storage.

Mrs. Thonen said she had visited the site and agreed that the structure was well built, but noted that the screening did not hide the building because it is so tall. Mr. Banks said he had planted Evergreen Leland Cypress along the fence line, which grow about 3 feet a year and will eventually reach a height of 20 feet, so it will be screened.

Mrs. Harris asked the applicant why he had not obtained a building permit. Mr. Banks said about 8 years ago he had tried to obtain a building permit, but after standing in line for more than two hours and being told that he had the wrong size plat and that staff could not make a copy for him, he did not attempt to try to obtain a building permit for this structure. Mrs. Harris asked if he was serious and the applicant said that he was.

Mr. Hammack noted the photographs that had been submitted and asked if the applicant was aware if any of the structures shown had required a variance or a special permit. Mr. Banks said he knew of one property owner who had obtained a variance.

Mr. Ribble asked how the applicant was employed and Mr. Banks replied printing sales.

There were no speakers, either in support or in opposition to the request, and Chairman DiGiulian closed the public hearing.

Mr. Banks added there were no objections from the neighbors.

In response to a question from Mr. Hammack, Mr. Banks said the base of the structure was 2 foot down and poured on a 6 inch thick slab.

Mrs. Harris made a motion to deny the request for the reasons noted in the Resolution.

Mr. Kelley seconded the motion and said just because the applicant had a bad experience with County staff, it was no excuse for him to disregard the fact that he needed to get a building permit.

Chairman DiGiulian said he would support the motion, but that he could understand the applicant's frustration.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-014 by PHILLIP BANKS, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit an accessory structure (garage) to remain 4.4 feet from rear lot line and 3.4 feet from side lot line, on property located at 3221 Dashiell Road, Tax Map Reference 60-2((15))69, 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 28, 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 10,780 square feet.
4. The error does exceed 10 percent of the measurements involved, but the applicant did not convince the Board of Zoning Appeals that the non-compliance was done in good faith, or through no fault of the property owner, or was the result of the error in the location of building subsequent to the issuance of the building permit.
5. The applicant did not convince the Board of Zoning Appeals that there was a reasonable reason why a building permit was not obtained.
6. The applicant knew he probably needed a building permit, but due to a prior experience with the County he did not want to get one.
7. If the applicant had gone through the building permit process, he might have realized what the side and rear yard setbacks were on the property and would have been able to locate the structure in a correct location.
8. Although the reduction may not impair the purpose and intent of the Ordinance, the Ordinance limits this type of structure from encroaching onto lot lines.
9. The two story structure is 24 feet x 14 feet.
10. If this was a smaller garage used for the purpose of storing vehicles and would conform to that size and that height, then perhaps it could be approved.
11. This is a two story structure and there is no way to mitigate the visual impact from the surrounding neighborhood.
12. It is a large structure which definitely intrudes into both the side and rear lot line.

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 of the Zoning Ordinance.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1993.

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Page 25, July 28, 1993, (Tape 1), Scheduled case of:

9:35 A.M. RICHARD K. & ELIZABETH F. BAUGHAN, SP 93-B-026 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to permit dwelling to remain 10.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 7416 Elgar St. on approx. 10,700 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (28) 10. (Concurrent with VC 93-B-055).

026

9:35 A.M. RICHARD K. & ELIZABETH F. BAUGHAN, VC 93-B-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 7416 Elgar St. on approx. 10,700 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (28) 10. (Concurrent with SP 93-B-026).

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 and Elizabeth Baughan, 7416 Elgar Street, Springfield, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicants were requesting approval of a special permit based on error in building location to allow an existing enclosed carport to remain 10.5 feet from the side lot line. The applicants were also requesting a variance to the minimum side yard requirement to allow a building addition to be located 10.5 feet from the side lot line. The minimum side yard requirement in this district is 12 feet; therefore, the applicants were requesting a variance and a modification of 1.5 feet to the minimum requirement. The existing carport on the property was enclosed to create additional living space without the benefit of a building permit by a previous owner. The current owner and applicant was made aware of the error when they applied for the variance to build the proposed addition. She called the BZA's attention to information regarding recent variance activity in the neighborhood contained on page 3 of the staff report.

Mr. Pammel said it appeared that the structure had originally been built as an open carport, which was then subsequently enclosed, but before the enclosure it had complied with the Code because it could be within so many feet of the side lot line. Ms. Kelsey said that was correct.

Mrs. Baughan said their neighborhood is made up of small houses and most have additions. She said when they purchased the house they wrongly assumed that the house was in compliance, and they would be able to expand when necessary. The location of the proposed addition was selected in order to tie into the existing plumbing for an additional bathroom, there are no objections from the neighbors, and to move the addition over would require the removal of a large picture window. Mr. Baughan said the house is on a slab making it more difficult to line up the plumbing, and the proposed location is the most appropriate.

In response to a question from Chairman DiGiulian, the applicants said the carport was enclosed prior to their purchasing the property.

Mrs. Harris said the statement of justification stated that the primary goal was to add a bathroom to the house and asked what else would be added to the 25 x 16 foot addition. The applicants said they planned to construct a bathroom and a family room. Mrs. Harris pointed out that with the addition it would be a 50 foot encroachment into the side yard.

Mr. Hammack asked if the addition could be moved over one and a half feet in order to bring it into compliance. Mrs. Baughan said they could move the addition over but it would make a smaller addition and would require moving the large picture window, which would be quite costly. Mrs. Harris said there were no topographical problems that prevented moving the addition over. Mr. Baughan said half of the violation is an existing condition, over which they had no control. Mrs. Baughan said there are other additions in the neighborhood similar to the one they are proposing. Mrs. Harris asked if those homeowners had needed variances and Mrs. Baughan replied they probably did since the lots are so small.

There were no speakers, either in support or in opposition, to the request and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 93-B-026 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 20, 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-026 by RICHARD K. AND ELIZABETH F. BAUGHAN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 10.5 feet from side lot line, on property located at 7416 Elgar Street, Tax Map Reference 71-3((4))(28)10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 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. Part of the structure that is in non-compliance was constructed prior to the applicants acquiring the property.

I. They purchased the property in good faith and without notice.

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

1. That the granting of this special permit will not impair the intent and purpose of the Zoning Ordinance, nor will it be detrimental to the use and enjoyment of other property in the immediate vicinity.

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

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

1. This special permit is approved for the location and the specified dwelling shown on the plat submitted with this application and 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 March 25, 1993, submitted with this application, as qualified by these development conditions.

3. The carport previously enclosed 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 (VaUSBC) in effect at the time of construction. Any structure that does not meet the VaUSBC in effect at the time of the construction shall obtain a current Building Permit that meets current codes and regulations, and shall obtain all required building inspections.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1993. 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 93-B-055 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 20, 1993.

Mrs. Harris said she could not support the motion because the subject property is totally flat and is similar to all the others within a 15 block radius and the addition could easily be moved to fit in without a variance.

028

Chairman DiGiulian said he would support the motion because of the unusual location of the existing dwelling on the lot. The applicants did not create the problem in the location of the dwelling; it was done before they purchased the property.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-055 by RICHARD K. AND ELIZABETH F. BAUGHAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.5 feet from side lot line, on property located at 7416 Elgar Street, Tax Map Reference 71-3((4))(28)10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 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 10,700 square feet.
4. The variance is a minimal request and the Board of Zoning Appeals has granted this type of variance in the past.
5. The applicants have testified to certain architectural constraints in the house that would increase cost significantly, in particular the picture window and the plumbing would have to be moved and those are really good reasons when it is coupled with a very minimal variance to allow an extension into an existing lot line.
6. The Board of Zoning Appeals has done this many times in the past in houses in older neighborhoods where construction has been requested.
7. The applicants have satisfied the nine required standards.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 plat prepared by Alexandria Surveys, Inc., dated March 25, 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. Pammel seconded the motion which carried by a vote of 5-1 with Mrs. Harris voting nay. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 29, July 28, 1993, (Tape 1-2), Scheduled case of:

9:45 A.M. HUNG DINH AND NGOC-DUNG T. NGUYEN, SP 93-P-030 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to permit addition to remain 6.84 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 2532 Drexel St. on approx. 10,912 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (I) 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. Hung Dinh Nguyen, 8912 Mears Street, Fairfax, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief. She said the applicants were requesting approval of a special permit based on error in building location to allow a garage to remain 6.84 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12.0 feet in this district; therefore, a modification of 5.16 feet was requested. On November 6, 1992, the applicants were issued a Notice of Violation from the Zoning Enforcement Branch for enclosing an existing carport. A building permit was issued in 1970 to a previous owner to build the carport and the applicants believed that as long as they did not extend closer to the side lot line, they would be in compliance with that building permit. The pictures showed the garage to be plywood and wood siding. Staff included a development condition, should the BZA approve the application, that required the garage to be painted a color which would be harmonious with the existing dwelling.

Mr. Nguyen said when he purchased the property in 1975 it included the carport. He lived on the property for five years, but it has been a rental property for the past twelve years. The error was not discovered until the current tenants requested that the carport be enclosed in an effort to improve the aesthetics of the neighborhood. Mr. Nguyen said the current tenant has seven children and there are several older cars that sit in front of the house, and because they are older they require repairs. He said enclosing the carport would allow the house to be properly maintained and painted the way it should be in order to be in harmony with the neighborhood. Mr. Nguyen said the carport was constructed prior to his purchasing the house and without his knowledge.

Mr. Ribble discussed with the speaker the reference in Mr. Johnson's letter to the illegal car service being conducted on the subject property. Mr. Nguyen said the repairs were being done were to the tenants' personal vehicles. He said the tenants were present and had the vehicle titles with them should the BZA wish to see them. Mr. Nguyen said the effort he was undertaking by enclosing the existing carport was to improve the subject property.

There were no speakers to the request, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 93-P-030 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-P-030 by HUNG DINH AND NGOC-DUNG T. NGUYEN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 6.84 feet from side lot line, on property located at 2532 Drexel Street, Tax Map Reference 49-1{(9)}(1)11, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 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 Board of Zoning Appeals believed that the applicant had not knowingly done anything against the County Ordinances.

I. They are trying to work with the County to straighten it out and the addition will be an asset in the long run.

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 CTL Engineering, Inc., dated March 10, 1993, submitted with this application, as qualified by these development conditions.

3. 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 in effect at the time of construction. Any structure that does not meet the Virginia Uniform Statewide Building Code at the time of construction shall obtain a current building permit that meets current code regulations.

4. The attached garage shall be architecturally compatible to the existing dwelling and shall be painted a color harmonious with the dwelling.

031

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required 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 6-0. Mr. Kelley was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 31, July 28, 1993, (Tape 1-2), Scheduled case of:

10:00 A.M. ELWOOD AND ELIZABETH HOWERTON, VC 93-D-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 6515 Brawner St. on approx. 15,420 sq. ft. of land zoned R-2 and HC. Dranesville District. Tax Map 30-2 ((17)) 55. (Concurrent with SP 93-D-029).

10:00 A.M. ELWOOD AND ELIZABETH HOWERTON, SP 93-D-029 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in building location to permit dwelling to remain 11.2 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 6515 Brawner St. on approx. 15,420 sq. ft. of land zoned R-2 and HC. Dranesville District. Tax Map 30-2 ((17)) 55. (Concurrent with VC 93-D-058).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elwood and Elizabeth Howerton, 6515 Brawner Street, McLean, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by Mary Ann Godfrey, Staff Coordinator with the Zoning Evaluation Division. The applicants were requesting variance approval to permit construction of an addition 11.0 feet from the side lot line.

The applicants were requesting special permit approval to permit a building to remain 11.2 feet from the side lot line. Since a 15 foot minimum side yard is required under the Zoning Ordinance, the applicants were requesting a modification of 3.8 feet. Ms. Kelsey said the distance noted in the staff report should be corrected to 11.2 feet as opposed to 11.0 feet. She said the applicants planned to convert a carport into a porch by adding a roof and side enclosures.

Mr. Howerton said they purchased the house in 1982 and hope to reside on the property when they retire. He said to his knowledge the garage was built at the same time as the house and if they were required to move the garage it would be a severe hardship as it would require them to add an exterior wall to the house.

He said they would like to put a roof on the existing porch and screen the porch on all sides. This will allow them to make better use of the porch and would provide them with a place to store the garbage cans. Mr. Howerton said there is a stairwell that goes down to the basement, which is a safety hazard when children are playing in the yard.

Chairman DiGiulian said it appeared that a portion of the enclosure already had a roof over it and Mr. Howerton said that was correct.

In response to a question from Mrs. Harris, Mrs. Howerton said the next door neighbors have attached a carport to the side of their garage which hangs over the applicants' lot line. She said because all the neighbors get along they have never complained about the overhang.

Mr. Howerton said they did not discover the garage was built in error until they applied for the variance to construct the addition.

There were no speakers to the request, either in support or in opposition.

In response to a question from Mrs. Harris, the applicants said it would simply be a screened-in porch.

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

Mr. Pammel asked staff for a clarification of the measurements shown on the plat. Ms. Kelsey said she had noted the error during her review of the staff report the previous evening, and pointed out that the plat was certified by an engineer. A discussion took place among the BZA members with regard to the plat and the amount of variance being requested.

Following that discussion, Mrs. Thonen made a motion to grant VC 93-D-058 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 20, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-058 by ELWOOD AND ELIZABETH HOWERTON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11 feet from side lot line, on property located at 6515 Brawner Street, Tax Map Reference 30-2((17))55, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 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 and HC.
3. The area of the lot is 15,420 square feet.
4. The property was acquired in good faith.
5. The house was built in 1953 when there was a difference in the Zoning Ordinance and the Ordinance has changed since then.
6. The house itself is in violation and the granting of the variance will bring the house into compliance.
7. The other neighbors do not have this particular problem.
8. If the Ordinance is strictly adhered to, it will create a lot of problems for the applicants.
9. The granting of the request will alleviate a clearly demonstrable hardship, it will not be detrimental to other properties in the neighborhood, and it will not change the character of the zoning district.
10. There are no objections from the neighbors.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 James H. Guynn Surveyor and Land Planner, dated March 12, 1992, revised March 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. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1993. This date shall be deemed to be the final approval date of this variance.

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Mrs. Thonen made a motion to grant SP 93-D-029 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 20, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-029 by ELWOOD AND ELIZABETH HOWERTON, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 11.2 feet from side lot line, on property located at 6515 Brawner Street, Tax Map Reference 30-2((17))55, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 28, 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 James W. Guynn, Surveyor and Land Planner, dated March 12, 1992, revised March 30, 1992 submitted with this application, as qualified by these development conditions.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mrs. Harris and Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 5, 1993. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 10:43 a.m. and reconvened at 11:00 a.m.

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Page 34, July 28, 1993, (Tape 1), Scheduled case of:

10:15 A.M. CONGREGATION ADAT REYIM, SPA 85-S-057 Appl. under Sect(s). 3-503 of the Zoning Ordinance to amend SP 85-S-057 for church and related facilities to permit nursery school. Located at 6500 Westbury Oaks Ct. on approx. 4.21 ac. of land zoned R-5. Springfield District. Tax Map 88-2 ((13)) (6B) B1 and B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Edward Lippert, 7215 Poplar Street, Annandale, Virginia, attorney for the applicant, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said this 4.21 acre site is located on Westbury Oaks Court at the intersection of Westbury Oaks Court and Old Keene Mill Road, is zoned R-5, and developed with a Synagogue. To the north across Old Keene Mill Road are single family attached dwellings, zoned R-5. To the east are lots developed with single family detached dwellings, zoned R-1. To the south are single family attached dwellings, zoned PDH-4, and to the west is a vacant lot owned by the Board of Supervisors, zoned R-2. The site is currently developed with a synagogue with a seating capacity of 250 and a 72 space paved parking lot.

The applicant was requesting approval of a special permit to establish a nursery school with a maximum daily enrollment of 26 children. The hours of operation proposed were 9:00 a.m. to 12 noon, Tuesday through Thursdays, and 11:30 a.m. to 2:30 p.m. on Fridays. There will be one teacher and one aide per twelve children, and there will be no structural additions as the nursery school will operate in classrooms within the existing building. The applicant proposed fencing a 1,434 square foot play area with a 3.0 foot high chain link fence. In response to staff's concerns about the noise generated by traffic on Old Keene Mill Road, the applicant has agreed to provide a 6 foot tall solid wood fence and two rows of evergreen trees between the play area and Old Keene Mill Road. The applicant further requested approval of a modification of the transitional screening along the north, east, and west lot lines and a waiver of the barrier requirements as previously approved by the BZA under SP 85-S-057.

Staff concluded that, with the implementation of the Proposed Development Conditions, the proposed nursery school 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 85-S-057 subject to the adoption of the Proposed Development Conditions, dated July 20, 1993, attached as Appendix 1 to the staff report.

Mr. Lippert agreed with the staff report and said the applicant will comply with all the County and State requirements, the use will have minimal impact on the transportation pattern, and will enhance the community's opportunity for greater nursery and child care facilities.

Mr. Hammack asked if the applicant had read the development conditions. Mr. Lippert said that the applicant was willing to comply with all development conditions.

There were no speakers to the request, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 85-S-057 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 20, 1993. He amended Condition Number 4 as reflected in the Resolution. 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 85-S-057 by CONGREGATION ADAT REYIM, under Section 3-503 of the Zoning Ordinance to amend SP 85-S-057 for church and related facilities to permit nursery school, on property located at 6500 Westbury Oaks Court, Tax Map Reference 88-2((13))(6B)B1 and 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 July 28, 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-5.
3. The area of the lot is 4.21 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 Fred T. Wilburn, Certified Land Surveyor, dated October 23, 1986, Revised through May 24, 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 has no objections to a waiver of the site plan requirement.

5. The seating capacity in the main worship area shall be a maximum of 250 seats. The nursery school shall be limited to a total maximum daily enrollment of twenty-six (26) children.

6. The house of operation for the nursery school shall be limited to 9:00 a.m. to 12:00 Noon, Tuesday through Thursday, and 11:30 a.m. to 2:30 p.m., Friday.

7. The proposed play area shall be located a minimum of ninety (90) feet from the centerline of Old Keene Mill Road. In order to reduce exterior noise levels to the standard of 65 dBA Ldn, acoustical mitigation measures shall be provided for the play area. The acoustical mitigation shall include a fence architecturally "solid" from the ground up with no gaps. This fence shall be a minimum of six (6) feet in height and serve as the fencing along the northern perimeter of the play area. In

addition, noise attenuation measures, including but not limited to, additional acoustical fencing, walls, earthern berms, landscaping and/or combinations thereof to reduce highway noise impacts shall be required as determined necessary by the Director, DEM.

8. 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 72 spaces. All parking shall be on site and as shown on the Special Permit Plat.

9. Parking lot lighting if installed will be in accordance with the following:

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

   The lights shall be a low-intensity design which directs the light directly onto the facility.

   Shields shall be installed, if necessary, to prevent the light from projecting beyond the parking lot area.

10. Transitional Screening 1 shall be modified along all lot lines to permit existing vegetation to fulfill the Transitional Screening 1 requirement except along the southern lot line adjacent to residential dwellings, where existing vegetation shall be supplemented so as to provide Transitional Screening 1. This modification shall be approved by the County Urban Forester. The driveway shall be shifted toward the north if necessary in order to provide Transitional Screening 1.

11. The barrier requirement shall be waived.

12. Signs shall be permitted in accordance with the provisions of Article 12, Signs.

13. This approval shall not be considered to be an approval of any Phase other than Phase 1 as represented on the approved plat.

14. Dedication of right-of-way, a grading easement and road improvements on Westbury Oaks Court shall be provided as determined necessary by the Director, DEM so as to provide safe site access and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, which ever occurs first.

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 Non-Residential Use Permit. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Harris and Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1993. The Board took action to waive the eight-day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 36, July 28, 1993, (Tape 2), Scheduled case of:

10:30 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, equipment garage 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. (DEF. FROM 5/25 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Michael E. Davey, 8236 Governors Court, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. The subject property is located on the east side of Riverside Road within the Fort Hunt area of the County. The site consists of 7.4 acres in the R-3 District and is occupied by a church, parish hall, nursery school for

99 children, and a parking lot with 102 spaces. The area surrounding the property is in the R-3 Zoning District and developed in single family detached dwellings.

He said the applicant was requesting a special permit amendment to allow the existing parish hall to be replaced by a new structure containing an increase in the floor area from 1,749 square feet to 5,792 square feet. The previously approved special permit would have allowed two additions to the existing parish hall, thus increasing the floor area to 4,957 square feet. The applicant was also requesting to construct a 400 square foot equipment garage located in the northwest portion of the property, and to reconfigure the parking lot to provide four handicapped spaces.

Mr. Heine said the applicant and the nursery school complex has a long history. The initial church was constructed in approximately 1963 and rebuilt in 1973, and the BZA approved the nursery school and school of general education in 1967. In July 1992, the BZA approved the enlargement of the parish hall which brought the nursery school and the church under a special permit.

In closing, he said it was staff's position that by providing transitional screening between the proposed equipment garage and the adjoining residential lot lines and regulating the use of the equipment garage, the proposed additions will be in harmony with the Comprehensive Plan. In addition, the BZA imposed development conditions on the previously approved Special Permit, which have been brought forward. Staff believed that with the imposition of the development conditions, the proposed application will meet applicable Standards for special permit uses set forth in the Zoning Ordinance; therefore, staff recommended approval of SPA 92-V-003 subject to the proposed development conditions contained in Attachment 1 of the staff report addendum which reflected changes in Conditions 20 an 21.

Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to a letter received from Kenneth D. Keene of 8600 Lombardi Lane.

Mr. Davey said the church received special permit approval in May 1992, but after further review of the parish hall the church decided it may have under estimated its needs. Based on that determination, the church decided to remove the entire structure and expand the new one by approximately 850 feet. He said the church also proposed relocating the equipment shed towards the parking area. Mr. Davey said during a conversation between a representative of the church and Mr. Keene, an adjacent property owner, Mr. Keene said that he recognized that the church was in the neighborhood before him, but requested that any future landscaping match that on his property. Mr. Davey used the viewgraph to point out the location of the structure Mr. Keene mentioned in his letter, and noted that there is approximately 70 to 80 feet of trees and shrubs between the structure and the church's lot line. He said Mr. Keene has never contacted the church about the structure.

Chairman DiGiulian discussed with the speaker the approximate timeframe for commencing construction. Mr. Davey said hopefully within the next eight months.

A discussion took place between the BZA and the speaker with regard to Condition 20 of the previous approval, which required the installation of a gate. Mr. Davey said the church had not been aware there was a deadline for constructing the gate, but the materials were on site and it could be done within the month. Mr. Ribble said he lives next door to the church and believed the church would comply with constructing the gate.

In response to a question from Mrs. Harris about the development conditions, Mr. Davey said the church agreed with all the conditions.

Jane Kelsey, Chief, Special Permit and Variance Branch, said the structure that the speaker had indicated on the viewgraph earlier was not reflected on the plat. Mr. Davey said it was a 10 foot high altar, which was recently constructed. The BZA expressed concern with the structure not being shown on the plat. Mrs. Harris asked if this would have required special permit approval. Ms. Kelsey said there was a recent Zoning Ordinance amendment that states if the structure is 250 square feet it can be an administrative action, but it did appear from the speaker's testimony to be a use on the property.

Mr. Pammel said he was inclined to defer the application until such time as the gate was constructed, and to allow staff an opportunity to determine if the altar required special permit approval.

Mr. Ribble asked when the construction would begin and Mr. Davey said probably not before March or April of 1994. He added that the gate would be installed long before that date.

Chairman DiGiulian said he did not have a problem with the gate being temporary, but that it should have been constructed under the previous approval and asked if the addition had been completed. Mr. Davey said the construction had not taken place. He added that this was the fifth time the church had been before the BZA and every time a new issue was raised. Chairman DiGiulian said the gate was not a new issue.

The church's architect, John Kelso, came forward and explained that when the church came in last year for the special permit, there were several conditions that were placed on the approval, and the applicant agreed to comply. He said the addition was not constructed, because the applicant has revised the request. Chairman DiGiulian said there was previous

testimony with regard to the problems that the neighbors are experiencing because of the easy access to the church's parking lot. Mr. Kelso said the applicant was unaware that the gate had to be constructed since the addition, approved under the previous special permit amendment, was not built.

In response to a question from Mrs. Harris with regard to the outside altar, Mr. Kelso said he had interpreted the altar as a piece of furniture. He said there was also a play structure that was not shown. Mr. Hammack asked if play areas had to be shown on plats and Ms. Kelsey said they did. Chairman DiGiulian asked whether or not the altar had to be shown. Ms. Kelsey said if the altar is a use of the property it had to be shown. Since it exceeds the size allowed in the Zoning Ordinance amendment that she had referenced earlier it would require BZA approval. She added that this would require the applicant to send certified notices to the surrounding property owners. In response to a question from the BZA as to whether or not the structure should have been shown on the plat since the property is under special permit, Ms. Kelsey said the structure should have been shown on the plat and its proposed uses should have been included in the statement of justification.

Mr. Hammack asked if it was true that the play area was not shown on the plat. Mr. Davey pointed out the location of the play area on the viewgraph.

Ms. Kelsey said Ms. Kelso had informed staff that he could prepare revised plats for submission to the BZA in time for its August 3rd meeting.

Mr. Pammel said he would make a motion to defer the case for a period of time to allow the applicant to amend the application and readvertise, if necessary, in order to resolve all the issues and be sure that the applicant has a clear understanding to what the BZA requires. He believed an October date would be appropriate.

Mrs. Thonen said she would rather have the case deferred to the earliest time possible if the applicant could provide the information. She asked that the applicant look at the property to determine if there are any other structures that need to be added to the plat. Mr. Davey said there were none.

Mr. Ribble said he did not like the church having to come back, but there were unanswered questions.

Mr. Davey said the church has been trying to proceed with construction for approximately a year and a half. Mr. Pammel pointed out that it was not the BZA's fault that the applicant has been in the process for that amount of time. He said the applicant received BZA approval last year, then changed its plans and came back to the BZA for a modification. Mr. Pammel added that the BZA has identified deficiencies, which must be addressed, so the church can move forward. Mr. Davey asked if there was anything else the BZA might wish the applicant to address. Mr. Ribble asked that the applicant review the development conditions. Mr. Hammack said he would like additional information on the maintenance facility and Mr. Davey said it was used strictly for storing a riding tractor which was is used for cutting the grass.

Mrs. Harris called for the question.

Chairman DiGiulian asked Mr. Pammel to restate the motion. Mr. Pammel asked staff for a date for the deferral. Ms. Kelsey said October was a rather bad month due to the revocation hearing for another church application scheduled on October 12th and a special permit for the same site scheduled on October 5th, which is very controversial. She suggested September 28th. The applicant agreed.

Mr. Pammel made a motion to continue the public hearing to September 28th at 10:45 a.m. in order to allow the applicant to amend the application as required by the Code and for the application to be readvertised, if necessary. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Kelley was not present for the vote.

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Page 38, July 28, 1993, (Tape 2), Scheduled case of:

10:45 A.M. RIDGEMONT MONTESSORI SCHOOL, INC., SPR 85-D-024 Appl. under Sect(s). 3-103 of the Zoning Ordinance to renew SP 85-D-024 for school of general education and nursery school. Located at 6519 Georgetown Pike on approx. 1.48 ac. of land zoned R-1. Dranesville District. Tax Map 22-3 ((1)) 48. (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. Tom Smith, attorney with the firm of HAZEL & THOMAS, P.C., P.O. Box 12001, Falls Church, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the site consists of 1.48 acres in the R-1 District located on the south side of Georgetown Pike within the Langley Area and is occupied by the Korean Orthodox Presbyterian Church and the Ridgemont Montessori School. The property is surrounded on three sides by single family detached dwellings in the R-1 District and on the east by undeveloped lots in the R-1 District. Langley High School is located northwest of the property.

The applicant was requesting a special permit renewal to allow the continuation of an existing nursery school and school of general education located in the basement of a church. There are no physical changes proposed and the applicant will maintain the maximum enrollment at 63 children, limit the operation to Monday through Friday between the hours of 9:00 a.m. and 3:00 p.m., maintain a 6,325 square foot outdoor play area, use the existing 60 parking spaces that are shared with the church, and extend the term limit for another five years.

Mr. Heine said the church was constructed in 1969 prior to there being a special permit requirement for churches. In 1973 and 1978, the BZA approved a special permit for the Children's Achievement Center for a school of special education. In 1985, the BZA approved a special permit for the Ridgemont Montessori School for a nursery school and school of general education, and approved amendments to the use in 1986 and 1988.

Staff believed that with the implementation of the Proposed Development Conditions, the proposed use would be in harmony with the recommendations of the Comprehensive Plan, and would satisfy all General Standards and Standards for all Group 3 Uses. Therefore, staff recommended approval of SPR 85-D-024 subject to the proposed development conditions contained in Appendix 1 of the staff report.

In closing, Mr. Heine noted that Condition Number 6 requires that since this is a renewal application, it must be determined if the use complies with the current Zoning Ordinance regulations as the parking regulations have changed since the previous approval. In order to satisfy the required parking, it will be necessary for the applicant to obtain a shared parking agreement.

Mr. Hammack asked if staff had seen the proposed development condition the applicant had submitted to the BZA with respect to the number of parking spaces. Jane Kelsey, Chief, Special Permit and Variance Branch, said staff had not. A copy was provided to staff. Mr. Hammack asked if this would satisfy the requirement. Ms. Kelsey said that it would not meet the parking requirement because the current Zoning Ordinance provisions require that parking for the combination of the two uses must be on site, unless a shared parking agreement is approved by the Board of Supervisors. She added this is a renewal application, and the Zoning Ordinance terminology is a little different and called the BZA's attention to page 7 of the staff report which quoted the Zoning Ordinance. Ms. Kelsey said the Ordinance essentially states that since this is a renewal application, and if the applicant does not meet the current Zoning Ordinance requirements the BZA may deny the application or impose conditions which would ensure that the use can operate safely, thus the decision is up to the BZA.

The applicant's agent, Mr. Smith, said the school is a non-stock, non-profit corporation which operates a small nursery school on the subject site. He said there will be no physical changes to the property and there are no proposed changes to the use or operation of the property as it has existed for the past eight years. Mr. Smith said he would not go into specific details of the application or the site unless the BZA had questions given that the request was merely for a renewal of a special permit which was previously considered and approved by the BZA and renewed two times. He addressed the parking issue by stating that the uses do not operate at the same time, and there is no overlap of the two uses. Mr. Smith said to require the applicant to provide the additional parking spaces would require a great deal of money for such a small operation and the BZA does have the authority to impose a condition to address the issue. He believed the development condition prepared by the applicant would address the parking issue and pointed out there have been no complaints relating to parking. Mr. Smith said the director of the school is very conscientious and distributes a handbook to all parents informing them of the hours of operation. He said the church has signed an annual contract with Fairfax County Public Schools, which allows them to use the parking at Langley School and shuttle people to the church. With respect to Condition Number 8, Mr. Smith asked that the last sentence be revised to reflect that the hedge be maintained along the front of the play area, rather than the front lot line of the property.

In response to a question from Mr. Pammel, Mr. Smith said the church holds services on Sunday morning and evening and on Wednesday evenings.

There were no speakers to the request, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to grant SPR 85-D-024 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 20, 1993, with Conditions 6, 8, and 14 revised as reflected in the Resolution. 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 85-D-024 by RIDGEMONT MONTESSORI SCHOOL, INC., under Section 3-103 of the Zoning Ordinance to renew SP 85-D-024 for school of general education and nursery school, on property located at 6519 Georgetown Pike, Tax Map Reference

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22-3((1))4B, 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 28, 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 1.48 acres.
4. The applicant has demonstrated a willingness to work with the neighborhood.
5. There have been no complaints.
6. They have seriously adhered to the traffic generation conditions that the Board of Zoning Appeals have put on them, for obvious reasons in the past.
7. If they continue as they are and receive no complaints, they should be administratively renewed for five (5) one (1) year terms.

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 Christopher Consultants Ltd., dated June 1986 and revised July 6, 1988 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 daily enrollment shall be 63 children.

5. The hours of operation shall be Monday through Friday, 9:00 a.m. to 3:00 p.m.

6. Sixty (60) parking spaces shall be provided for the church and nursery school use. The nursery school shall not operate at the same time that the church holds its worship services.

7. All existing dead trees and shrubs now located along the northern and western boundary lines of the play area shall be replaced with healthy evergreens as required by Par. 3A of Sect. 13-111 of the Zoning Ordinance.

8. The existing wooden fence approximately six (6) feet in height along the southern lot line and approximately 120 feet of the eastern lot line shall satisfy the barrier requirement. The barrier requirement along all other lot lines shall be waived provided the fence around the play area remains and the hedge along the front line of the play area is maintained.

9. Transitional Screening 1 provided adjacent to the western lot line and adjacent to the eastern lot line between Georgetown Pike and the parking area shall be maintained. The supplemental evergreen landscaping located adjacent to the northern boundary of the outdoor play area shall be maintained. The natural vegetation between the southern lot line and the parking lot shall be maintained. Prior to the issuance of a Non-Residential Use Permit, the site shall be inspected by the Urban Forestry Branch to ensure that the required Transitional Screening 1, supplemental landscaping and existing natural vegetation is provided and maintained.

10. Signs shall be in accordance with the provisions of Article 12, Signs.

11. The applicant shall continue to require carpool and/or vanpool arrangements sufficient to ensure that trips to and from the site will not exceed 150 trips per day.

12. An outdoor recreational area of 6,325 square feet shall be provided. This area shall be enclosed with a four (4) high chain link fence.

13. If parking lot lighting is installed, such lighting shall be the low intensity type on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent properties.

14. This special permit shall automatically expire without notice, five (5) years from the date of approval unless the applicant wishes to apply for five (5) additional one (1) year terms that can be administratively approved by the Zoning Administrator.

15. Prior to the issuance of a Non-Residential Use Permit the Zoning Enforcement Branch shall inspect the site to ensure that all of the development conditions are met.

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

Pursuant to sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date of approval* unless a Non-Residential Use Permit has been issued. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 28, 1993. The Board took action to waive the eight-day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 41, July 28, 1993, (Tape 2), Information Item:

Mr. Pammel said during the public hearing the BZA had considered a couple of carports which were enclosed without permits, under the assumption that since the carport existed the homeowners had the right to enclose them. He said in the past the BZA has granted variances for carports and in those cases had recognized there is an Ordinance provision that allows the 5 foot encroachment. Mr. Pammel expressed concern with this happening and suggested that the BZA request that the Board of Supervisors consider an amendment to the Zoning Ordinance that would restrict any building whatsoever to the required yards as set forth in the Zoning Ordinance. He said this would alleviate carports from having the flexibility of extending 5 feet into the side yard.

Mr. Hammack seconded the motion. The motion passed by a vote of 6-0. Mr. Kelley was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 12:02 p.m.

Betsy S. Hurtt
Betsy S. Hurtt, 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 August 3, 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 9:10 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 43, August 3, 1993, (Tape 1), Scheduled case of:

9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-D-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8 ft. from one side lot line and 10 ft. from other side lot line (20 ft. min. side yard req. by Sect. 3-107). Located 1600 Seneca Ave. on approx. 7,000 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-3 ((2)) 231. (Concurrent with VC 93-D-049, VC 93-D-050, VC 93-D-051 and VC 93-D-052). (DEF. FROM 7/27 TO ALLOW STAFF TIME TO REVIEW REVISED PLAT AND APPLICANT TO REVIEW REVISED DEV. CONDITIONS)

9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-D-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 19.27 ft. from street line of a corner lot, 12 ft. from side lot line and 5 ft. from edge of pavement of access easement (40 ft. min. front yard req. and 20 ft. min. side yard req. by Sect. 3-107; 25 ft. min. yard req. from access easement). Located 1600 Seneca Ave. on approx. 7,878 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-3 ((2)) 230. (Concurrent with VC 93-D-048, VC 93-D-050, VC 93-D-051 and VC 93-D-052). (DEF. FROM 7/27 TO ALLOW STAFF TIME TO REVIEW REVISED PLAT AND APPLICANT TO REVIEW REVISED DEV. CONDITIONS).

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9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-D-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 6 ft. from one side lot line and 12 ft. from other side lot line and 5 ft. from edge of pavement of access easement (20 ft. min. side yard req. by Sect. 3-107 and 25 ft. min. yard req. from access easement). Located 1600 Seneca Ave. on approx. 7,000 sq. ft. of land zoned R-1 and HC. Dranesville District. Tax Map 30-3 ((2)) 232. (Concurrent with VC 93-D-048, VC 93-D-049, VC 93-D-050 and VC 93-D-052). (DEF. FROM 7/27 TO ALLOW STAFF TIME TO REVIEW REVISED PLAT AND APPLICANT TO REVIEW REVISED DEV. CONDITIONS).

9:00 A.M. PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, VC 93-D-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8 ft. from one side lot line and 10 ft. from other side lot line (20 ft. min. side yard req. by Sect. 3-107). Located 1606 Seneca Ave. on approx. 6,500 sq. ft. of land zoned R-1. Dranesville District. Tax Map 30-3 ((2)) 236. (Concurrent with VC 93-D-048, VC 93-D-049, VC 93-D-050 and VC 93-D-051). (DEF. FROM 7/27 TO ALLOW STAFF TIME TO REVIEW REVISED PLAT AND APPLICANT TO REVIEW REVISED DEV. CONDITIONS).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel with the law firm of WALSH, COLUCCI, STACKHOUSE, EMRICH & LUBELEY, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the properties are located at the corner of Chain Bridge Road and Seneca Avenue in the Hunting Ridge Subdivision; they are surrounded on the east, west, and south by the remainder of the Hunting Ridge Subdivision and on the north by a water tower owned by the City of Falls Church; there are five different variance plats of existing lots created in the 1920s; the applicant proposes to locate a dwelling on each of the lots and, in order to do so, is requesting variances to the minimum side and front yards, which in this district are 20 feet and 40 feet, respectively; the dwellings on Lots 231, 232 and 235 will access from an ingress/egress easement on Seneca Avenue; the dwellings on Lots 230 and 236 will have their own driveways onto Seneca.

Ms. Greenlief referenced the short addendum to the staff report which staff had distributed the previous week; the purpose of the addendum was to give the BZA additional information which may be needed to respond to concerns raised by the citizens; on one of the letters distributed, there was a map attached, showing how many properties had been combined with one dwelling placed on them, under one ownership; staff figures on page 3 of the staff report

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appeared to conflict with that, but she believed it was just a matter of submitting information in a different form; staff had revised the Proposed Development Conditions by adding conditions regarding access to the lots, parking for the dwellings, and road improvements to Seneca Avenue.

Ms. Greenlief said it was staff's opinion that granting the requested yard variances would allow the development of more dwellings than could be developed if the lots were consolidated and developed in accordance with the R-1 zoning regulations. The additional number of dwellings results in additional traffic using Seneca Avenue, which currently is a substandard street; therefore, it was staff's opinion that frontage improvements are needed for the safe ingress/egress from Seneca Avenue and staff requested that the applicant construct one-half of a typical section with the existing right-of-way, to include sidewalk, curb and gutter. It was proposed that the sidewalk would be located within the easement shown on the plat and should be provided for public access. As stated in the staff report, a substandard street is usually constructed 25 feet from the centerline, and the curb and sidewalk are located within the right-of-way and dedicated to the Virginia Department of Transportation (VDOT). In order not to require additional dedication from the applicant, staff believed that the frontage improvements requested within the existing right-of-way are a reasonable compromise to improve what could be a dangerous traffic situation.

Ms. Greenlief advised that Chuck Almquist from the Office of Transportation (OT) was present to answer questions regarding the frontage improvements or other transportation questions.

Mr. Greenlief continued, there are many lots which are vacant and of similar size and shape in this subdivision; staff believed that approval of these applications could set an undesirable precedent in the area; if the applicant's situation is a hardship, it is shared generally by other lots in the Subdivision and, since the lots pre-exist the current Zoning Ordinance, the applicant should have had knowledge of any constraints on the property before becoming the contract purchaser. She said that, if it was the intent of the BZA to approve these applications, staff recommended that approval should be conditioned by requiring conformance with the Development Conditions contained in the Addendum; Condition 1 should be changed to reflect the date of the revised plat.

Ms. Strobel, the applicant's agent, presented the statement of justification, advising that the applicant is the owner of the property; there was a contract purchaser, but the applicant was the owner. She said that the property includes 5 subdivided lots located on Seneca Avenue, which are presently zoned R-1; the applicant proposed to construct a single family detached dwelling on each existing subdivided lot; the applicant did not propose any increased density under the existing zoning, but was asking for the requested variances as each lot is exceptionally narrow, which she believed created a unique circumstance; the proposed development would meet all minimum requirements of the Fairfax County Zoning Ordinance for development, with the exception of the minimum yard requirement. Ms. Strobel said she believed the applicant had satisfied the requirements under Section 18-404 for the approval of a variance and said the parcels included the following characteristics: each parcel is exceptionally narrow, which was an existing condition at the time of the effective date of the Zoning Ordinance; the Hunting Ridge Subdivision was created in 1928, predating the minimum lot and yard requirements of the R-1 zoning district; the lots could not be developed in harmony with surrounding properties without the approval of a variance request; the applicant proposed to construct one dwelling unit on each existing subdivided lot; the exceptionally narrow lots create an extraordinary condition; the condition or situation on the subject properties is not of so recurring or general in nature as to make reasonably practical the formulation of a general regulation to be adopted by the Board of Supervisors (BOS); there are not very many lots in Fairfax County of such narrow proportions; any proposed subdivision must conform to the R-1 regulations and it is, therefore, not appropriate or practical to create a general regulation associated with the unique situations on each lot.

Ms. Strobel said that the strict application of the Zoning Ordinance would produce undue hardship, as each parcel cannot be developed with a single family home of a size consistent with the existing development on surrounding lots. Ms. Strobel submitted photographs to the Board. She said that the undue hardship was not generally shared by other properties in the same zoning district in the same vicinity; subdivisions created subsequent to the adoption of the Zoning Ordinance had been created in accordance with the R-1 zoning district provisions and do not share a similar hardship; the granting of the requested variances would alleviate a clearly demonstrable hardship as distinguished from a special privilege or convenience; the lots cannot reasonably be developed without the variance approval and the owner has, therefore, been denied reasonable use; the granting of the variances would not be of substantial detriment to the adjacent properties; surrounding properties are of a similar lot size and have been developed in a fashion consistent with the applicant's proposal; there are some homes constructed on a single lot, while others have been constructed on several combined lots; the proposed homes in this application averaged 2,100 square feet in size and clearly would be compatible with the neighborhood.

Mrs. Strobel said that the character of the zoning district would not be changed by the granting of the variances and the proposed division would be in harmony with the surrounding neighborhood. As evidenced in the staff report, several variance requests had been granted in the area, providing evidence of a recognized hardship; the variances were granted for single lots, thereby demonstrating that the development of the property as proposed would be in harmony with the surrounding area.

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Ms. Strobel responded to some of the issues raised in the letters of opposition. One of the objections raised was the proximity of the homes to each other. Ms. Strobel provided a revised plat the previous week to the BZA members and the Planning staff, which evidenced a lesser setback variance in a number of areas; she provided a written summary of the changes. She said the builder proposed that each home would be constructed with a two-car garage, also reflected in the Development Conditions; the revised plan proposed widening the area of the ingress/egress to accommodate additional visitor parking. Ms. Strobel referenced discussions during the past week regarding road improvements, as well as the reference to road improvements in the Addendum; she said she was confused by the request because the applicant had not proposed rezoning or resubdividing the property which would create additional density. Ms. Strobel said it was her understanding that the Office of Transportation or the Department Environmental Management did not typically review yard variance requests and she was puzzled as to why this applicant had been singled out to make road improvements in the area.

Ms. Strobel said that, in discussions with staff and some of the neighboring property owners, it was apparent that a safety concern had arisen. As a result, the applicant proposed road improvements, even though she believed it was unprecedented in connection with side yard variance requests; the staff report Addendum had requested a 15-foot section to be constructed from centerline; she proposed that the applicant would construct an 18-foot section from centerline, in excess of what had been requested by the Office of Transportation. Ms. Strobel said the applicant had designed a layout to provide the safest access for future and existing homeowners; all of the rear yards would be fenced and each proposed home would have a back yard in which children might play; in addition, the applicant would provide a sidewalk within the area shown on the plat as "reserved for sidewalk" and proposed street improvements.

Ms. Strobel submitted 3 letters of support from property owners in the area.

Mr. Hammack asked Ms. Strobel if the lots could be developed without variances. Ms. Strobel said they could; however, the homes would be exceptionally narrow, giving the appearance of a townhouse on a single family dwelling lot. She said she did not believe that would be a reasonable use of the property in the area.

There were no speakers in support of the applications.

Speaking in opposition was: Mary Holbeck, 1608 Colonial Lane, McLean, Virginia, who had drawn the sketch referenced by staff earlier in the hearing, and said she is an architect and tried to show the existing density and that the owners of the existing dwellings own more than one lot. Although the applicant requested a variance of setback requirements, she said it is a de facto rezoning because it would change the existing density and change several other requirements. She said that variances had already been granted for the 3 houses opposite her property, which she said was the beginning of a change in the neighborhood.

Also speaking in opposition were: Andrew Brown and Cindy Brown, 1604 LaSalle Avenue, McLean, Virginia, whose property is located on the east side of Seneca Avenue and Chain Bridge Road; Earl Allison, 1624 Seneca Avenue, McLean, Virginia; John Duke, 1619 Seneca Avenue, McLean, Virginia, owner of 2 lots; Fred Daniels, 1616 Seneca Avenue, McLean, Virginia; Brad Johnson, 1628 Seneca Avenue, McLean, Virginia (Lot 247); and Louise Carlson, Mrs. Duke's daughter and part owner of the house at 1619 Seneca Avenue. The concerns of the speakers were: Public safety is imperiled; trash has not been picked up a couple of times this summer because the trash truck has to back down and cannot get through; access by emergency vehicles cannot be assured; there would be a difference in the appearance of the proposed dwellings on the lot (long and narrow); the property owner does not live in the neighborhood but would be responsible for making a drastic change in the character of the neighborhood; the precedent set by granting the proposed applications, considering that there are 10 more existing undeveloped lots which could be developed with the same density and lot line variances, thereby dramatically altering the character of the neighborhood; the unfairness of clustering houses with a driveway which impedes access, endangers and encumbers the existing homeowners' ability to safely access the only route into and out of the area in question; apprehension of a forthcoming request for ingress/egress for Lot 233 on Seneca Avenue; with 6 new houses accessing Chain Bridge Road via Seneca Avenue, at 2 or 3 vehicles per home, the neighborhood will have to absorb parking for 12 to 18 additional vehicles; apprehension that the application will be approved without the applicant having to make road improvements; the area is now congested and if property owners are allowed to build 1 dwelling per lot it will become even more congested; increased traffic and decreased property values; the applicant could build by-right within the confines of the requirements without making road improvements; and the potential for drainage problems from erecting so many houses within a small area.

Mrs. Harris asked Mr. Allison if his house was built with a variance, to which he replied that it had been built in 1967, with a variance of 8 feet on one side yard and 12 feet on the other. Mr. Allison bought the existing house.

Ms. Strobel came to the podium for rebuttal to the speakers in opposition. She said that the applicant would be constructing the largest amount of roadway possible within the existing 40-foot right-of-way; they were proposing to construct a half section, which is 18 feet, as well as to provide a sidewalk within that area shown on the plat as "reserved for sidewalk." Ms. Strobel said that the applicant, with just 5 lots, could not address the concerns of all of the neighbors; there would be no curb cuts on Chain Bridge Road and there is no site distance issue with the intersection of Chain Bridge Road and Seneca Avenue.

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Mr. Pammel prefaced his motion with some comments: He had been out to the site and observed the problems firsthand. He said he believed that 5 single family structures were not out of character in this predominantly single family community. He noted that the property in close proximity to this area is developed with townhouses and higher density units to the south and east and, within this particular subdivision, there is a mixture of lot sizes; the fact that the applicant wishes to build 5 single family houses on the property is not incompatible with the established character of the community; the issue is the varying lot sizes; the plat presented illustrated that about 18% of the dwellings within the subdivision are developed on lots of less than 2 acres (sic)--they vary from 1 lot to 1 and, in one instance 1 ; but approximately 18% of the dwellings are on lots smaller than 2 consolidated lots. Mr. Pammel said that the applicant had not overcome the issue that, within the configuration of the 5 lots, the applicant, although small, could develop the lots individually and Ms. Strobel addressed that in answer to a question from Mr. Hammack: That the lots could be developed individually. It might not be in the best interest of the community to develop the 5 small lots as they are; but the issue before the Board is: Is the hardship a result of the inability of the owner to make use of the 5 lots? If there is a hardship at all, it is a self-imposed hardship. What the applicant really needs to look at here is that to get the type of development proposed at the proposed density would require a rezoning application. The appropriate forum for the applicant's request would be the Board of Supervisors, seeking a rezoning of the property to an appropriate density that will allow them to build with the proposed density on the 5 lots.

Mr. Pammel moved to deny the 5 applications for the reasons previously mentioned, which are outlined in the Resolutions as findings of fact.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-048 by PATRICIA BAILEY CHARITABLE UNITRUST, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 8 feet from one side lot line and 10 feet from other side lot line, on property located at 1600 Seneca Avenue, Tax Map Reference 30-3((2))231, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 7,000 square feet.
4. Five single family structures are not out of character with this predominantly single family community.
5. The property in close proximity to this area is developed with townhouses and higher density units to the south and east.
6. In a particular subdivision, there is a mixture of lot sizes, but the fact that five single family houses are proposed for this property does not make it incompatible with the established character of the community.
7. The only issue is the varying lot sizes.
8. The plat that was presented illustrates that about 18% of the dwellings within the subdivision are developed on lots of less than 2 acres (sic); they vary from 1 lot to 1-1/4 to, in one instance, 1-1/2.
9. The main issue, which the applicant had not overcome, is that within the configuration of the lots that are represented, the applicant could develop the five lots individually.
10. It may not be in the best interest of the community to develop the five small lots as they are, but the issue before the BZA was a hardship imposed as a result of the inability of the owner to make use of the five lots and that is not a hardship; if there is a hardship at all, it is a self-imposed hardship.
11. Getting the type of development at the intensity indicated would require a rezoning application; the appropriate forum for this request would be the Board of Supervisors by seeking a rezoning of the property to an appropriate density that would allow construction at the intensity being requested for the five lots.

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 resulted in a tie vote of 3-3. Mrs. Thonen was absent from the meeting. The application was therefore denied, since a motion for approval was not made as such motion would have required 4 affirmative votes for approval.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 11, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

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In Variance Application VC 93-P-049 by PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 19.27 feet from street line of a corner lot, 12 feet from side lot line and 5 feet from edge of pavement of access easement, on property located at 1600 Seneca Avenue, Tax Map Reference 30-3((2))230, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 7,878 square feet.
4. Five single family structures are not out of character with this predominantly single family community.
5. The property in close proximity to this area is developed with townhouses and higher density units to the south and east.
6. In a particular subdivision, there is a mixture of lot sizes, but the fact that five single family houses are proposed for this property does not make it incompatible with the established character of the community.
7. The only issue is the varying lot sizes.
8. The plat that was presented illustrates that about 18% of the dwellings within the subdivision are developed on lots of less than 2 acres (sic); they vary from 1 lot to 1-1/4 to, in one instance, 1-1/2.
9. The main issue, which the applicant had not overcome, is that within the configuration of the lots that are represented, the applicant could develop the five lots individually.

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10. It may not be in the best interest of the community to develop the five small lots as they are, but the issue before the BZA was a hardship imposed as a result of the inability of the owner to make use of the five lots and that is not a hardship; if there is a hardship at all, it is a self-imposed hardship.
11. Getting the type of development at the intensity indicated would require a rezoning application; the appropriate forum for this request would be the Board of Supervisors by seeking a rezoning of the property to an appropriate density that would allow construction at the intensity being requested for the five lots.

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

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 7,593 square feet.
4. Five single family structures are not out of character with this predominantly single family community.
5. The property in close proximity to this area is developed with townhouses and higher density units to the south and east.
6. In a particular subdivision, there is a mixture of lot sizes, but the fact that five single family houses are proposed for this property does not make it incompatible with the established character of the community.
7. The only issue is the varying lot sizes.
8. The plat that was presented illustrates that about 18% of the dwellings within the subdivision are developed on lots of less than 2 acres (sic); they vary from 1 lot to 1-1/4 to, in one instance, 1-1/2.
9. The main issue, which the applicant had not overcome, is that within the configuration of the lots that are represented, the applicant could develop the five lots individually.
10. It may not be in the best interest of the community to develop the five small lots as they are, but the issue before the BZA was a hardship imposed as a result of the inability of the owner to make use of the five lots and that is not a hardship; if there is a hardship at all, it is a self-imposed hardship.
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   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
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   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

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In Variance Application VC 93-P-051 by PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 6 feet from one side lot line and 12 feet from other side lot line and 5 feet from edge of pavement of access easement, on property located at 1600 Seneca Avenue, Tax Map Reference 30-3((2))232, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 HC.
3. The area of the lot is 7,000 square feet.
4. Five single family structures are not out of character with this predominantly single family community.
5. The property in close proximity to this area is developed with townhouses and higher density units to the south and east.
6. In a particular subdivision, there is a mixture of lot sizes, but the fact that five single family houses are proposed for this property does not make it incompatible with the established character of the community.
7. The only issue is the varying lot sizes.
8. The plat that was presented illustrates that about 18% of the dwellings within the subdivision are developed on lots of less than 2 acres (sic); they vary from 1 lot to 1-1/4 to, in one instance, 1-1/2.
9. The main issue, which the applicant had not overcome, is that within the configuration of the lots that are represented, the applicant could develop the five lots individually.
10. It may not be in the best interest of the community to develop the five small lots as they are, but the issue before the BZA was a hardship imposed as a result of the inability of the owner to make use of the five lots and that is not a hardship; if there is a hardship at all, it is a self-imposed hardship.
11. Getting the type of development at the intensity indicated would require a rezoning application; the appropriate forum for this request would be the Board of Supervisors by seeking a rezoning of the property to an appropriate density that would allow construction at the intensity being requested for the five lots.

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.

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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 resulted in a tie vote of 3-3. Mrs. Thonen was absent from the meeting. The application was therefore denied, since a motion for approval was not made as such motion would have required 4 affirmative votes for approval.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 11, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-052 by PATRICIA BAILEY CHARITABLE REMAINDER UNITRUST, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 8 feet from one side lot line and 10 feet from other side lot line, on property located at 1606 Seneca Avenue, Tax Map Reference 30-3((2))236, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 6,500 square feet.
4. Five single family structures are not out of character with this predominantly single family community.
5. The property in close proximity to this area is developed with townhouses and higher density units to the south and east.
6. In a particular subdivision, there is a mixture of lot sizes, but the fact that five single family houses are proposed for this property does not make it incompatible with the established character of the community.
7. The only issue is the varying lot sizes.
8. The plat that was presented illustrates that about 18% of the dwellings within the subdivision are developed on lots of less than 2 acres (sic); they vary from 1 lot to 1-1/4 to, in one instance, 1-1/2.
9. The main issue, which the applicant had not overcome, is that within the configuration of the lots that are represented, the applicant could develop the five lots individually.
10. It may not be in the best interest of the community to develop the five small lots as they are, but the issue before the BZA was a hardship imposed as a result of the inability of the owner to make use of the five lots and that is not a hardship; if there is a hardship at all, it is a self-imposed hardship.
11. Getting the type of development at the intensity indicated would require a rezoning application; the appropriate forum for this request would be the Board of Supervisors by seeking a rezoning of the property to an appropriate density that would allow construction at the intensity being requested for the five lots.

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

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

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

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

6. That:

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

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

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

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

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not 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 resulted in a tie vote of 3-3. Mrs. Thonen was absent from the meeting. The application was therefore denied, since a motion for approval was not made as such motion would have required 4 affirmative votes for approval.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 11, 1993.

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Page 52, August 3, 1993, (Tape 1), Scheduled case of:

9:00 A.M. LEONARD B. TERR & LINDA L. LAMOREUX, VC 93-M-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 6378 Lakeview Dr. on approx. 24,000 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 132.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Linda L. Lamoreux, 6366 Burton Circle, Falls Church, Virginia, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the property is surrounded on the north, south and west by single family detached dwellings and on the east by homeowners' open space; the applicant proposed to enclose an existing carport and was requesting a variance of 4 feet.

Ms. Lamoreux came to the podium, stating that the applicants agreed with the staff report and requested that the BZA grant the request.

In answer to a question from Mrs. Harris, Ms. Lamoreux said that they had purchased the property in April 1993 with the intention of renovating and remodeling, including enclosure of the carport; they were unaware at that time that the carport encroached upon the side yard requirements and only found out after having contacted a contractor and an architect; at that point, they filed for a variance. She said the addition would not be used as a garage; it would be used as a side parlor/study; they intended to construct a garage in the front of the house. Mr. Hammack remarked that the new garage was not shown on their plat and Mrs. Lamoreux deferred to their architect.

Carl Newberg, CEN Architects, 8294 Old Courthouse Road, Tysons Corner, Virginia, pointed out on the overhead screen where the garage would be located, and said that the two-car garage would be within the setback requirements and would have a side entrance, using the existing driveway.

Mr. Hammack asked Ms. Lamoreux what the realtor had told them when they purchased the house. She said that they had learned of the house from the developer that the owner had hired to repair damage to the inside of the house by a previous tenant; the owner lives in Illinois. Ms. Lamoreux said they hurriedly purchased the house because they had been looking for a house in that area, on Lake Barcroft.

Ms. Harris asked, since the garage will be constructed in the front, would they now take up the pavement east of where the garage is now located. Ms. Lamoreux again deferred to Mr. Newberg, who said that the concrete slab to the right of the garage would be removed and the area would be landscaped.

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

Mrs. Harris moved to grant VC 93-M-072 for the reasons outlined in the Resolution, subject to the Conditions contained in the staff report dated July 27, 1993, as amended. Condition 4 was added, stating that "The concrete slab between the carport and the side lot line shall be removed and the area shall be landscaped architecturally."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-072 by LEONARD B. TERR & LINDA L. LAMOREUX, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11 ft. from side lot line, on property located at 6378 Lakeview Dr., Tax Map Reference 61-3((14))132, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 24,000 square feet.
4. There is a sanitary sewer easement to the rear of the property.
5. There is a topographic falloff between Lakeview Drive and Lake Barcroft.
6. The applicants are making a reasonable request; they choose to go no closer to the property line than they presently are.
7. Photos make the carport appear to be an integral part of the house in that enclosing the carport and subsequently removing the concrete slab on the side and providing landscaping would be an asset to the applicant's property and, possibly, the property of the next door neighbor.
8. The character of the zoning district will not be changed by the granting of the variance.
9 The addition will be 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 specific addition (enclosure of carport) shown on the plat prepared by Richard O. Spencer, Certified Land Surveyor, dated May 11, 1993 and is not transferable to other land.

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

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

4. The concrete slab between the carport and the side lot line shall be removed and the area shall be landscaped architecturally.

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

Mrs. Harris moved to waive the eight-day waiting period. 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 August 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 54, August 3, 1993, (Tape 1), Scheduled case of:

9:15 A.M. JOSEPH H. & MARJEAN D. KAUFMAN, VC 93-V-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 8709 Eaglebrook Ct. on approx. 21,454 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 111-2 ((6)) (22) 81. (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. Dr. Joseph H. Kaufman, 8709 Eaglebrook Court, Alexandria, Virginia, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the property is located in the Waynewood Subdivision, west of the George Washington Memorial Parkway; the surrounding lots are also zoned R-3; to the north and south the lots are developed with single family detached dwellings, to the east is federal parkland and to the west is a pumping station. The applicant proposed to construct an addition 7 feet from the side lot line and, accordingly, was requesting a variance of 5 feet from the minimum side yard requirement.

In answer to a question from Mr. Ribble, Ms. Anderson said that the house on Lot 82 is 15 feet from the shared lot line.

Dr. Kaufman came forward to present the statement of justification, stating that illness necessitated enlarging his home; in 1989, they converted their existing basement into an apartment and did not use the variance that the Board granted them in April 1989; the main problem is wheel chair accessibility; he asked architects to design an addition and three of the four would have required a variance of between 9 and 11 feet; the proposed addition requires a 5 foot variance, which both the architect and the builder assured him was the absolute minimum for the construction of an addition with wheel chair accessibility. Dr. Kaufman said that, in 1989, the Board had found that the lot is pie-shaped and narrow and that the house is sited unequally on the lot; none of the neighbors objects to the proposed addition and their view of the parkland will not be obstructed.

Chairman DiGiulian said he believed the last variance request was to come to within 2.1 feet of the property line; the applicant said he had previously requested a variance to within 4.2 feet.

In answer to a question from Mr. Ribble, the applicant said that the variance previously granted was on the other side of the lot. Mr. Ribble asked the applicant why he had changed

his mind about what side of the house he wanted to build on. The applicant said that it was a different architect who persuaded him to change to the other side of the house; the wheel chair was previously not a consideration, as it is now.

Mrs. Harris asked the applicant why he could not build within the confines of the requirements of the Zoning Ordinance as the area is flat and the same amount of floor space could be placed in the front or rear of the house in a configuration that did not require a variance. Dr. Kaufman said the architect had pointed out that putting the addition in the back of the house would block his neighbor's view of the parkland and the Potomac River. Mrs. Harris said that was not what she was suggesting, rather she was asking why he could not put the addition closer to the patio and not further back.

Mr. Hammack asked where the applicant would park his cars and he said that, perhaps, he would build a garage sometime in the future but had no plans to do so now; thus far, he was only planning to convert the existing garage into a living area. Dr. Kaufman said that there is an existing driveway and the entrance to the existing garage is from the side. He pointed out that there is a cul-de-sac with plenty of room for parking; he also said that he could put in a concrete slab for parking; his present plan was to park on the street.

Mr. Ribble asked Dr. Kaufman if he had any renderings of his proposed addition and he said he had none.

Mrs. Harris suggested another way to avoid the need for a variance; however, Dr. Kaufman said it would interfere with his plans for a hydrotherapy room in the area where the garage was being torn down.

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

Mr. Ribble said he was torn on this application and he was not satisfied that the Board did not have a drawing of the proposed addition. He made a motion to defer until such time as Dr. Kaufman could come in with the architect and the drawings. Mr. Ribble believed that the architect would be in a position to answer many of the questions posed by the Board.

Mr. Hammack seconded the motion and said he would support the motion because he had difficulty coming to the conclusion that the hardship requirement had been met; it is unusual to have an addition 56 feet long that would sit 7 feet from a side lot line; if the neighbor on the adjacent property approved of the addition, that might help a little bit. Mr. Hammack remarked that the proposed addition is as big as the existing house and would be 7 feet from the property line; he understood Dr. Kaufman's motives and his reliance on the advice of the architect; however, he did not understand why the addition could not be a couple of feet narrower and still be wheel-chair accessible; he believed the addition could be reconfigured so as not to require a variance; under the circumstances, it appeared to be more of a convenience; and, he would like to speak to the architect.

Chairman DiGiulian asked the applicant how much time he would require to obtain the exhibits requested by the Board and the applicant said he did not know. He said that time was of the essence as his relative had metastatic carcinoma and he did not know how long it would take an architect to prepare the drawing and come before the Board.

Mr. Ribble pointed out that the applicant could not start building without the drawings and he said they planned to start building almost immediately; the garage had already been taken down and renovated to prepare for the hydrotherapy unit.

Dr. Kaufman stressed that he consulted four architects and this plan was the best any one of them could come up with.

Mr. Ribble advised the applicant that it was in his best interest to contact the architect and get a drawing because, if he had to vote on the proposed addition at that time, he would be inclined to deny the request.

In answer to a question from Chairman DiGiulian, Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the next meeting was scheduled for September 14, 1993, and the applicant told Chairman DiGiulian that he believed he could have something prepared by 9:00 a.m. on that date.

Mrs. Harris said that she would like the applicant to address the hardship issue and Mr. Hammack said he would like to know why the proposed addition could not be constructed without a variance; he said that, at that time, he could not support the application.

Chairman DiGiulian advised that there was a motion on the floor to defer the hearing until September 14, 1993 at 9:00 a.m., for additional information and testimony from the architect.

The motion carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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9:30 A.M. FAIR OAKS COMMUNITY CHURCH & S. & A. ENT. T/A THE CLUBHOUSE, SPA 89-C-026 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 89-C-026 for church and related facilities and school of general education to permit child care center, change in applicant name and delete school of general education. Located at 3309 West Ox Rd. on approx. 1.0001 ac. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 62.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Sarah L. Roussos, 13221 Ladybank Lane, Herndon, Virginia, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the site is located north of the intersection of West Ox Road and Route 50; the property is planned for residential development at 0.2 to 0.5 dwelling units per acre; it is surrounded by single family detached dwellings on lots of varying sizes; the applicant was requesting approval to permit a child care center in an existing church; the applicant also was requesting a change in applicant name and deletion of a school of general education; the Edlin School previously occupied the space; the applicant proposed to conduct before and after school child care from 7:00 a.m. to 6:00 p.m., Monday through Friday; a maximum of 40 students and 5 teachers was proposed and, although the application proposed the same number of students as the Edlin School had at this location, the current application differed in that the previous use limited its hours from 9:00 a.m. to 3:30 p.m, which is outside the peak-traffic period on West Ox Road, a heavily travelled two-lane roadway; also, the previous school transported the students by van, which limited the number of trips and turning movements into the site from West Ox Road.

Ms. Anderson further stated that, although the current applicant is willing to try to alleviate the number of trips to the site, the nature of the current application made it impossible for staff to resolve the transportation issues since the use is for before and after school child care, with parents dropping children off and picking them up before and after work and the teachers transporting children to and from nearby kindergartens and schools with varying hours of operation.

Ms. Anderson said that, in addition to the transportation problems related to the current application, staff had identified other concerns with the application, including the need for noise attenuation, screening and barriers. It was staff's opinion that the application was not in harmony with the Plan's recommendation for low density residential use in this area due to the potential adverse impact, nor was it in conformance with the Zoning Ordinance standards relating to vehicular access and transitional screening; therefore, staff was recommending denial of the application.

Ms. Roussos came forward to represent the applicant and present the statement of justification; she stated that she had also brought Wayne Carroll with her who would be representing the interests of Fair Oaks Community Church and any of the previous actions related to the Edlin School. Ms. Roussos referenced the growth and expansion of Northern Virginia with a unique type of workforce; the traditional family had been redefined and the census figures of 1990 confirmed this fact; it was determined that one in four children in this area live with a single parent; the number of dual employed parents was soaring; therefore, the need for child care outside the home for longer and more varied hours is no longer a choice, but an economic necessity. She said that, after a decade of superior achievement and reputation in the arena of preschool and school-aged summer care with the Embassy School affiliation, the applicant wished to expand their horizons and offer more opportunities to a wider range of families in this geographic area.

Ms. Roussos said that the applicant had applied for a $40,000 grant from AT&T Corporation, which would be allocated toward developing and implementing new programs that are especially designed for school-aged children at the new site. She said that a petition signed by 163 present clients and concerned advocates had been submitted to Supervisor Robert B. Dix, Jr., Centreville District.

Ms. Roussos referenced the requirement of furnishing a deceleration lane on West Ox Road to accommodate the increased traffic flow during peak-hour operation and said it was an interesting point, since it is the Board's concern that the van and parent transportation would generate 210 trips per day as predicted in the applicant's findings, . She said that estimating with 40 children on site, 20 of those children and 2 teachers will be accessing and exiting the site between the hours of 7:00 and 8:00 a.m.; one van will leave and enter the property between 8:00 and 9:00 a.m. and again at 11:00 a.m. and 3:00 p.m.; 35 vehicles would enter and leave the property between 4:00 and 6:00 p.m. Ms. Roussos said they found that only 120 vehicular trips are made on any given day, not 210; thus, reducing the impact on West Ox Road. She asked the Board to consider the consequences of providing a 24-foot public access easement across the front of the lot, as it would encroach upon their available parking. In conclusion, Ms. Roussos said that the Clubhouse before and after school center is positioning itself for the future of the children and she felt the time was now to welcome unsurpassed child care in this location.

Chairman DiGiulian asked Ms. Roussos to address the Development Conditions contained in the staff report and indicate whether or not she agreed with them, beginning with Condition 5.

Regarding Condition 5, Ms. Roussos said that they were in the process of obtaining a shared parking agreement. Mrs. Harris asked Ms. Roussos if she had read the Conditions and if she had objections to any of them. Ms. Roussos said that they would obtain a shared parking agreement; there would be no need to have the Clubhouse-generated cars there at the same time as the cars generated by the church, since their respective time frames preclude that from happening. She agreed with Condition 7 limiting the enrollment to 40 children and Condition 8 limiting the hours of operation to 7:00 a.m. to 6:00 p.m.. Mrs. Roussos agreed with Condition 9, limiting the number of children in the play area at any one time; they had given consideration to Condition 10 regarding the provision of transitional screening along the northern, southern and eastern lot lines and she was sure they could work with that, if the need arose. Mrs. Harris questioned this statement and Ms. Roussos said that compliance with Condition 9 would be costly with their tiny budget. Chairman DiGiulian advised that Condition 9 had been a condition of the prior use permit and the prior permittee had not complied with the Condition. He said that, in order to be consistent, the Board would have to require compliance as they had in the past; he asked Ms. Roussos if she agreed to the Condition. Ms. Roussos deferred to Mr. Carroll, Treasurer and Trustee of Fair Oaks Community Church. It was his belief that they had planted all the required trees when they entered into the agreement with Edlin School; if there was something that had not been done, he said he was not aware of it. Chairman DiGiulian said the staff report indicated that the Condition had not been complied with. Mr. Carroll said that they had planted trees and, when some died, they replanted trees; he was not sure what was missing. Mr. Carroll said that, if there was anything not done that should have been done, they would correct it.

Chairman DiGiulian asked that Ms. Roussos address Condition 11 and she said that, considering the fact that Edlin School was also there and that they would have the same situations with children going to the playground, she did not believe there had been a concern previously about the children causing undue noise. Mr. Ribble asked Ms. Roussos if she meant that she did not agree with the Condition. Mr. Carroll said he recalled that the wood fence was waived when they entered into the original agreement with Edlin School, in light of Condition 9, which restricts outside activities to 12 children at a time; the church would prefer not to have that requirement because of the cost involved and because, with only 12 children outside at a time, it is not likely that much noise would be generated. Mr. Carroll said they would supplement with additional trees and shrubbery. Mr. Kelley said he would like staff to comment on previous Condition 9 and the current Condition 9. Ms. Anderson said she would agree that having only 12 children on the playground at one time would help to attenuate the noise; the reason staff had asked for the Condition, however, was because of the very close proximity of the two existing dwellings on either side of the church; even 12 children can make a lot of noise on a playground in close proximity to existing residential dwellings.

Chairman DiGiulian asked staff what the difference was between the previous application and the one before the Board today that required a solid wood fence, the right and left turn deceleration lanes, etc.; he was trying to find a nexus and asked what had happened since the last granting that would require all of the additional work. Mr. Ribble said he believed the expanded hours made the difference. Mrs. Harris said that, previously, it was a non-peak-hour operation; people would drop off their children and come back later. Chairman DiGiulian referenced a Condition which asked that the existing entrance be made narrower to more closely look like a part of the existing neighborhood; if the amount of traffic coming to the site required right and left turn lanes, it appears inconsistent to want to narrow the driveway entrance. Ms. Anderson advised that it is more efficient to funnel traffic into a certain area to keep turning movements in line, entering and exiting the property; the existing driveway was designed with almost the entire front of the site having gravel on it and looking as if it is all part of a roadway, which would encourage conflicting turning movements. Ms. Kelsey said that the 30-foot wide driveway had lost its definition and was no longer confined as shown on the plat; she said the entrance appeared to be all along the property line. Ms. Anderson said that, because of the gravel, there is also no definition of the parking spaces as they are shown on the plat. Mr. Carroll said he did not believe that was entirely correct; the wings that come off of West Ox Road are dirt with grass growing on them; he believed there were some shrubs at certain points which he believed constricted and defined the entrance way; the gravel is confined to the center area. Mrs. Harris said she drove by there often and the entrance was not clearly defined, with no apron onto West Ox Road.

Mrs. Harris said she was concerned that the applicant did not fully understand the Development Conditions; she believed they may not have read them thoroughly and did not understand the implications regarding their commitment to comply with them. Ms. Roussos said she, her partner, and Mr. Carroll had gone over the Development Conditions and they were having difficulty with some of them. Mrs. Harris said she questioned their understanding of the Conditions because Ms. Roussos' statement of justification was mostly about how nice the school was and the need for the school; whereas, the land use issues needed to be addressed. Mrs. Harris said that the Conditions were binding and she was not convinced that the applicant understood the commitment to comply with the imposed Conditions. Mr. Ribble said he, too, believed that the applicant did not fully understand the necessity to comply with the Conditions, nor did he believe that she fully understood the expense involved in complying with the Conditions. Mr. Hammack said he was concerned that Ms. Roussos said that she wanted to draw students from the broadest possible geographic range, but then said she planned to minimize the number of vehicles entering and exiting during peak rush hours; he did not know how to reconcile the inconsistencies; he anticipated many vehicular trips; the land issues had not been addressed by the applicant.

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Mrs. Harris said that, based on the issues raised, she believed that the applicant needed time to digest and thoroughly examine the Conditions. She said she would, therefore, move to continue the hearing to a later date.

Chairman DiGiulian said he would prefer to listen to all the testimony and then defer for comments on the Development Conditions and making a decision. Ms. Kelsey said that staff had met with the applicant and a representative from the Office of Transportation in an effort to ensure that the applicant understood the Development Conditions and what they entailed; they also discussed the differences between this application and the previous one; she said that staff had recommended denial of the original application, as well.

Chairman DiGiulian asked Ms. Roussos if she had any additional testimony and she did not.

Speaking in support of the application were: Philip Merritt, 12133 Westwood Hills Drive, Herndon, Virginia; Carla Williams, 13404 Brookfield Drive, Chantilly, Virginia; and Michael Dameron, 13404 Virginia Willow Drive, Fairfax, Virginia. Those in support said that they found over the years that the Embassy School, operated by the applicant, had provided outstanding quality service, that the Conditions imposed by the BZA might be too restrictive and expensive for the applicant, thereby depriving clients of the quality service;

Chairman DiGiulian asked Mr. Merritt if he believed that the right and left turn lanes were essential to the safety of the school and Mr. Merritt said he did not believe it affected the safety of the children. Mrs. Harris said she travels the route frequently and, many times, had suddenly come upon stopped cars at the entrance to the school, which was unsafe especially to drivers who were not familiar with the area and were not prepared to see the backup.

Ms. Anderson advised the Board that the speakers in support had been referring to the Embassy School at another location when describing the superior care given to their children.

Speaking in opposition to the application were: George Gould, 3311 West Ox Road, Herndon, Virginia; and, Jean Johnson, 12508 Coldge Street, Herndon, Virginia.

Concerns of those in opposition were: People coming down West Ox Road make a high-speed turn and go back in the other direction, throwing gravel and dust all over; they did not object to the gravel area originally, when Edlin School was there and they wanted to work with the people, but they found that, even the traffic from Edlin School caused quite a bit of dust; some of the residential community's bedrooms face the church and the extra hours of operation from 7:00 a.m. until 6:00 p.m. are objectionable; the play area was not always used because it is in a low lying area and is quite frequently wet, so the children would use other areas for play; the Edlin School met with the neighbors before they started operating and explained their desire to get along with the neighbors, whereas the current applicant had not made any effort to approach the neighbors; the maintenance which the church recently has been doing has not been to the satisfaction of the neighbors idea of keeping up the property's appearance; last fall the church raked their leaves up to the side of the property, to the south, and left them lying there instead of picking them up and that made it necessary for the neighbors to constantly pick up leaves; they did not adhere to the no-left-turn leaving the area, creating a dangerous situation because of the knoll in that area; one of the neighbors had a hole in his hedge where a car drove through the hedge while trying to navigate the curve to the south, which frequently happened; there are blind curves on either side of the church entrance; the traffic on West Ox Road often exceeds 45 mph and neighbors cannot see the traffic leaving the school until they are too close for safety and any further traffic on the road would increase the danger; after improvements are made, all traffic will have to turn right and will create a line of traffic which would be dangerous.

Ms. Roussos came forward for rebuttal. She said she was glad she had a chance to hear everyone's comments; safety was her prime issue also; she asked the Board to consider the cost of the improvements.

Chairman DiGiulian said he believed the Board had endeavored to make it clear that they would like Ms. Roussos to address the Development Conditions at the time of the continuation.

In rebuttal, Ms. Roussos said that they would be as consistent as possible in their endeavors to ensure that everyone would continue the right-turn-only policy.

Mr. Kelley asked Ms. Roussos to tell him about the Embassy School. She said that the Embassy School is a private school at 3013 West Ox Road, operated by her partner, Anne W. Cornacchione. Ms. Cornacchione has operated the school there with her husband for almost a decade. There are no other schools run by the applicants.

Mrs. Harris moved to continue the hearing of SPA 89-C-026 for additional comments from the applicant regarding the Development Conditions and a decision by the Board. She said she believed that the only way the BZA could ensure a fair decision was to have the applicant fully understand the extent and the degree to which the Development Conditions will affect their application and the operation of the School.

Mr. Kelley seconded the motion, stating that he had initially though of making a motion deleting Conditions 11 through 14; however, having heard from the last two speakers in opposition, he was not sure that would be a good idea.

Ms. Kelsey suggested a date of September 14, 1993, at 10:00 a.m. for continuing the hearing, and it was so moved. Chairman DiGiulian stated that, at the continuation of the hearing, the BZA would discuss the Development Conditions and make a decision, without the need to bring everyone out again.

Mr. Ribble suggested to the applicant that she talk to the neighbors before the continuation date.

The motion carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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The Board recessed at 11:15 a.m. and reconvened at 11:30 a.m.

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Page 59, August 3, 1993, (Tape 2), Scheduled case of:

9:45 A.M. ST. CATHERINE OF SIENA CHURCH, SPA 80-D-021-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 80-D-021 for church and related facilities to permit building additions, increase in parking spaces, increase in land area and increase in seating capacity. Located at 1020 Springvale Rd. on approx. 15.81 ac. of land zoned R-1. Dranesville District. Tax Map 12-1 ((1)) 31, 32B and 32C.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William F. Enderle, 200 N. Glebe Road, Arlington, Virginia, agent for the applicant, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located on the west and south sides of Springvale Road, includes a 7,714 square foot church sanctuary with 454 seats, a social hall of 8,421 square feet and 221 parking spaces; the property is surrounded by single family detached dwellings also zoned R-1, with the area adjoining the western lot line being developed under the Cluster Provisions of the Zoning Ordinance; Route 7, Leesburg Pike, is located south of the property; the applicant was requesting a special permit amendment to allow the lot to be increased by 1.78 acres, a rectory containing 13,227 square feet, a new social hall containing 13,285 square feet, and a 2,150 square foot addition to the church sanctuary, in order to add 256 additional seats and 36 parking spaces; total square footage would be 43,797 feet, or an FAR of 0.06, a total of 710 seats and a total of 257 parking spaces. Mr. Heine said that the special permit allowing the church was approved by the BZA on April 22, 1980; it was followed by approval of additional parking in 1983; it was staff's opinion that, by dedicating a right-of-way for the realignment and improvement of Springvale Road, reconstructing the existing right-turn deceleration lane into the site at a future date, and providing transitional screening between the proposed additions and adjoining lot lines, the proposed use would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the General Standards and Standard for Group 3 uses; therefore, staff recommended approval of SPA 80-D-021-2.

Mrs. Harris asked Mr. Heine when the applicant proposed the realignment of Springvale Road would take place. Mr. Heine said that did not appear on any of the documentation. Mrs. Harris said that, although there is a very bad bump, the road is not heavily traveled. She believed that drivers avoided the road because of the large bump.

Mr. Enderle came forward to represent the applicant, stating that the applicant accepted the Proposed Development Conditions as outlined in the staff report.

Mr. Hammack referenced a letter from Mr. and Mrs. Brown dealing with the drainage system and, when there was a high water table, they said they had some odor; it appeared that pressure on the drainage field may cause some overflow. He asked staff if they had included this concern in the Development Conditions. Mr. Heine said staff did not have sufficient time to do that, but they referred it to the Environmental staff, who did not wish to comment on it; they asked staff to send the letter to the Health Department. Mr. Hammack said he had no objection to the expansion of the facilities, except that it would put more pressure on the drain fields since, ultimately, under one of the phases, there would be more seating capacity and, perhaps, more use. Mr. Hammack said he would like to know what would occur in relation to the drain field.

Mr. Enderle told Mr. Hammack to be assured that, if there was a condition as the letter stated that, at some time produced odors, he could be assured that on the new Development Plan under Phase 2, they planned to install an additional drain field as depicted on the drawings. He said that was specific and committed; they do not have a problem with that and he assured Mr. Hammack that they would cooperate with the Health Department and correct any problem.

Mr. Hammack remarked that it appeared there would be two new drain fields and Mr. Enderle advised that was correct; they were looking into the situation on an as-needed basis.

The architect, Peter Juanpere, who designed the addition came forward and stated that the existing drainfield presently takes all the effluence from the church and the facility; the new proposed drainfield will take care if the major portions of the church expansion and social hall; the new one behind the rectory will be a residential drainfield; the main objective was to design a project that would be in keeping with the neighborhood; they had gone before the Great Falls Citizens Association on various occasions to explain what was being done on the site; Richard Peters, President of the Association, was expected at the hearing to speak in support, but was unable to do so because of a medical emergency. Mr. Hammack said Mr. Peters had sent the Board a letter of support.

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

Mr. Kelley moved to grant SPA 80-D-021-2 for reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 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 80-D-021-2 by ST. CATHERINE OF SIENA CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 80-D-021 for church and related facilities to permit building additions, increase in parking spaces, increase in land area and increase in seating capacity, on property located at 1020 Springvale Rd., Tax Map Reference 12-1((1))32, 32B and 32C, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 15.81 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 Intec Group, Inc., dated March 10, 1993, revised through July 7, 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. Transitional screening shall be provided in accordance with the following:

   Along the southern lot line, existing vegetation shall be deemed to satisfy Transitional Screening 1, except that supplemental plantings shall be provided between the rectory and the tree line.

   Along the northern lot line, the existing vegetation shall be deemed to satisfy Transitional Screening 1.

Along the eastern lot line south of the driveway, the existing vegetation shall be deemed to satisfy Transitional Screening 1 except that supplemental evergreen plantings shall be provided.

Along the eastern lot line north of the driveway, Transitional Screening 1 shall be provided adjacent to the eastern boundary of the proposed parking lot.

Along the western lot line, the existing vegetation shall be deemed to satisfy Transitional Screening 1 provided that evergreen plantings are provided west of the proposed Social Hall and adjacent to the parking lot.

The above plantings shall be in a location, quantity, type and size as approved by the Urban Forestry Branch of the Department of Environmental Management. The purpose of these plantings shall be to screen the use, particularly the parking areas, from the adjacent residential properties. The planting plan and tree preservation plan shall include the preservation of existing quality trees which the Urban Forestry Branch may deem to be appropriate to be saved with particular emphasis on the existing trees in and around the proposed rectory.

6. The barrier requirement shall be waived along all lot lines.

7. Right-of-way to 45 feet from the centerline of Springvale Road necessary for the future road improvements of the portion of the road adjacent to the east property line located south of the driveway shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand by the Virginia Department of Transportation (VDOT).

8. Right-of-way necessary for the realignment of Springvale Road located on the northeastern part of the property shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand by the Virginia Department of Transportation or at such time as an alignment is determined and VDOT has begun acquisition.

9. The parking lots located north and south of the driveway shall be connected by a travelway through the median strip of the driveway as shown on the revised Special Permit Plat.

10. At such time as Springvale Road is realigned, the existing right turn/deceleration lane into the site shall be reconstructed and designed to conform with DEM and VDOT standards.

11. The maximum number of seats in the main area of worship of the church shall be 710.

12. There shall be a total of 257 parking spaces provided as shown on the Special Permit Plat. 36 of the total parking spaces shall be provided when the Church is expanded (Phase III). All parking shall be on site.

13. The area west of the line identified on the Special Permit Plat as the existing floodplain line and storm drainage easement shall be designated as an Environmental Quality Corridor (EQC). There shall be no clearing or grading in this area except for the removal of dead or dying trees and shrubs.

14. Best Management Practices (BMPs) shall be provided as determined by the Director, Department of Environmental Management, to meet the requirement of the Chesapeake Bay Preservation Ordinance. Infiltration trenches or other infiltration measures may be used to help meet this requirement. Should a stormwater management pond be required, the location shall be generally in the area shown on the Special Permit Plat and shall be outside of the EQC.

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 Phase I of the use as shown on the special permit plat has been established or construction has commenced and been diligently prosecuted. In addition, this special permit shall automatically expire, without notice, five (5) years after the date of approval unless Phase III of 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.

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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.

Mr. Kelley moved to waive the eight-day waiting period. Mrs. Harris seconded the motion. The motion 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 August 3, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 62, August 3, 1993, (Tape 2), 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. (DEFERRED FROM JULY 13, 1993).

Chairman DiGiulian advised that this appeal had been withdrawn on July 12, 1993.

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Page 62, August 3, 1993, (Tape 2), Scheduled case of:

10:15 A.M. THOMAS J. & LIANE E. YOUNG, VC 93-Y-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-207) and permit 5 ft. and 6 ft. high fences to remain in front yard (4 ft. max. height allowed by Sect. 10-104). Located at 3528 Valeview Dr. on approx. 23,838 sq. ft. of land zoned R-2 (Cluster). Sully District. Tax Map 46-1 ((8)) (4C) 48. (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. Liane E. Young, 3528 Valeview Drive, Oakton, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report, which she said had been prepared by Susan Langdon, Staff Coordinator; the site is located east of the intersection of West Ox Road and Vale Road in the Valewood Manor Subdivision; the surrounding lots are also zoned R-2 and developed under the Cluster provisions of the Ordinance with single family dwellings; the applicant proposed to construct an addition consisting of a two-car garage with a second story room to be located 14 feet from the rear lot line; the site is located off a pipestem which makes it difficult to evaluate; Ms. Kelsey used the viewgraph to explain the idiosyncrasies of the site.

Mrs. Harris asked Ms. Kelsey to point out the rear lot line, which Ms. Kelsey did, stating that the rear lot line is that which is most opposite the front lot line, and the proposed addition would be 14 feet from that line.

Mr. Hammack asked Ms. Kelsey if the applicant's front lot line happened to be the rear lot line of the lot in front of it. Ms. Kelsey said that was true.

A discussion ensued regarding lot lines and where they were located.

Ms. Young came forward to present the statement of justification, stating what she had been told when she called to inquire about lot setback requirements and the resulting confusion when they actually had the plat drawn; they were once told they had to have a total of 25 feet with the 8 feet on the side yard, plus the back yard; the architect reconfigured the addition to meet the total 25-foot requirement; when they returned with the new plat, someone else told them they needed to be 25 feet from one lot line and they needed a variance. Next, the fences came into question; she said the fence actually belonged to their neighbor and it extended into their yard about 2.5 feet because of the anchor post. Regarding their front yard, which is now their back yard, down behind their shed, it faces the back yard of two other neighbors whose compost piles are located in that area, so they just put up a fence in what they thought was their back yard.

Mrs. Harris referenced the statement of justification, which she said stated that the garage would also be a workshop; she asked what percentage would be which. Ms. Young said there would probably be enough space for one car, the rest would be a workshop until her husband's business gets established well enough so that they are able to rent space for that activity. In answer to a question from Mrs. Harris, Ms. Young said that her husband manufactures items

in the garage and has a Business, Professional and Occupational License; she said they have all the necessary licenses from Fairfax County and the Commonwealth of Virginia. In answer to a Mrs. Harris' question as to whether Ms. Young's statement sounded like they had their papers in order, Ms. Kelsey said she would not be comfortable answering that because that was not a question she normally had asked of her; she said the applicant not only had to have a professional and business license, she had to have a home occupation letter from Zoning; she said she would have to examine the documents before commenting. Ms. Young assured the Board that they had everything they needed from the County and the Commonwealth. Ms. Kelsey said that it was her understanding that a Home Occupation Permit only allowed an office in the home but did not allow any storage of equipment or supplies; it did not allow any clients or employees in the home, nor did it allow any manufacturing.

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

Mr. Hammack asked Ms. Young if her husband did any woodworking in the evening, to which she replied "yes." Mr. Hammack asked if Mr. Young used saws, lathes, etc.; she said he uses power equipment in their basement now. In answer to a question from Mr. Hammack, Ms. Young said the closest house is that of their back neighbor, which is 100 feet away. Mr. Hammack asked about the side neighbor and Ms. Young said they were the length of their drainfield away, plus whatever the size of their back yard is: probably a couple hundred feet on either side; she said they are surrounded by drainfields, so there is no one close to them.

Mr. Hammack moved to grant VC 93-Y-084 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 27, 1993.

Mr. Hammack remarked that Mr. Young had been using power equipment in his basement and had not thus far impacted on any of the neighbors; however, he believed the potential existed in the new location. Mr. Hammack said he would like to add to Condition 5 that the applicant shall be restricted to using power equipment between the hours of 9:00 a.m. and 5:00 p.m. on Monday through Friday or Monday through Saturday, so as not to impact on any neighbors if he is using heavy equipment to operate a business; he could still paint and do other activities that do not require the use of noisy power equipment. A discussion ensued and the Board members eventually agreed that Condition 5 was sufficiently restrictive as written. Chairman DiGiulian said he believed any other action should come from the Zoning Enforcement Branch in the event the applicant does not comply with the conditions of the various permits and licenses required before a building permit can be issued.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 92-Y-084 by THOMAS J. & LIANE E. YOUNG, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14 ft. from rear lot line and permit 5 ft. and 6 ft. high fences to remain in front yard, on property located at 3528 Valeview Dr., Tax Map Reference 46-1{{8}}(4C)48, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 3, 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 (Cluster).
3. The area of the lot is 23,838 square feet.
4. The lot is accessed via a pipestem.
5. The lot has an unusual configuration all the way around; it has a weird shape.
6. The lot has septic fields in the middle of much of the usable property.
7. The house is positioned and angled to the property lines.
8. There is practically no place on the property where an addition could be built without requiring a variance under any of the definitions discussed; there is really an unusual situation on the property as it now exists.
9. There is concern about the home occupation permit, but the applicant's testimony indicates that they have all the appropriate licenses, and it was taken at face value.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 and fences shown on the plat prepared by Arencibia Architects Inc., dated June 30, 1993, revised July 1, 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.

4. The fences shall be maintained in good repair.

5. Prior to the issuance of a building permit, the applicant shall obtain all licenses and permits required by Fairfax County for the woodworking business.

Pursuant to Sect. 18-407 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.

Mr. Hammack moved to waive the eight-day waiting period. 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 August 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 65, August 3, 1993, (Tape 2), ACTION ITEM:

Request for Reconsideration
Kathryn Nesbit, SP 93-P-027
heard and denied July 27, 1993

Mr. Kelley moved that the request be denied; it was a unanimous vote, he could speak for his vote only, a cutback of the hours of operation would have made no difference, he did not believe it was a suitable location for a home professional office.

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.

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Page 65, August 3, 1993, (Tape 2), Action Item:

Approval of Resolutions from July 27 and July 28, 1993
and
Approval of Revised Plat for VC 93-M-044
for Raymond M. Nowakowski

Mr. Ribble moved to approve. Mrs. Harris 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.

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Page 65, August 3, 1993, (Tape 2), Action Item:

Request for Date and Time
Patrick R. Cain Appeal

Mrs. Harris advised that there was some question about whether the application had been timely filed and asked if there was anyone present to address the issue. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that this had been discussed at a prior hearing and deferred in order for Mr. Hammack to write a letter to the Attorney General requesting an opinion concerning the time limit issue. Ms. Kelsey said that Jane W. Gwinn, Zoning Administrator, was on standby and could be present almost immediately, if the Board so wished. Mr. Hammack said there was no need; he had been out of town and had not yet written the letter, but would do so very soon. Ms. Kelsey said that, in the past, the Planning Commission members had planned similar action but were told that they could not do so; they were told they would need to go through the County Attorney's Office; she said she believed Mr. Hammack also was going to check on that issue. Chairman DiGiulian said that, as far as he was concerned, if Mr. Hammack wished to write the letter, he could do so. Ms. Kelsey advised that Mr. Cain was present, if the Board had any questions. Chairman DiGiulian said he believed they should decide whether or not they would hear it at the next meeting on September 14, 1993. Mr. Kelley asked Ms. Kelsey if she knew what Ms. Gwinn would tell the Board if she appeared. Ms. Kelsey said Ms. Gwinn had only said that she would be available. It was the Board's consensus was that, even if the Attorney General took a long time to respond, Mr. Cain could operate as he had been until the response was received and a decision made by the Board. Chairman DiGiulian asked Mr. Cain if he had any comments.

Mr. Cain said that he disagreed with the Zoning Administrator's decision and his purpose in bringing it before the BZA was to voice those feelings. Mr. Cain said he believed what the Zoning Administrator was saying, but he did not believe that it applied to him and he would continue operating until the Zoning Administrator provided him with a written order or challenged him, in which case he would take it to court.

It was the consensus of the Board that a decision on the appeal be deferred until September 14, 1993, at which time it would not be necessary for the appellant nor the Zoning Administrator to be present. If a response is not received from the Attorney General by September 14, 1993, the Board may defer their decision again.

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Page 65, August 3, 1993, (Tape 2), Action Item:

Approval of Minutes from June 22, and July 7, 1993 Hearings

Mrs. Harris so moved. 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.

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Page 65, August 3, 1993, (Tape 2), Action Item:

Request for Twelve-Month Waiver
William H. Dempsey and Karen L. Holzberg, VC 93-D-034
heard and denied on June 29, 1993

Mr. Hammack so moved. Mrs. Harris 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.

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Page 66, August 3, 1993, (Tape 2), ACTION ITEM:

Request for Date and Time
McDaniel Construction Company, Inc., Appeal

Mrs. Harris moved to accept the appeal and schedule it for November 3, 1993 at 10:00 a.m. 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.

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Page 66, August 3, 1993, (Tape 2), Action Item:

Request for Date and Time
Stanis Furniture, Inc., Appeal

Jane W. Gwinn, Zoning Administrator, advised that both the appellant and staff were requesting that the appeal not be scheduled pending the results of a Planning Commission review of the Ordinance provision that is the basis of this appeal. Ms. Gwinn said it was staff's wish that the Board find the appeal complete and timely filed, but defer scheduling a hearing until such time as the Planning Commission has reviewed the issue of Retail Sales in Industrial Districts, at the request of the Board of Supervisors, in terms of whether any Zoning Ordinance should be recommended.

Mr. Hammack moved to grant the request to defer. 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.

Mrs. Harris asked if the Board had not recently heard an appeal on this same issue and Ms. Gwinn said that they had, involving a public storage facility near Marlo Furniture, which has since gone to court.

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Page 66, August 3, 1993, (Tape 2), Action Item:

Request for Change of Permittee
Kindercare, Inc., SP 82-S-068

Mr. Hammack so moved. 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.

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Page 66, August 3, 1993, (Tape 2), Action Item:

Request for Withdrawal
Theodore Simpson Appeal, A 92-D-018
Scheduled for September 14, 1993 at 10:00 a.m.

Mr. Hammack so moved. 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.

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Page 66, August 3, 1993, (Tape 2), Action Item:

Request for Intent to Defer
McLean Bible Church Appeal
Scheduled for September 14, 1993

Jane C. Kelsey, Chief, Special Permit and Variance Branch, asked the Board to defer this appeal indefinitely, until such time as the applicant has an application for a special permit scheduled and heard. Ms. Kelsey said that, if the application for a special permit resolves their problem, the appellant would withdraw the appeal application. The special permit application requests the amendment of one of the Development Conditions.

Mr. Ribble so moved. Mr. Hammack asked when the special permit would be heard and Ms. Kelsey said the application was under review; the applicant was requesting a waiver of certain submission requirements, items which are not on the plat which should be on the plat and, as soon as they have that corrected, and get the waiver of certain of those requirements, it will be scheduled. Ms. Kelsey said she expected it would be scheduled sometime in November 1993.

Ms. Harris asked if the applicant was meeting with the citizens in an effort to diffuse some of the issues. Ms. Kelsey said it was her understanding that they were meeting with the citizens and that the situation had improved, so far as parking on residential streets.

Jane W. Gwinn, Zoning Administrator, recommended that the Board defer the appeal to a specific time in order that staff might have a guide to when the staff report should be prepared. Ms. Kelsey suggested a date of November 9, 1993, at 9:00 a.m.

Mr. Hammack asked if this appeal was affected in any way by William E. Shoup, Deputy Zoning Administrator, having made a ruling involving the Northern Virginia Jewish Community Center regarding on-site parking only. Ms. Gwinn said that she did not believe so because the Conditions for approval for the McLean Bible Church were different than those for the Norther Virginia Jewish Community Center. Her memory was that there were different approval conditions; whereas, the McLean Bible Church very clearly contained what she considered the BZA's standard condition about all parking being required on site; the same condition was not imposed on the previous Northern Virginia Jewish Community Center Special Exception.

Mrs. Harris moved to defer the appeal to the date suggested by Ms. Kelsey: November 9, 1993, at 9:00 a.m. 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.

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As there was no other business to come before the Board, the meeting was adjourned at 12:15 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 14, 1993

APPROVED: September 21, 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 September 14, 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 9:10 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 69, September 14, 1993, (Tape 1), Scheduled case of:

9:00 A.M. DENNIS F. RATNER, SP 93-D-016 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition to remain 20.8 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-307). Located at 1244 Colonial Rd. on approx. 11,440.00 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((44)) 5. (Concurrent with VC 93-D-033).

9:00 A.M. DENNIS F. RATNER, VC 93-D-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 20.8 ft. from front lot line (24 ft. min. front yard req. by Sect(s). 3-307 and 2-412). Located at 1244 Colonial Rd. on approx. 11,440.00 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-2 ((44)) 5. (Concurrent with SP 93-D-016).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Donald D. Smith, replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He said the 11,440 square foot subject property is located at 1244 Colonial Road within Kings Manor Subdivision and has frontage on Churchill Road and access to Colonial Road, via a pipestem driveway. The subject property and the surrounding lots are zoned R-3 and developed with single family detached dwellings.

The applicant was requesting approval of concurrent special permit and variance applications. The request for a special permit resulted from an error in building location to allow an existing screened porch to remain 20.8 feet from a front lot line. In the R-3 District, the Zoning Ordinance requires a minimum front yard of 30 feet; therefore, a variance of 9.2 feet was required. The building permit for the screened porch addition was issued in error in 1988. When the applicant attempted to obtain a building permit in 1993 for the proposed deck, it was discovered that the addition was built in error and that a special permit was required.

The variance request resulted from the applicant's proposal to construct a 3 foot high deck to be located 20.8 feet from a front lot line. The Zoning Ordinance allows decks that are not over 4 feet high to extend 6 feet into a minimum required front yard which is 30 feet in the R-3 district. Therefore, the deck must not extend closer than 24 feet to the front lot line, and a variance was requested for 3.2 feet.

The applicant's agent, Donald Smith, 5618 Wharton Lane, Centreville, Virginia, said the non-compliance was done in good faith and through no fault of the property owner. He said the applicant applied for and received a building permit in 1988 for an screened-porch addition 20.8 feet from the front lot line which he constructed. When the applicant applied in 1993 for a building permit to construct a deck 20.8 feet from the front lot line, he was told the 1988 building permit was issued in error and his request for a building permit was denied.

With respect to the variance, Mr. Smith said the applicant was requesting a 3.2 foot variance in order to construct a 9.2 foot wide deck in the front yard. He added that in cases where a lot has reverse frontage on a major highway the Virginia Department of Transportation (VDOT) will not issue an entrance permit to the property if it abuts a major thoroughfare. Mr. Smith said in this case the lot does not, but VDOT still refuses to grant an entrance permit off Churchill Road; therefore, the applicant has to use, what is by definition, his front yard as his back yard. He said only the applicant and one other neighbor share this hardship as the other houses have driveways off Churchill Road.

Chairman DiGiulian said if he understood correctly the property had two front yards and two side yards. Mr. Smith said that was correct.

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

Mr. Hammack made a motion to grant SP 93-D-016 subject to the Development Conditions contained in the staff report dated September 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-016 by DENNIS F. RATNER, under Section 8-914 of the

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Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition to remain 20.8 feet from front lot line, on property located at 1244 Colonial Road, Tax Map Reference 30-2((44))5, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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 use(s) indicated on the special permit plat, entitled Special Permit/Variance Plat, prepared by Alexandria Surveys, Inc., dated January 12, 1993, revised March 11, 1993, submitted with this application, as qualified by these development conditions.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. 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 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 September 22, 1993. 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 93-D-033 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-033 by DENNIS F. RATNER, under Section 18-401 of the Zoning Ordinance to permit construction of deck 20.8 feet from front lot line, on property located at 1244 Colonial Road, Tax Map Reference 30-2((44))5, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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 11,440 square feet.
4. The applicant has satisfied the nine required standards for a variance.
5. The property is unusual as it has two front yards and two side yards.
6. The actual use of the property or orientation of the property is for the front yard to be used as a back yard.
7. The property backs up to a street and there will be no impact on any other properties.
8. It is not a common condition throughout the neighborhood.
9. The requested variance is minimal and reasonable under the circumstances.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Alexandria Surveys, Inc., dated January 12, 1993, revised March 11, 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.

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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 variance 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 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. Kelley was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 22, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 72, September 14, 1993, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH H. & MARJEAN O. KAUFMAN, VC 93-V-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 8709 Eaglebrook Dr. on approx. 21,454 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 111-2 ((6)) (22) 81. (OUT-OF-TURN HEARING GRANTED. DEFERRED FROM 8/3/93)

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

Susan Langdon, Staff Coordinator, presented the staff report. She said the 21,454 square foot property is located on Eaglebrook Court in an area north of the intersection of Fort Hunt Road and George Washington Memorial Parkway in the Waynewood Subdivision. The subject property and surrounding lots are zoned R-3. To the north and south the lots are developed with single family detached dwellings. To the east is federal parkland and to the west is a pumping station. The applicants' request was for a reduction in the minimum yard requirement to allow construction of an addition 7.0 feet from a side lot line. On August 3, 1993, the BZA deferred the public hearing on this application to allow the applicant an opportunity to submit architectural drawings of the proposed addition and to allow the architect to be present to answer any questions the BZA may have. Ms. Langdon pointed out that a copy of the architectural drawings were submitted to the BZA for its review and the architects were present.

The applicant, Joseph H. Kaufman, 8709 Eaglebrook Court, Alexandria, Virginia, said he had explained at the previous meeting that the addition would provide a handicapped accessible living area for his sister and her three children. He said the BZA had expressed concern as to whether the neighbors objected to the size of the planned addition. Dr. Kaufman said following that meeting he contacted each of the neighbors who had received certified letters regarding the request and there were no objections. The next door neighbor at 8707 Eaglebrook Court, which would be the most impacted by the proposal, had given him a letter in support and Dr. Kaufman read the letter into the record. Dr. Kaufman said the architects were present to respond to questions as well as several speakers in support.

Mrs. Harris asked staff if the use would be better defined as an accessory dwelling unit as opposed to an addition. Ms. Langdon said staff would review the Zoning Ordinance.

The architects, Kathleen Burton and Roger Miller, came forward. Mr. Hammack asked if the proposed living area could be relocated to the rear of the existing dwelling so it would not impact Lot 82. Mr. Miller said they had considered a number of possibilities and found that if the addition was wrapped around the hydro therapy unit it would not allow enough square footage to accommodate the basic functional requirements of the addition. He noted that the yard slopes away to the front of the house and if the addition was brought closer to the street it would complicate wheelchair access into the dwelling and the addition would appear to loom over the neighbors. Mr. Miller said if the addition is constructed to the rear of the house it will block light and air to the most utilized parts of the existing dwelling since the kitchen and family room is located in the back. It would also require a long entry path from the driveway to the private entrance to the addition, would block the neighbors' view of the Potomac River, and would require the removal of several mature trees. Mr. Miller said they believed the proposed location would have the least impact on the applicants' lot and was the most compatible with the existing dwelling.

Mr. Ribble asked if the proposed location was the only feasible location and Mr. Miller said that was correct.

Mrs. Harris asked what exactly would be in the hydro therapy unit. Mr. Miller said he believed Dr. Kaufman could best answer the question as it was his understanding that a specialist was designing the unit. Chairman DiGiulian pointed out the hydro therapy unit would be located in the existing garage. Mrs. Harris and Mr. Miller discussed where the applicants would park their vehicles. Mr. Miller said the applicants were proposing widening the existing driveway and parking their vehicles in the driveway.

In response to questions from Mr. Hammack, Dr. Kaufman said his original request had indicated that a family would be occupying the addition. He said the basement is occupied by his deceased sister's three teenagers, one of which is now attending the Air Force Academy. Dr. Kaufman said his sister presently lives in New Orleans.

Mrs. Harris expressed concern with the possibility of a potential parking problem. Dr. Kaufman said the property is located on a cul-de-sac and he did not believe there would be a problem.

Ms. Langdon replied to Mrs. Harris' earlier question with respect to the use being an accessory dwelling unit. She said it would be an accessory dwelling unit and if the BZA granted the variance the applicant would not be able to use it as such until he received special permit approval. Jane Kelsey, Chief, Special Permit and Variance Branch, quoted from the Zoning Ordinance and said perhaps the applicant would like to review the restrictions. Mrs. Thonen questioned why staff had not discovered the applicant would need a special permit before now. Mr. Hammack said the applicant had just recently submitted the architectural drawings showing the layout of the proposed addition.

Mr. Hammack asked if the sister could obtain some assistance in New Orleans. Dr. Kaufman said the husband had abandoned the family and they were presently living on what he was able to send them and he was reluctant to nor would he allow them to apply for welfare. He said he would like the BZA to grant the request but if it did not he was still determined to bring his sister to Virginia.

In response to a question from Mrs. Harris, Dr. Kaufman said there is only a microwave in the basement and the teenagers eat with his family.

Mr. Hammack asked the whereabouts of the children's father who currently reside in the basement. Dr. Kaufman said he had been killed in an automobile accident when the children were very young.

Mrs. Harris commended the applicant on what he was trying to do and explained that she had brought up the issue about the accessory dwelling unit to alleviate any problems in the future. Dr. Kaufman said he would be willing to delete the kitchen. Mrs. Harris and Dr. Kaufman discussed the hydro therapy unit and what equipment would be located in the unit. Chairman DiGiulian pointed out that a portion of the unit would be taken up by two doorways.

Mr. Pammel said his calculations indicated that with the addition the existing structure would be more than doubled in size.

Chairman DiGiulian called for speakers in support of the request.

The architect, Roger Miller, came back to the podium and said the square footage of the addition was such so as to accommodate someone in a wheelchair.

Mary Kirenstern, an Ecology Social Worker with the Northern Virginia Cancer Center, said it would have been easier if the architects could have designed a two story addition rather than a one story with wheelchair accessibility. She said it was important for the mother to be able to supervise her three teenage children. The inclusion of the kitchen was to basically maximize the sister's independent living as she did not wish to become a burden to Dr. Kaufman and his family, although she will need assistance.

Betsy Ziegler, a Social Worker in the Rehabilitation Program at Mount Vernon Hospital, said it was very important for people with disabilities to be able to live independently because it contributes to their well being. She said hospitals could provide people with adaptive equipment, but unless it can be used in an adaptive environment they are not as effective or efficient. Ms. Ziegler said the applicant was trying to give his sister the opportunity to live independently and not be dependent on the community.

Mrs. Harris asked the speaker what activities were conducted in a hydro therapy unit. Ms. Ziegler said it was not her area of expertise, but from her observations it appeared that a lot of therapy techniques can be done in a water environment.

Dan Singer, Director of Advocacy and Outreach with the Independent Center of Northern Virginia, an organization that is run primarily by disabled persons for persons with disabilities with the philosophy of empowering people to live as independently as possible. He commended the applicants' creativity in trying to solve an obviously far from ideal situation. Mr. Singer said he understood the BZA had to look at the land use issues and asked that it also consider the people involved. He said a hydro therapy unit does utilize a great deal of space and encouraged the BZA to visit a center and see how a unit is used.

Mrs. Harris said she knew what the unit was used for but because the unit was forcing the applicant to need a variance, she questioned the use based on the criteria the BZA had to go by in granting a variance. Mrs. Thonen said she had used hydro therapy equipment and pointed out that it did require a lot of room. Mr. Singer said he had moved to The Rotunda mainly because it had an indoor pool and jacuzzi for when he went through his rehabilitation. Mr. Hammack said no one questioned whether the therapy was needed only if the addition could be constructed without a variance.

A discussion took place among the BZA as to how the addition could be redesigned or relocated in order to minimize the variance or eliminate it entirely.

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

Mr. Pammel made a motion to deny the request for the reasons noted in the Resolution.

Mrs. Thonen said she could not support the motion as she believed 5 feet was a minimum variance, there had been testimony that the room was needed for the family, and if the addition were relocated there would be opposition.

Mr. Hammack said he believed it was a substantial addition that could be relocated and redesigned.

Chairman DiGiulian said he would not support the motion as he believed there had been testimony stating this was the only place to put the addition to satisfy the neighborhood and there is no opposition.

Mr. Ribble said he was torn on the application and though he would like to see a smaller addition, he believed there had been adequate explanation as to why the location had been chosen.

Following the vote denying the application, Mr. Pammel asked if the applicant would like to request a waiver of the 12-month time limitation. Dr. Kaufman said he did not have time to file a new application because his sister was dying.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-070 by JOSEPH H. AND MARJEAN D. KAUFMAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7 feet from side lot line, on property located at 8709 Eaglebrook Drive, Tax Map Reference 111-2((6))(22)81, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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 21,454 square feet.
4. The case posed many, many problems and was a difficult one to decide. The BZA was very sympathetic to the applicant and believed it was commendable that he had taken the action he has to support his family and provide living accommodations for them. If the response was based strictly on the testimony given at the public hearing relative to the needs of the family and the illnesses that were involved, there would be no question of supporting the application. However, the BZA's action is constrained as to what is set forth in the Code and its findings have to be in accord with the criteria set forth in the Zoning Ordinance. Basically, the finding the BZA has to make is that the strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved. If the BZA makes that finding, it can grant a variance; but on the other hand, if that is not the case, there has been very, very little discussion or testimony relative to the land uses and the hardship, if any, that would exist as a result. The architects have said basically in their analysis that they determined the proposed location was the best and the most feasible for the addition after exploring other options. It gets down to the issue of convenience; this is the most convenient location for the addition. There are other locations the addition can be put on the property that would not require a variance, or would require a minimal variance. All of the addition is on one side of the property coming within 7 feet of the adjoining neighbor and amounts to 56 feet of building length along that lot line, and that is a lot of mass. The

BZA has consistently denied applications for additions encroaching upon the side yard of that magnitude. There are other solutions that can be addressed and perhaps the applicant can do further exploration as to where the addition might go to minimize 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. Hammack seconded the motion which carried by a vote of 3-3. Mrs. Harris, Mr. Hammack, and Mr. Pammel voted aye; Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble voted nay. 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 September 22, 1993.

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Page 75, September 14, 1993, (Tape 1), Scheduled case of:

9:10 A.M. LUCIA B. HOFFMANN, SP 93-P-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in bldg. location to permit carport to remain 0.4 ft. from side lot line (5 ft. min. side yard req. by Sect(s). 3-407 and 2-412). Located at 2928 Summerfield Rd. on approx. 8,400 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((14)) 30.

Don Heine, Staff Coordinator, informed the BZA that notices were not in order and the applicant had submitted a request for deferral. Mrs. Thonen asked for a date and staff suggested November 3, 1993, at 9:00 a.m.

Mrs. Thonen made a motion to defer the application to the date and time suggested by staff. Mr. Pammel seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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9:20 A.M. HRAIR H. KAZANJIAN, VC 93-L-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to be 26 ft. and 28.5 ft. from front lot lines (40 ft. min. req. by Sect. 4-807), parking spaces 6.5 ft. and 5.5 ft. from front lot lines (10 ft. from front lot line req. by Sect. 11-102), modify required landscape strips (10 ft. min. from public ROW and 4 ft. from land not in ROW req. by Sect. 13-202), and allow loading space in min. front yard (prohibited by Sect. 11-202). Located at 7210 Richmond Hwy. on approx. 15,998 sq. ft. of land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 79B. (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. The applicant's agent, Mr. Hitchcock, replied that it was.

Lori Greenlief, Staff Coordinator, called the BZA's attention to page 3 of the staff report and noted that a 4 foot wide strip along Fordson Road and a 14 foot wide strip along Route 1 is to be vacated as shown on the plat. She said that through further research the applicant has determined that the land was erroneously dedicated. Ms. Greenlief said staff has worked with the applicant and the applicant is currently working with the County Attorney's office to obtain the correct documentation showing that the applicant is the owner of the land. Since staff has not yet received documentation showing clear ownership, Ms. Greenlief suggested that perhaps the BZA could hold the public hearing but defer decision.

Neil T. Hitchcock, 1221 Cameron Street, Alexandria, Virginia, said when one of the previous owners applied for a site plan and went before the Board of Supervisors, the Board deferred action on having the dedication done. At some point in time, he said the dedication was recorded in the land records as if the land had actually been dedicated to the County. When the applicant began the vacation process, it was discovered that the dedication had not taken place and it was erroneously recorded. The applicant has been working with the title company to redo the deed to provide the County and the applicant with the necessary documentation.

A discussion took place between Mr. Hammack and Mr. Hitchcock about why the County has not deeded the land back to the applicant. Mr. Hitchcock said the attorneys were currently in the process of preparing a quick claim deed.

Mrs. Thonen said the applicant had been working with the County for quite some time and it was her understanding that the County at one time had requested the dedication and then decided that it was not necessary; however, the land was being dedicated.

Following a discussion between the applicant and the BZA, Mrs. Thonen made a motion to hold the public hearing and defer decision until such time as the issue could be resolved. Mr. Ribble seconded the motion which carried by a vote of 5-1 with Mr. Hammack voting nay.

Lori Greenlief, Staff Coordinator, presented the staff report. The subject property is located between Richmond Highway, Route 1 and Fordson Road, one lot south of the triangular intersection of those two roads, contains 15,998 square feet, and is zoned C-8.

The applicant was requesting the following variances on the property in order to develop an office and retail building: A variance to the minimum front yard requirement to allow the proposed building to be located 26 feet from the front lot line abutting Richmond Highway and 28.5 feet from the front lot line abutting Fordson Road. The minimum front yard requirement in these areas is 40 feet. A variance to allow parking spaces 5.5 feet from the front lot line abutting Richmond Highway and 6.5 feet from the front lot line abutting Fordson Road. The Zoning Ordinance requires that parking spaces be located at least 10 feet from a front lot line. Also, a variance to allow the landscape strip between the parking and the public right-of-way abutting Richmond Highway to be 5.5 feet in width and the distance between the parking and the public right-of-way abutting Fordson Road to be 6.5 feet in width. The Zoning Ordinance requires a 10 foot wide landscaping strip in these areas. Also, a variance to allow a 2.0 foot wide landscape strip along the northern lot line where the Zoning Ordinance requires 4.0 feet. Lastly, the applicant was requesting a variance to allow a loading space in the front yard, which is prohibited by the Zoning Ordinance.

In response to a question from Mrs. Harris, Ms. Greenlief outlined the existing building on the viewgraph.

Mr. Hitchcock said the applicant purchased the property, which had been a gas station at one point in time, in December 1987 and was operating an electronics business on the site. When the applicant purchased the property, it had been his intent to replace the existing structure with a new building and it had been his understanding he could do this by-right with the proper permits. Mr. Hitchcock said the applicant has been working with the Southeastern Fairfax Development Corporation since April 1992 and local government officials to come up with a plan that was acceptable to the Route 1 Revitalization Task Force and would allow the applicant to expand his business. He discussed the floor plan that was agreed upon by all parties with the BZA and discussed photographs showing what exists on the property and what the applicant proposes to construct on the property.

Mrs. Harris asked if the land in question was incorporated into the plan and shown on the plat. Mr. Hitchcock said that it was.

Mr. Pammel asked why staff had not included a variance from the minimum lot area since the applicant planned to do away with the non-conforming use by constructing a new building for a new use. Ms. Greenlief said if it was determined that the applicant owned the land in question and has always owned the land, it would be an existing lot which would come under Sect. 2-405 of the Ordinance and the applicant could proceed with his proposal.

Mr. Hammack questioned whether the landowner had to be the same. Jane Kelsey, Chief, Special Permit and Variance, said the applicant would not have needed to own the land at the time it became non-conforming, if the lot existed prior to the Zoning Ordinance. She added that the applicant still needed to meet the yard requirements and that necessitated the need for the variances.

Mr. Hitchcock said the applicant had also raised that issue when filing the application and was told since the lot was created prior to 1978 a variance was not needed for the minimum lot width.

Mrs. Thonen said the subject property was located in an area of the Route 1 Corridor where very few of the lots meet the standards. She said the applicant was proposing a plan that will upgrade the lot.

Mrs. Harris believed the applicant had done a good job in placing the building in such a way that it would not impair the sight distances and the traffic flow.

Mr. Pammel added that given the constraints established by the setbacks there was a clear hardship.

Joe Ferber, Executive Director of the Southeast Fairfax Development Corporation, spoke in support of the applicant and said he had worked with the applicant for two years to come up with the proposed plan.

In response to a question from Mrs. Harris regarding the landscaping, Mr. Ferber said he was amazed at the emphasis that the applicant had placed on landscaping.

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

Mrs. Thonen reiterated her comments and said she was very much in support of the request and that she was pleased a good plan had been developed. She made a motion to defer decision until such time as the applicant could present a corrected deed to the BZA. Mr. Pammel seconded the motion. Ms. Kelsey suggested September 28, 1993, at 10:50 a.m. The motion carried by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 77, September 14, 1993, (Tape 1-2), Scheduled case of:

9:30 A.M. JAMES L. & LINDA S. PIERCE, VC 93-M-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 4220 Sleepy Hollow Rd. on approx. 11,299 sq. ft. of land zoned R-3. Mason District. Tax Map 71-2 ((16)) 59.

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. Pierce replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on Sleepy Hollow Road northwest of Columbia Pike, is 11,299 square feet in size, is zoned R-3, and is developed with a single-family detached dwelling. Surrounding lots in the Sleepy Hollow Run subdivision are also zoned R-3 and developed with single-family detached dwellings. The applicants' request for a variance resulted from their proposal to construct an attached garage 4.0 feet from the side lot line. A minimum side yard of 12 feet is required on a lot zoned R-3; therefore, the applicants were requesting a variance of 8.0 feet from the minimum side yard requirement. Mr. Hunter added that the distance from the shared lot line to the dwelling on adjacent Lot 60 is approximately 16.0 feet.

James L. Pierce, 4220 Sleepy Hollow Road, Annandale, Virginia, said he was requesting a variance in order to enclose a two-car carport into a two-car garage, which would allow him to incorporate the storage space in the shed into the garage. He said only the back corner of the proposed garage would be 4 feet from the lot line.

In response to a question from Mrs. Harris about the depth of the existing carport, Mr. Pierce said it was roughly 24 feet. He said the proposed enclosure would extend the length by approximately 6 feet.

A discussion took place between Mrs. Harris and the applicant as to why the dimensions of the existing and the proposed structures were not shown on the plat. Jane Kelsey, Chief, Special Permit and Variance Branch, scaled the plat and said the length of the proposed addition scaled 28 feet.

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

Mrs. Harris asked if it was sufficient to simply write the dimensions on the plat. Ms. Kelsey said the applicants would only be able to construct what is shown on the plat and if the structure scaled to 28 feet they would be restricted to that size.

In response to a question from Mr. Pammel about the setback of the existing carport, Mr. Pierce said the back corner of the carport is exactly 7 feet from the side lot line.

Following a discussion between the BZA and the applicant, Mrs. Harris made a motion to defer the public hearing for two weeks in order to allow the applicant an opportunity to submit revised plats showing the dimensions of the existing carport and the proposed garage. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting. Ms. Kelsey suggested September 28, 1993, at 11:00 a.m.

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The BZA recessed at 10:45 a.m. and reconvened at 10:58 p.m.

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Page 78, September 14, 1993, (Tape 2), Scheduled case of:

9:40 A.M. HAROLD W. & SHIRLEY A. COLLAMER, VC 93-P-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.3 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 8232 McNeil St. on approx. 12,305 sq. ft. of land zoned R-3. Providence District. Tax Map 39-3 ((16)) 289.

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. Collamer replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report prepared by David Hunter, Staff Coordinator. The subject property is located on McNeil Street east of Cedar Lane and west of Gallows Road. The subject property is 12,305 square feet in size, is zoned R-3, and is developed with a single-family detached dwelling. Surrounding lots in the Stonewall Manor subdivision are also zoned R-3 and developed with single-family detached dwellings. The variance request resulted from the applicants' proposal to construct an attached garage 2.3 feet from the side lot line. A minimum side yard of 12 feet is required on a lot zoned R-3; therefore, the applicants were requesting a variance of 9.7 feet from the minimum side yard requirement. He added that the distance from the shared lot line to the dwelling on adjacent Lot 290 is approximately 12.6 feet.

The co-applicant, Shirley A. Collamer, 8232 McNeil Street, Vienna, Virginia, said they would like to convert the existing carport into a 20 foot wide two car garage. She said the materials used in the construction of the garage would be similar to that on the existing dwelling. Ms. Collamer said the lot is irregularly shaped, is currently terraced because of the slope, and is heavily wooded. If the garage were constructed in the rear of the lot, Ms. Collamer said it would require the removal of several large trees, extensive regrading, and eliminate their recreational area. Ms. Collamer said there are no objections from the neighbors and it would not be disruptive to the neighborhood.

In response to a question from Mr. Ribble, Ms. Collamer said the front of the house would be in line with the existing carport and approximately 12 feet from the shared lot line.

Mr. Collamer said the garage would protect his motorcycle and get their vehicles off the street.

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

Mr. Ribble made a motion to grant VC 93-P-060 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-060 by HAROLD W. AND SHIRLEY A. COLLAMER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 2.3 feet from side lot line, on property located at 8232 McNeil Street, Tax Map Reference 39-3((16))289, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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 12,305 square feet.
4. The applicant has met the nine required standards for a variance; in particular, the irregular shape of the lot.
5. The proposed addition is a little bit closer to the lot line than the BZA normally likes to grant, but it is necessary in this case.
6. The applicants talked about the topography on the lot which makes it the only place to construct the two car garage; therefore, it is not a convenience as much as a hardship and a necessity.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 (attached two car garage) shown on the plat prepared by Alexandria Surveys, Inc. dated April 22, 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must 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. 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 September 22, 1993. This date shall be deemed to be the final approval date of this variance.

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9:50 A.M. MARY L. MICHAILIDIS, VC 93-V-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.8 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 8425 Richmond Ave. on approx. 18,807 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-4 ((8)) (A) 31. (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. Ms. Michailidis replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located at 8425 Richmond Avenue east of Route 1, is 18,807 square feet in size, is zoned R-2, and is developed with a single-family detached dwelling. Surrounding lots in the Mt. Zephyr subdivision are also zoned R-2 and developed with single-family detached dwellings. The request for a variance resulted from the applicant's proposal to construct a one story addition 10.8 feet from the side lot line. A minimum side yard of 15 feet is required on a lot zoned R-2. Therefore, the applicant was requesting a variance of 2.8 feet from the minimum side yard requirement.

Mary L. Michailidis, 8425 Richmond Avenue, Alexandria, Virginia, said the way the house is situated on the lot precludes the addition being constructed anywhere else because of the location of the garage and the interior design of the house. She said the addition will allow her to construct a first floor bedroom for her elderly mother.

In response to a question from Mrs. Harris about reducing the size of the addition, Ms. Michailidis explained that the house is designed for handicapped accessibility. She said there will be two bedrooms with a bathroom in the middle.

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

Mr. Hammack made a motion to grant VC 93-V-077 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 7, 1993. The BZA granted the applicant's request to waive the eight day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-077 by MARY L. MICHAILIDIS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.8 feet from side lot line, on property located at 8425 Richmond Avenue, Tax Map Reference 101-4((8))(A)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 September 14, 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 18,807 square feet.
4. The applicant has satisfied the nine required standards for a variance.
5. In particular, the applicant testified there is really no other place on the house where the addition could be added.
6. In looking at the size of the house, the configuration, the patio, and the fact that the applicant will be adding two bedrooms and a bath, there really is not any other place where it can be conveniently or properly added.
7. The variance is minimal and the addition will remain a fair distance off the lot line.
8. The addition will not impact the neighbors or affect the character of the zoning district.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Alexandria Surveys, Inc. dated June 28, 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 14, 1993. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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10:00 A.M. STEPHEN & DEBORAH WEATHERFORD, SP 93-L-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in bldg. location to permit shed to remain 6.1 ft. from rear lot line and 3.1 ft. from side lot line (20 ft. min. side yard and 11.7 ft. min. rear yard req. by Sect(s). 3-107 and 10-104). Located at 6316 Miller Dr. on approx. 22,364 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((6)) (3) 5. (Concurrent with VC 93-L-065). (OUT-OF-TURN HEARING GRANTED)

10:00 A.M. STEPHEN & DEBORAH WEATHERFORD, VC 93-L-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.1 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 6316 Miller Dr. on approx. 22,364 sq. ft. of land zoned R-1. Lee District. Tax Map 91-3 ((6)) (3) 5. (Concurrent with SP 93-L-032). (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. Stephen and Deborah Weatherford replied that it was.

David Hunter, Staff Coordinator, presented the staff report. This 22,364 square foot property is located on Miller Drive east of Beulah Street and west of Kingstowne. The subject property and surrounding lots in the Glynalta Park Subdivision are zoned R-1 and developed with single family detached dwellings, with the exception of Lots 4 and 4B which are zoned R-2.

The applicants' request involved concurrent special permit and variance applications. The request for a special permit resulted from an error in building location and is to allow a shed to remain 6.1 feet from the rear lot line and 3.1 feet from the side lot line. A minimum side yard of 20 feet and a minimum rear yard of 11.7 feet is required by the Zoning Ordinance for the existing shed.

The request for variance resulted from the applicants' proposal to construct a two story addition to be located 17.1 feet from the side lot line. Therefore, the applicants were requesting a variance 2.9 feet.

The applicants, Stephen and Deborah Weatherford, 6316 Miller Drive, Franconia, Virginia, said it was their intent to build an addition on the side of the house in order to have a two car garage, to allow an expansion of the kitchen, and to relocate of the laundry room. Mr. Weatherford said they presently do not have a garage.

Mrs. Harris asked why the addition could not be reduced in size and moved over to alleviate the need for the 2.9 foot variance. Mr. Weatherford said the 2.9 feet is necessary in order to make the alterations to the interior walls. At Mrs. Harris' request, he used the viewgraph to show the layout of the proposal.

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

Mr. Pammel made a motion to grant SP 93-L-032 subject to the Development Conditions contained in the staff report dated September 7, 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-032 by STEPHEN AND DEBORAH WEATHERFORD, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 6.1 feet from rear lot line and 3.1 feet from side lot line, on property located at 6316 Miller Drive, Tax Map Reference 91-3((6))(3)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 September 14, 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 shed 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 plat (prepared by Alexandria Surveys, Inc. dated May 4, 1993) 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.

Mrs. Harris 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 September 22, 1993. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel made a motion to grant VC 93-L-065 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-065 by STEPHEN AND DEBORAH WEATHERFORD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.1 feet from side lot line, on property located at 6316 Miller Drive, Tax Map Reference 91-3((6))(3)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 September 14, 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 22,364 square feet.
4. The proposed location is the only logical place for the structure to be located.
5. The applicant presented a very rational and logical design.
6. The variance is very minimal as it is only 2.9 feet.
7. There are topographical problems on the property in that the rear yard slopes away.

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

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

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

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

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

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

1. This variance is approved for the location and the specified structures and additions shown on the Variance plat prepared by Alexandria Surveys, Inc. dated May 4, 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.

Mrs. Harris 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 September 22, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 84, September 14, 1993, (Tape 1), Scheduled case of:

10:00 A.M. FAIR OAKS COMMUNITY CHURCH & S. & A. ENT. T/A THE CLUBHOUSE, SPA 89-C-026 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 89-C-026 for church and related facilities and school of general education to permit child care center, change in applicant name and delete school of general education. Located at 3309 West Ox Rd. on approx. 1.0001 ac. of land zoned R-1. Sully District. Tax Map 35-4 ((1)) 62. (DEFERRED FROM 8/3/93. 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. Ms. Roussos replied that it was. She said Gary Burnham, representative of Fair Oaks Community Church, was also present.

Marilyn Anderson, Staff Coordinator, said the BZA deferred the public hearing from August 3rd in order for the applicant to review the proposed development conditions and give the applicant an opportunity to meet with the neighbors.

Ms. Anderson summarized, based on her talks with the minister of the church, what the applicant and the church had determined with regard to the conditions: Condition Number 4 - delete the requirement for a site plan; Condition Number 9 - allow a maximum of 20 children

be on the playground at any one time; Condition Number 11 - waive the noise barrier entirely; Condition Number 12 - delete the right and left turn lanes; Condition Number 14 - applicant prefers not to provide the interparcel access; Condition Number 15 - applicant prefers not to pave 25 feet into the site from the roadway.

In closing, Ms. Anderson said staff continued to recommend denial for the reasons set forth in the staff report.

Sarah L. Roussos, 13221 Ladybank Lane, Herndon, Virginia, said the ten surrounding households were invited to a meeting at the church, but only the two adjacent property owners attended. She said the neighbors' honest conclusion was that they would prefer that the applicant not open a before and after care facility at the site, but they would be good neighbors if the application was approved.

At Mrs. Harris' request, Ms. Roussos addressed the development conditions. Ms. Roussos proceeded to address Condition Number 9 regarding the increase the number of children. A discussion took place between Mrs. Harris and the speaker as to how increasing the number of children on the play area would decrease the noise levels. Ms. Roussos said one of the neighbors' concerns was that the children were wandering into other yards and the extra staff person would prevent this from happening. She added that an additional staff member would be hired, bringing the total to four staff members at the center.

The representative of the church addressed the remainder of the conditions. Mr. Burnham said the church would agree to provide the plantings requested in Condition 10 since the plantings provided under the previous application had not satisfied the Transitional Screening 1 requirement. He believed this would provide additional privacy to the neighbors. With these additional plantings, Mr. Burnham did not believe that Condition Number 11 would be necessary. He agreed to the second sentence in Condition Number 12 and added that the church would provide the ancillary access easement, but it did not agree to providing the turn lanes.

A discussion took place between Mrs. Harris and the speaker with regard to Condition Number 11. He said there was a 4 foot high chain link fence on the property. Mr. Burnham said in the past the children had not always been kept within the play area.

With respect to deleting the turn lanes, Ms. Roussos outlined alternate travel patterns which the school would present to the parents whose children would be attending the center. These parents would be coming from the areas of Reston, Franklin Farms, and the Navy School district.

Mr. Burnham said the church initially had concerns with Condition Number 13, but following a discussion with Ms. Anderson the church would be willing to comply with the condition. The church did not agree with Condition Number 14(a) as it believed compliance would completely destroy the parking area, but would agree to Condition Number 14(b), with the exception of installing pavement 25 feet into the site. Mr. Burnham said the church would be willing to install an 10 foot asphalt apron into the site to prevent gravel spilling onto West Ox Road.

A discussion took place between Mrs. Harris and Mr. Burnham with regard to the entranceway into the site and the installation of 25 feet of pavement. Mrs. Harris suggested that the school reconsider staff's request. Mrs. Thonen pointed out that was a requirement of the Virginia Department of Transportation (VDOT) and she would be opposed to deleting the condition. Mrs. Harris agreed.

Ms. Anderson asked for a clarification as to the number of staff members that will be on site. She said Appendix 3 of the staff report indicated there would be a total of five. Ms. Roussos said there would be a total of five staff members, including herself. Mr. Burnham said there would be a total of four staff members who worked directly with the children in addition to the director, Ms. Roussos. When the 20 children are in the play area, there would be two staff members.

In response to a question from Mrs. Harris, Ms. Anderson said the parking was adequate for five employees.

There were no speakers in support of the request and Chairman DiGiulian called for speakers in opposition.

George Gould, 3211 West Ox Road, Fairfax, Virginia, said he had met with the representatives of the church and school on August 24th and was told nothing that would change his opposition to the day care center. He said the applicant had readily admitted that their financial situation would not permit compliance with staff's recommendation. Mr. Gould said because he has lost the use of his front yard because of the traffic noise on West Ox Road, the location of school play area all year round would also result in the lose of his back yard. He agreed with staff's findings and asked the BZA to deny the request, but added that if the BZA chose to grant the request he asked that the applicant be required to provide the additional screening and solid wood barrier prior to the program commencing. Mr. Gould expressed concern with the number of children being allowed on the play area at any one time, water runoff, and the heavy traffic on West Ox Road.

Mr. Ribble noted two letters in opposition had been received by the BZA, one from the Campbells and one from the Johnsons which would be made a part of the record.

In rebuttal, Mr. Burnham agreed that plantings would be added on the subject property near the Goulds' property, which would afford privacy, and the church has had work done on the septic system to prevent runoff.

Mrs. Harris discussed with staff the possibility of conducting a test on site to determine if the site fell within the normal decimal levels with respect to noise. Ms. Anderson said the children would have to be on site, which would present a problem.

Mr. Burnham suggested that perhaps the BZA could grant the special permit for one year, which would give the applicant an opportunity to resolve the neighbors' concerns and allow the BZA to re-evaluate the situation.

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

Mrs. Harris made a motion to grant SPA 89-C-026 since she believed day care centers were a much needed part of our society and that it does make sense to have one on a major semi-thoroughfare. Although West Ox Road was not designed to carry the amount of traffic that it does, Mrs. Harris said it did provide a main artery for people going to and from work. She believed the day care center could work at the proposed location with the implementation of certain development conditions. Mrs. Harris suggested changes to Conditions 4, 6, 7; deletion of Conditions 11, 12, and 14; a new Condition 17 - "This special permit shall be granted for one (1) year."

Mr. Pammel seconded the motion.

Ms. Anderson asked if Mrs. Harris would prefer to amend Condition 11 to "waive" the solid wood fence, rather than deleting the condition. Mrs. Harris agreed.

Chairman DiGiulian said he could support the motion only if the fence was installed around the play area in order to mitigate the noise impact on the neighbor. Mr. Ribble said that he was not convinced that the neighbors were satisfied. Mrs. Thonen did not agree that the turn lanes should be deleted. Mr. Pammel concurred with Mrs. Thonen.

Mrs. Harris said her reasoning had been based on the BZA granting the existing school without the deceleration lanes and the wood fence. Mr. Hammack said the existing school did not operate during the peak rush hours.

Following the discussion, Mrs. Harris withdrew her motion. The seconder agreed.

Mrs. Thonen made a motion to deny SPA 89-C-026 for the reasons noted in the Resolution.

Mr. Hammack supported the motion as he believed staff had raised some good issues and the applicant had not addressed all of those issues.

Mr. Pammel said he would be willing to waive the 12-month time limitation for the filing of a new application if the applicant so chose. The applicant indicated agreement. Mr. Pammel so moved. Mrs. Thonen and Mr. Hammack seconded the motion which passed by a vote of 6-0. Mr. Kelley 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 89-C-026 by FAIR OAKS COMMUNITY CHURCH AND S. & A. ENT. T/A THE CLUBHOUSE, under Section 3-103 of the Zoning Ordinance to amend SP 89-C-026 for church and related facilities and school of general education to permit child care center, change in applicant name and delete school of general education, on property located at 3309 West Ox Road, Tax Map Reference 35-4((1))62, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 1993; and

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

1. The co-applicant is the lessee of the land.
2. The present zoning is R-1.
3. The area of the lot is 1.0001 acres.
4. The applicant should work closer with the neighbors and has not shown a willingness to do anything to make the application work.
5. The child care center would operate during rush hours.
6. There is no right or left turn lanes and there is no ingress/egress into the site.

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7. The applicant has to address the noise issue because children do generate noise when playing.
8. The applicant has not presented testimony showing compliance with the standards for a special permit.
9. Staff has raised good issues and the applicant has addressed some but not all of them.
10. It would not take a lot to bring the application into compliance, such as limiting the hours of operation and stronger carpool regulations.

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 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 6-0. Mr. Kelley was absent from the meeting. The Board 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 September 22, 1993.

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Page 87, September 14, 1993, (Tape 1), Scheduled case of:

10:10 A.M. MICHAEL & ELEANOR PINKERT, VC 93-D-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-E07). Located at 705 Potomac Knolls Dr. on approx. 3.22 ac. of land zoned R-E. Dranesville District. Tax Map 20-2 ((11)) 15. (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. Mr. Pinkert replied that it was. The applicants' architect, Gregory Whittiman, with News-Whittiman Architects, introduced himself.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located at 705 Potomac Knolls Drive, is 3.22 acres in size, is zoned R-E, and is developed with a single-family detached dwelling. Adjacent Lots 13 and 14 are vacant. Lots south of the subject property in the Potomac Knolls subdivision are also zoned R-E and developed with single-family detached dwellings. The variance request resulted from the applicants' proposal to construct a greenhouse addition 13.0 feet from the side lot line. A minimum side yard of 20 feet is required on a lot zoned R-E. Therefore, the applicants were requesting a variance of 7.0 feet from the minimum side yard requirement.

Michael Pinkert, 705 Potomac Knolls Drive, McLean, Virginia, said his architect would present the technical aspects of the proposed request. He said they built the house five years ago to the allowable lot lines and within that five years his family's needs have changed. Mr. Pinkert said he was proposing to construct a game room under the house with a greenhouse attached to the side of the house. The greenhouse would be primarily below grade, but there is a portion that would come up above grade and does extend closer to the lot line than that allowed by the Zoning Ordinance.

Mr. Whittiman said the subject property has a very steep slope with an elevation of 270 feet at the road entrance and slopes steeply to the river. When the house was built, a clearing plateau was constructed at an elevation of 195 feet, approximately 100 feet below the entrance to Potomac Knolls. He said there is a small extension of land on Lot 16, approximately 40 feet wide, that is unbuildable and gives the owner access to the Potomac River. The owner of Lot 16 had submitted a letter in support of the applicants' request to the BZA. Mr. Whittiman said other alternatives were looked at but in order to secure south and east light, the proposed site is the only practical location. If the greenhouse was moved further south toward Potomac Knolls Drive, the addition would essentially be pushed underground. He added that the portion that would be above ground was glass and is only 5.6 inches above natural grade on the uphill side; therefore, it would not be obtrusive.

In response to a question from Mr. Hammack, Mr. Whittiman said at no point on the outside will the structure be 11 feet. The 11 feet is measured from the floor level of the greenhouse, which is 2 to 3 feet at the low side.

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

Mr. Ribble made a motion to grant VC 93-D-068 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-068 by MICHAEL AND ELEANOR PINKERT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13 feet from side lot line, on property located at 705 Potomac Knolls Drive, Tax Map Reference 20-2((11))15, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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 3.22 acres.
4. The applicant has met the nine required standards for a variance, in particular the exceptional topographic conditions where at one point on the lot it is 270 feet and slopes down toward the river.
5. There is also an extraordinary situation of the buffer or strip of land on the adjacent property that goes down to the river for access.
6. The shape is very irregular.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Walter L. Phillips, Inc. dated May 5, 1993, revised through June 2, 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 September 14, 1993. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this variance.

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Page 89, September 14, 1993, (Tape 1), Scheduled case of:

10:20 A.M. PAUL T., JR. & JEAN M. WAGNER, SP 93-Y-024 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to min. yard. req. to permit addition 8.6 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C03). Located at 4309 Silas Hutchinson Dr. on approx. 11,234 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 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. Mr. Wagner replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the 11,234 square foot property is located at 4309 Silas Hutchinson Drive in an area south of Lee Jackson Memorial Highway and east of Pleasant Valley Road in the Pleasant Valley Subdivision. The subject property and the surrounding lots are zoned R-C, AN and WS and are developed with single family detached dwellings. The applicant was requesting approval of a special permit to allow a reduction in the minimum yard requirements in the R-C District to allow construction of an addition to be located 8.6 feet from a side lot line. The Zoning Ordinance requires a minimum 20.0 foot side yard in the R-C District; therefore, a modification of 11.4 feet was requested. One of the Standards requires that the modification shall result in a yard not less than the minimum yard required on June 25, 1982. The property was previously zoned R-2 Cluster with a minimum side yard requirement of 8.0 feet with a total side yard of 24.0 feet and this modification meets that standard. Ms. Langdon said the dwelling on adjacent Lot 32 is located approximately 22.2 feet from the shared lot line.

Paul T. Wagner, Jr., 4309 Silas Hutchinson Drive, Chantilly, Virginia, said they would like to build an additional bedroom since his wife's mother is now living with them on a permanent basis. He said there is no other place to construct the addition and that he has discussed the proposal with the most affected neighbor.

In response to questions from Mrs. Harris, Mr. Wagner said he was proposing to construct the addition to the right of the house to prevent blocking the kitchen window. He said the addition will be no closer to the lot line than the existing house.

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

Mrs. Harris made a motion to grant SP 93-Y-024 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report. The BZA granted the applicants' request for a waiver of the eight-day waiting period.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-024 by PAUL T., JR., AND JEAN M. WAGNER, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C Lot to permit addition 8.6 feet from side lot line, on property located at 4309 Silas Hutchinson Drive, Tax Map Reference 33-4((2))31, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 14, 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, AN, and WS.
3. The area of the lot is 11,234 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 applicant is going no further with the proposed addition than the house sits presently.
9. In looking at photographs of the house, there are critical windows that are involved in the middle section of the house and if the addition is moved over it will block out the light.
10. There is also a configuration constraint because if the addition is moved other it would mean the entranceway to the bedroom would be through the kitchen.

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 room 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 Paciulli, Simmons & Associates, Ltd., dated May 14, 1979, finalized September 6, 1979, revised by Jean M. Wagner, dated May 6, 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.

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.

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 September 14, 1993. The BZA waived the eight day waiting period. This date shall be deemed to be the final approval date of this special permit.

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Page 90, September 14, 1993, (Tape 1), Action Item:

Approval of Minutes from June 29, July 13, July 20, and July 28, 1993

Mrs. Thonen made a motion to approve the minutes as submitted. Mr. Hammack seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 91, September 14, 1993, (Tape 1), ACTION ITEM:

Request for Out of Turn hearing for
VC 93-L-094, Paul and Julie Wolfteich

Mr. Hammack made a motion to grant the applicants' request for an out of turn hearing. Hearing no objection, the Chair so ordered.

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Page 91, September 14, 1993, (Tape 1), Action Item:

Request for Out of Turn hearing for
VC 93-L-101 and SP 93-L-045, Lynnwood S. Fitzgerald

Mrs. Thonen made a motion to grant the applicant's request for an out-of-turn hearing. Following a discussion with Jane Kelsey, Chief, Special Permit and Variance Branch, regarding the earliest possible date, Mrs. Thonen scheduled the out-of-turn hearing for October 26, 1993. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 91, September 14, 1993, (Tape 1), Action Item:

Request for Out of Turn hearing for
SP 93-H-043, Village Center at Dulles Shopping Center

Mr. Hammack made a motion to deny the applicant's request. Mrs. Harris asked staff for additional information. Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicants had to submit corrected plats and until staff had an opportunity to review those plats, staff could not make a determination with regard to parking. Mrs. Harris seconded the motion to deny the request which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 91, September 14, 1993, (Tape 1), Action Item:

Request for Additional Time for
VC 90-L-066, Phyllis M. and David C. Benner

Mrs. Harris made a motion to grant the applicant's request making the new expiration date June 24, 1994. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 91, September 14, 1993, (Tape 1), Action Item:

Request for date and time for Patrick R. Cain Appeal

Mr. Hammack said he had looked at the appellant's application at the request of the BZA and following that review he had determined that the appeal had been filed on the 31st day, which is outside the time limitation. The BZA asked staff for additional information.

William E. Shoup, Deputy Zoning Administrator, said the appeal was filed with staff on June 10th, which was outside the 30 day time limitation.

Following a discussion among the BZA members, Mr. Pammel made a motion that the BZA not accept the appeal as being timely filed. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 91, September 14, 1993, (Tape 1), Action Item:

Request for date and time for David L. Hunter Appeal

Mrs. Thonen said she did not believe the BZA was the proper forum to hear an appeal dealing with a proffer amendment. Chairman DiGiulian pointed out that the appellant's agent was requesting that the BZA defer scheduling the appeal until such time as the Board of Supervisors had acted on the rezoning. Mrs. Thonen made a motion to deny accepting the appeal. Mr. Pammel seconded the motion. Mr. Hammack said he believed the appellant should have an opportunity to present his case. Mr. Ribble suggested deferring decision on whether or not to schedule the appeal until September 21, 1993, to allow the appellant's agent to be present.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested deferring the decision to September 28th due to the BZA's heavy caseload on the 21st. The BZA agreed.

Mrs. Thonen withdrew her motion to deny accepting the appeal and made a motion to defer decision to September 28th. Mr. Pammel seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 92, September 14, 1993, (Tape 1), Action Item:

Request for date and time for DPM Group, Inc. Appeal

Mr. Hammack made a motion that the BZA defer action for six months pending the results of the Planning Commission's review of the Zoning Ordinance amendment concerning retail sales in an industrial district. Mr. Pammel seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 92, September 14, 1993, (Tape 1), Action Item:

Request for date and time for Donald H. and Linda L. Frazier Appeal

Mrs. Thonen made a motion to schedule the appeal for November 9, 1993 at 10:30 a.m. Mr. Hammack seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 92, September 14, 1993, (Tape 1), Action Item:

Request for date and time for Azita Ahn d/b/a Star Cleaners Appeal

Mrs. Harris made a motion to schedule the appeal for November 9, 1993 at 10:30 a.m. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 92, September 14, 19931, (Tape 1), Action Item:

Request for date and time for James M. Seymour Appeal

Mrs. Harris made a motion to schedule the appeal for November 9, 1993 at 10:30 a.m. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 92, September 14, 1993, (Tape 1), Action Item:

Request for date and time for William A. Stewart, III, Appeal

Mr. Ribble made a motion to schedule the appeal for November 30, 1993 at 10:30 a.m. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 92, September 14, 1993, (Tape 1), Action Item:

Request for date and time for (1) Aaron Rents, Inc. d/b/a Arron Sells Appeal (Walney Road)

Request for date and time for (2) Aaron Rents, Inc. d/b/a Arron Sells Appeal (Sullyfield Circle)

Request for date and time for
(3a) Aaron Rents, Inc., d/b/a Arron Rents Furniture Appeal;
(3b) Aaron Rents, Inc., d/b/a Arron Sells Appeal;
(3c) Aaron Rents, Inc., d/b/a Arron Rents and Sells Office Furniture Appeal;
(General Washington Drive)

William Shoup, Deputy Zoning Administrator, recommended that the BZA accept the appeals for Aaron Rents, Inc. d/b/a/ Arron Sells appeal (Walney Road and Sullyfield Circle sites) but defer scheduling a public hearing pending the results of the Planning Commission's review of retail sales in an industrial district.

Mr. Shoup said staff did not believe the appeal dealing with Aaron Rents, Inc., d/b/a Arron Rents Furniture Appeal; Aaron Rents, Inc., d/b/a Arron Sells Appeal; and Aaron Rents, Inc., d/b/a Arron Rents and Sells Office Furniture Appeal (General Washington Drive) was timely filed. He said the appellant's agent was present. Mr. Shoup added that the appeal was the result of a Notice of Violation issued on April 21, 1993, but the appeal was not filed until August 19, 1993; therefore, staff was recommending that the appeal not be accepted.

Mrs. Thonen made a motion to defer action on Aaron Rents, Inc. d/b/a Arron Sells Appeal (Walney Road) for six months. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

Mrs. Thonen made a motion to defer action on Aaron Rents, Inc. d/b/a Arron Sells Appeal (Sullyfield Circle) for a period of six months. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

Chairman DiGiulian called the appellant's agent to the podium.

Marie Travesky, with Travesky and Associates, represented the appellant who occupied the General Washington site and said John Nie, with Aaron Rents, was also present. She explained that when the Notice of Violation was issued in April 1993 the owners were unaware they had thirty days to file an appeal based on a Zoning Enforcement Branch decision since it was not common knowledge that an administrative decision was appealable. She said proof of that was the number of people who went to Richmond last year and asked the General Assembly to add a requirement that people be notified of the right of appeal, which the General Assembly agreed to do. Ms. Travesky said the appellant talked to the Zoning Administrator on June 21st and an extension of time was granted to December 24, 1993, and the appellant was not told in June that they had to appeal or possibly might have already lost the right to appeal. The appellant was issued two other Notice of Violations and those spoke to a thirty day appeal timeframe and based on that timeframe five appeals were filed. Although staff had said the appeals should be treated as one, Ms. Travesky pointed out there are three separate businesses with three separate entrances in the same general vicinity, three managers, etc. She did not believe the acceptance of the appeal would harm anyone and saw no reason why the appeal should not also be allowed a six month deferral.

A discussion took place between Mrs. Harris and the speaker regarding the fact that "ignorance of the law" was not an excuse. Mr. Hammack said it was his understanding, through the County Attorney's office, that there is an court decision that supports the thirty day time limitation. He pointed out that the appellant's June 21, 1993 letter refers back to the Notice of Violation dated April 21st.

Mr. Hammack made a motion that the BZA not accept the appeal relating to the General Washington site as being timely filed. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 93, September 14, 1993, (Tape 1), Action Item:

Request for date and time for
TAC Group of Virginia, Inc., t/a Frugal Fannie's Fashion Warehouse Appeal

William Shoup, Deputy Zoning Administrator, said staff planned to rescind and reissue the Notice of Violation which would give the appellant an additional thirty days in which to file an appeal. Mr. Shoup suggested that the BZA defer action until such time as the new Notice of Violation could be issued and the appellant decided how to proceed.

Mr. Hammack made a motion that the BZA defer action for sixty days. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 93, September 14, 1993, (Tape 1), Action Item:

Intent to Defer for McLean Children's Academy, SPA 82-D-083-4

Mr. Hammack made a motion that the BZA issue an intent to defer SPA 82-D-083-4 to November 3, 1993 as suggested by staff to allow the applicant time to seek approval of a shared parking agreement from the Board of Supervisors. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 93, September 14, 1993, (Tape 1), Action Item:

Crosspointe Retail Limited Partnership Appeal, A 93-S/V-009

Mrs. Harris made a motion that the BZA issue an intent to defer A 93-S/V-009, which was scheduled for September 28, 1993. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Kelley was absent from the meeting.

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Page 94, September 14, 1993, (Tape 1), ADJOURNMENT:

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

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

SUBMITTED: October 26, 1993

APPROVED: November 3, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 21, 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 8:00 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.

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Page 95, September 21, 1993, (Tape 1), Scheduled case of:

8:00 P.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

Chairman DiGiulian noted that the Board of Zoning Appeals (BZA) had issued an intent-to-defer on September 14, 1993, to allow the applicant time to obtain approval of a shared parking agreement.

Mrs. Harris made a motion to defer SPA 82-D-083-4 and SPR 82-D-083-2 to November 3, 1993. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Pammel not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 95, September 21, 1993, (Tape 1), Scheduled case of:

8:00 P.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. (DEF. FROM 5/25/93 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. Choe replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to the minimum lot width requirement to allow subdivision of one lot into two lots, with proposed Lot 10 having a width of 188 feet and proposed Lot 10-A having a width of 12 feet. The Zoning Ordinance requires a minimum lot width of 200 feet in the R-E Zoning District; therefore, the applicant was requesting a variance of 12 feet to the minimum lot width requirement for Lot 10 and a variance of 188 feet to the minimum lot width requirement for Lot 10-A.

Ms. Langdon said the Department of Environmental Management (DEM) has stated that under the Subdivision Ordinance, a waiver of the public street frontage requirement cannot be granted in the R-E Zoning District. She explained Gouldman Lane is a private street located in the R-E District; therefore, DEM cannot approve a subdivision plat for the lot. In conclusion, Ms. Langdon stated that staff believed the proposed request would not meet the required standards for the granting of a variance.

The applicant, Charlie S. Choe, 713 Gouldman Lane, Great Falls, Virginia, addressed the BZA. He stated that he would like to subdivide his existing lot into two lots. Mr. Choe stated that proposed Lot 10 would consist of 4.9 acres and proposed Lot 10A would consist of 2.048 acres. In conclusion, he said that he would respect the BZA's decision.

Mrs. Harris explained to Mr. Choe that in order to grant a variance, the BZA must affirm that the application meets the variance standards and asked Mr. Choe to address the hardship issue. Mr. Choe stated that without the variance, he would be unable to subdivide the lot.

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

The Great Falls Citizens Association representative, Sally Mann, 9416 Pamloco Lane, Great Falls, Virginia, addressed the BZA. She said that the Association had worked on the Subdivision Ordinance and noted that the Ordinance specifically precluded the subdivision of R-E zoned lots on private streets. Ms. Mann said that the letter from the President of the Great Falls Citizens Association, Dick Peters, contained the official position of the Association. She submitted a copy of the letter to the BZA.

David MacDonnell, 701 Gouldman Lane, Great Falls, Virginia, addressed the BZA. He stated that he had recently purchased the property and was chagrined to learn Mr. Choe had applied for a variance for subdivision. Mr. MacDonnell expressed his belief that the granting of the variance would cause a substantial hardship and would change the character of the area. He asked the BZA to deny the request.

Mark Alberta, with the law firm of Arentfox, 8000 Towers Cresent Drive, Vienna, Virginia, represented Mr. and Mrs. Ashe, 704 Gouldman Lane, Great Falls, Virginia, addressed the BZA. He stated that the proposal was not compatible with the neighborhood, would create an oddly shaped lot, would set a bad precedent, and would create a burden on the private road and other public facilities. Mr. Alberta noted that the staff report recommended denial and expressed his belief that the necessary criteria had not been met. In conclusion, Mr. Alberta stated that the application was not in conformance with the Comprehensive Plan and asked the BZA to deny the request.

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

Mr. Choe stated that he would respect the BZA's decision.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny VC 93-D-015 for the reasons reflected in the Resolution.

Chairman DiGiulian stated that he supported the motion. He noted that the subdivision would not be allowed under the Subdivision Ordinance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-015 by CHARLIE S. CHOE, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 10 having lot width of 188 feet and proposed Lot 10A having lot width of 12 feet, on property located at 713 Gouldman Lane, Tax Map Reference 7-4((8))10, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 21, 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 6.95 acres.
4. The applicant has not satisfied the necessary standards for the granting of a variance.
5. The application does not meet Variance Standards 2, 3, 4, 5, 6, 8, and 9 as set forth in the staff report.
6. There is nothing unusual in the size or configuration of the lot that makes it different from other lots in the subdivision or that would produce a hardship.
7. The applicant has not carried the burden of showing that there is a hardship.
8. The lot is not a dividable lot under the Department of Environmental Management's requirements.

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

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

the applicant.

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

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

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

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Pammel 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 September 29, 1993.

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Page 97, September 21, 1993, (Tape 1), Scheduled case of:

8:00 P.M. MOUNT VERNON ON THE POTOMAC CITIZENS ASSOCIATION, SPA 76-V-277-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend P 76-V-277 for marina to permit boat and trailer parking. Located at 9527 Mt. Vernon Landing on approx. 10.30 ac. of land zoned R-2. Mount Vernon District. Tax Map 110-3 ((11)) D, 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. Kathleen B. Manafort, Chairman, Building and Grounds Committee, 9357 Mount Vernon Circle, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated the 10.3 acre site is zoned R-2 Cluster and currently developed with a private thirty-six slip marina, two asphalt tennis courts, a brick rest-room facility, a twenty space paved parking area, and a concrete boat ramp.

Ms. Langdon said that the applicant was requesting approval of a Special Permit Amendment to add thirteen additional parking spaces which would be designated specifically for boat and trailer parking. She stated that the previous special permit required twenty parking spaces for vehicles for the tennis court and marina uses, with the storage of boats and trailers prohibited on site. Ms. Langdon noted the current plat shows a reconfiguration of the parking area with twenty spaces provided for vehicular parking and thirteen spaces provided for boat and trailer parking. She said that six new spaces were proposed north of the tennis courts, the driveway would be widened by 7 feet, and the parking spaces along the eastern boundary would be extended to accommodate boats and trailers. Several landscape trees would be relocated as a result of the additional parking. In conclusion, Ms. Langdon stated that staff believed the proposed use would be in harmony with the recommendation of the Comprehensive Plan and would satisfy the required standards. Therefore, staff recommended approval subject to the development conditions contained in the staff report dated September 14, 1993.

Robert E. Plett, President of the Mount Vernon on the Potomac Citizens Association, 9370 Mount Vernon Circle, Alexandria, addressed the BZA and stated that he was representing the Association's one hundred and fifteen members. He said the boat and trailer accommodations were needed in the marina area. Mr. Plett explained that boats and trailers have been parked at the marina since it was established in the late 1970's and noted that the members depend on the continuance of the right. He explained that although the existing special permit prohibited the parking of boats and trailers, the Association found that there was no economical or practical solution other than the continuation of the boat and trailer parking at the marina. Mr. Plett said while the tennis courts which were completed in July 1993 have proven to be beneficial to the community, the boat owners' needs must also be met. Mr. Plett relinquished the rest of his time so that Ms. Manafort could speak.

Ms. Manafort stated that the Association's goal was to maintain and improve the neighborhood relations. She explained that after the granting of the existing special permit which prohibited the parking of boats and trailers, the Association found itself in the unfortunate situation of not being able to operate in a manner which considered the needs of all its members. Therefore, the Association would like to rectify the situation. Ms. Manafort expressed her belief that the proposal before the BZA would fulfill the County's requirements, allow boat and trailer parking at the facility, maximize the use of the existing paved area, add a minimal amount of new paving, and make negligible changes to the landscape plan. She stated that the community supported the request and asked the BZA to grant the special permit with an amendment to Condition 5. Ms. Manafort explained that they

would like Condition 5, which provided for twenty parking spaces and thirteen boat and trailer spaces, to be amended to provide an additional boat and trailer space. She said the space was available because a large tree had been condemned by Fairfax County Urban Forestry Branch and noted that staff had no objection to the change.

In response to Mrs. Harris' question as to whether the conditions in the staff report were acceptable, Ms. Manafort said they were.

In response to Mr. Hammack's question as to whether the notices and advertisement would be correct if an additional parking space was provided, Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that it would be correct because the advertisement had not specified the number of proposed parking spaces.

In response to Mr. Hammack's question as to whether, with the exception of Condition 5, the conditions in the staff report were acceptable, Ms. Manafort said they were.

Mr. Ribble noted that the applicant was requesting parking spaces for twenty cars and fourteen boats and trailers. Ms. Manafort said he was correct.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition.

Dick Harrington, 9517 Mount Vernon Landing, Alexandria, Virginia, addressed the BZA. He presented a petition signed by sixty-seven Association members and said that although they supported the parking proposal for boats and trailers, they were opposed to the paving of additional land. He presented an alternate plan which he asked the BZA to consider.

Mr. Harrington explained the parking facility was very seldom used for automobile parking and noted that because of the locked gate, most tennis players either walk to the courts or park on the street when using the facility. He noted that although only ten members owned trailers, there are presently fifteen trailers parked on the site. Mr. Harrington said that five of the fifteen trailers carried the Mount Vernon on the Potomac Citizens Association's sticker. He stated there is no need for additional parking and asked the BZA not to distinguish between car, boat, and trailer parking and not to allow the paving of additional green area. In conclusion, Mr. Harrington said that the applicant's proposal would create an environmental, aesthetic, and financial detrimental impact on the area.

Mr. Hammack stated there was a discrepancy in the testimony and noted that Mr. Plett and Ms. Manafort stated that they represented all the Association members. He noted Mr. Harrington had testified that the sixty-five Association members he represented did not want the proposal in its present form. Mr. Harrington stated that the Association members had not been advised about the proposal. He explained that he had obtained the plan only after making a specific request and had taken it upon himself to distribute the plan to other members of the community.

In response to questions from the BZA, Mr. Harrington stated that the Association's board members had been advised of the community opposition to the request. He admitted boats and trailers were parked on the site and that members were parking their cars on the street, both of which violated the conditions of the existing special permit.

Ms. Manafort stated that the Association's goals were to provide boat and trailer parking, to pave the least amount of area possible, and to maximize the appearance and utility of the community property. In conclusion, she asked the BZA to approve the application.

Mr. Ribble expressed concern regarding the conflicting testimony and asked Mr. Plett for a clarification. Mr. Plett stated that he, as well as Ms. Manafort, represented the Association. He stated that Mr. Harrington's proposal had been developed within the past week and explained that the community was united in the fundamental position of the application. Mr. Plett said there had been no intent to violate the special permit, but admitted that the boats and trailers were parked on the site pending the outcome of the hearing. Again, Mr. Plett recanted the marina's need to provide boat and trailer parking facilities. He stressed that the immediate neighbors had received an official notification letter of the public hearing and that other members had received courtesy copies of the notification letter.

In response to Mr. Hammack's question regarding the Association's Board Meeting, Mr. Plett said although the Board met once a month, there was only a general membership meeting once a year. He noted that the general membership had not voted on the project or seen the plan. Mr. Hammack expressed concern as to the conflicting testimony as to whom was representing the Association's members.

Mr. Ribble asked if the outstanding issues could be resolved at the Association's annual meeting on September 30, 1993. Mr. Plett said they could. In addressing the parking arrangements, Mr. Plett stated that most of the members walk to the facilities and agreed that automobile parking was minimal. He explained that the locked gate made it inconvenient for the cars to park on site.

Mr. Hammack expressed his belief that a deferral would allow the Association to review the proposal with their membership and return to the BZA with an application which had the support of the membership. Mr. Plett said a deferral would be acceptable.

Page 99, September 21, 1993, (Tape 1), MOUNT VERNON ON THE POTOMAC CITIZENS ASSOCIATION, SPA 76-V-277-2, continued from Page 98)

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to defer SPA 76-V-277-2 to November 16, 1993 at 8:00 p.m. He asked that the applicant submit any changes to the proposal prior to the new public hearing date.

Mr. Pammel noted that the Chairman had closed the public hearing, therefore new testimony could not be presented. Chairman DiGiulian stated that the November 16, 1993 public hearing would be held open for a total of ten minutes of testimony from each side.

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 99, September 21, 1993, (Tape 1), Action Item:

Approval of Resolutions from September 14, 1993 Hearing.

Mrs. Harris made a motion to approve the Resolutions as submitted. 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 99, September 21, 1993, (Tape 1), Action Item:

Request for Additional Time
Groveton Baptist Church, SP 88-V-079
6511 Richmond Highway
Tax Map Reference 93-1((7))1, 2 and 93-1((1))27

Mrs. Harris made a motion to grant the request. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting. The new expiration date will be September 30, 1994.

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Page 99, September 21, 1993, (Tape 1), Action Item:

Approval of Minutes from July 27, and August 3, 1993 Hearings

Mr. Ribble made a motion to approve the Minutes as submitted. 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 99, September 21, 1993, (Tape 1), Action Item:

Request for Date and Time
Darrel E. DeChaby Appeal

In response to Mrs. Harris' question as to whether the appellant had submitted a copy of the appeal to the Clerk to the Board of Zoning Appeals, William Shoup, Deputy Zoning Administrator, stated that the appeal had not been filed with the Clerk. He explained that although the appeal had been filed with the Zoning Administrator, it was not filed with the Clerk.

Mrs. Harris made a motion to defer the matter to the September 28, 1993 public hearing. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

(NOTE: The BZA subsequently accepted the appeal and scheduled it for December 7, 1993 at 10:30 a.m.)

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Page 99, September 21, 1993, (Tape 1), Action Item:

Request for Date and Time
Susan Rainoff Appeal

Mrs. Harris noted the appellant had not filed a copy of the appeal with the Clerk to the Board of Zoning Appeals (BZA) and asked if there had been a reason that prohibited the appellant from filing with the Clerk. William E. Shoup, Deputy Zoning Administrator, stated that the memorandum had merely noted the appellant did not satisfy the technical requirement of filing with the Clerk. He said the appeal process requires that an appeal be filed within thirty days and the appellant had not done so.

Mr. Hammack asked if the appellants were given instruction as to the filing requirements when they received their appeal application packages. Mr. Shoup stated that the requirements were

included in the application package. Jane C. Kelsey, Chief, Special Permit and Variance Branch, explained that one copy of the appeal had to be filed with the Zoning Administrator, Zoning Administration Division, and one copy had to be filed with the Clerk to the Board of Zoning Appeals, Zoning Evaluation Division.

After a brief discussion, it was the consensus of the BZA to accept the appeals.

Mr. Pammel made a motion to schedule Darrel E. DeChaby Appeal for December 7, 1993 at 10:30 a.m. and to schedule Susan Rainoff Appeal for January 25, 1994 at 10:30 a.m. 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 100, September 21, 1993, (Tape 1), Action Item:

Request for Date and Time
Ourisman Dodge, Inc. Appeal

Mr. Kelley made a motion to schedule the appeal for December 7, 1993 at 10:30 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 100, September 21, 1993, (Tape 1), Action Item:

Request for Date and Time
Lawrence P. Troxell Appeal

Mr. Kelley made a motion to schedule the appeal for December 7, 1993 at 10:30 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 100, September 21, 1993, (Tape 1), Action Item:

Request for Date and Time
Hirt Appeal

William E. Shoup, Deputy Zoning Administrator, addressed the BZA and referred to his September 14, 1993 memorandum, and expressed his belief that the appeal was not timely filed. He explained that the issue involved the construction of an accessory structure located in the front yard in violation of the Zoning Ordinance. Mr. Shoup stated that the appellant had been issued a Notice of Violation on December 17, 1991, and had been sent a letter dated August 2, 1993, advising him that the structure remained in violation and the deadline for compliance was being extended. He explained that while it was the August 2, 1993, letter the appellant was appealing, it was the Zoning Administration's position that the letter did not constitute a new determination; therefore, the appeal was not timely filed. Mr. Shoup noted that the appellant was advised of the negative determination and although he was unable to appear before the BZA, he had submitted a memorandum dated September 15, 1993, reflecting his position. He said the appellant had argued that since the August 2, 1993, letter had presented the appeal option to him for the first time, he had the right to appeal. Mr. Shoup noted the Virginia State Code requires Zoning Administration to advise recipients of "Notice of Violation" and "Written Orders", that they have an appeal right. He pointed out that while the recipients are advised "they may have an appeal right", it does not guarantee an appeal right. Again, Mr. Shoup stated that the August 2, 1993, letter was a follow-up letter to the Notice of Violation, and did not constitute a new determination. He asked the BZA not to accept the appeal.

In response to Mr. Kelley's question as to why twenty months had elapsed before action was taken on the issue, Mr. Shoup stated that the appellant had met with staff to discuss his options on the issue and had at one point obtained a permit to move the structure. He also noted that due to the death of Mrs. Hirt, staff had delayed taking further action.

In response to Mrs. Harris' question as to whether the paragraph contained in the August 2, 1993 letter, "You may have the right to appeal this determination", was a standard paragraph which is included in each letter, Mr. Shoup said that it was. He explained that staff believed the Virginia State Code requirement applied to follow-up letters, as well as the Notice of Violation. He further explained that each case is unique and will have to be judged by its own merit. Mr. Shoup noted that while in some cases there may be justifications for an appeal based on the contents of the follow-up letter, he did not believe it was the case with this appeal application.

Mr. Hammack made a motion to deny the acceptance of the appeal on the basis that it was not timely filed. He said the appeal was based on the December 17, 1991 letter, and noted the appellant had admitted that legal counsel had informed him he had no legal grounds for an appeal.

Mrs. Harris and 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 101, September 21, 1993, (Tape 1), ACTION ITEM:

Request for Out-of-Turn Hearing
Earl J. White, Jr. VC 93-V-107

101

Mr. Ribble noted that due to a relative's need for housing, the appellant had an urgent requirement for the addition and asked staff to schedule the case and expedite the hearing. Mr. Kelley seconded the request.

Chairman DiGiulian asked staff for a date. Jane C. Kelsey, Chief, Special Permit and Variance Branch first suggested a date of November 3, 1993 or November 9, 1993.

Mr. Kelley made a motion to grant VC 93-V-107 an out-of-turn hearing and schedule the case on November 3, 1993. 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 101, September 21, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Richard F. Rosen, VC 93-D-109

Mrs. Harris asked why the structure was 10 feet closer to the lot line than the building permit indicated. Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that because the case is new and staff has not had an opportunity to conduct the research, she could not answer the question.

Ms. Kelsey noted that although the prior case, Earl J. White, Jr. VC 93-V-107 had been scheduled for November 3, 1993, she was not sure the applicant would have enough time to complete the notification requirements. She asked the Board of Zoning Appeals (BZA) to give her the latitude to change the out-of-turn hearing date if the advertisement and notification requirement could not be completed.

After a brief discussion, it was the consensus of the BZA that if the applicant had difficulty in completing the notices, staff should assist.

Mrs. Harris made a motion to grant an out-of-turn hearing for VC 93-D-109 and schedule the hearing date for November 9, 1993. 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 101, September 21, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Donald and Susan Cotchen, SP 93-M-048

Mr. Pammel made a motion to deny the request. The motion died for lack of a second.

Mr. Ribble noted that the applicant had tremendous problems with the original contractor who had allegedly forged signatures and finally walked off the job.

Mrs. Harris made a motion to grant an out-of-turn hearing for SP 93-M-048 and schedule the hearing date for November 9, 1993. 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.

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Page 101, September 21, 1993, (Tape 1), Action Item:

Request for Intent to Defer
James W. Spears Appeal

Mr. Ribble made a motion to issue an intent-to-defer James W. Spears appeal to November 30, 1993. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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The BZA recessed at 9:25 and reconvened at 9:35.

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Page 101, September 21, 1993, (Tapes 2 and 3), Scheduled case of:

8:00 P.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. (DEF. FROM 7/13/93 TO ALLOW STAFF TIME TO REVIEW THE REVISED PLAT SUBMITTED on 7/12/93)

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. Lawrence 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 the construction and operation of a church and related facilities on 6.01 acres which is currently undeveloped and zoned R-1. Mr. Hunter said the proposed 16,000 square foot structure would be 30 feet high and would contain a sanctuary with a seating capacity of 286, offices, and a gymnasium. Parking for 98 vehicles was also proposed.

He said the subject property is located on the east side of Beulah Road, south of the Dulles Airport Access and Toll Roads, and approximately 150 feet north of the intersection of Beulah Road and Meadowlark Road. Mr. Hunter noted that Meadowlark Gardens Regional Park is located to the southwest, across Beulah Road, and Glenn Haven Forest subdivision also lies to the southwest.

Mr. Hunter stated that the July 20, 1993 public hearing had been deferred to allow time for staff to review revisions to the application which had been amended subsequent to the completion of the staff report. According to the applicant's revised statement of justification dated June 24, 1993, the proposed 286-seat church would serve only two congregations as opposed to three as previously requested. He explained that two separate congregations, called wards, would use the facility on Sundays for a period of three hours each. Ward A would be scheduled from 8:00 a.m. to 11:00 a.m. and Ward B would be scheduled from 12:00 noon to 3:00 p.m. He stated that the number of parking spaces has been reduced to 98, as shown on the revised plat.

Mr. Hunter said that seminary classes for high school students were proposed to be held from 6:00 a.m. to 7:00 a.m. each week-day morning when school is in session. He stated that on Tuesday and Wednesday evenings, the facility will be used for youth activities or women's homemaking activities with all youth activities ending at 10:00 p.m. and women's activities ending at 9:00 p.m. On Thursday evenings various leadership meetings will be held involving small groups and the meetings would end by 10:00 p.m. Mr. Hunter said on Friday evenings, no regularly scheduled activities would be held at the church. He noted that occasionally the church may have a social which could extend beyond 10:00 p.m. on Friday or Saturday evenings.

Mr. Hunter noted that the Special Permit plat, dated January 7, 1992, revised July 9, 1993, showed Transitional Screening 1 along all lot lines except along Beulah Road. He said staff believed that, in order to provide adequate buffering, transitional screening yards should be larger than the minimum required by the Zoning Ordinance. Therefore, staff recommended that at least 35 feet of existing vegetation should be preserved along all lot lines except Beulah Road, supplemented if necessary to the equivalent of Transitional Screening 2.

Mr. Hunter stated that the applicant was requesting a waiver of the transitional screening requirement along the site's frontage with Beulah Road. He noted that this portion of the subject property is void of deciduous trees and contains a few scattered evergreen trees. Beyond the open area, there are existing deciduous trees located between the entrance driveway and the proposed right-of-way dedication for Beulah Road. Mr. Hunter said staff has re-evaluated the need for Transitional Screening 2 along Beulah Road and was of the opinion that if the existing trees were retained they would provide a better overall buffer of the proposed use from Beulah Road. He also noted that a fence was proposed along the shared lot line with Lot 10 to the south, and a waiver of the barrier requirement was requested along the northern, eastern, western, and southwestern property lines.

Mr. Hunter said the Comprehensive Plan calls for the preservation and protection of the rural, large-lot, and open space character of this critical environmental area adjacent to Difficult Run. He explained that because the site is a heavily wooded lot and several specimen hardwood trees worthy of preservation are scattered across the site, staff believed that the applicant should limit the amount of clearing and grading on the site. He noted that in response to staff concerns, the applicant has reduced the number of parking spaces on site to 98.

Mr. Hunter said although staff had originally proposed that all site lighting be shut off at 10:00 p.m., staff had no objection to the applicant's request to extend the outside lights until 10:30 p.m. He noted that staff did not support the applicant's request to extend the use of outside lighting until 11:30 p.m. on weekends.

Mr. Hunter stated that with the implementation of the revised proposed development conditions, staff was of the opinion that the proposed use would be compatible with the character of the surrounding low-density residential area. He said it was staff's belief that the proposed intensity of the non-residential use would be compatible with the purpose and intent of the R-1 Zoning District and would be in conformance with the recommendations of the Comprehensive Plan. Therefore, staff recommended approval subject to the revised development conditions, dated September 21, 1993.

In conclusion, Mr. Hunter said that staff had just received a copy of the applicant's proposed development conditions in late afternoon, and noted that the applicant's proposed development conditions differed in substance from staff's development conditions. He asked that if the BZA granted the application with any of the applicant's development conditions or amended any of staff's development conditions, the BZA grant a deferral of two weeks to give staff an opportunity to coordinate with the applicant to formulate conditions which are easily implemented and enforceable.

In response to Mrs. Harris' question regarding the possibility of the applicant providing a left turn lane into the site, Mr. Hunter stated that the Office of Transportation did not request a left turn lane. Mrs. Harris noted that the Church of Jesus Christ of Latter Day Saints have "Stake" meetings and asked if provisions had been made for these meetings. Mr. Hunter stated that no "Stake" meetings would be held on the site.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that since the operation of the use would not be at peak hours and because of the number of vehicle trips per day on Beulah Road, the Office of Transportation had not requested a left turn lane.

Mrs. Harris noted that because St. Andrews Church on Compton Road does not have a left turn lane, police must be present to direct traffic.

The applicant's attorney, Robert A. Lawrence, with the law firm of Hazel and Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, addressed the BZA. He used an easel and the viewgraph to demonstrate the applicant's landscaping plan. Mr. Lawrence said that the 6 acre site would have a Floor Area Ratio (FAR) of .06 which is less than half of the FAR permitted in the R-1 district for non-residential uses. He also said that the applicant was providing the required 25 foot transitional screening yard around the entire site with the exception of the frontage of Beulah Road. He noted that because of the existing vegetation, staff had no objection to the modification of the transitional screening yard along Beulah Road.

Mr. Lawrence presented the BZA with a picture of the proposed building and explained that the 16,000 square foot structure would be 30 foot high. He noted that the applicant had revised the request by redesigning the parking lot reducing the number of spaces from 144 to 98, eliminating one of the proposed congregations reducing it from three to two, reducing the size of the

storm water management ponds in order to provide more landscaping, modifying the limits of clearing and grading to provide more tree save, providing more supplemental plantings, and had agreed not to have overlapping services. He stated that as a result of the changes, staff had recommended approval of the application.

Mr. Lawrence presented amended development conditions to the BZA and said that, although the applicant still had some differences with staff regarding the development conditions, the difference were not substantial. He explained the reasons the applicant was requesting the modification in Development Condition Numbers 5, 6, 8, 10, 11, 12, 13, 15, 16, 18, and 19.

In response to Mr. Kelley's question as to what activities would be held jointly, Mr. Lawrence said that only the Women's Auxiliary would meet together.

In conclusion, Mr. Lawrence noted that although all the transportation requirements have been met, the applicant, in an attempt to prove itself a good neighbor, would be willing to provide a left turn lane. He noted that in response to the citizens concerns, John Callo, a transportation consultant, had performed a capacity analysis which found the church entrance would operate at a level of "Service A" for all critical movements during Sunday peak hours. He further noted that many intersections in the County operate at level "Service F" and the design standards in the County was level "Service D". Mr. Lawrence said Mr. Callo's analysis, staff, the engineers, and VDOT have all indicated that a left turn lane into the church was unwarranted. He expressed his belief that from a traffic standpoint approval of the application was warranted. Again, Mr. Lawrence said that if they could obtain the necessary right-of-way, the applicant would be willing to install a left turn lane and asked the BZA to defer decision until the applicant could pursue the matter.

Mrs. Harris stated that she was impressed that the applicant was willing to install a left turn lane into the property.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and explained each individual would be allotted three minutes and each homeowners association's or civic association's representatives would be allotted one ten minute block. The following citizens came forward.

The Wolftrap Meadows Homeowners Association representative, Baxter Ragsdale, 1510 Black Eyed Susan Lane, Vienna, Virginia; The Sun Valley Homeowners Association representative, Ilene Garvey, 1725 Asoleado Lane, Vienna, Virginia; Ann Streb, 1010 Country Club Drive N.E., Vienna, Virginia; The Glen Haven Forest Community's representative, Jeanette Sobajian, 1701 Wind Haven Way, Vienna, Virginia; The Cinnamon Creek Homeowners Association's representative, Storm C. Rhode, 9702 Cinnamon Drive, Vienna, Virginia; Reed Black, 1707 Howard Manor Drive, Vienna, Virginia; Tara Echevarria, 1625 Beulah Road, Vienna, Virginia; Charles Duttwilder, 1601 Asoleado Lane, Vienna, Virginia; Gene Klein, 1657 Beulah Road, Vienna, Virginia; Reginald Ohlson, 1700 Wind Haven Way, Vienna, Virginia; Paul Kayatta, 1737 Wind Haven Way, Vienna, Virginia; Leon B. Noory, 3500 Everest Drive, Marlo Heights, Maryland; Camille Klein, 1657 Beulah Road, Vienna, Virginia; Lois Love, 1641 Beulah Road, Vienna, Virginia; Ricardo Krajewski, 9716 Days Farm Drive, Vienna, Virginia; addressed the BZA. They expressed opposition to the application and stated their concerns regarding the traffic impact that would be generated by the use and asked that an impartial traffic survey and analysis be conducted by VDOT. The citizens noted the increased traffic would have a negative impact on

an already dangerous situation and alluded to the traffic volume and the sight distance. The citizen expressed their belief that the required clearing and grading would have a detrimental impact on the environment, the storm water ponds would be inadequate, the use would be incompatible with the Comprehensive Plan, the transitional screening would be insufficient, the lighting would have a negative impact on the neighbors, and the use would have an adverse effect on the area's property value. The citizens noted that the application barely met the angle of bulk plan requirement, the spire height would be in excess of the R-1 zoning height limitation, the increased traffic would create a safety hazard, and the use would have a detrimental impact on Meadowlark Regional Gardens Park. Mr. Noory asked that, if the BZA were to grant the request, a board-on-board fence be provided along his entire lot line. In conclusion, the citizens stated that while there were twelve churches within a two mile radius which were beneficial to the community, the proposed use was too large and would cause a detrimental impact on the community. They asked the BZA to defer decision until the revised conditions submitted by the applicant could be studied and a detailed traffic analysis conducted.

Also, during the course of the citizens' testimony, Mr. Kelley questioned Ms. Echevarria as to whether her concerns with the dangerous traffic situation had been communicated to the local authorities or VDOT prior to the proposed application. Ms. Echevarria said she had asked the police department for increased supervision but had not contacted VDOT. Mr. Kelley noted that VDOT had determined that a left turn lane was not necessary.

Mrs. Harris also questioned Mr. Klein as to how land fill would be required. Mr. Klein stated that the site plan depicted that within a 40 foot area the ground sloped from a 330 foot elevation to a 320 foot elevation.

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

Mr. Lawrence presented a traffic analysis conducted by Greenhorne and O'Mara and expressed his belief that because church services would not be conducted during peak traffic hours, the traffic would not create a problem. He also expressed his belief that the lighting concerns were being used as a red herring because the neighbors did not want a church in their community. He noted that some of the testimony was not factual and said that many of the neighbors were in support of the application.

Chairman DiGiulian called for order in response to an outburst from the audience and noted that Mr. Lawrence had respected the citizens' right to speak and expressed his belief that the citizens should also respect Mr. Lawrence's right to speak.

Mr. Lawrence thanked the Chairman and stated that the applicant would be willing to provide the fence requested by Mr. Noory along the contiguous lot line. He stated that although the speakers in opposition referred to the area as rural, the existing zoning is R-1. Mr. Lawrence explained that by-right, the property could be developed with six lots which would also require clearing and grading of the site. He noted that the applicant would have to adhere to the Fairfax County requirements that the runoff cannot be increased from the predevelopment stage. He further noted that with the Best Management Practices (BMP) required under the Chesapeake Bay Ordinance, the applicant would have to provide water quality treatment. Mr. Lawrence explained that both the storm water management facilities and the BMP would be addressed before Site Plan approval was granted.

In addressing the sight distance issue, Mr. Lawrence referred to the Greenhorne and O'Mara, Inc. analysis dated September 20, 1993, and stated that south bound cars would have to be backed up approximately 350 feet (approximately equal to fourteen automobiles) from the proposed entrance before the stopping sight distance ever approached the minimum criteria of 325 feet. Mr. Lawrence noted that although the applicant could not resolve all the traffic problems on Beulah Road, they would provide a safe entrance into the site. He explained that even though a left turn lane was not required by VDOT, the applicant would, if possible, install one. Mr. Lawrence emphasized that church services would not be held during peak hour traffic. In conclusion, he stated that if the church congregation expanded beyond the capacity which was agreed to in the development conditions, a new church would be formed.

Mrs. Harris made a motion to defer SP 93-H-017 to October 19, 1993 at 8:00 p.m. She stated that the hearing would be held open and the applicant, as well as the citizens in opposition, would be allotted a block of 10 minutes for each side for testimony. Mrs. Harris said that the deferral would allow staff and the citizens the opportunity to study the revised development conditions submitted by the applicant, and would also give the applicant the opportunity to look into the acquisition of land for the left turn lane. She said that while the applicant had shown willingness to accommodate the neighbors, the citizens had expressed their concerns in a very concise manner. Mrs. Harris expressed her hope that the citizens and the applicant would take the opportunity to resolve the outstanding issues.

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 105, September 21, 1993, (Tape 3), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 11:25 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: October 19, 1993

APPROVED: October 26, 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 September 28, 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 9:05 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 107, September 28, 1993, (Tape 1), Scheduled case of:

9:00 A.M. PRESENTATION BY THE OFFICE FOR CHILDREN

Speaking on behalf of the Fairfax County Office for Children (OFC) were: Ellen A. Tuyahove, Director, Fairfax County OFC, Division of Community Education and Provider Services; Jane Snyder, Northern Virginia Family Day Care Association and Fairfax County Child Care Advisory Council; Sharon Schoumacher, Regional Licensing Administrator, Commonwealth of Virginia, Department of Social Services, Division of Licensing Programs, Fairfax Area Office; and, Stephen Rohde, Program Administrator, Fairfax County OFC, Division of Community Education and Provider Services.

Ms. Tuyahove introduced Jane Snyder and said Ms. Snyder was a child care giver and had been appointed by Supervisor Christine R. Trapnell, Mason District, to the Child Care Advisory Council and she introduced the other speakers.

Ms. Tuyahove spoke of the changes affecting child care regulation in the last several years, most recently in laws, the fact that the Council had always worked closely with the community and community groups, and the role of the Board of Zoning Appeals in the aspect of child care regulation having to do with land use. She said that a few important statistics underscored their presence at the meeting. The first was that, in Fairfax County today, 70% of all children live in homes where all adults are working, pointing out the need for child care; the need for school-aged care and infant care continues to be the biggest area of concern; almost all infant and toddler care is done in Family Day Care homes within the neighborhood; parents tend to choose care that is close to home and Child Care Centers have very few slots for infants. A Family Day Care Home in Fairfax County cannot legally operate without being subject to either county or state safety and health standards, depending upon the number of children for which they care.

Ms. Tuyahove turned the podium over to Ms. Snyder and asked that any questions be reserved until the end of all the presentations.

Ms. Snyder spoke of the common goal between the Council and the BZA: maintaining the integrity of the community. She pointed out that children placed in Child Care Centers often are removed from their communities early in the morning and do not return until late at night; this impedes their learning a sense of community, belonging and values, and respecting neighbors and their property, which can only be taught in the community setting. Ms. Snyder said that, by providing care within the community, she considered herself an extended "Mom," by influencing early childhood development and meeting the needs of the children, the family and the community. She said she would like to work with the BZA in the future to help maintain the delicate balance between family and community. The Northern Virginia Family Day Care Association has worked with Fairfax County on policy regarding the process of monitoring and inspection of day-care providers; they have worked closely over the past 3 years with the OFC toward successfully regulating family providers; and providers have given their support and input into the new state regulations which become effective in November. Ms. Snyder said that the regulations enhance safety awareness, promote Cardiovascular Pulmonary Resuscitation (CPR) and First Aid Certification, offer training and technical assistance, and encourage professional achievement through the Child Development Associate Certificate for provider certification programs within national associations. Compared to community providers in previous years, the providers are now regulated and are trained in nutrition, early childhood development, family relations, special needs, etc.

Ms. Schoumacher addressed changes in the State Code relating to child care providers and said that her office was responsible for licensing center-based programs and Family Day Care homes in Fairfax County, Alexandria, Arlington County and Loudoun County. She said that meshing state codes with county ordinances was sometimes quite confusing; providers must figure out where they fit into state codes and local codes, and they also must deal with zoning ordinances, which becomes even more difficult. Ms. Schoumacher said she appreciated that the BZA must deal with complex land issues and hoped they could appreciate the difficulties of understanding the different, complex laws and codes by Family Day Care providers. She said her office worked closely for years with the Fairfax County OFC, trying to be sure that all home providers are monitored to insure the safety and well-being of the children in their care. Ms. Schoumacher expressed hope that this meeting would be a beginning between those responsible for licensing and those responsible for zoning implementation in coordinating with the providers; her office could assist providers in the process while assisting the community in having child care options which are essential to working parents. She said that, in the last session of the General Assembly, legislation was passed that considerably changed the definition of programs subject to licensing in the State; the two Bills, Senate Bill 777 and House Bill 2380, were the culmination of a number of years of work to improve the consistency of the laws regarding child care in Virginia. Ms. Schoumacher referenced a

fact sheet providing information on the Bills, which had been distributed earlier; the new requirements state that all children under the age of 13, except the provider's own children and other children living in the home, are counted to determine if they are subject to state licensing; it is sometimes confusing to people that the state counts the number of children present at any one time of the day to judge compliance with the maximum number allowed; whereas, zoning frequently deals with the number of children on site during the course of the day and these differences are sometimes confusing to the provider; the new law requires registration or licensing if over 4 children under 2 years of age are in care; it provides for a registration process which is not necessary in Fairfax County because the County has a permitting process through the OFC for the smaller homes; the law exempts providers caring exclusively for their own grandchildren; effective July 1, 1993, homes wishing to care for 9 to 12 children under the age of 13 must be licensed in the State of Virginia; part of the law says that the threshold will drop back down to 6 in 1996; and licensing will continue to be required for all homes previously licensed in the State with only 9 children in the home. Ms. Schoumacher was not aware of any homes having a lesser number of children that have requested withdrawal because they are not now required to be licensed, indicating a voluntary licensing. Ms. Schoumacher said that the the law became effective in July, but new regulations for Family Day Care homes will become effective in November; existing regulations have been in place for a long time and the new regulations are about 3 times as long; statewide training to providers based on the new regulations is just beginning; some of the provisions include criminal record checks for all providers and household members, checks with the child abuse central registry for all adults in the household, T.B. tests, reference checks on the provider and possible staff required on the basis of age and number of children cared for.

Ms. Schoumacher outlined the process of State licensing. When an application is received, it is assigned to a Licensing Specialist who does an on-site visit, makes sure that the provider understands the regulations and can be in compliance, checks for completion of reference checks and criminal record clearances, after which they check for health and safety issues in the home. The first license issued is usually for 6 months, a conditional license, during which period the provider, after two months, would be visited one or more times to be sure that they understand and will be in compliance with regulations. After the 6 month conditional period, the provider could receive a license for 1, 2 or 3 years; even with a 3-year license, the provider will continue to be monitored with at least 2 visits per year, at least 1 of which must be unannounced, most likely 2 unannounced visits; any complaints are investigated and, if necessary, additional visits are made. Ms. Schoumacher stressed the professionalism and high standards required of Family Day Care providers.

In answer to a question from Mrs. Harris, Ms. Schoumacher advised that applicants are advised of their responsibility to meet local ordinances and laws. Mrs. Harris agreed with Ms.Schoumacher's statement that it was not up to their office to explain County zoning requirements. Ms. Schoumacher said that, if Fairfax County could provide her office with something simple and informative to give to the applicants, they would be happy to do so. Mrs. Harris noted that it would be beneficial to an applicant if they had all the information they needed to comply with land use issues when planning their operation; otherwise, it might come as an insurmountable surprise that they had to comply with parking requirements, for instance, for which they had not planned.

In answer to a question from Mr. Pammel, Ms. Schoumacher referenced "...certified preschools and nursery schools that are operated by accredited public schools to be exempt from licensing if certain requirements are met and documentary evidence is filed with the Commissioner..." and stated that particular provision expires July 1, 1994, at which time the full requirements of the State will become effective.

Mr. Rohde explained the function of the OFC and described the permit process currently mandated in the County for home child care providers: Parents choose Family Day Care more than any other kind of care for young children because of the family atmosphere, a warm cozy place, that parents and children like; studies have shown that young children, especially infants and toddlers, thrive in this environment; in partnership with Ms. Schoumacher and her staff in the Licensing Office, the County has developed a consistent and thorough system of home child care regulations; the Fairfax County Code requires people providing care in their own home for unrelated children for compensation to have a Fairfax County Home Child Care Permit or a Family Day Care License through the State. The County Permit process is two-part: completion of an application packet and completion of health and fire inspections; the application packet includes a mandatory background clearance by the Virginia State Police and by Child Protective Services, both local and state, for the provider and all other adults in the home; the provider must also have home visits conducted by the Fire Department and the OFC staff. Fire inspectors look at the maintenance of the home and other areas, including areas free of fire hazards, working smoke detectors, telephones to call for emergency assistance, clear exits, working fire extinguishers, regular fire drills, etc. A separate home visit is done by the OFC staff who looks for play areas that are free from hazards, both indoors and outdoors, good repair and maintenance of the home, toxic items stored away from the children, proper food storage, etc. If corrections are needed, a return visit is scheduled with the provider. Once prerequisites are completed, a permit is issued for 1 year; there is no fee; renewal of the permit requires submission of an application, as well as health and fire inspections on an annual basis. Staff investigates complaints related to corporal punishment, numbers of children in care, treatment of children, training and coordination issues and any other concerns that are addressed by their regulations; follow-up is automatic. Training and regular contact continue.

Mr. Rohde said there are approximately 1,800 providers with permits at present in the County, which is greater than in any other of the surrounding counties in the Metropolitan D.C. and Tri-State areas. The permit offers an entry into other programs offered through the OFC: The Child and Adult Care Food Program, the primary goal of which is to improve the diet of children up to 12 years of age; this is done through a reimbursement program with the United States Department of Agriculture. There are currently 756 providers in the County who participate in that and they service over 3,500 children; these providers are visited by staff from the OFC at least 3 times a year. There is the Child Care Resource System, which is a referral service that connects parents looking for care with child care and child care resources throughout Fairfax County. In order to benefit from the listed programs, it is necessary to have a state or local county permit and meet requirements. There are currently over 1,500 providers listed on the Resource System. The Child Care Assistance Program finds appropriate child care and homes and centers for families that are working or who are in training and who need low-income guidelines; this program has contracts with over 100 centers and 460 Family Day Care providers who are monitored, in addition to whatever requirements their permit mandates. The Office also provides a wide range of training to providers through the Community Education and Provider Services Division, the School Aged Child Care Program (SAC), the Head Start Program and the Employer Child Care Advisory Council.

Mr. Rohde said that the OFC would like to continue its positive relationship with Zoning and Comprehensive Planning staff; they had agreed to several things which should help: a systematized exchange of information when the BZA needs information; a regular dialogue and cross-training between Zoning and OFC staff to keep staff current with common and associated issues such as the licensing changes with the State.

Mr. Kelley referenced Mr. Rohde's statement that a large number of providers are licensed and asked if he knew the number of providers who are not licensed. Mr. Rohde said that, nationally, it is suggested that only 1/4 of the people who are licensed are actually in the universe of people providing care. He believed that, because of the large number in Fairfax County who are licensed, the majority of providers are licensed. He said they get calls from people in the community who say that they saw an advertisement for someone providing child care or babysitting and they would like to find out if they are licensed or have a permit, which is something the OFC checks through the permit office and Child Care Resource System; if they find they are not licensed or permitted, they follow up to ensure that the provider comes up to compliance. He did not have an exact number but, during the 3 years that the Division has been operating, they have investigated 500 complaints about providers, not all of whom have been operating without a license or a permit, leading him to believe that the majority of providers were in compliance.

Mrs. Harris asked Mr. Rohde if they included in their packet the information that applicants must comply with zoning requirements. He said that they did not because most providers had 5 or fewer children, but when people decided to obtain a Family Day Care license, the training they go through includes information on zoning requirements; the Child Care Resource System also provides that information. Mrs. Harris submitted that some of the applicants coming before the BZA for the first time have been operating for some time in compliance with state and local regulations, but had never been before the BZA to obtain the appropriate zoning permits. She wondered how they had succeeded in operating and renewing licenses without having someone in the OFC suggest to them that they go before the BZA, until they were reported to be in violation of the Zoning Ordinance and were forced to comply. She wanted to find some way for applicants to the Office for Children to be informed of their obligation to go before the BZA.

A discussion ensued regarding generalities on the subject of child care.

Mrs. Harris stressed to the speakers that letters from people whose children are cared for by the providers are not germane to the issues before the BZA; rather, providers should inform their neighbors of their intentions and sustain a dialogue, in order to promote good will in the community.

The Board members thanked the speakers for their presentations.

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Page 109, September 28, 1993, (Tape 1), Scheduled case of:

9:20 A.M. ALYCE M. POPE, JAMES EDWARD CARTER AND WILLIE AND MARGARET COLEMAN, 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. (DEF. FROM 7/20 FOR APPLICANT TO RESEND NOTICES AND AMEND AFFIDAVIT)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Monroe G. Chew, 4th, RLS, Larson Engineers, 5000 Sunnyside Avenue, Beltsville, Maryland, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located at the intersection of Munson Road and Summers Lane; there are currently 3 houses on the two lots; two of the houses are located on Lot 41; the second or back house was moved to the lot sometime in the 1930's or 1940's without approval; there have, over the years, been sewer and water taps provided to that house; staff believed that the application did not meet all of the standards specified in the Zoning Ordinance; it was noted that the staff report indicated the third home was moved to the lot without approval and staff could not find any official records regarding the placement of the house; since the publication of the staff report, staff had met with the applicants and there appeared to be extenuating circumstances regarding the location of that house, which Ms. Greenlief believed the applicant could best explain. Ms. Greenlief said that the lots and the dwellings on them are very old; they predate the current Zoning Ordinance and the lots themselves predate the first Zoning Ordinance. Ms. Greenlief noted that a revised affidavit had been distributed to the Board which added Henry C. Mackall, an attorney, who represented two of the applicants, the Colemans.

Mrs. Harris asked Ms. Greenlief is she knew when Parcel 39 was subdivided. Ms. Greenlief said she had been unable to find the answer to that; it appeared to have been after the 1940's, but she could not ascertain that from the old deeds that were submitted and suggested that, perhaps, the applicant could answer that question.

Mr. Chew came to the podium and addressed the question asked by Mrs. Harris. He said he was not sure exactly when the subdivision went into effect; it was after the implementation of the Ordinance. Mrs. Harris asked if it was subdivided by the present owner or the previous owner of the property. Mr. Chew said it was done by the former owner of the property, who is now deceased.

Mr. Chew presented the statement of justification, stating that the applicant was requesting a variance on two lots: Lot 40 which has an existing width at the setback line of 64.5 feet, created when the subdivision showing Parcel 39 was created, resulting in a long tier of lots down Munson Road. The house existed at that time and met the existing side yard and front yard requirements; however, the requirement today for an interior lot is 80 feet and the property does not meet the requirement; the owner wished to repair the house but required a permit, for which a variance is required. Lot 41 has had a house on it for more than 35 years; it was built when the subdivision was created. Lots 40 and 41 have been in their present condition since the early 1900's and there was a small roadway, on paper only, for Summers Lane; it was very narrow and, over the years, the property behind it has been developed; the school was placed there and requirements to upgrade the street were imposed, requiring dedications; requirements were also imposed for a sidewalk, curb and gutter, further reducing the side yard and building setback. Mr. Chew said that, as a result of subdivision of the rear portion of the long lot, at the recommendation of the school and an adjacent property owner, the old family house on the lot was moved to Lot 41. He did not believe there was ever a permit issued for the move; however, immediately after that, they did apply for water and sewer permits and those hookups were granted; the house has remained that way for almost 40 years.

Henry C. Mackall, Esquire, with the firm of Mackall, Mackall, Walker & Gibb, 4031 Chain Bridge Road, Fairfax, Virginia, came to the podium and stated that he represented Mr. & Mrs. Coleman, two of the applicants. He said they became involved after the application had already been filed; there originally were 2 lots with 3 houses on them; the 2 lots were created in 1939 with Mrs. Green owning Lot 40 and Mrs. Payton owning Lot 41; the conveyance occurred in the early 1940's, as best he could remember, prior to the enactment of the Ordinance. Mr. Mackall said that he represented Mrs. Green and Mrs. Payton in 1954, when they conveyed the back part of the two lots to the School Board; he represented them in 1956 when they conveyed dedicated land for the widening of the road which created a problem with the house which is on what is now Lot 2; there was a subsequent dedication which exacerbated that problem and caused the width and setback problems. Mr. Mackall said that the only thing the application requests is legitimization of the 2 existing houses on Lot 1 and Lot 2. After the application was filed, Mr. Coleman contacted Mr. Carter to acquire the third lot, next to the school; the County indicated that they were not happy with the other house on the lot, so Mr. & Mrs. Coleman have agreed to take that house down and build a new house. All of this would result in the two existing houses with the existing setback and problems, and a new lot which meets all of the requirements and is at the low end of the density recommended by staff. Mr. Mackall said that an unusual situation exist in that the lots are long and narrow and he believed the application should be approved. He said he had received letters that morning from the President of the Springdale Civic Association and submitted them to the Board.

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

Mr. Hammack moved to grant VC 93-M-046 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

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-046 by ALYCE M. POPE, JAMES EDWARD CARTER AND WILLIE AND MARGARET COLEMAN, under Section 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. and proposed Lot 2 having lot width of 90.74 ft. and permit dwelling to remain 22.9 ft. from front lot line, on property located at 3708 and 3710 Munson Rd., Tax Map Reference 61-4((1))40 and 41, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 28, 1993; and

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

1. The applicants are the owners of the property.
2. The present zoning is R-3.
3. The area of the lots is 1.44 acres.
4. The situation is unusual in that the construction and movement of the buildings had been done before the adoption of the first Zoning Ordinance and, in this particular case, one of the controlling factors was that the house on proposed Lot 3 was granted sewer and water service after it was moved, even though it did not have a permit.
5. The application satisfied the standards for variance applications and granting it would clean up the legal situation on the property.

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

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

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

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

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

1. This variance is approved for the subdivision of the existing two lots into three lots and to allow the dwelling on Proposed Lot 2 to remain 22.9 feet from the front lot line as shown on the plat prepared by Larsen Engineers, Inc. dated February, 1993 submitted with this application.

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

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 October 6, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 112, September 28, 1993, (Tape 1), Scheduled case of:

9:30 A.M. RICHARD H. GOEHNER, VC 93-B-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.5 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307). Located at 7512 Ferber Pl. on approx. 14,339 sq. ft. of land zoned R-3. Braddock District. Tax Map 71-3 ((4)) (42) 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. Richard H. Goehner, 7512 Ferber Place, Springfield, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is surrounded by lots also zoned R-3 and developed with single family detached dwellings; the variance of 4.5 feet to the minimum yard requirement was being requested to allow the enclosure of an existing covered deck. On June 20, 1973, the BZA approved a variance application filed by the applicant on the subject property to allow a covered porch closer to the rear lot line than permitted; it was the covered porch that the applicant now was requesting permission to enclose. The BZA has also taken action on several other variances in the vicinity, which are listed in the staff report.

Mr. Goehner presented the statement of justification, stating that he purchased the property in 1970, located at the end of a cul-de-sac with a front yard of 55.6 feet, a rear width of 198 feet and a depth of 109 feet; there are 6 contiguous property owners; the house is located 43.6 feet from the front lot line and the existing porch is 25 feet from the front lot line; the orientation of the property is such that there is a 1-foot difference between the distance from the property line on the north and south sides of the porch; the house is approximately 10 feet higher than the street and approximately 5 feet lower than the rear lot line; the rear yard setback of 25 feet is not restrictive to other property owners in the area; most homes are located on the lot such that there is 50 to 60 feet from the rear of the house to the property line; adherence to the 25-foot requirement would necessitate the disassembly of a porch that was constructed under the previous variance granted in 1973; the resulting room would be of an unusual size of 11 feet deep from the house and 22 feet long, giving the appearance of a structure being appended to the house, rather than the appearance of having been a part of the original construction. Mr. Goehner further stated that any construction of similar size on the north side of the house would require total restructuring of the existing living and dining rooms, the construction of an additional opening in the existing brick and block wall, and the removal of several mature trees; also, the construction on the south side would not be practical since it would require access through either the garage or the bedroom; the shrubbery and landscaping are in place and the previous variance resulted in a structure that did not detract from the aesthetic value of the property. Mr. Goehner said that granting this variance would not change the character of the Zoning District since the majority of the houses in the area are located on a property that allows each owner sufficient room to construct a useable sized addition without the need for obtaining a variance; it will not be contrary to public interest; a variance of 4.5 feet still results in the minimum rear yard being greater than the minimum side yard of 12 feet.

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

Mr. Pammel moved to grant VC 93-B-067 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 21, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-067 by RICHARD H. GOEHNER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20.5 ft. from rear lot line, on property located at 7512 Ferber Pl., Tax Map Reference 71-3((4))(42)21, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 28, 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 14,339 square feet.
4. The lot has an irregular shape, limiting the location of an addition.
5. The location of the house, almost at dead center of the lot, limits the location of an addition.
6. The lot is exceptionally shallow, which precludes the location of an addition in any other location.
7. The variance requested is minimal, less than 5 feet.
8. Existing exceptional topographical conditions further limit the applicant.
9. The applicant has no other options in the placement of the addition on the lot to meet the needs of his family.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Richard H. Goehner, dated May 20, 1993, revised through June 6, 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.

Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Kelley 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 October 6, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 114, September 28, 1993, (Tape 1), Scheduled case of:

9:40 A.M. THOMAS M. & LAURA J. LAWLER, VC 93-V-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 27.3 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-407). Located at 6125 Woodmont Rd. on approx. 6,992 sq. ft. of land 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. Laura J. Lawler, 6125 Woodmont Road, Alexandria, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located at the corner of Woodmont Road and Fort Willard Court; surrounding properties are also zoned R-4; the variance of 2.7 feet was being requested to allow a front portico addition. Ms. Greenlief said that, on December 8, 1992, the BZA approved a variance on the property to allow an addition to be located 5.6 feet from the rear lot line and 8 feet from the side lot line; the BZA had also acted on several other variance requests in the area, which are listed in the staff report.

Ms. Lawler presented the statement of justification, stating that the proposed portico was intended to provide shelter for the primary entrance to the house; the current entrance leads directly into a hallway with a wood floor which has suffered considerable damage because of the constant wear and tear, with no protection from the elements. She said they have had problems with the storm door and repeated painting was required around the front entrance. Ms. Lawler submitted pictures of other houses in the neighborhood with front porches.

Mrs. Harris asked if the applicant would need to redo the stoop and the answer was that the concrete stoop would be extended out about 42 inches from the doorway to the end, at the same height, constructed of brick.

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

Mrs. Harris moved to grant VC 93-V-069 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 21, 1993.

The applicant requested that the eight-day waiting period be waived and the Board so moved.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-069 by THOMAS M. & LAURA J. LAWLER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 27.3 ft. from front lot line, on property located at 6125 Woodmont Rd., 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 September 28, 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 6,992 square feet.
4. The property has the unusual characteristic of two front yards.
5. The variance is very minimal and was requested in order to correct a problem relating to the actual structure of the house.
6. Granting the variance would alleviate a hardship.
7. Granting the variance would not be of substantial detriment to any of the adjacent properties and would 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 of the addition (portico) shown on the plat prepared by Barbara K. Ball, dated September 14, 1992, revised through June 3, 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 5-0. Mr. Kelley was not present for the vote. Mrs. Thonen was absent from the meeting.

Mrs. Harris moved to waive the eight-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 5-0. Mr. Kelley 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 September 28, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 115, September 28, 1993, (Tape 1), Scheduled case of:

9:50 A.M. LEE E. PERRY, VC 93-H-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 1920 Baton Dr. on approx. 15,555 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-3 ((11)) 78.

Chairman DiGiulian said he had a note stating that the notices were not in order and Lori Greenlief, Staff Coordinator, confirmed that was true.

Marilyn Anderson, Senior Staff Coordinator, suggested deferring the hearing to November 30, 1993, at 9:00 a.m. Mr. Ribble so moved. Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Kelley was not present for the vote and Mrs. Thonen was absent from the meeting.

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Page 116, September 28, 1993, (Tape 1), Scheduled case of:

10:00 A.M. MR. AND MRS. ROBIN BROADWAY, VC 93-D-073 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 33.3 ft. from front lot line (40 ft. min. front yard req. by Sect. 3-107). Located at 1938 Lorraine Ave. on approx. 29,973 sq. ft. of land zoned R-1. Dranesville District. Tax Map 41-1 ((7)) 46.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Amanda Broadway, 1938 Lorraine Avenue, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located south of the intersection of Kirby Road and Old Dominion Drive in the Franklin Forest Subdivision; the lots to the north, east and south are also zoned R-1; the lot to the west is zoned R-3; all the lots are developed with single family detached dwellings; the request is for a variance of 6.7 feet.

In answer to a question from Mrs. Harris, Ms. Langdon said that Birch Road was not a full road but appeared to dead end at Franklin. Ms. Broadway said it is not a public road, it provides access to houses but is not paved; Birch and Lorraine is just a curve. Mr. Hammack pointed out that the map said it was a State Route. Chairman DiGiulian said it appeared to him from the tax map that, from the southeast side of Lot 33 to the northwest, it is a dedicated public right-of-way; from the southeast side of the subdivision to the southeast, it also appears to be a dedicated road; it appears that there is just a piece across the back of the subdivision where it is not a public road.

Ms. Broadway presented the statement of justification, stating that they had moved into the house in 1981; their family has grown and they need more space; they have no basement to convert to additional living space; the addition would enable them to have a separate living room and family room; given the layout of the house and its position on the lot, the proposed location is the only logical place to build the addition; written statements address the required standards for the granting of a variance; an unusual feature of the house is that it is situated at a bend in the road at Birch and Lorraine, which is not a traffic junction in the normal sense; the property does not resemble a corner lot, but the bend in the road gives the property two front yards; they had always assumed that their front yard was on Lorraine; they already have a side wall on Birch which is within the designated requirement. Ms. Broadway said that placing the addition in any other location would turn the existing bedrooms into interior rooms and would not allow all of the living space to be together; building where they could build by right would be more intrusive to their neighbors at 1940 Lorraine, either being viewed from their bedrooms or deck; at the proposed location, the addition will not be viewed by the neighbors at all; the proposed addition would be further away from the road than the existing wall on Birch. Ms. Broadway said that the architect was present to answer any technical questions. She said she had the support of the immediate neighbors, which had been submitted in writing.

Thomas M. Hemphill, 111 Park Place, Falls Church, Virginia, Architect and Agent, presented himself to answer any questions the Board might have.

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

Mr. Ribble moved to grant VC 93-D-073 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 21, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-073 by MR. AND MRS. ROBIN BROADWAY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 33.3 ft. from front lot line, on property located at 1938 Lorraine Ave., Tax Map Reference 41-1((7))46, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 28, 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 approx. 29,973 square feet.
4. The position of the house on the lot creates an extraordinary situation.
5. The property has the unusual characteristic of a double front yard which, on the Birch Road side, has always been used as a side lot line.
6. Only a small portion of the addition causes the need for the variance.
7. Architecturally, the proposed location is the only place on the lot that the addition could be placed.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated May 11, 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. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley 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 October 6, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 118, September 28, 1993, (Tape 1&2), Scheduled case of:

10:10 A.M. RALPH & BETTY WARE, VC 93-M-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure (garage) 4 ft. from side lot line (12 ft. min. side yard req. by Sect(s). 3-307 and 10-104). Located at 4517 Rynex Dr. on approx. 14,730 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((6)) pt. 151.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The Agent, Sonia J. Dainton, Civil Engineer with CAD-CON Consulting, Inc., 8133 Leesburg Pike, Vienna, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the rear yard of the property is traversed by the boundary line of the City of Alexandria; the property is surrounded on three sides by single family detached dwellings zoned R-3, and on the east by single family detached dwellings in the City of Alexandria; the variance of 8 feet is being requested to allow the construction of a detached garage; approximately 87% of the proposed garage would be located in the City of Alexandria and is subject to that jurisdiction's zoning regulations.

Ms. Dainton presented the statement of justification, stating that the property is located in both Fairfax County and the City of Alexandria; most of the rear yard is in the City of Alexandria, the main residence and the front yard is located in Fairfax County; an existing carport with a basement is part of the house and the owners would like to leave it intact; they wish to have more vehicle storage space by building the proposed garage, 20 x 28 foot in size, 15 feet tall, designed to be architecturally compatible with the existing structure. Ms. Dainton said the property was acquired in good faith and is exceptionally narrow; the lot was created prior to the effective date of the Ordinance and conforms to the requirements of the City of Alexandria's setbacks; the residence has very little room on either side or in the front of the house; the applicants own a pickup truck and three other vehicles which they use on a daily basis; they have a greater need than other property owners for their vehicles; the exceptional narrowness of the lot precludes locating the garage in the front or on the side of the property, where garages are normally located; without the variance, the applicants cannot construct a two-car garage on their property and still maintain a useable rear yard; they have numerous decks and patios in their back yard which is two-storied. The restrictions created by the lot are not normally shared by other homeowners in the area. While the lack of a secure space for all the vehicles could not be considered a hardship, there is the danger of theft and vandalism.

Ms. Dainton said the proposed garage would replace old dilapidated sheds and would be of limited height, 15 feet; since the ground slopes down from the front of the house to the rear, it will actually appear to be smaller with respect to the main house and other houses around it; very little, if any, of the garage will be visible from the front street. The closest neighbor to the southwest, Mr. Richard Eudy, is not opposed to the garage and is happy that the sheds will be removed.

In answer to a question from Mrs. Harris, Ms. Dainton said that the carport would remain; it has a basement under it and, if observed from the rear, is seen to be a part of the house.

Mrs. Harris asked about the property to be purchased from the neighbor, which was not mentioned on Ms. Dainton's presentation. Ms. Dainton said that, if the variance is approved, Mr. Eudy would convey the triangular piece of land that would help maintain the 11.5 foot rear setback of the garage. Mr. Ribble asked if Ms. Dainton had the agreement with her and she did not; however, she said that Mr. Eudy was present to verify the agreement. Mrs. Harris asked why the proposed addition could not be located in some other way to avoid a 28 foot intrusion into the side yard. Ms. Dainton said that the applicants wanted the use of their rear yard and also needed to maintain a certain distance from the main house in order to make a wide turn in and out of the proposed garage.

Chairman DiGiulian asked Ms. Dainton if she had checked to see if they could comply with the subdivision ordinance with the conveyance of the Eudy property and if they proposed to submit a subdivision plat. Ms. Dainton said they intended to submit a subdivision plat.

Richard Eudy, side yard neighbor, spoke of his acceptance of the project and of his willingness to conduct the transaction necessary to transfer the triangular piece of property mentioned earlier.

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

Mr. Hammack moved to deny VC 93-M-062 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-062 by RALPH & BETTY WARE, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure (garage) 4 ft. from side lot line, on property located at 4517 Rynex Dr., Tax Map Reference 72-2((6))pt. 151, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 28, 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 approx. 14,730 square feet.
4. The application is somewhat taxing because so much of the garage is in Alexandria and seems to meet with their Ordinance, but it does not meet with the Fairfax County Zoning Ordinance.
5. It is understandable that the applicants might wish to have additional garage space to store their cars and have the use of their back yard for other than parking purposes, but the engineer was candid in her presentation which indicated that the result of granting the variance would be a convenience under the Fairfax County statute. There does not appear to be any hardship on the applicants at all because it is possible that they could reorient the garage; since they have enough back yard, they might put it all in Alexandria or move it in to satisfy the requirement of Fairfax County.
6. A 28 foot garage to 4 feet from the lot line is a large two-car garage; retaining the carport which is not being enclosed for additional living space or any other justification of need is just a convenience and only a means for parking more vehicles on the property.
7. The applicant has not satisfied the Board that the nine required standards for variances have been met.

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 5-0. Mr. Kelley 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 October 6, 1993.

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Page 120, September 28, 1993, (Tape 2), Scheduled case of:

10:20 A.M. CHRISTOPHER L. CRAWFORD, VC 93-D-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 941 Dead Run Dr. on approx. 20,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-3 ((11)) 81.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Christopher L. Crawford, 941 Dead Run Drive, McLean, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the Broyhill Langley Estates Subdivision, is surrounded on three sides by single family detached dwellings zoned R-2, and on the east by St. Lukes Church and School, also zoned R-2; the interchange of the Beltway with Georgetown Pike is located northwest of the property; the variance of 2.9 feet was being requested to allow the construction of a two-car attached garage.

Mr. Crawford presented the statement of justification, stating that he had acquired the property in 1979 in good faith and was presented with the Deed of Trust dated June 7, 1961, which allowed for a side yard setback of 12 feet; they assumed that the requirement would be effective until such time as they would be able to afford to build a garage. Mr. Crawford said that, when applying for a permit to build a combination workshop and garage in April, 1993, the builder discovered that the current minimum side yard requirement is 15 feet and not 12 feet; given the County measurement standards, they agreed to go ahead with construction of an approved and permitted garage measuring 17.5 by 40 feet, with a wider slab and roof eaves to allow for movement of a southmost non-loadbearing wall, depending upon the decision of the Board; the application addressed and appeared to the applicant to meet all the requirements set forth by Section 18-404; due to the width of the home and its placement on the lot, there is inadequate width on either side of the house for a double garage without some form of variance; the builder and the applicant evaluated alternative locations on the lot and concluded that the only other possible location was to the rear of the home, which unfortunately would block existing drainage for the applicant and his neighbor and would require a very long driveway extension, necessitating the removal of a number of large, mature trees and probable damage to additional trees. Mr. Crawford said that the proposed expansion of only 2.9 feet would enable him to have a full width two-car garage and workshop; a 17.5 foot width is insufficient for parking two cars side by side; the proposed width is in keeping with the standard of many other homes in the neighborhood and the applicant provided photos of many of them which are wider than the proposed garage; staff had provided information concerning other side yard variances already approved for a few exceptional circumstances on the applicant's street. Mr. Crawford said that the standard of construction for that area of McLean had risen to accommodate two- three- and even four-car garages; with five bedrooms in his home, he did not believe it was unreasonable to have enough people at the house to fill the existing short driveway and require on-street parking; the granting of the request would preclude on-street parking; there would be over 30 feet between the applicant's house and the neighbor's house to the south; there would also be over 30 feet of total clear space on both sides of the house; every neighbor abutting or directly across the street has supported the request, as evidenced by a written statement filed with the application.

Mrs. Harris asked why the garage had to be 42 feet long, almost twice what is required for a regular two-car garage; she asked what the additional 20 feet was for. Mr. Crawford said that he had two hobbies: working on old cars and woodworking; the large area to the rear of the garage would accommodate those hobbies. Mrs. Harris said that she recognized the hardship in locating the garage, but a 40-foot variance is excessive and she was having trouble being persuaded that granting the variance would alleviate a hardship approaching confiscation, which is the required standard. In answer to a comment by Mrs. Harris, Mr. Crawford said the yard was not flat but was sloped so that there was a 4-foot differential between the front and back yards, where the drainage occurs.

Mr. Pammel told Mr. Crawford he believed what Mrs. Harris was alluding to was, if he could live with less area in the workshop, the workshop wall could be moved back to comply with the 15-foot side yard requirement. Mr. Crawford said that they were permitted by the County to build a 17.5-foot by 40-foot garage and the builder understood that they would be allowed a 3-foot overhang, so they built to that specification on a 20.5 foot slab; the interior of the structure is 17.5 by 40 feet now and that was permitted by the County in April and it is the overhang that makes the difference; it would enable the applicant to utilize an additional 3 feet, which would enable him to park 2 cars side by side; many other garages in the

neighborhood exceed the 20.4 interior depth. Mr. Pammel asked the applicant if the workshop could be less wide than the garage. Mr. Crawford said he believed it would not look good but could be done. Mrs. Harris asked if the addition was fully constructed and the applicant said that it was, but the side wall could be ripped out and moved in about two hours.

Chairman DiGiulian said it concerned him that the applicant had obtained a building permit to build a 17.5-foot wide structure, but constructed it in such a way that the slab and a 3-foot overhang is there to accommodate a 20-foot structure; he said he understood that a notice of violation had been issued and the applicant said that was true. Mr. Crawford said it was their understanding when they obtained the building permit that a 3-foot overhang would be allowed and it was their intention to either bring the wall in or leave it out, depending upon the decision of the Board; they used a smaller (15-foot) double garage door, so that it would be possible to bring the wall in if necessary; the problem is that he still will not have a two-car garage because of the narrow width.

A discussion ensued regarding the questionable method used by the applicant of constructing the addition before filing an application for a variance. The applicant said they had been confused when looking at the deed and seeing a 12-foot required setback; it was only when the builder went to obtain a permit that they learned of the change in the requirement to 15 feet; the applicant knew before construction that the requirement had been changed.

In answer to a question from Mr. Pammel, the applicant said he had acquired the property in early 1979.

Mrs. Harris asked staff, since the addition had already been constructed, why the applicant did not file for a special permit under the mistake section instead of a variance. It was revealed that the applicant had a choice in this situation to file for either a special permit or a variance; however, when the application was originally filed, staff had not been aware that the addition was already in place.

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

Mr. Pammel said that he realized now what had happened: The time frame in which the applicant had acquired the property was almost the same time frame during which the Ordinance was amended, changing the side yard requirement.

Mr. Pammel moved to grant VC 93-D-064 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 21, 1993. The decision will become effective on the date the applicant's revised plat is submitted and approved by the Board.

Mrs. Harris said she could not support the motion because the applicant had built the addition prior to filing for a variance and because the addition was built in such a way as to allow for changing the position of the side wall if the variance were not granted; she would have been more comfortable if the applicant had come before the Board and obtained a variance before construction; she did not believe the request met the hardship criteria and she believed that, if the applicant had chosen to come in for a special permit, he could not have proven that he was unaware of the proposed encroachment into the side yard. Mrs. Harris was opposed to the 40-foot dimension, stating that the workshop area could be changed to fit within the side yard requirement, requiring a lesser variance.

Mr. Pammel said that he was amenable to an amendment to his previous motion and to grant-in-part only, holding the workshop area back 2.9 feet to meet the standards. He so moved, as reflected in the Resolution.

Mr. Hammack said that, similarly, the Board is often faced with builders who place houses on lots in such awkward positions that they cannot meet minimum yard requirements and variances are granted in many such cases; it appeared to him that this building was placed to meet the 12-foot requirement and the applicant believed he only needed to meet the 12-foot requirement; while he did not agree with the applicant's procedure, this situation would be consistent with many others in Broyhill Park; it would not really change the characteristics of the neighborhood to allow the applicant to build within 12 feet of the side lot line; the applicant's plans were thwarted by the County changing the side yard requirements, not too unlike the County taking frontage and changing a front yard requirement; while he did not disagree with anything Mrs. Harris said, and he agreed with the setback suggestion on the workshop portion, he was not sure about the appearance of the two portions not being in line; however, he did second the motion, which carried by a vote of 5-0. Mr. Kelley was 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 93-D-064 by CHRISTOPHER L. CRAWFORD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from side lot line **(THE BOARD GRANTED THE VARIANCE OF 2.9 FEET TO APPLY ONLY TO THE 20-FOOT DEPTH OF THE GARAGE; THE WORKSHOP MUST COMPLY WITH THE 15-FOOT SIDE YARD REQUIREMENT)**, on property located at 941 Dead

Run Dr., Tax Map Reference 21-3((11))81, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 28, 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 approx. 20,000 square feet.
4. The time frame in which the property was acquired was almost in the same time frame that the Zoning Ordinance was amended in 1978, changing the side yard requirements. An unfortunate situation develops when a person acquires property and does long range planning based on existing requirements, believing they are within their rights by applying for a permit to build, only to find out that the requirements have changed.
5. When the applicant purchased the property, the reference documents indicated to him that the side yard requirement was 12 feet and he made his future plans based on those requirements. In the interim, the County changed the standards, thereby justifying a variance.
6. The applicant's situation evokes sympathy, although his approach to resolving the situation is questionable.
7. The variance request is minimal and could have been granted if the application were filed before construction.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by James H. Guynn, dated May 3, 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 attached 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 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 5-0. Mr. Kelley 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 will **become final on the date the revised plat is approved by the Board.** That date shall be deemed to be the final approval date of this variance.

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Page 123, September 28, 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. (DEF. FROM 7/13/93)

Chairman DiGiulian stated that the Board had issued an Intent-to-Defer on September 14, 1993.

Marilyn Anderson, Senior Staff Coordinator, stated that staff suggested a hearing date of January 4, 1994, at 10:30 a.m. Mr. Pammel so moved. Mr. Ribble seconded the motion, which carried by a vote of 5-0. Mr. Kelley was not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 123, September 28, 1993, (Tape 2), Scheduled case of:

10:35 A.M. JIM SPEARS, APPEAL 93-V-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination of the Zoning Administrator that the appellant is operating a contractor's office and shop and storage yard on property located in an R-1 District, and is therefore in violation of Par. 5 of Sect. 2-302. Located on 9035 Telegraph Rd. on approx. 3.75 ac. of land zoned R-1. Mount Vernon District. Tax Map 108-1 ((1)) 18.

Chairman DiGiulian stated that the Board had issued an Intent to Defer to November 30, 1993 on September 21, 1993. The Board so moved.

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The Board recessed at 11:05 a.m. and reconvened at 11:20 a.m.

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Page 123, September 28, 1993, (Tape 2), Scheduled case of:

10:45 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 additions, additional outdoor uses, accessory structures 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. (DEF. FROM 5/25 FOR NOTICES. DEF. FROM 7/28/93 TO ALLOW APPL. TO SUBMIT REVISED PLAT)

Chairman DiGiulian stated that this case was deferred from July 28, 1993 for a revised plat.

Michael F. Davey, 8236 Governors Court, Alexandria, Virginia, represented the applicant and reaffirmed the affidavit.

Don Heine, Staff Coordinator, presented the staff report, stating that the applicant had submitted a special permit plat which showed other existing structures, including an outdoor altar, a slightly increased outdoor play area, two toy sheds, a trellis with seating and additional planting proposed for the front yard adjacent to the driveway and within or near the parking area. In addition, during a site visit, staff observed that a temporary gate had been provided across the driveway. It was staff's position that, by imposing the previously recommended Development Conditions, adding the revised Development Conditions that limit the

number of outdoor events to the number in the revised justification, prohibiting the use of amplified music with outdoor events, and bringing forward the Development Conditions previously approved by the BZA, the proposed additions would be in harmony with the Comprehensive Plan and would meet applicable Zoning Ordinance standards for special permit uses; therefore, staff recommended approval of this request, subject to the Proposed Development Conditions contained in Attachment 1 of Staff Report Addendum 2.

Mr. Davey stated that, in March of 1993, they had applied for an amendment to an original special permit granted in June 1992 because they decided that, rather than adding on to the existing structure, they would take down the existing structure and construct a new building that would be approximately 800 to 1,000 feet larger than the original special permit indicated. He said they had read and did understand the Development Conditions contained in Addendum 2; they submitted a revised plat which he believed answered the questions raised at the July hearing; both Jane C. Kelsey, Chief, Special Permit and Variance Branch, and Mr. Heine made a site visit to the property on August 24 and verified that the plat did accurately reflect the issues raised in July; specifically, that the security gate had been installed, that the site of the altar is 102 feet from the nearest property line, that the location of the playground is around the east side of the day school and the proposed location of the storage shed, what its distance is from the property line, and compliance with required screening.

Chairman DiGiulian asked Mr. Davey if he agreed with the Development Conditions and he said he did.

Kenneth Keene, Lot 1, the lot in closest proximity to the outdoor altar structure, came forward and submitted what he believed was a more detailed plat, stating that the transitional screening becomes very sparse in the winter, leaving clear visibility of the church property and the activities in the Keene's back yard. He was concerned about the continued erosion of the transitional screening and suggested that an addendum be made to the appropriate condition, requiring additional evergreen, hedge type vegetation behind the memorial garden, which is to the rear of the outdoor altar, to provide some degree of privacy to adjacent property owners throughout the seasons. Mr. Keene was also concerned about the increase in the number of outdoor events throughout the year and the amplification of music at those events making it necessary for adjacent property owners to close their windows. Mr. Keene and Mr. Ribble discussed Condition 22 as a solution to his concerns.

Mr. Davey said that the Rector and he had visited with Mr. Keene 2 or 3 weeks ago because of the letter he wrote to the BZA and their desire to discuss his concerns; they told Mr. Keene they had no intention of reducing the amount of transitional screening; they told him that they had taken down only some trees which had been damaged in a storm; staff noticed in their visit of August 24 that the plat understates the amount of transitional screening, especially on the east and south sides. Mr. Davey said the altar is 102 feet from their property line and for about 15 or 20 feet the area is heavily wooded, with underbrush. Mr. Ribble asked Mr. Davey to comment on Mr. Keene's suggestion that the church plant some evergreens in the area. Mr. Davey said he did not believe it would be a problem, although they would have to clear existing vegetation to plant the evergreens.

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

Mr. Ribble moved to grant SPA 92-V-003 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in Staff Report Addendum 2, dated September 21, 1993, as amended: Condition 22 was changed to allow 12 outdoor events per year.

Mr. Ribble noted Mr. Davey had indicated that additional screening would be voluntarily planted near Mr. Keene's property to mitigate any visual or noise problems in the winter.

Mr. Hammack referenced Condition 23 and the amplification of music, stating he believed that, in the past, the BZA has said applicants would have to be in compliance with the noise ordinance but had not prohibited all amplified music. He said he remembered only one mosque where the BZA had considered and disallowed amplification. Mr. Ribble asked staff to comment. Ms. Kelsey tried to remember the incident Mr. Hammack made reference to; she could only remember one such application which presented a problem and that involved church bells; the church bells had to meet the noise ordinance requirements; the other one she remembered involved amplified Christmas music outside a church at Tysons Corner, which was subsequently removed. Mr. Ribble said he did not have any problems with the Development Conditions as they were.

Ms. Kelsey asked for clarification concerning the additional evergreen trees between the worship altar and the lot line; she asked if the BZA wanted to leave it up to the County Arborist. Mr. Ribble said he did not make that a condition; he was taking the church's word that they would plant sufficient evergreens to mitigate the noise and visual impact on that side.

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number of outdoor events to the number in the revised justification, prohibiting the use of amplified music with outdoor events, and bringing forward the Development Conditions previously approved by the BZA, the proposed additions would be in harmony with the Comprehensive Plan and would meet applicable Zoning Ordinance standards for special permit uses; therefore, staff recommended approval of this request, subject to the Proposed Development Conditions contained in Attachment 1 of Staff Report Addendum 2.

Mr. Davey stated that, in March of 1993, they had applied for an amendment to an original special permit granted in June 1992 because they decided that, rather than adding on to the existing structure, they would take down the existing structure and construct a new building that would be approximately 800 to 1,000 feet larger than the original special permit indicated. He said they had read and did understand the Development Conditions contained in Addendum 2; they submitted a revised plat which he believed answered the questions raised at the July hearing; both Jane C. Kelsey, Chief, Special Permit and Variance Branch, and Mr. Heine made a site visit to the property on August 24 and verified that the plat did accurately reflect the issues raised in July; specifically, that the security gate had been installed, that the site of the altar is 102 feet from the nearest property line, that the location of the playground is around the east side of the day school and the proposed location of the storage shed, what its distance is from the property line, and compliance with required screening.

Chairman DiGiulian asked Mr. Davey if he agreed with the Development Conditions and he said he did.

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Mr. Davey said that the Rector and he had visited with Mr. Keene 2 or 3 weeks ago because of the letter he wrote to the BZA and their desire to discuss his concerns; they told Mr. Keene they had no intention of reducing the amount of transitional screening; they told him that they had taken down only some trees which had been damaged in a storm; staff noticed in their visit of August 24 that the plat understates the amount of transitional screening, especially on the east and south sides. Mr. Davey said the altar is 102 feet from their property line and for about 15 or 20 feet the area is heavily wooded, with underbrush. Mr. Ribble asked Mr. Davey to comment on Mr. Keene's suggestion that the church plant some evergreens in the area. Mr. Davey said he did not believe it would be a problem, although they would have to clear existing vegetation to plant the evergreens.

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

Mr. Ribble moved to grant SPA 92-V-003 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in Staff Report Addendum 2, dated September 21, 1993, as amended: Condition 22 was changed to allow 12 outdoor events per year.

Mr. Ribble noted Mr. Davey had indicated that additional screening would be voluntarily planted near Mr. Keene's property to mitigate any visual or noise problems in the winter.

Mr. Hammack referenced Condition 23 and the amplification of music, stating he believed that, in the past, the BZA has said applicants would have to be in compliance with the noise ordinance but had not prohibited all amplified music. He said he remembered only one mosque where the BZA had considered and disallowed amplification. Mr. Ribble asked staff to comment. Ms. Kelsey tried to remember the incident Mr. Hammack made reference to; she could only remember one such application which presented a problem and that involved church bells; the church bells had to meet the noise ordinance requirements; the other one she remembered involved amplified Christmas music outside a church at Tysons Corner, which was subsequently removed. Mr. Ribble said he did not have any problems with the Development Conditions as they were.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 92-V-003 by ST. AIDAN'S EPISCOPAL CHURCH, under Section 3-303 of the Zoning Ordinance to amend SP 92-V-003 for church and related facilities and nursery school to permit additions, additional outdoor uses, accessory structures and reduction in parking, on property located at 8531 Riverside Rd., Tax Map Reference 102-3((1))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 September 28, 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 approx. 7.47 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, and 10-104 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 amendment plat (prepared by Kelso & Easter, Architecture, Interiors, Urban Design, dated October 5, 1991 as revised December 9, 1991 through August 6, 1993 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 in the main area of worship shall be limited to 300.

6. The maximum daily enrollment of the nursery school shall not exceed ninety-nine (99) children.

7. Hours of operation of the nursery school shall be limited to 9:00 a.m. until 2:00 p.m., Monday through Friday.

8. The number of parking spaces provided to serve the two (2) uses shall be a minimum of 94 spaces including 4 handicapped spaces. All parking shall be on site. The parking shall be as shown on the special permit plat and shall be designed according to the Public Facilities Manual (PFM) requirements.

9. Transitional screening requirements shall be modified along the western, eastern and southern lot lines in favor of the existing natural and landscaped vegetation as shown on the approved special permit plat.

10. Transitional screening requirements shall be modified along the northern lot line in favor of supplemental evergreen vegetative materials consisting of fourteen (14) Juniper trees planted along the northern lot line from the southeastern corner of adjacent Lot 4 to the southeastern lot line of adjacent Lot 6 in order to mitigate the effect of the existing uses and proposed additions on the adjacent residential uses. The trees shall be located between the existing screening fence and the edge of the existing parking lot pavement.

Transitional Screening 1 shall be provided between the equipment garage and adjacent Lots 3 and 33-A. All supplemental screening materials shall be reviewed and approved by the Urban Forestry Branch.

11. The Barrier requirements shall be waived along the east, south and west lot lines. Along the north lot line, a 7.0 ft. high wood fence shall be installed and maintained between the parking lot and the north lot line.

12. The play area for the nursery school shall be in the area as shown on the approved special permit plat, as approved by the Health Department. This play area shall remain fenced and shall be located outside the required transitional screening yard.

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

14. Dedication of right-of-way shall be provided along the frontage of Riverside Road to forty-five (45.0) feet from the centerline in order to comply with the recommendations of the adopted Transportation Plan for improvements to Riverside Road to a standard two-lane facility.

15. In order to facilitate future construction of improvements to Riverside Road, all necessary ancillary easements shall be provided, per the review and approval of the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT) at the time of site plan review.

16. A cul-de-sac shall be provided at the end of Lombardy Lane, per VDOT requirements, or a waiver of this requirement shall be obtained by the applicant at the time of site plan review, subject to the review and approval of VDOT and DEM.

17. In order to mitigate any potential impacts of glare from outside lights on the surrounding residential lots, the outside lighting of the parking lot shall be directed away from residential lots and shall be equipped, if necessary, with shields to prevent light from projecting onto surrounding residential lots.

18. Adequate on-site stormwater management facilities shall be provided to the satisfaction of the Department of Environmental Management (DEM) to contain and direct stormwater draining from the building additions to an approved public or private stormwater management system in order to protect adjacent residential lots from any potential adverse impacts from stormwater originating from the subject property. If a site plan waiver is requested from DEM, site plan waiver approval shall be conditioned upon the submission and approval of a drainage plan to address stormwater drainage from the subject property.

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

20. In order to prevent unauthorized use of the parking lot during hours church activities are not in session, prior to the issuance of a Non-Residential Use Permit, two (2) six (6) inch by six (6) inch wide wooden bollards shall be installed on both sides of the driveway, just to the east of the dumpster. A chain with a padlock shall be extended between the bollards during hours that church activities are not in session. During the construction phase, a temporary gate shall be provided and it shall be removed prior to the issuance of the Non-Residential Use Permit.

21. Use of the equipment and the equipment garage shall be limited to 8:00 a.m to 7:00 p.m. There shall be no major repair of equipment or machinery in or around the equipment garage or parking area on the property.

22. The number of outdoor events shall be limited to twelve (12) per year.

23. Use of amplified music for outdoor events shall be prohibited.

The 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 established or construction has commence 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. Mr. Kelley and Mrs. Harris were 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 October 6, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 128, September 28, 1993, (Tape 2), Scheduled case of:

10:55 A.M. HRAIR H. KAZANJIAN, VC 93-L-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to be 26 ft. and 28.5 ft. from front lot lines (40 ft. min. req. by Sect. 4-807), parking spaces 6.5 ft. and 5.5 ft. from front lot lines (10 ft. from front lot line req. by Sect. 11-102), modify required landscape strips (10 ft. min. from public ROW and 4 ft. from land not in ROW req. by Sect. 13-202), and allow loading space in min. front yard (prohibited by Sect. 11-202). Located at 7210 Richmond Hwy. on approx. 15,998 sq. ft. of land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 79B. (OUT OF TURN HEARING GRANTED. DEF. FROM 9/14/93 FOR DECISION ONLY)

Neil T. Hitchcock, 1221 Cameron Street, Alexandria, Virginia, the applicant's agent, came forward to request another two-week deferral because they had experienced problems in resolving issues relating to the title; he believed that was done now, but they still needed to obtain some certificates. Mr. Ribble said he had spoken with Mr. Hitchcock and believed they now had the ownership problem under control and only needed certification from the title company and the engineer.

Marilyn Anderson, Senior Staff Coordinator, said staff suggested that the hearing be scheduled for October 12, 1993, at 9:25 a.m. Ms. Kelsey noted that the applicant was required to submit a revised plat to accurately reflect the property line. The Board so moved.

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Page 128, September 28, 1993, (Tape 2), Scheduled case of:

11:10 A.M. JAMES L. & LINDA S. PIERCE, VC 93-M-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 4220 Sleepy Hollow Rd. on approx. 11,299 sq. ft. of land zoned R-3. Mason District. Tax Map 71-2 ((16)) 59. (DEF. FROM 9/14/93 TO ALLOW APPLICANT TO SUBMIT 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. James L. Pierce, 4220 Sleepy Hollow Road, Annandale, Virginia, replied that it was.

Mr. Pierce said that the continuance from September 14, 1993, resulted from concern by the Board regarding the fact that the plat appeared to show that the proposed addition would actually be closer to the house than the dimension on the plat indicated; the dimension in question on the original plat showed that the back corner of the garage would be 4 feet from the property line, which was not an exact dimension; the plat had been revised to reflect the exact dimension of 4 feet, 8 inches; the depth of the garage, previously missing from the plat, was shown to be 29 feet, 5 inches; dotted lines indicating the existing two-car carport were also added to the revised plat. Mr. Pierce said that he was requesting permission to convert his existing two-car carport and slightly enlarge it, resulting in a two-car garage; he hoped to eliminate an existing shed, also shown on the revised plat, and make up for the loss of storage space by increasing the depth of the garage. Mr. Pierce said that, if the Board deemed that 4 feet, 8 inches is too close and would like to suggest 5 feet or some other dimension, he would be amenable. Mr. Hammack asked if the applicant had to have a trapezoidal-shaped garage, 22 feet at the front and 20 at the back. Mr. Pierce said that he owns two full size vehicles: a Suburban and a Yukon Blazer which are both large and wide; the architect recommended the depth to accommodate two standard size double garage doors, 16 and 18 feet; he planned to use 18 feet to be able to open and close the car doors without causing damage to the vehicles. Mr. Pierce said that all of the dimensions on his plat were open to modification by the Board.

Mr. Hammack asked if the existing depth is 29 feet, as shown on the revised plat. Mr. Pierce said that the existing carport is 23 feet, 5 inches; he needs the extra depth for storage space which will be lost by eliminating the existing shed; the shed is 12 feet long by 5 feet wide; he believed removing the shed and deepening the garage would result in a more attractive situation. In answer to a question from Mr. Hammack about how he planned to treat the roof line, Mr. Pierce said he planned to take the existing carport roof down totally and reassemble the roof.

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

Mr. Pammel moved to grant VC 93-M-059 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 7, 1993. Mr. Ribble seconded the motion.

Mr. Hammack said he had difficulty with the request because it was an enlargement of a carport; he could live with the carport being enclosed, but adding another six feet and, even

though the variance required is only a few more inches, it indicated convenience; he had reservations about approving the request; it is very close to the property line at the back.

Mr. Ribble pointed out that the applicant was moving the shed which is right on the property line, which appeared to him to be a cleaner plan.

Chairman DiGiulian pointed out that the proposed addition would be 8 or 9 inches further away from the side lot line than the original request proposed; it has an unusual converging condition on the side lot line. Mr. Hammack said that the 8-foot variance being requested is a big variance; he also pointed out that the request needed 4 votes to carry and that he would support it.

The motion carried unanimously.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-059 by JAMES L. & LINDA S. PIERCE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 4 ft. from side lot line, on property located at 4220 Sleepy Hollow Rd., Tax Map Reference 71-2((16))59, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 28, 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 approx. 11,299 square feet.
4. The lot has an irregular shape.
5. The applicant has adjusted his plans in order to minimize the area required for the enclosure of the carport.

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

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

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

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

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

1. This variance is approved for the location of the specific addition (garage) shown on the plat prepared by Kelso & Easter dated May 12, 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify 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 4-0. Mrs. Harris and Mr. Kelley were 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 October 6, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 130, September 28, 1993, (Tape 2), Action Item:

Approval of Resolutions from September 21, 1993 Meeting

Mr. Ribble so moved. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 130, September 28, 1993, (Tape 2), Action Item:

Request for Date and Time for
David L. Hunter Appeal

Chairman DiGiulian said that the applicant had requested an indefinite deferral; however, the Deputy Zoning Administrator requested that the decision not be deferred and Chairman DiGiulian called on William E. Shoup, Deputy Zoning Administrator, to come forward.

Mr. Shoup referred to his memorandum of August 23, 1993, to the Board of Zoning Appeals (BZA), stating that it was the position of the Office of the Zoning Administrator that the appeal deals with a determination related to a proffer and, therefore, would be proper before the Board of Supervisors and not the Board of Zoning Appeals; he asked that it not be accepted.

Mr. Shoup noted that Robert A. Lawrence of the law firm of Hazel & Thomas, 3110 Fairview Park Drive, Falls Church, Virginia, was present to represent the applicant.

Mr. Lawrence came forward and stated he noted that the Zoning Administrator's Office opposed the applicant's motion to defer the matter generally; he did not realize that was an issue; he had written a letter to the Board of Zoning Appeals, explaining the circumstances: The applicant had a rezoning application pending which could render all of the issues moot; he believed it was unnecessary and a waste of everyone's time and energy to pursue the matter, research it, have it considered by the BZA, and for either the County or the applicant to appeal the decision of the BZA, if that decision may never be necessary. Mr. Lawrence said that the applicant waived any entitlement to the BZA's obligation under the Code to consider and schedule a matter in a timely manner; they had no objection to the Board deferring the decision generally or deferring it to a date certain, a few months ahead, allowing time to determine if there will be any necessity for the applicant to research the issues involved and for the applicant and the County to prepare for a public hearing which may not be necessary. Mr. Lawrence said that the applicant had not asked for the interpretation issued by the Zoning Administrator's Office; it had been requested by a citizens' association. Mr. Lawrence said there was a question of whether or not the BZA had jurisdiction. He said that, if the Board defers the decision, the applicant could present a written request if they wished to change the deferral date.

Mr. Shoup said his office would have no objection to deferring consideration of acceptance for six months. Mr. Lawrence concurred.

Mr. Hammack moved to defer consideration of acceptance of the appeal until April 5, 1994.

Mr. Shoup said he concurred with Mr. Lawrence's suggestion that the applicant have the option to request in writing that a new date be set, should they decide to have acceptance considered at an earlier date.

Mr. Pammel seconded the motion which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 131, September 28, 1993, (Tape 2), Action Item:

Request for Additional Time
John J. Magill, SP 91-M-072

Mr. Pammel moved to approve six (6) months of additional time, to March 3, 1994, stating there was no evidence that the request had not been made within the prescribed time period. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 131, September 28, 1993, (Tape 2), Action Item:

Request for Intent-to-Defer
McLean Bible Church Appeal, A 93-D-003

Mr. Hammack moved to issue an Intent-to-Defer. Mr. Ribble seconded the motion which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 131, September 28, 1993, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
The Fitness Authority, SP 93-H-049 and VC 93-H-111

A discussion ensued relating to the "severe penalties" referred to and other aspects of the request. Chairman DiGiulian said he would like to see some documentation.

Mr. Pammel moved to defer the request for two weeks until the Board could be provided with documentation.

The applicant's agent, Toni L. McMahon, 9719 Kings Crown Court, Fairfax, Virginia, said they would be happy to provide copies of their SBA loan; the total penalties are in excess of $100,000 over the life of the loan. Chairman DiGiulian said that he would also like more information: i.e., when the applicant applied for the loan, and some chronology on both this application and the loan application. Mr. Hammack referenced the statement that the loan had been closed at the end of August 1993, just a month ago. Ms. McMahon said that was true; they had been working with staff on the unusual aspects of the lot, such as no road frontage; it is part of a center that has cross-parking and cross-travelway easements; they have been working on some of the problems of determining lot lines and what variances would be required to bring the lot into compliance; it is an older business park with a number of problems; the preliminary plat was submitted to the Application Acceptance Branch days after the loan went to closing, for which documentation also would be provided.

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

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Page 131, September 28, 1993, (Tape 2), Action Item:

Approval of 1994 Meeting Dates

Jane C. Kelsey, Chief, Special Permit and Variance Branch, explained the BZA policies and directives behind the selection of the dates; i.e., no Tuesday meetings after Monday holidays, night meeting on the third Tuesday of the month. A discussion ensued.

Mr. Ribble moved to change the January night meeting to Tuesday, January 18, 1994, and otherwise accept the schedule as submitted. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mrs. Harris and Mr. Kelley were not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 132, September 28, 1993, (Tape 2), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 12:07 p.m.

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 16, 1993

APPROVED: November 30, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 5, 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 9:12 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 133, October 5, 1993, (Tape 1), Scheduled case of:

9:00 A.M. CLAY E. & TRACY B. CARNEY, VC 93-P-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5 ft. from rear lot line (25 ft. min. rear yard req. by Sect(s). 16-102 and 3-307). Located at 7501 Silver Maple Lane on approx. 4,266 sq. ft. of land zoned PDH-3. Providence District. Tax Map 60-1 ((36)) 39.

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. Carney replied that it was.

Donald Heine, Staff Coordinator, presented the staff report and said the subject property is 4,266 square foot and is located on the southern side of Silver Maple Lane within the Walnut Hill Subdivision. It is surrounded on three sides by single family detached dwellings in the PDH-3 District and on the north side by common open space which is also in the PDH-3 District. Annandale Road is approximately 500 feet east of the property. The applicants were requesting a variance to allow the construction of a screened porch addition to be located 5.0 feet from a rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, the applicants were requesting a variance of 20 feet.

Mrs. Harris said the BZA had received a letter from the contract purchaser of Lot 41 who had pointed out that the screened porch looked more like an addition. Mr. Heine said since the structure would have a roof, it would be a addition.

Clay Carney, 7501 Silver Maple Lane, Falls Church, Virginia, referenced the statement of justification submitted with their application and asked that it be incorporated as part of his presentation. He said as homeowners in the Walnut Hill community they were subject to the rules and regulations of the homeowners association and any addition or landscaping, etc., had to be approved by the association. Mr. Carney said the existing dwelling was developed under the PDH-3 zoning and sits 9 feet from the rear lot line making the dwelling substantially closer than the 25 feet required under the R-3 zoning. He said they were proposing to construct a combination porch/deck and noted that every house in the neighborhood has a deck, with the exception of theirs and one other. The proposed 10 x 40 foot deck would be the same size as all the others in the neighborhood except that a 10 x 14 foot portion of the deck would be a screened porch and be situated at the rear of their dining room in the corner of the lot. Mr. Carney said the screened porch/deck was designed to be compatible with the existing dwelling and the architecture of the community. He added the proposed addition would afford them more privacy.

In response to questions from Mr. Hammack about other decks in the neighborhood, Mr. Carney pointed out the location of Lot 38, which is the other house that does not yet have a deck. He said it was his understanding that all the other decks were built out to a 5 foot setback.

Chairman DiGiulian asked the speaker if he had seen the letter from the contract purchaser of Lot 41 and Mr. Carney said that he had not. The Chairman presented him with a copy.

Mr. Hammack asked staff if the deck could be constructed by-right if it was not connected to a screened porch. Jane Kelsey, Chief, Special Permit and Variance Branch, said she would review the Zoning Ordinance, if the BZA would like to continue with the public hearing, and then respond.

In response to a question from Mr. Hammack, Mr. Carney said he had already submitted the application to the homeowners association but he had not been told when the request would be considered. He added that if the variance was denied the issue before the homeowners association would become moot.

Ms. Kelsey asked the height of the deck. Mr. Carney said the deck would sit approximately 2 to 3 feet above ground. Ms. Kelsey said the deck could be constructed no closer than 5 feet to the side or rear lot lines, if the deck is no higher than 3 feet.

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

Shirley Leichter, contract purchaser of Lot 41, said she was not opposed to the applicants constructing a deck, but she was opposed to the screened porch addition. She said the proposed deck would be 10 feet from her deck and discussed photographs of the subject property with the BZA. Ms. Leichter said when people purchase zero lot line houses they should not assume they can automatically construct additions.

In response to a question from Mrs. Harris, Ms. Leichter said none of the other houses have additions.

Mr. Hammack asked how far her deck is from the lot line and the speaker said she did know.

In rebuttal, Mr. Carney pointed out that the screened porch would back up to Lot 40 as opposed to Ms. Leichter's property, Lot 41. (He used the viewgraph to show the approximate location of the proposed addition.)

Mrs. Harris said it appeared that the subject property was very similar to others in the neighborhood. Mr. Carney said the houses were developed under a different zoning and it was inconsistent to hold the homeowners to the R-3 zoning.

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

Mr. Hammack believed that the granting of a variance to construct a screened porch would change the character of the zoning district, and his inclination would be to make a motion disapproving the screened porch. He said he would be willing to defer the application until such time as the homeowners association had an opportunity to review the request. A discussion took place among the BZA members as to the precedent that would be set if the BZA took such an action. Mr. Hammack's motion failed for the lack of a second.

Mrs. Harris made a motion to grant VC 93-P-071 in part for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 28, 1993. She moved to deny the screened porch, but to allow the deck.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-071 by CLAY E. AND TRACY B. CARNEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5 feet from rear lot line **(THE BZA GRANTED THE DECK AND DENIED THE SCREENED PORCH)**, on property located at 7501 Silver Maple Lane, Tax Map Reference 60-1((36))39, 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 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 PDH-3.
3. The area of the lot is 4,266 square feet.
4. The subject property is very similar to the other 58 properties within the PDH-3 subdivision, and the constraints on the subject property extend to the rest of the lots.
5. There are no topographic conditions, unusual state, or unusual situations on the subject property.
6. The strict application of the Ordinance would not produce a hardship.
7. There was testimony that the houses are zero lot line houses and are not unique.
8. The applicants' house is not unique within the subdivision as to its placement or to its rear or side yards.
9. The character of the zoning district will be changed if the variance is granted.
10. The granting of the variance would be precedent setting.
11. The houses were placed in a particular location to affect as much openness as could be afforded by putting the houses on the lots the way they are located.
12. The variance would not be in harmony with the intended spirit and purpose of the Ordinance and would be contrary to public interest.

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

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

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6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 deck shown on the plat prepared by Runyon, Dudley, Anderson Associates, Inc., dated May 20, 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.

Pursuant to Sect. 18-407 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. 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 October 13, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 135, October 5, 1993, (Tape 1), Scheduled case of:

9:10 A.M. DOROTHY M. GIBSON, SP 93-M-033 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0 ft. from side lot line (15 ft. min. side yard req. by Sect(s). 10-104 and 3-207). Located at 4900 Chowan Avenue on approx. 20,759 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((8)) (F) 33, 33A, 34, 35, 36, 37 and 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. The applicant's daughter, Heather Norris, replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. The 20,759 square foot subject property is located at 4900 Chowan Avenue within the Weyanoke Subdivision which is south of the intersection of Chowan Avenue and Route 236. The subject property and the surrounding lots are zoned R-2 and developed with single family detached dwellings. The property lies between Route 236 and I-395. The applicant was requesting a special permit for an error in building location to allow an existing carport to remain 0.0 feet from a side lot line. In the R-2 District, the Zoning Ordinance requires a minimum side yard of 15 feet; therefore, an error in building location was requested for 15 feet.

Heather Norris, 9384 Saddlemount Court, Springfield, Virginia, said her father, who is now deceased, built the carport in 1973 and because it was a wooden structure it deteriorated over the years. When her mother was in the process of having the carport repaired, it was discovered that the carport was not in non-compliance with the Zoning Ordinance. She said a building permit cannot be found. When the carport was built it was put at the end of the carport covering the existing driveway, therefore there is not a drainage problem. Ms. Norris said houses in that general timeframe were built with carports and pointed out there is a 6 foot privacy fence between the carport and the most affected neighbor. She said because of the length of time the carport has been on the property is a testimony to the fact that it is in harmony with the neighborhood and has caused no significant problems.

Ms. Norris said her mother is a senior citizen who walks with a cane and needs good footing getting in and out of the car.

In response to a question from Mr. Kelley, Ms. Norris said the contractor pointed out the error when he was planning the repairs.

Mrs. Harris asked if there were two driveways on the property. Ms. Norris said there were. She explained that her father put an asphalt driveway to the rear of the property, but because of the steep slope and a retaining wall it is very narrow and the driveway is not used.

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

Mr. Pammel made a motion to grant SP 93-M-033 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 28, 1993, with the following addition:

4. The applicant shall maintain the six (6) foot privacy fence that is located on the property line that separates the carport from the view of the adjoining property.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-033 by DOROTHY M. GIBSON, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 0 feet from side line, on property located at 4900 Chowan Avenue, Tax Map Reference 72-3((8))(F)33, 33A, 34, 35, 36, 37, and 38, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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. In this particular circumstance, the applicant has indicated the hardships involved in having to lose the use of the carport since the carport is a necessary part of the living accommodations for the resident of the house.

I. There is a serious topographical element involved in this particular application that really renders the driveway to the rear of the property, for all practical purposes, useless.

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 use(s) indicated on the special permit plat, entitled "Variance Plat, Lots 33-38, Block F," prepared by Alexandria Surveys, Inc., dated January 28, 1993, revised May 20, 1993, submitted with this application, as qualified by these development conditions.

3. The carport 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 (VaUSBC) in effect at the time of the construction. Any structure that does not meet the VaUSBC in effect at the time of construction shall obtain a current Building Permit that meets the current codes and regulations, and shall obtain all required inspections.

4. The applicant shall maintain the six (6) foot privacy fence that is located on the property line that separates the carport from the view of the adjoining property.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required 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 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 October 13, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 137, October 5, 1993, (Tape 1), Scheduled case of:

9:20 A.M. ANNANDALE UNITED METHODIST CHURCH, VC 93-M-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing church to remain 11.4 ft. from front lot line and accessory structure to remain 9.3 ft. from side lot line (30 ft. min. front yard req. and 12 ft. min. side yard req. by Sect. 3-307). Located at 6935 Columbia Pike on approx. 6.099 ac. of land zoned R-3, HC and SC. Mason District. Tax Map 60-4 ((1)) 20; 71-2 ((2)) 25; and 71-2 ((1)) 2C. (Concurrent w/RZ 93-M-010 and SEA 85-M-100-2)

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's agent, Mr. Cook, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the property is located on the south side of Columbia Pike, at its intersection with Gallows Road and just east of the Annandale Central Business Center. The property contains 6.099 acres, is zoned R-3, and lies within the Highway Corridor Overlay District and Sign Control Overlay District. The applicant was requesting approval of two variances: one to allow the existing historic church to remain 11.4 feet from the front lot line and the other was to allow an existing block storage building to remain 9.3 feet from a side lot line. The minimum front yard requirement in the R-3 District is 30 feet so the applicant was requesting a variance of 18.6 feet for the historic church. The minimum side yard requirement in the R-3 District is 12 feet so the applicant was requesting a variance of 2.7 feet for the storage building.

Ms. Greenlief said on Monday, September 27, 1993, the Board of Supervisors approved RZ 93-M-010 which rezoned the property from the R-2 to the R-3 District. The Board also approved SEA 85-M-100-2 which allowed a building addition to the church (not the historic church building), an increase in maximum daily enrollment of the existing child care center and nursery school, a decrease in land area, and an increase in parking. A development condition was adopted by the Board which required the obtainment of a variance for the two structures or the special exception would be null and void.

Lawrence Cook, 3424 Mansfield Road, Falls Church, Virginia, said the church is fully in compliance with the nine required standards for a variance. The chapel on the subject property along Columbia Pike was built over a hundred years ago and was restored a few years ago. He said to move the building would be quite costly and might possibly damage the building beyond repair. At the time the church was built, Columbia Pike was just a trail and

over the years the church has given more than 50 feet for dedication for two public right-of-ways, the most recent being approximately 25 years ago. Mr. Cook said the storage shed is a one story concrete building with a reinforced concrete foundation, which would be very difficult to relocate and pointed out that it cannot be seen from either Columbia Pike or Evergreen Lane.

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

Mrs. Harris made a motion to VC 93-M-039 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 28, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-039 by ANNANDALE UNITED METHODIST CHURCH, under Section 18-401 of the Zoning Ordinance to permit existing church to remain 11.4 feet from front lot line and accessory structure to remain 9.3 feet from side line, on property located at 6935 Columbia Pike, Tax Map Reference 60-4((1))20; 71-2((2))25; and 71-2((1))2C, 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 5, 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, HC and SC.
3. The area of the lot is 6.099 acres.
4. It was brought out in testimony that the chapel was located in its present location a considerable time before Columbia Pike was widened to its present state; so, the extraordinary condition is that the front yard, which would have put it in compliance, has been slowly eaten away as Columbia Pike has been increased, as opposed to wanting to build the chapel close to the front lot line.
5. The shed is located in a situation that will not interfere with the cemeteries that are located on the property and the parking area.
6. The shed is in an area that is not hurting or changing the zoning district at all.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 church and shed shown on the plat prepared by Harold A. Logan, Associates, P.C., dated April 7, 1993, revised through August 18, 1993, submitted with this application and is not transferable to other land.

Mr. Kelley 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 October 13, 1993. This date shall be deemed to be the final approval date of this variance.

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The BZA recessed at 10:00 a.m. and reconvened at 10:07 a.m.

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Page 139, October 5, 1993, (Tape 1, 2, 3), Scheduled case of:

9:30 A.M. DAR AL-HIJRAH, SPA 84-M-009 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 84-M-009 for place of worship to permit additional parking spaces and modify existing development conditions. Located at 3159 Row St. on approx. 3.48 ac. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((1)) 19B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Larry Becker, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on the northeast corner of Leesburg Pike and Rose Street and is 3.4 acres in size. Single family detached dwellings in the Munson Hill subdivision lie to the northeast and southeast. A one acre parcel developed with a single family detached home lies across Rose Street to the northwest and the Church of Christ lies across Leesburg Pike to the southwest. All of the surrounding properties are zoned R-3. The subject property is developed with a Mosque, a single family detached dwelling, and a 92 space parking lot.

Special Permit, SPA 84-M-009, was to amend SP 84-M-009 to increase parking on site from 92 spaces to 152 spaces. The special permit amendment application included a change in terminology from a limitation on the number of seats to "worshippers", as well as an increase in the allowed capacity. The applicant was requesting an increase in the number of worshippers attending the Mosque at any one time from the previously approved 360 to 900, since more than 360 worshippers regularly attend the weekly midday prayer held on Fridays from 1:15 p.m. to 2:00 p.m. and the two semi-annual celebrations held at the Mosque, which were further described in the staff report. Access to the subject property is by way of an existing 30 foot wide commercial entrance on Row Street. One hundred fifty-two parking spaces are shown on the special permit plat, on three sides of the structure. No new light poles are proposed for the expanded parking lot. Sixteen twelve foot high poles are located in the existing parking lot. The applicant indicated the possibility of installing ground lights in the expanded parking lot. Existing landscaping is shown along Leesburg Pike, Row Street, and at the rear of the site, and mature and decidious trees exist along the site's southern boundary. Traffic counts prepared by Zoning Enforcement, Office of Comprehensive Planning, and the Mosque bear out that fewer than four persons per vehicle arrive at the Friday midday prayers held at the Mosque. The actual ratio is approximately 1.8 persons per vehicle. If this ratio is applied to the requested number of worshippers, which is 900, the resultant parking demand would be 500 parking spaces. Staff supported allowing 360 worshippers in the Mosque at any one time, if 72 of the proposed 152 parking spaces on the site is HOV-3 parking spaces.

In addition, the Mosque received approval from the Board of Supervisors for 190 shared parking spaces at two churches across Leesburg Pike, the Church of Christ and the Falls Church First Christian Church. The shared parking agreements do not provide a permanent solution to the parking problem, but are designed as a temporary measure to relieve an acute problem. The Board of Supervisors limited its approval to four years, which would allow the Mosque ample time to implement a permanent solution to the problem of off-site parking. Because the special permit amendment does not address or resolve the total parking problem, it was difficult for staff to make a recommendation on the application as to whether it meets the general standards; therefore, the off-site parking issue must be resolved by ensuring that the number of worshippers allowed at the Mosque at any one time is conditioned on the amount of parking available at a ratio of 1.8 worshippers per parking space, and by way of the requirement for carpooling. Staff recommended a development condition that required all

parking be either on site or on such sites as may be approved for shared parking by the Board of Supervisors. With the implementation of the proposed development conditions dated September 22, 1993 which addressed these concerns, staff believed that the application would be in compliance with the provisions of Sect. 8-006 of the Zoning Ordinance and recommended approval.

Mr. Hunter said on September 22, 1993, the Planning Commission voted unanimously to recommend to the Board of Zoning Appeals approval of SPA 84-M-009 subject to the proposed development conditions dated September 1, 1993, revised September 22, 1993. He said the Planning Commission revised Condition 5 to reflect a limitation on the shared parking for four years, as opposed to five years. On Monday, September 27, 1993, the Board of Supervisors voted unanimously to deny associated application SE 93-M-022 for a 82 space parking lot in a residential district. The Board voted unanimously to approve the applicant's associated request for 190 shared parking spaces at the Church of Christ and the First Christian Church for a period of four years. He noted that the applicant had submitted revised development conditions which deleted Condition 5 and amended Conditions 6 and 7. Mr. Hunter said staff did not concur with the changes.

Chairman DiGiulian expressed concern with how staff had calculated the number of parking spaces. Mr. Hunter said Zoning Enforcement has observed that more than the approved number of persons are arriving at the site on Friday afternoons and staff is concerned that there is not sufficient parking spaces to accommodate the worshippers. Following discussions with the applicant who agreed that the ratio was reasonable, staff used the ratio to calculate the parking.

A lengthy discussion took place between the BZA and staff with regard to the parking.

Karen Harwood, Senior Assistant County Attorney, explained that staff's rationale was based on the time the worshippers attended the Mosque, which is on Friday afternoon, which has a direct land use impact on the facility since the worshippers are coming from work.

In response to a question from Mr. Kelley about the HOV-3 requirement, Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning, said the applicant indicated to staff that they had instituted a policy of encouraging carpools, which had been effective. She said the HOV-3 requirement was a way in which staff believed they could comfortably establish a higher number of worshippers while still accommodating the parking on the site. Ms. Byron said she believed the condition was enforceable.

The applicant's agent, Larry E. Becker, 1427 Dolley Madison Boulevard, McLean, Virginia, said the applicant wanted to solve the parking problem without limiting the legal rights which currently exist under the existing special permit. He said the applicant's plan was contingent upon the approval of all three phases of their proposal, including the parking lot which the Board of Supervisors had denied. Mr. Becker said he had never agreed to the parking ratio of 1.8 and said the Mosque committee would never accept it and that staff was treating the applicant's religious institution differently from others in Fairfax County. With respect to the development conditions, Mr. Becker said the applicant would not agree to limiting the number of worshippers to 360 and that he believed to impose that on the Mosque would be discriminatory and would not be legally enforceable. He said the applicant was committed to using HOV-3 in order to effect a behavorial change in the worshippers of the Mosque, but that he did not agree to a specific number of assigned spaces. Mr. Becker said the applicant's amended Condition 6 merely changed the number of parking spaces on site. He said if he accepted staff's proposed development conditions there was no doubt in his mind that it would change the way that Fairfax County can enforce its regulations with regard to the Mosque, and there was no doubt in his mind that there would be another revocation hearing one year from now, which would foster additional litigation. Mr. Becker said the applicant agreed to pursue the carpooling policy and was currently posting people on site to ensure that the worshippers comply with the parking restrictions.

The BZA pointed out that it did not have the development conditions. Mr. Becker provided the BZA with copies.

He said the applicant was requesting that the limitation on the number of worshippers be eliminated. Chairman DiGiulian asked if the applicant has ever agreed to limit the number of worshippers on site to 900. Mr. Becker said the original application specifically stated that the number of seats in the Mosque was 360, staff asked that a specific number of worshippers be added, and he added the number of 900.

A discussion took place between Mrs. Harris and the speaker regarding the number of seats in the Mosque. She asked if it was correct that the 360 seats came up at the time of the original special permit. Mr. Becker said that was correct.

Mr. Becker continued in his discussion with regard to the development conditions by stating that the applicant would continue to utilize surrounding sites during special worship services. He asked that the time to complete the construction be changed to "30 months", and asked that it be clarified that the applicant would be allowed to hookup a sound system in the Mosque in order to pipe the service from the Mosque onto other sites.

In summary, Mr. Becker said that he did not want to agree to something that would invalidate the applicant's rights and that he believed the BZA had made the most appropriate decision in 1984. He added that no one could have anticipated the growth that has occurred.

Before calling for speakers, Chairman DiGiulian outlined the time limits and asked that each speaker adhere to those limits.

Anwar Hajjaj, ex-president of the Mosque and executive member of the board, outlined the history of the problem. He said they are proud of the Mosque in Fairfax County and pointed out that it is the only one in Northern Virginia where over 30,000 Muslims reside. Dr. Hajjaj said he had had the pleasure of working with staff and Mr. Kelley in trying to resolve the parking problem. In February 1991 when the Mosque came into existence, being the president of the Mosque, he was aware of the parking problem since there were only 90 spaces and they started immediately working to address the problem by monitoring the parking and contacting the surrounding uses in order to obtain additional parking spaces. The Mosque received only two positive responses, one from the Church of Christ and one from the First Christian Church, and at the Mosque's request these churches have increased the number of parking spaces. Dr. Hajjaj said the Mosque was disappointed when their request for an additional parking facility at another site was denied, since the Supervisor for their District nor staff had given any indication there was a problem. He said the Mosque will continue to encourage carpooling and beginning October 15th one-third of the Mosque's parking lot will be designated as HOV-3. Dr. Hajjaj said he could not agree to limiting the number of worshippers nor could the hours of worship be changed because of their faith.

Mrs. Harris said she believed the HOV-3 was a creative way of dealing with the parking issue and asked how it would be enforced. Dr. Hajjaj said the policy had just recently been started, and although it will not be easy since the worshippers would be coming from their place of work, they believe it will work. He said the Mosque is planning to compile a list showing the place of work for worshippers in order to encourage the HOV-3.

Chairman DiGiulian said the Clerk had informed him that the twenty-four other speakers who had signed up to speak in support of the Mosque had forfeited their time to Dr. Hajjaj. He called for speakers who were not on the list.

Speaker Number 1 said it appeared that the applicant had done everything possible to resolve the parking issue and expressed concern that requests for other mosques had been denied.

Mr. Hammack pointed out that the BZA has approved other mosques in the area and if they are not yet constructed that is the responsibility of the applicants.

Speaker Number 2 said he did not believe the worshippers attending the Mosque for one hour on Friday had any impact on the traffic, the complaint was generated by only a few neighbors, there were only a few worshippers who parked illegally, and the applicant's proposal would resolve the problem. He said the parking restrictions should be lifted from the surrounding neighborhoods.

Speaker Number 3, residing at 6113 Munson Hill Road, spoke on behalf of himself and a neighbor, who resides at 6109 Munson Hill Road. He supported the applicant's request as he believed that it would help solve the parking problem. He asked that the BZA use the same ratio for the Mosque that is used for other religious facilities in the County and agreed that the parking restrictions should be lifted.

Speaker Number 4 said the scene around the Mosque on Friday afternoon is very peaceful and the only thing you see is a policeman helping people to cross Route 7. He said there is not really a parking problem, but an attitude problem.

Speaker Number 5 objected to the Mosque being closed. He said he lives next door to a church but he has not complained about the traffic on Sunday, because he believed going to church was a good thing.

Speaker Number 6 commended the members of the BZA who voiced objection to imposing harsher and stricter restrictions on the Mosque as opposed to other religious facilities. He said he and many other worshippers carpool to the Mosque and many who live in the surrounding neighborhoods walk. The speaker also disagreed with imposing a restriction on the number of worshippers.

Speaker Number 7 read a letter into the record on behalf of an abutting property owner residing at 6109 Munson Hill Road, in support of the applicant's request and said the parking problem has improved. (A copy of the letter is contained in the file.)

Speaker Number 8 said the applicant has been trying to resolve the parking problem since they became aware of the situation and added that he did not believe there was a problem.

Speaker Number 9, an adjacent neighbor, read a letter into the record from another resident in the neighborhood residing at 3231 Apex Circle, which stated that the parking problem has improved. (A copy of the letter is contained in the file.)

Speaker Number 10 said she has lived in Fairfax County all her life and believed that everyone should stand up for religious facilities no matter what the religion and protect those institutions. She asked that the parking restrictions be lifted.

Mr. Kelley said perhaps many of the people in attendance were not present at the March 30th public hearing and had forgotten there were complaints about driveways being blocked, cars

being parked in private driveways, and in front lawns. The speaker agreed those violators should be ticketed. Mrs. Harris pointed out the BZA had certain guidelines which they used for reviewing applications and noted that many issues raised by the speakers were issues that have to be legislatively changed by the Board of Supervisors.

Speaker Number 11 said he believed the Mosque had done what they can to resolve the parking problem and that he supported the request.

Speaker Number 12 assured the BZA that the worshippers at the Mosque shared its concerns with the problem that is occurring with off-site parking and the Mosque is serious about resolving the issue. She expressed concern that the experience has taken an adversarial tone against the Mosque and that she did not see a need for a "us against them" attitude.

Speaker Number 13 asked the BZA to grant the request.

Speaker Number 14 spoke in support of the applicant's request and pointed out the increase in the number of minioritiies throughout the County and noted that they were looking to the BZA for leadership.

There were no additional speakers in support and Chairman DiGiulian called for opposition.

Charlotte Smith Needham, 6152 Leesburg Pike, Falls Church, said she lives with her father directly across from the Mosque. She said since the BZA approved the Mosque in 1984 the number of worshippers attending Friday services has increased from 360 to 850 resulting in the need for more parking spaces. Ms. Needham expressed concern with the overflow parking that has occurred and will occur during Ramadan and said it was extremely critical that an on-site parking arrangement be agreed upon. She asked that the BZA deny the applicant's request for the additional 62 parking spaces on site, but encouraged them to adopt a policy that would allow the applicant to build a tiered-level garage. (A copy of the presentation is contained in the file.)

Mrs. Harris said other churches are given the opportunity to utilize off-site parking. Ms. Needham agreed that off-site parking should be used temporarily while the Mosque is working on a permanent solution.

Susan Flinner, 6102 Brook Drive, Falls Church, said she has resided on her property, which is just two blocks from the Mosque, for over 25 years. She urged the BZA to deny the applicant's request, not because the parking is not needed, but because it is a shortsighted solution to a large problem. Ms. Flinner expressed concern with the loss of the existing vegetation and the runoff problem that might be caused by the addition of impervious surface. She said the Mosque could use the funds to construct an on-site parking garage and asked the BZA to limit the number of worshippers. (A copy of the presentation is contained in the file.)

Sylvia Johnson, 6110 Brook Drive, Falls Church, Virginia, said since September 18, 1992, the date of the third and final Notice of Violation, the issue is one year older and nowhere near a viable plan to end the parking problem for the present nor for the future. She said the Board of Supervisors had denied SE 93-M-022 and she urged the BZA to deny SPA 84-M-009. (A copy of the presentation is contained in the file.)

Bob Mace read a letter from Jackie Gilbert, President of Lee Boulevard Heights/Lower Munson Hill Citizens Association, into the record which agreed with the applicant's request for additional parking spaces, but was against increasing the attendance above 360. She suggested the implementation of shuttles, increased use of public transportation, increased carpooling, and finding other temporary sites for Friday services. Ms. Gilbert pointed that it is not the neighbors' responsibility to monitor the Mosque's activity and pointed out that the neighbors should not be impacted by the use.

Mr. Mace, residing at 6109 Brook Drive, Falls Church, then spoke on behalf of the Citizens Task Force, an umbrella organization that represents a number of neighborhoods and businesses. He noted that the Task Force is in general but not wholehearted support of staff's recommendations. He said he had been prepared to support the additional parking on site, but that he was somewhat surprised that the applicant's agent was now retracting the Mosque's agreement with the parking ratio noted in the staff report. Mr. Mace also expressed concern that the HOV-3 parking restrictions was going to be voluntary. He said the Task Force was in support of the addition of on-site parking, but could not support increasing the number of worshippers since the surrounding neighbors were still be impacting.

Mrs. Harris asked if the speaker had been present at the Board of Supervisors meeting when they discussed the off-site parking at the Mosque. Mr. Mace said that he was, and that it had been his impression that the Board believed it was a short term solution and had limited the use to a four year term.

Chairman DiGiulian asked if staff had additional comments.

Ms. Byron said staff had worked extensively with the applicant's agent and there had been very specific discussions with regard to the conditions. Staff had every reason to believe that the applicant was in agreement with its recommendation. She said staff's proposed development conditions were essential to its recommendation and without them staff would have

to change its recommendation. Ms. Byron said the applicant had indicated that eighteen months was sufficient to add the additional parking on site. She said for the BZA not to limit the number of worshippers attending at any one time would not be consistent with any other house of worship that has been approved by the Board of Supervisors or the BZA. Zoning Inspectors have visited the site within the past couple of weeks and there are over 800 people attending the Friday services with approximately 370 cars parked off site.

A discussion took place between Mrs. Harris and Ms. Byron with regard to a "cap" being put on the number of attendees and the parking issue. Ms. Byron said applicants typically file an application noting a specific number of seats and provide parking accordingly.

James Zook, Director, Office of Comprehensive Planning, added that it was not unusual for the County to use some kind of indeces to estimate the amount of parking required, the amount of trips generated by a site thereby the impact on the road, the amount of turning movements in an area, nor is it unusual for the County to require that the parking be on site for safety related considerations. He said in this case there is obviously a difficult in the terminology "seats" and it is best translated in terms of worshippers as an indece of activity at any one point in time generated by the site. Mr. Zook said the community and the County are faced with a very diffficulty situation. He added that the Board of Supervisors when granting the applicant's request for shared parking viewed it as a temporary solution; therefore, a four year term was placed on the approval.

In rebuttal, Mr. Becker commended staff for working so closely with the applicant and that he believed everyone worked in good faith to attempt to resolve the issue. He said since he did not object vehemently to some of staff's suggestions, perhaps staff viewed it as acquiescence. Mr. Becker objected to the time limit of 18 months and said he did not believe that the applicant could complete the construction process within that time. He argued that no other special use permit limits the number of worshippers, and that was probably because it was not enforceable under the First Amendment. Mr. Becker agreed to Condition Number 22 as submitted by staff and asked that Condition Number 8 be eliminated.

Mrs. Harris and the speaker discussed the parking garage structure referenced by the speakers. Mr. Becker said members of the community had brought forth the suggestion, but the Mosque believed that it would be objectionable to the majority of the community and would change the residential character of the area.

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

Mr. Kelley made a motion to grant SPA 84-M-009 for the reasons noted in the Resolution and subject to revised Development Conditions dated September 22, 1993.

Mr. Pammel seconded the motion and concurred with the maker's comments. He noted that no one anticipated at the very beginning the amount of intensity that would occur on the site and it is the BZA's responsibility to assist in reaching a solution. Mr. Pammel said a parking structure was totally out of the question.

Mrs. Harris questioned deleting the reference to HOV-3 parking and explained that she believed it would be an incentive to encourage people to carpool. Chairman DiGiulian, Mr. Kelley, and Mr. Pammel disagreed.

Mr. Kelley said if the applicant does not comply with all the Conditions the permit will expire and the use will go away. Ms. Harwood clarified that the Conditions do not include a term limit. Chairman DiGiulian pointed out that the BZA does have the option to hold another revocation hearing.

Mrs. Harris asked if the citizens would also have an opportunity to speak at the public hearing in 1995 and Chairman DiGiulian said they would.

Chairman DiGiulian called for the vote. Before voting, Mrs. Harris said there were only four members present and all four votes were needed to pass the motion. She said she was having a hard time supporting the motion without having some additional parking considerations.

At Mrs. Harris's request Chairman DiGiulian called the leader of the Mosque back to the podium. Mrs. Harris and the speaker discussed the HOV-3 parking restriction. Dr. Hajjaj explained that it would take some time to change the people's behavior and asked the BZA to give them the time to do so. He committed to making two-thirds of the existing parking HOV-3. Mrs. Harris agreed.

The other BZA members disagreed with making the HOV-3 requirement part of the condition. Dr. Hajjaj asked Mrs. Harris to work with the Mosque and not make it a part of the conditions. Mrs. Harris said she did not know if she would be on the Board when the Mosque came back for review, but she assured Dr. Hajjaj that she would be in the audience to see if he stood up to the commitment.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 84-M-009 by DAR AL-HIJRAH, under Section 3-303 of the Zoning Ordinance to amend SP 84-M-009 for place of worship to permit additional parking spaces and modify existing development conditions, on property located at 3159 Row Street, Tax Map Reference 51-3((1))19B, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 5, 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 3.48 acres.
4. There has been no religious bigotry nor attitude problem involved in the case. The staff, officials of the Mosque, and the BZA have worked very hard to reach a solution to the problem.
5. When the BZA and staff review an application from a church or religious group, they need to look at the special circumstances and the practice of the religion involved so that appropriate development conditions can be placed on the use.
6. The agent testified that the applicant did not want to go through a revocation public hearing due to technicalities on varying interpretations of development conditions.
7. The applicant will come back to the BZA within approximately eighteen months, preferably after two religious seasons have passed to see if the parking situation has been improved.
8. The BZA wants the applicant to understand that the BZA is serious about resolving the problem.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sect. 8-303 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 Amendment Plat (2 sheets) prepared by John M. Coldwell, Coldwell, Sikes and Associates, dated March 24, 1993, revised August 30, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit Amendment 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 Place of Worship 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. The applicant shall submit to the Zoning Administrator at least once a year by October 1st of each year, documentation as to the availability of the 190 shared parking spaces.

6. One hundred fifty two (152) parking spaces shall be provided on-site as shown on the Special Permit Amendment Plat. All parking shall be contained on site unless the applicant obtains permission for coordinated parking from the Board of Supervisors in accordance with Sect. 11-102 of the Zoning Ordinance. Parking may also be provided pursuant to Development Condition No. 11 below.

7. A carpool program shall be established and actively pursued by the Mosque. During the applicable time periods, one or more persons shall be stationed in the parking lot to direct traffic and ensure that any restricted spaces are used exclusively by vehicles that comply with the restriction.

8. The applicant shall arrange for and provide an off-duty police officer to be stationed at the intersection of Route 7 and Row Street on Friday afternoons between 12:30 p.m. and 2:30 p.m. to facilitate pedestrian crossing of Route 7 and to direct traffic.

9. A "laddered" crosswalk shall be provided across Row Street at its intersection with Route 7, and the existing crosswalk across Route 7 shall be restriped as a laddered crosswalk, as permitted by VDOT.

10. Vehicular access to and from the site shall be only from Row Street.

11. During the annual celebrations of Ramadan and Zul Hijjah, additional parking shall be provided at pre-arranged off-site locations such as Jeb Stuart High School, if available. A shuttle bus shall be used to transport worshipers from these off-site parking locations to the Mosque during these celebrations. Notice of the location of such satellite parking spaces and the shuttle bus service shall be provided to worshipers via handouts at Friday worship services and/or mailings at least one month prior to the celebration.

12. Handicap accessible parking spaces shall be provided on site in accordance with the PFM and the provisions of the Americans with Disabilities Act (ADA). These spaces shall be among the 152 parking spaces required on site.

13. The standards for the parking lights shall be no higher than 12 feet and the lights shall be shielded to direct the light onto the parking lot with no spillage to adjacent properties. Additional parking lot lights may be installed in the expanded parking lot provided the fixtures are a maximum of three (3) feet in height, directed toward the ground, and on a manual timer which shall only be turned on during the times the parking lot is used for Mosque activities during evening hours for evening activities and shall be turned off no more than 45 minutes after the activity has concluded.

14. Dedication shall be provided along the entire frontage of the site abutting Leesburg Pike (Route 7) and Row Street (Route 2379) as shown on the Special Permit Amendment Plat. Ancillary easements in accordance with the Route 7 project (VDOT project #0007-029-117, PE-101) shall also be provided as determined by DEM to facilitate these improvements. Such dedication shall be provided on demand or at the time of site plan approval, whichever first occurs. Dedication shall be to the Board of Supervisors and shall convey in fee simple.

15. If permitted by VDOT, a left turn lane shall be provided on eastbound Leesburg Pike at Row Street via restriping the existing pavement within the existing right-of-way.

16. The existing Transitional Screening 1 shall be maintained along all lot lines, except for the property's frontage on Route 7 where the screening shall be maintained until such time as the area is needed for construction of improvements to Route 7. A modification shall be permitted along the northeastern lot line to allow the existing driveway to remain within the required 25 foot wide screening yard.

    As shown on the special permit amendment plat, Barrier H shall be provided along the property's frontage on Route 7 outside of the new right-of-way, except that evergreen shrubs, in lieu of trees, shall be provided in front of the minaret. If permitted by DEM, evergreen shrubs shall also be provided between the existing parking spaces north of the minaret and the new right-of-way line.

17. A six foot high solid brick, masonry or pre-cast concrete wall that is compatible with the architecture of the Mosque as determined by DEM shall be provided along the northeastern property line along the new 60 space parking area, as shown on the special permit amendment plat.

18. The applicant shall work with the County's Urban Forestry Branch in order to preserve the existing quality vegetation on the eastern part of the site to the maximum extent feasible. The applicant shall remove and control the spread of invasive vines along the northeastern and southeastern property lines.

19. Interior parking lot landscaping shall be maintained in accordance with Article 13 of the Zoning Ordinance.

20. A sidewalk shall be provided from the new parking lot to the entrance of the Mosque as shown on the special permit amendment plat to facilitate safe pedestrian access to the Mosque.

21. 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 requirements of the Chesapeake Bay Preservation Ordinance. Despite Note 5 on the Special Permit Amendment Plat, if the stormwater management pond shown on the special permit amendment plat is not sufficient to provide BMPs as determined by DEM and an additional facility or facilities must be provided, no parking spaces, landscaping, or transitional screening may be lost to provide such facilities.

22. No regularly scheduled outdoor activity shall be associated with this special permit use.

23. The maximum building height for the Mosque shall be 35 feet and the maximum height for the minaret shall be 45 feet.

24. Signs shall be permitted in accordance with Article 12, Signs of the Zoning Ordinance.

25. In order to accommodate the existing as well as the increasing numbers of worshipers, the Mosque shall diligently pursue providing alternative opportunities for worship. This may include, among other things, the provision of services at other locations.

26. The Board of Zoning Appeals shall schedule a public hearing in May 1995 to receive a progress report from staff and Mosque officials.

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, twenty-four (24) months after the date of approval* unless the required Non-Residential Use Permit has been obtained. The Board of Zoning Appeals may, after a public hearing, grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 4-0 with Mr. Hammack 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 October 13, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 146, October 5, 1993, (Tape 3), Action Item:

Approval of Resolutions from September 28, 1993

Mr. Pammel made a motion to approve the Resolutions as submitted. Mr. Kelley seconded the motion which passed by a vote of 4-0 with Mr. Hammack not present for the vote. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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Page 146, October 5, 1993, (Tape 3), Action Item:

Request for Date and Time for
Anthony Benkahla Appeal

Mr. Pammel made a motion to accept the appeal as being timely filed and scheduled the public hearing for December 14, 1993, at 10:30 a.m. Mr. Kelley asked if the appeal should be deferred until such time as the issue involving the Virginia Department of Transportation has been resolved. Chairman DiGiulian said if the appeal was timely filed the appeal had to be scheduled. Mrs. Harris seconded the motion which passed by a vote of 4-0 with Mr. Hammack not present for the vote. Mrs. Thonen and Mr. Ribble were absent from the meeting.

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

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

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

SUBMITTED: November 14, 1993

APPROVED: November 30, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 12, 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. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 147, October 12, 1993, (Tape 1), Scheduled case of:

9:00 A.M. MAURICE R. ST. GEORGE, VC 93-V-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 3.6 ft. from side lot line (7 ft. min. side yard req. by Sect(s). 3-307 and 2-412). Located at 8414 Crossley Place on approx. 10,646 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 102-4 ((5)) (15) 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. St. George replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to construct a carport 3.6 feet from the side lot line. A minimum side yard of 12 feet with a permitted extension of 5 feet for a carport is required by the Zoning Ordinance; therefore, the applicant was requesting a variance of 3.4 feet to the minimum side yard requirement.

She said that on October 27, 1992, a variance request for a detached garage was denied on the subject property. She noted there were several other variances granted in the area.

In response to Mr. Ribble's question regarding other variances granted in the neighborhood, Ms. Langdon said that three carport variances and two garage variances were granted in the subdivision.

Maurice R. St. George, 8414 Crossley Place, Alexandria, Virginia, addressed the BZA and stated that he had acquired the property in 1961. He said the position of the house on the lot and the existing drainage easement precluded the construction of a carport without a variance. Mr. St. George explained that because of age, he and his wife needed a safe covered access to and from the car. Mr. St. George noted that his wife's bones were brittle and said she had just experienced a broken bone in her foot. He said he wished to construct the carport in order to prevent any potential serious injuries during inclement weather.

Mr. St. George said his situation was unique and noted that approximately one-half of the houses in the subdivision have added carports or garages within the constraints of the Zoning Ordinance. He referred to the safety issue and explained that without the protection of the carport, he would have to move from the house.

In summary, Mr. St. George stated that the neighbors were in support of the request, the carport would increase the property value, and the variance would have no detrimental impact on the neighborhood. He explained the carport would be partially below grade and noted the Federalist architecture would conform with the other structures in the community.

In response to Mr. Hammack's question as to why a forty-four foot long carport was necessary, Mr. St. George said that in order to be compatible with other structures in the area, the carport must extend from the front of the house, and in order to provide a safe covered ingress and egress to and from the house, the carport must extend into the rear of the lot. He noted that a section of the carport would be used for storage. Mr. St. George said although he did not have a drawing, the carport would have a flat roof with a small railing to ensure compatibility with the style of other structures in the area.

In response to Mr. Ribble's question as to whether the carport would be forty-four feet long and ten and one-half feet high, Mr. St. George said it would.

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

Mr. Hammack made a motion to deny VC 93-V-061 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 93-V-061 by MAURICE R. ST. GEORGE, under Section 18-401 of the Zoning Ordinance to permit construction of carport 3.6 feet from side 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 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 10,646 square feet.
4. The BZA cannot support a request for a carport that is 44 feet long.
5. The request is for a substantial variance and, although the applicant has testified that some of it would be below grade and that it is required to extend from a foot in front of the house to what would appear to be 20 to 25 feet behind the house in order to make it architecturally compatible with the Federalist architecture in the area, the BZA is not sure it could agree that a 44 foot long carport is architecturally compatible with the style of the neighborhood.
6. The variance would be for a convenience.
7. While the applicant has testified that he does not need all the area in the back to park but just enough to be under cover to get to the footpath, the carport would extend another 12 feet.
8. The request does not meet the technical requirements for a variance.
9. The application has not satisfied 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**.

Mr. Pammel seconded the motion which carried by a vote of 6-0-1 with Mrs. Harris abstaining from the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 20, 1993.

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9:10 A.M. MARGARET A. COYLE, VC 93-V-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 8111 Kane Ct. on approx. 11,835 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 102-1 ((14)) (B) 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. Byrnes replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to construct a one story addition 3 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 12 feet; therefore, the applicant was requesting a variance of 9 feet from the minimum side yard requirement.

The applicant's agent, Robert C. Byrnes, 1100 Princess Street, Alexandria, Virginia, addressed the BZA and stated that the applicant wished to add a dining room to the existing structure. He explained that because of the configuration of the house, the proposed location would be the most practical and economical. Mr. Byrnes said that with the exception of the front yard, the steep topographical conditions precluded placing the addition elsewhere on the lot. He expressed his belief that the addition would have no visual impact on the neighbors.

Mr. Byrnes stated that Lot 7, which would be most affected by the addition, is owned by the applicant. He explained that the lot is in the floodplain and virtually undevelopable.

In response to Mr. Hammack's question as to whether Lot 7 was developable, Mr. Byrnes said that because of the setback requirement and the line of the floodplain, there is approximately 15 feet of developable land.

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

Mr. Pammel asked Mr. Byrnes if the deck was a necessity; Mr. Byrnes said that although the applicant would like the deck, it was not essential.

Mr. Pammel made a motion to grant-in-part VC 93-V-074 for the reasons reflected in the resolution and subject to the development conditions contained in the staff report dated October 5, 1993.

Mrs. Harris seconded the motion.

In response to Mr. Kelley's question as to why Mr. Pammel wished to restrict the deck, Mr. Pammel explained that while Mr. Byrnes had stated that Lot 7 was not developable, it was his own belief that any recorded lot, unless totally within the floodplain, can be developed. He noted that a variance could be obtained for construction on Lot 7. Mr. Pammel also noted that a precedent would be set. Mr. Kelley said that if the applicant consolidated the two lots, the addition and deck could be built by-right. Mr. Pammel agreed. Mrs. Thonen stated that although the applicant owned Lot 7, it had not been included as part of the variance request.

In an attempt to clarify the issue, Mr. Byrnes said the applicant did own both Lots 6 and 7, but had not consolidated the lots. In response to Mrs. Harris' question as to whether Lot 7 was a buildable lot, Mr. Byrnes said that under the Zoning Ordinance it was a buildable lot.

Mrs. Thonen stated that if the lots were consolidated, a variance would not be required.

Mr. Hammack explained that the BZA had reservations about granting a variance which had a substantial impact on contiguous property. He noted that in the future, the owner of Lot 7 could present justifications for a variance.

The motion carried by a vote of 6-1 with Mrs. Thonen voting nay.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-074 by MARGARET A. COYLE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3 feet from side lot line, **(THE BZA GRANTED A 2 FOOT VARIANCE FOR A ONE STORY ADDITION TO BE 10 FEET FROM THE SIDE LOT LINE AND DENIED THE VARIANCE FOR THE DECK)**, on property located at 8111 Kane Court, Tax Map Reference 102-1((14))(B)6, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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 11,835 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The property has an irregular shape.
6. The southern property line tapers from the rear of the lot forward creating an area of reduced 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-IN-PART (THE BZA GRANTED A 2 FOOT VARIANCE FOR A ONE STORY ADDITION TO BE 10 FEET FROM THE SIDE LOT LINE AND DENIED THE VARIANCE FOR THE DECK)** with the following limitations:

1. This variance is approved for the location and the specified addition shown on the variance plat prepared by Robert C. Byrnes, Architect, dated October 24, 1991, revised June 17, 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.

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

Page 151, October 12, 1993, (Tape 1), MARGARET A. COYLE, VC 93-V-074, continued from Page 150)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 20, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 151, October 12, 1993, (Tape 1), Scheduled case of:

9:20 A.M. JOHN G. & IRENE A. SCHMALZ, VC 93-V-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.9 ft. from street line of a corner lot (30 ft. min. front yard req. by Sect. 3-307). Located at 8205 Treebrooke Ln. on approx. 12,424 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 102-4 ((17)) 30.

Chairman DiGiulian called for VC 93-V-075 but the applicant was not present. Mr. Kelley made a motion to move the case to the end of the agenda. He explained that the applicant would have to come from the Mount Vernon District and traffic was very heavy. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 151, October 12, 1993, (Tape 1), Scheduled case of:

9:25 A.M. HRAIR H. KAZANJIAN, VC 93-L-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to be 26 ft. and 28.5 ft. from front lot lines (40 ft. min. req. by Sect. 4-807), parking spaces 6.5 ft. and 5.5 ft. from front lot lines (10 ft. from front lot line req. by Sect. 11-102), modify required landscape strips (10 ft. min. from public ROW and 4 ft. from land not in ROW req. by Sect. 13-202), and allow loading space in min. front yard (prohibited by Sect. 11-202). Located at 7210 Richmond Hwy. on approx. 15,998 sq. ft. of land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 79B. (OUT OF TURN HEARING GRANTED. DEF. FROM 9/14/93 FOR DECISION ONLY. DEF. FROM 9/28/93 FOR REVISED PLATS.)

Chairman DiGiulian called for VC 93-L-063. Lori Greenlief, Staff Coordinator, stated that the applicant was present, but was conferring with Mr. Ribble regarding the revised plats.

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The Board of Zoning Appeals recessed at 9:33 a.m. and reconvened at 9:50 a.m.

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HRAIR H. KAZANJIAN, VC 93-L-063

Lori Greenlief, Staff Coordinator, stated that the applicant would like a deferral in order to verify the ownership of a portion of the subject property. She explained that a portion of the land may have to be vacated.

Marilyn Anderson, Senior Staff Coordinator, suggested a deferral date of November 30, 1993.

Mr. Hammack made a motion to defer VC 93-L-063 to the suggested date. Mr. Ribble second the motion which carried by a vote of 7-0.

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Page 151, October 12, 1993, (Tape 1), Scheduled case of:

9:30 A.M. REVOCATION HEARING: DAR AL-HIJRAH, SP 84-M-009 Appl. under Sect(s). 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. (DEF. FROM 3/30/93. THE BZA GAVE THE ZONING ADMINISTRATOR AND THE APPLICANT'S AGENT 30 MINUTES TO MAKE COMMENTS.)

Chairman DiGiulian called for the Dar Al-Hijrah revocation hearing and stated that Mr. Kelley would like to clarify the October 5, 1993 motion on SPA 84-M-009.

Mr. Kelley made a motion that the October 5, 1993, Findings of Facts for DAR AL-HIJRAH, SPA 84-M-009, be incorporated into his motion. He modified the following development conditions to read:

18. The applicant shall work with the County's Urban Forestry Branch in order to preserve the existing quality vegetation on the eastern part of the site to the maximum extent feasible. The applicant shall remove and control the spread of invasive vines along the northeastern and southeastern property lines.

11. During the annual celebrations of Ramadan and Zul Hijjah, additional parking shall be provided at pre-arranged off-site locations such as Jeb Stuart High School, as necessary. A shuttle bus shall be used to transport worshipers from these off-site parking locations to the Mosque during these celebrations. Notice of the location of such satellite parking spaces and the shuttle bus service shall be provided to worshipers via handouts at Friday worship services and/or mailings at least one month prior to the celebration.

Mr. Kelley explained that Ramadan and Zul Hijjah are high celebration days and the BZA has never imposed a condition on any other church to provide special parking for high celebration days such as Easter or Christmas.

Mr. Kelley stated that the Finding of Fact Number 7 should be deleted from the Resolution. He explained that carpools were already addressed in the development conditions. Mr. Kelley noted that although the applicant had stated that they would implement a parking arrangement, it was not his intent to have staff's suggestion implemented.

Mrs. Thonen stated that the BZA has determined that other applicants must provide buses for their functions and noted that the parking has created a problem in the community. Mr. Kelley explained that Development Condition 11 would still call for a shuttle bus to be used, but the applicant would not be obligated by a development condition to provide extra parking for the high holidays.

The BZA had a brief discussion regarding the parking and congregation limitations.

Mr. Pammel stated that he was concerned with the deletion of the Findings of Fact Number 7. He noted that the applicant had raised the issue. Chairman DiGiulian explained that although the issue was part of the presentation, the Resolution reflected that it was "Finding of Fact."

Chairman DiGiulian seconded the motion.

In response to Mrs. Harris' question regarding the issue of HOV parking and carpools, Mr. Kelley said he did not consider Fact Number 7 to be a part of his Finding of Fact.

The motion carried by a vote of 6-0-1 with Mrs. Thonen abstaining from the vote.

Mr. Kelley stated that, unless something startling happened, he intended to offer a motion to dismiss the revocation hearing.

Jane W. Gwinn, Zoning Administrator, addressed the BZA. She stated that the issue had been deferred to allow the applicant the opportunity to file applications and to take the necessary steps in order to comply with the Special Permit. She explained that the applicant had filed and received a shared parking agreement from the Board of Supervisors for one hundred and ninety off-site parking spaces. The BZA also approved a special permit amendment for an additional sixty-two parking spaces on-site. Ms. Gwinn further explained that the applicant's special exception to allow parking on another lot was not approved. She noted that the applicant had installed signs and was attempting to enforce HOV restrictions on the parking lot. Ms. Gwinn said that although the applicant had diligently attempted to resolve outstanding problems, they still remained in violation of the special permit. She explained that the congregation used approximately two hundred off-site parking spaces. Ms. Gwinn recommended that the revocation hearing be deferred and noted the special permit amendment conditions require a public hearing in May 1995. She suggested the BZA either defer the revocation hearing to May 1995 or for six to twelve months in order to receive information on the results of the applicant's efforts to resolve the parking problem. Ms. Gwinn stated that she made the suggestion because the applicant has twenty-four months to implement the special permit amendment.

The applicant's attorney, Larry E. Becker, with the law firm of Lieding and Becker, P.C., 1427 Dolley Madison Boulevard, McLean, Virginia, addressed the BZA and said the applicant would like to have the eight-day waiting period for the revised resolution waived. He stated that it was his belief that once the special permit amendment was final, the applicant would be operating under it; therefore, the revocation issue for the previous special permit was moot. He explained that the special permit had been superseded by the special permit amendment. Mr. Becker said that based upon the fact that the applicant had received approval from the Board of Supervisors for shared parking, he believed the application was in compliance with the special permit amendment requirements. He expressed his belief that the applicant had demonstrated good faith and had strived to resolve the problems and asked the BZA to dismiss the revocation hearing.

In response to Mrs. Thonen's question as to whether the Mosque was still in violation, Mr. Becker stated he did not believe the applicant was in violation. He explained that as a good public relations effort, the applicant was attempting to resolve the parking problem that existed within the community. Mr. Becker said that all the congregation parked in a legal parking space in or around the Mosque, either on-site, in the shared parking, or on the streets nearby. He noted that although the program to diminish parking on the nearby streets had been very successful, there were still members of the Mosque that continued to park on the street.

In response to Mrs. Thonen's question as to whether the applicant would be willing to provide a status report in approximately one year, Mr. Becker said there was a requirement that the applicant submit a yearly report and noted the report could be expanded to included the status of the applicant's effort to diminish off-site parking.

Mr. Kelley made a motion to dismiss the revocation hearing for DAR AL-HIJRAH, SP 84-M-009. He stated that it was his belief the BZA could not hold a revocation hearing for a special permit which no longer existed.

Mr. Hammack seconded the motion.

Karen J. Harwood, Senior Assistant County Attorney, addressed the BZA. She stated that the special permit amendment approved on October 5, 1993 was not currently in effect and could not be in effect until the development conditions are implemented. Ms. Harwood explained that the applicant had two years in which to implement the development conditions and may elect to let the special permit amendment expire. She noted that if the applicant elects not to comply with the development conditions, the existing special permit would be in effect.

Chairman DiGiulian thanked Ms. Harwood, but cautioned that if she continued, she would be acting as an advocate.

Mrs. Thonen asked Mr. Kelley if he would agree to a requirement for a status report. Mr. Kelley noted that the development condition required that a review be submitted to BZA in eighteen months. Chairman DiGiulian said the status report should be a part of the special permit amendment.

Mr. Kelley made a motion to have staff provide an up-date on the applicant's compliance with the special permit amendment's development conditions in six months and up until such time as the public hearing is scheduled under Development Condition 26.

Mrs. Thonen seconded the motion.

In response to Mrs. Harris' question as to whether the special permit amendment could not go into effect until all the development conditions are met, Ms. Harwood stated that the special permit amendment would not go into effect until it is implemented. Mrs. Harris asked if she was correct in her understanding that if the BZA were to approve a new special permit for a new church just breaking ground, the special permit would not govern the site until the church was built and everything implemented. She noted she had been under the impression that the church would be under the special permit when the resolution was final and if a change was needed, the applicant would then have to obtain a special permit amendment. Ms. Harwood stated that in a sense, a special permit is an option. She explained that if an applicant applied for a special permit on a vacant lot, the land owner may elect to abandon the special permit and not pursue it. If they decide not to pursue it, they are left with the vacant lot. If they decided to pursue it, they are given a certain amount of time to implement the special permit which would not become operational until they obtain an occupancy permit (Non-Residential Use Permit). Mrs. Harris asked if an applicant was granted a special permit for a mosque and later decided they would prefer to build a shopping center, would the site already be governed by the initial special permit. Ms. Harwood said no. She explained the applicant would have to abandon the special permit and then they would be able to use the property by-right.

The motion carried by a vote of 7-0.

Mr. Kelley made a motion to direct staff to submit bi-annual status reports with regards to the implementation of the amended special permit.

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

Mr. Kelley made a motion to waive the eight-day waiting period. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 153, October 12, 1993, (Tape 1), Scheduled case of:

9:20 A.M. JOHN G. & IRENE A. SCHMALZ, VC 93-V-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.9 ft. from street line of a corner lot (30 ft. min. front yard req. by Sect. 3-307). Located at 8205 Treebrooke Ln. on approx. 12,424 sq. ft. of land zoned R-3. Mount Vernon District. Tax Map 102-4 ((17)) 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. Schmalz replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to construct a one story addition 16.9 feet from the street line of a corner lot. The Zoning Ordinance requires a 30 foot minimum front yard; therefore, the applicants were requesting a variance of 13.1 feet from the minimum front yard requirement.

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The applicant, John G. Schmalz, 8205 Treebrooke Lane, Alexandria, Virginia, addressed the BZA. He said that his lot was unusual in that it had three front yards. Mr. Schmalz said he wished to add a family room and library and expressed his belief that the addition would be harmonious with the neighborhood. He noted that the neighbors supported the request, the addition cannot be placed elsewhere on the lot without a variance, and asked the BZA to grant the request.

In response to Mrs. Harris' question regarding the existing trees, Mr. Schmalz said that it was his intent to preserve the existing trees.

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

Mrs. Thonen made a motion to grant VC 93-V-075 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 5, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-075 by JOHN G. AND IRENE A. SCHMALZ, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.9 feet from street line of a corner lot, on property located at 8205 Treebrooke Lane, Tax Map Reference 102-4((17))30, 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 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-3.
3. The area of the lot is 12,424 square feet.
4. The odd triangle shape of the property, as well as the position of the house on the property, has caused the need for the variance.
5. There is no other place on the lot to construct the addition without a variance.
6. The application meets the necessary standards for the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the variance plat prepared by Stephen L. Moore, Land Surveyor, Dove & Associates, dated June 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. 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 October 20, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 155, October 12, 1993, (Tape 1), Action Item:

Approval of Resolutions from October 5, 1993 Hearing

Mr. Pammel made a motion to approve the Resolutions as amended by Mr. Kelley earlier in the public hearing. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 155, October 12, 1993, (Tape 1), Action Item:

Request for Out of Turn Hearing
The Fitness Authority, VC 93-H-111 and SP 93-H-049

Mrs. Harris referred to the applicant's statement regarding the financial circumstances and asked when staff could schedule the case. Marilyn Anderson, Senior Staff Coordinator, addressed the Board of Zoning Appeals and stated that the case was presently scheduled for December 14, 1993. She explained that because of staffing and the preparation of the staff report, the very earliest date would be November 30, 1993, and noted that December 7, 1993 would be preferable.

Mr. Hammack asked when closing had taken place. The applicant's agent, Toni L. McMahon, Compliance Consultants, P.O. Box 2124, Merrifield, Virginia, addressed the BZA and stated that closing had taken place on August 23, 1993. She explained that even though the applicant intended to work double shifts, the project will take approximately seventy-five days to complete. She noted that the Fairfax County staff has cooperated in expediting the matter.

Mr. Pammel made a motion to grant an out-of-turn hearing for November 16, 1993.

In response to Mrs. Harris' question as to the nature of the variance, Ms. McMahon said the variance would allow the existing parking spaces to remain 8 feet from the front lot line.

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

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Page 156, October 12, 1993, (Tape 1), Action Item:

Approval of the Board of Zoning Appeals Agenda

Mr. Pammel made a motion to approve the agenda as scheduled.

In response to Mrs. Thonen's question regarding the December 21, 1993 meeting, Mr. Pammel stated that if the meeting were cancelled, the Board of Zoning Appeals would just have to hear more cases in January 1994.

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

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 16, 1993

APPROVED: November 30, 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 October 19, 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 8:05 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board. Chairman DiGiulian announced that the cases would be heard in the order in which they were printed on the agenda and called for the first scheduled case.

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Page 157, October 19, 1993, (Tape 1), Scheduled case of:

8:00 P.M. THOMAS T. ALLGYER, VC 93-D-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot A-2 having lot width of 21.49 ft. (70 ft. min. lot width req. by Sect. 3-406). Located at 6454 North Rochester St. on approx. 26,695 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-3 ((7)) 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. Thomas T. Allgyer, 6454 North Rochester Street, Falls Church, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is developed with a single family detached dwelling and is within the Rowena S. Phillips Subdivision; the site is surrounded by lots also zoned R-4; the Arlington County line is located east of the property, traversing the adjoining the lot; the applicant was requesting a variance of 48.51 feet to the minimum lot width requirement in order to subdivide the property into two lots. Mr. Heine said it was staff's belief that the proposed application did not meet several of the standards for variances as set forth in Section 18-404 of the Zoning Ordinance; particularly, Standard 9. The development would not be in harmony with the Comprehensive Plan, which recommends that existing neighborhoods be protected by insuring that additional development is compatible. He said that, in this instance, pipestem lots cannot meet the goals and objectives of the Comprehensive Plan because pipestem lots are not characteristic of residential development in the vicinity.

Mr. Allgyer presented the statement of justification, stating that the lot is unique because of its size, roughly 27,000 square feet, with limited road frontage; other lots in the immediate area are significantly smaller and, of the 11 property owners he had notified by Certified Mail, the average lot size is approximately 10,500 square feet; the other lots in the area are not particularly odd in shape and are routinely in the 9,000- to 10,000-square foot category. Mr. Allgyer described the configuration: The existing house is on the right side and set forward, close to the right side lot line; the existing driveway on the left goes back to a metal shed/garage. He said they had planned from the beginning, when they purchased the property, to build a house on the lot; they could have kept the existing house but it was not feasible. Mr. Allgyer said that one alternative was to build one house which would entail tearing down the existing house, building a single house on the property and having a 27,000-foot lot. The single house alternative would result in a large house, compatible with the size of the property; another alternative, and the one being proposed, was to leave the existing house, divide the lot, and build a second house behind the existing house, using a pipestem configuration; a third alternative was to divide the property into three lots which, with regard to the density requirement of the R-4 District, would be allowable. The third alternative was considered by the applicant to be inappropriate, as was the alternative of building one house on the parcel because it would conflict in density and scale with the neighboring properties. Mr. Allgyer referenced the Public Facilities Manual (PFM) and pointed out an example that he believed supported his proposed configuration; he referenced existing pipestem lots in the area, which were not in very close proximity to the applicant's property; he said the reason there were no pipestem lots in closer proximity was that the lots were developed in a regular pattern and the need for a pipestem did not arise. Mr. Allgyer said that the denial of this request would create a demonstrable hardship, in that the property could not be subdivided to allow the development of the parcels in a manner compatible with the density and scale in the R-4 District.

Mrs. Thonen asked how the dwelling would reduce the area currently available for natural stormwater infiltration, as referenced in the staff report. Mr. Allgyer said that the footprint of the house created an impervious surface. Mrs. Thonen asked the applicant if he could meet the requirements of the Chesapeake Bay Ordinance and he said that was his intention.

Mrs. Harris asked the applicant if he knew whether the pipestems which he had earlier referred to had required variances and he said he did not know. Mr. Heine said staff only researched the 2 pipestems closest to the property: one had been denied by the Board in 1985, with a proposed location about 850 feet from the applicant's property; since the other one is approximately 1,650 feet away, staff does not believe it is in the neighborhood of the subject property.

Mr. Ribble asked if the applicant had seen the letter of opposition and he said he had not; Mr. Allgyer said he understood there also was a letter in support. The Board members said they had several letters pertaining to this case. Chairman DiGiulian suggested that Mr. Allgyer take a few minutes to the read the letter of opposition.

George L. Moran of the law firm Kellogg, Krebs and Moran, represented Mr. and Mrs. Louie on Lot 16, and said he also spoke on behalf of other neighbors. Concerns of those in opposition were that there is a great deal of open space with trees, which will be replaced by the proposed dwelling; there are no existing pipestems in the area, as the last application was denied; approval would cause an invasion of privacy to homeowners having to accept a dwelling closer than anticipated.

Mr. Allgyer came back to the podium for rebuttal, stating that the people opposing his application were doing so because they wished to preserve the open space represented by his lot; he agreed that it was nice to have open space around a house, but it would not be reasonable use of his land to provide open space for his neighbors. He said the Louies have two lots, 9,000 square feet and 10,000 square feet, and are nearly at the limit of the back yard requirements. Regarding the concern for privacy, he noted that the lots which would be created by his proposed subdivision would be larger than the neighboring lots. Mr. Allgyer said he did not believe that the neighbor's objection to a two-story dwelling on the grounds of privacy was reasonable; the R-4 limit on height is 35 feet. Mr. Allgyer referenced the 1985 application which had been denied, stating that it was different and that his application was not incompatible with the neighboring properties.

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

Mr. Hammack moved to deny VC 93-D-076 for the reasons set forth 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-076 by THOMAS T. ALLGYER, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot A-2 having lot width of 21.49 ft., on property located at 6454 North Rochester St., Tax Map Reference 41-3((7))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 October 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-4.
3. The area of the lot is approximately 26,695 square feet.
4. This gives the impression of being a "close" case; but, the hardship standards are intended to be applied strictly.
5. Careful examination of the application indicates some unusual characteristics, but the lot really is not significantly larger than some of the other lots in the area, such as Lot 11, 12, 13 and some other lots which front on Toronto Street.
6. It is believed that the applicant has not satisfied the nine required standards for variances to be granted, basically for those reasons stated by staff; but, in particular, in the case of Standard 4, which states that strict application of the Ordinance would produce undue hardship. The property is being used as a single family dwelling, was developed as such, and has remained that way since 1959.
7. The application also fails to meet Standard 6B, which states that granting a variance will alleviate a clearly demonstrable 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 affective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

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

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

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

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

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

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

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

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

Mrs. Harris seconded the motion which carried by a vote of 5-1-1. Mrs. Thonen voted nay. Mr. Pammel abstained.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 1993.

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Page 159, October 19, 1993, (Tape 1), Scheduled case of:

Chairman DiGiulian recognized the presence of Boy Scouts of America Pack 893. He asked them to stand and welcomed them. He asked if Betsy S. Hurtt, Clerk to the Board of Zoning Appeals, had anything to do with the Scouts being there; her son, Brandon, is a member of the Pack.

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Page 159, October 19, 1993, (Tape 1), Scheduled case of:

8:00 P.M. BURGUNDY FARM COUNTRY DAY SCHOOL, INC., SP 93-L-015 Appl. under Sect(s). 8-915 and 3-403 of the Zoning Ordinance to permit a waiver of the dustless surface requirement and continuation of existing community pool use. Located at 3700 Burgundy Rd. on approx. 23.44 ac. of land zoned R-4. Lee District. Tax Map 82-2 ((1)) 5, 6 and 8. (Concurrent with VC 93-L-027 and SE 93-L-014).

8:00 P.M. BURGUNDY FARM COUNTRY DAY SCHOOL, INC., VC 93-L-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure (garage) to remain in min. req. front yard (no accessory structure permitted in any min. req. front yard req. by Sect. 10-104). Located at 3700 Burgundy Rd. on approx. 23.44 ac. of land zoned R-4. Lee District. Tax Map 82-2 ((1)) 5, 6 and 8. (Concurrent with SP 93-L-015 and SE 93-L-014).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, James H. Moore of CEM Consulting Services, Inc., 6803 Lamp Post Lane, Alexandria, Virginia, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the property is located on Elmwood Drive and is surrounded on the north, south and east by residential development zoned R-3 and R-5, and on the west by open space zoned R-5. She said the hours of operation of the community pool are proposed to be from 9:00 a.m. until 9:00 p.m. Ms. Anderson said that, on November 27, 1993, the Board of Supervisors (BOS) approved special exception SE 93-L-014, subject to Development Conditions, to allow building additions for an existing private school of general education, nursery school, child care center and day camp, with a maximum daily enrollment of 300 students; there will be no increase in the enrollment at the school. The BOS also approved a modification of the transitional screening and barrier requirements to that shown on the plat. Ms. Anderson said it was staff's opinion that the applications were in harmony with the Comprehensive Plan and with the standards of the Zoning Ordinance. A copy of the Proposed Development Conditions dated October 19, 1993, which incorporated some recommended changes by the Planning Commission, were distributed to the Board, showing the date of the revised plat and recommending the retention of 3 speed bumps on the entrance driveway. If the speed bumps prove not to be effective in controlling dust, the applicant shall be requested to provide paving 25 feet into the entrance from Burgundy Road. Staff recommended approval of SP 93-L-015 and VC 93-L-027, subject to the Proposed Development Conditions dated October 19, 1993.

Mr. Moore presented an overview of the school, stating that the site is covered by mature woodlands and trees, the central core is located in the middle of the site as a school

cluster, the concept is that of a rural school and efforts are directed toward maintaining that image. He said the proposed development will be in harmony with the surrounding area, in and around the existing mature trees; the site is presently served by a gravel outlet road and this application proposes an extension of the existing gravel road and a small portion of the lower parking area. Mr. Moore said that the speed bumps were designed to reduce speed and alleviate dust, which satisfies the neighbor located in that area. He said the applicant realized that the waiver of the dustless surface would be for five years only, if granted, and that he would need to submit an application for renewal before the expiration date.

Mr. Moore addressed the variance request for the unfinished structure which he said is a kit type of plan that can be purchased from stores such as Hechingers. He said the school needed a garage in which to work on lawn care equipment, the school bus, and several other pieces of machinery; the location for the structure was selected because it is out-of-the-way, in the woods, behind the caretaker's residence; employees of the school selected the site and built the structure. Mr. Moore presented a letter from the neighbor across the street in support of the application. He said denial of the application would create an undue financial hardship for the applicant if they had to dismantle and move the structure back, noting that the applicant was requesting less than a 4-foot variance.

In answer to a question from Mrs. Harris, Mr. Moore said they planned to obtain a building permit for the structure and/or do anything else necessary to be in compliance. Mrs. Harris also asked about the paving recommended by the Planning Commission and Mr. Moore said that the paving would be done on the proposed road, with an entrance off of Elmwood Drive, when it is constructed sometime in the future.

Mrs. Harris asked Mr. Moore if he had read and agreed with the special exception Proposed Development Conditions and he replied in the affirmative.

Mrs. Thonen said, if the entrance off Burgundy was not going to be paved, how could speed bumps be put in. Mr. Moore said that, once on the site, the road becomes private property on a shared outlet gravel road; they have placed 3 asphalt speed bumps on the private property of the school. Mr. Hammack asked why the applicant was reluctant to pave 25 feet into the private property. Mr. Moore said the 25-foot portion of road, where the existing asphalt ends and the public right-of-way crosses a bridge in the right-of-way, raised an issue that, if the applicant paves the public right-of-way, he inherits responsibility for the public right-of-way which includes the bridge; the applicant believed that could be very expensive. Mr. Hammack asked if he was saying that the public right-of-way was not paved. Mr. Moore explained that there is a portion where the public right-of-way terminates, prior to coming onto the private property, where the existing pavement is deteriorated to the point of not being paved. Mr. Hammack said he did not know why the County did not keep up the public portion of the road, but he did believe the applicant should pave the 25 feet inside the private property because it is near residences which will be impacted by the dust. He noted that the applicant indicated willingness to pave the 140 feet of road which will be built in the future but did not want to pave the 25 feet of road that is being used now; it appeared to him to be inconsistent. Mr. Moore said they had discussed this with adjacent neighbors who suggested the speed bumps as a satisfactory alternative. He said the other concern of adjacent neighbors about paving any portion of the road is that it would cause an increase in speed. Mr. Hammack said he did not believe that cars could pick up much speed on a 25-foot length of road, a little over a car length long.

Mrs. Thonen asked if the Virginia Department of Highways (VDOT) required a 25-feet paved entrance. Ms. Anderson said that VDOT did not require it, but it was normally a staff recommendation. Mrs. Thonen asked Mr. Moore if that was the only portion of the conditions that he disagreed with and he said yes. Mrs. Thonen noted that the paving was recommended by the Planning Commission: "...shall provide pavement to a point 25 feet into the entrance drive...." Mr. Moore said that was to apply only if, after one year, the speed bumps proved not to be effective. He said another deterrent to paving was the cost to the applicant. Mrs. Harris referenced the difference between that cost and the cost of the Stormwater Management Facility, also recommended. Mr. Moore said the Stormwater Management Facility would be costly; however, the pond would be a Best Management Practice and Stormwater Management Facility for the respective drainage area, while the rest of the drainage on the property would be handled by existing infiltration through the natural woodlands and grass strips; he said the expense would not be as much as one would think.

Mr. Kelley referenced Condition 4 of the Planning Commission recommendations and asked if there was something wrong with the pool, as he had never seen a similar condition imposed. Mr. Moore said he believed the intent of that condition was to ensure that the pool did not have any problems, since it is located in a marine clay area. Mr. Kelley asked how long the pool had been there and how long it had been in use. Mr. Moore said it had been in use for 40 years and had no problems, such as structural cracks. Chairman DiGiulian said he realized a soil survey could be very expensive. Mr. Moore said that soil borings would be required anyway as part of site plan submission because of the marine clay. Mrs. Thonen said that the marine clay ordinance requires testing for suitability before any construction can be done. Mr. Kelley noted the condition indicated that the Department of Environmental Management (DEM) could cause the applicant to tear down the pool and reconstruct it. Mrs. Thonen said she doubted that DEM would do that. Chairman DiGiulian said that, if the soil survey is a requirement of the site plan process, the BZA did not need to impose it under the special permit.

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

Mrs. Thonen moved to grant SPA 82-D-101-5 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions recommended by the Planning Commission, dated October 19, 1993.

Mr. Pammel seconded the motion to grant SPA 82-D-101-5 and suggested an amendment, specifically the deletion of Condition 4, since it is a site plan requirement. Mr. Kelley seconded the amended motion. The motion carried by a vote of 6-1. Mrs. Thonen voted nay on the amended motion.

Mrs. Thonen moved to grant VC 93-L-027 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions dated October 19, 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-015 by BURGUNDY FARM COUNTRY DAY SCHOOL, under Sections 8-915 and 3-403 of the Zoning Ordinance to permit a waiver of the dustless surface requirement and continuation of existing community pool use, on property located at 3700 Burgundy Rd., Tax Map Reference 82-2((1))5,6,8, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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-4.
3. The area of the lot is approximately 23.44 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-915 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 entitled Burgundy Farm Country Day School and prepared by CEM Consulting Services, Inc. which is dated March 16, 1993 as revised through September 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. The pool shall be limited to a maximum of 78 bathers at any one time.

5. There shall be no more than four (4) league swim meets conducted at this facility per year. All parking shall be accommodated on site.

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

   Limited to six (6) per season.

   Limited to Friday, Saturday and pre-holiday evenings. Three (3) weeknight parties may be permitted per year, provided written proof is submitted which shows that all contiguous property owners concur.

   Shall not extend beyond 12:00 midnight.

The applicant shall provide a written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous after-hour party.

7. During discharge of swimming pool waters, the following operational procedures shall be implemented:

   Sufficient amount of lime or soda ash shall be added to the acid cleaning solution in order to achieve a pH approximately equal to that of the receiving stream. The Virginia Water Control Board standards for the class II and III waters found in Fairfax County range in pH from 6.0 to 9.0. In addition, the standard for dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

   If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

8. The regular hours of operation for the swimming pool shall not exceed 9:00 am to 9:00 pm.

9. 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 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.

   The three existing asphalt speed bumps on the entrance drive from Burgundy Drive shall remain. If, after one year, the speed bumps prove not to be effective in controlling dust, the applicant shall provide pavement to a point 25 feet into the entrance drive from Burgundy Road.

   The applicant shall provide pavement to a point 140 feet into the entrance drive from Elmwood Drive to inhibit the transfer of gravel off the site.

10. A landscape plan shall be submitted for review and approval of the Urban Forestry Branch prior to the time of final site plan approval. This landscape plan shall include a tree supplementation plan for the transitional screening area north of the proposed new parking area and for the transitional screening area along the southern periphery west of the partially constructed garage 300 feet east to the gravel outlet road in order to mitigate adverse impacts on existing and future residential units as determined by the Urban Forester. The final location of all supplemental vegetation provided shall be determined by the Urban Forester. The Urban Forester shall review and approve a tree preservation plan for trees to be preserved within the clearing and grading areas limited to 9:00 A.M. to 9:00 P.M.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless the use has been established and been diligently prosecuted. Construction of at least one (1) new structure shall constitute establishment of this Special Permit use. 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.

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Mr. Pammel seconded and amended the motion. Mr. Kelley seconded the amended motion, which carried by a vote of 6-1. Mrs. Thonen voted nay on the amended motion.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 1993. This date shall be deemed to be the final approval date of this special permit.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-027 by BURGUNDY FARM COUNTRY DAY SCHOOL, under Section 18-401 of the Zoning Ordinance to permit accessory structure (garage) to remain in minimum required front yard, on property located at 3700 Burgundy Rd., Tax Map Reference 82-2((1))5,6,8, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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-4.
3. The area of the lot is approximately 23.44 acres.
4. The applicant has been operating for a long time and there have been no complaints about the accessory structure.
5. The accessory structure does not give the appearance of being in the front yard.

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

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

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

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

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

1. This variance is approved for the location of the garage structure south of the proposed administration building as shown on the plat entitled Burgundy Farm Country

Day School and prepared by CEM Consulting Services, Inc. which is dated March 16, 1993 as revised through September 13, 1993 submitted with this application and is not transferable to other land.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 164, October 19, 1993, (Tape 1&2), Scheduled case of:

8:00 P.M. RIVER BEND GOLF AND COUNTRY CLUB, INC., SPA 82-D-101-5 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 82-D-101 for country club to permit increase in land area, relocate golf practice facility, building addition and change in hours of operation. Located at 413 Walker Rd. on approx. 181.72 ac. of land zoned R-E. Dranesville District. Tax Map 7-2 ((1)) 21; 8-1 ((1)) 22, 23 and 41; and 8-3 ((1)) 4.

Lori Greenlief, Staff Coordinator, advised the Board of Zoning Appeals (BZA) that the Clerk had deemed the notices were not in order; there was one property owner on Lot 1D who did not receive the Certified Letter because it was sent to the wrong address; therefore, the owner was not notified in accordance with the Ordinance; the applicant turned the notices in to the Clerk for verification on the afternoon before the hearing so there was no time to correct the non-compliance. She said, however, it was staff's understanding that the applicant's agent was in possession of an affidavit from the property owner in question and he wished to address the issue.

Kennon W. Bryan, Esq., 4117 Chain Bridge Road, Fairfax, Virginia, the applicant's agent, advised the Board that he had met with the property owner in question, Randolph West, at 6:00 p.m. that evening; he showed Mr. West the plat and the application; he explained the process and what the applicant planned to request from the Board. Mr. West wrote, "I have notice of BZA hearing on October 19, 1993, and do not object to driving range." The statement was signed by Mr. West and notarized by Mr. Bryan as a Commissioner in Chancery of the Circuit Court of Fairfax County.

Mr. Ribble moved to accept the notarized statement. Chairman DiGiulian ruled that the notice was acceptable as submitted.

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. Bryan replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located in Great Falls, east of Walker Road and south of Beach Mill Drive; it is surrounded by land also zoned R-E and developed with single family detached dwellings or open space. She said the applicant was requesting approval of an amendment to an existing special permit in order to add land area (Lot 21), relocate and expand an existing golf practice facility and change the hours of operation for the clubhouse. Ms. Greenlief said that the applicant proposed to locate a golf driving facility on Lot 21 with 45 tees for club members only and a 100-square-foot kiosk which would be located in the tee area for dispensing golf balls; there will be no parking on Lot 21, except for golf carts; the facility will not be lighted; the proposed hours of operation are the same as for the golf course, 7:30 a.m. to dusk. The applicant also was requesting permission to expand the hours of operation for the clubhouse which had been conditioned to open no earlier than 11:00 a.m. According to the Club, the golf course itself opens at 7:30 a.m. and golfers use the clubhouse during the early morning hours, prior to teeing off; therefore, the applicant was requesting that the clubhouse hours be amended to open at 7:00 a.m.

Ms. Greenlief said that staff's main concerns about this application center around transitional screening for the relocated golf practice facility and provision of adequate stormwater management facilities and environmental controls on the new facility. Those concerns are addressed in the Development Conditions. The applicant had submitted a revised plat subsequent to the publication of the staff report, which adds 2 possible stormwater management ponds on Lot 21 which appear to be appropriately located and would help to alleviate the concerns of staff. Ms. Greenlief pointed out an error in the staff report on Page 3: The report indicated that there is a 6-foot high chain link fence along the western

and northern lot lines of Lot 21; there is no fence along those lot lines, there is a fence only along the eastern lot line of Lot 21. Ms. Greenlief further stated that, with the implementation of the Development Conditions in Appendix 1, staff recommended approval of SPA 82-D-101-5. She noted that, with the submission of the revised plat, the date of the plat indicated in Development Condition 2 needed to be changed.

Mr. Bryan addressed the issue of opening time, stating that Mr. Kelley pointed out to the applicant in 1991 that, although they may have been using the clubhouse prior to 11:00 a.m., the special use permit in effect at that time did not permit such locker room utilization, so they merely wished to clarify that issue at this time. Mr. Bryan said that the locker room is used from about 7:00 a.m. and food service would not commence prior to 11:00 a.m.; they would like to continue operating on that basis.

Mr. Bryan submitted a letter from the adjacent land owner, Michael J. Malesardi, 347 Walker Road, Great Falls, Virginia, in support of the application, who referenced the applicant's request to add approximately 30 acres to the special use permit. The applicant is a lessee of the property, holding a 10-year lease with the right of the landlord to give the applicant a "put" after 7 years and either tell them to buy the land at that time under a right of first refusal, or the landlord will be free to develop the land in its own interest. Mr. Bryan pointed out that the 7-year limitation impacts upon the amount of money the applicant proposes to spend in terms of improvements during the next 7 years, until they know what the future of the property will be. They could not afford to spend $150,000 or $200,000 from a development standpoint, if they ultimately will lose the opportunity for utilization of the facility in 7 years; rental of the land will be approximately $30,000 per year because they are paying 1.3 times real estate taxes per the terms of their negotiation of the lease; projections at this point lead them to believe that they will spend at least $100,000 in terms of developing the site to a condition where it can be used as a driving range.

Mr. Bryan addressed the Proposed Development Conditions, stating that Condition 9 states that the facilities shall be for the use of the members only; he wished to change the Condition to read ". . . members and guests." Regarding Condition 18 and the property owned by Mr. Brar at the entrance to the country club, extending half-way up to the lot that joins Mr. Brar's lot, he had spoken with Mr. Brar on the site; Mr. Brar had taken the liberty of going onto the Harrisons' property and rearranging dogwood trees according to his own program, which he preferred to having the applicant plant evergreens which would grow to 40 feet. Mr. Bryan suggested that the Board allow him and Mr. Brar to work out the screening between them, but not to require them to go beyond the Transitional Screening 1, as recommended by staff. He said the neighbors are supportive of the applicant's plan. Mr. Bryan said the attorney representing one of the neighbors, Mrs. Harrison, was present to advise the Board that his client would prefer to have a 6-foot chain link fence for a distance of approximately 400 feet, in lieu of screening; the applicant is willing to do that between now and the development stage. Mrs. Harris said she believed this type of an arrangement would be difficult to enforce, but she was in favor of working something out with the neighbors. Chairman DiGiulian suggested wording as in the staff report, adding ". . . or as modified by mutual agreement between the Club and the adjacent property owner," after each condition affected. Mr. Kelley said that, in Condition 18, he would like to see a period after the words, ". . . barrier requirement," and delete the rest of the Condition; he said the applicant had always done what they had agreed to do and he would take them at their word. A discussion ensued.

Mr. Bryan said the next condition he was concerned about was 13, which pertains to the trees they were to retain on the driving range where clearing and grading will be done; they had clearly indicated on the application plat which elm and maple trees would be retained. He said there are approximately 18,000 trees on the site, including scrub, Virginia cedar and small dogwoods, ranging from 3 to 10 or 12 feet in height. The third line of Condition 13 states, "...and any other quality specimen trees..." which the County Urban Forestry Branch would theoretically make a decision on. Mr. Bryan said they had to run a cart around that area to pick up golf balls every day and a multitude of dogwoods would make that impossible; he suggested that the Board delete, "...and any other quality specimen trees..." and rely upon the applicant to retain the trees clearly delineated on the application plat. In answer to a question from Mrs. Thonen, Mr. Bryan said they would retain the elm and maple trees.

Mr. Bryan said that staff had raised the issue of Better Management Practices (BMPs) on the on-site stormwater management, which is a function of site plan approval; they will have to do a study to comply with the Chesapeake Ordinance; however, they would like the Director of the Department of Environmental Management (DEM) to know that the BZA is not opposed to a waiver, if he deems it appropriate. To accomplish this, he requested a change in the language of Condition 28: After the word "Ordinance," add "if not waived by the Director." A discussion ensued and Mr. Bryan said there have been occasions when the Director of DEM has deemed a waiver appropriate but said he could not facilitate a waiver because the BZA did not make provisions for the waiver.

Mr. Kelley asked Mr. Bryan for an explanation of Condition 20 and 22. Regarding Condition 20, Mr. Bryan said that the area referred to is what golfers call a "rough" area and they plan to treat the area with fertilizer only. Ms. Greenlief said that Condition 22 would be addressed in the site plan process. Chairman DiGiulian asked about the last sentence: "...If determined by DEM at the time of site plan review that additional erosion and sedimentation control measures beyond Public Facility Manual (PFM) standards are desirable, additional measures shall be provided to the satisfaction of DEM." He said he would like to delete that sentence and Mr. Bryan requested the deletion.

Mr. Bryan said that the basic reason for the request is to eliminate the hazard of golf balls landing in tennis courts or other areas where they might cause injury.

Richard Peters, President of the Great Falls Citizens Association, made a presentation on behalf of the Association in support of the application. A written copy of the statement became a part of the record.

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

Mr. Ribble moved to grant SPA 82-D-101-5 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions dated October 12, 1993, with the following modifications:

Condition 2 - the date of the plat shall be changed to October 8, 1993.

Condition 4 - add this sentence: "The Board of Zoning Appeals recommends a waiver in this instance.

Condition 9 - change to read: "The golf practice facilities shall be for the members and guests..."

Condition 13 - line 6, shall read: "...the elm and maple trees. (Delete the rest of the sentence.) Change the last sentence to read: "Dead and dying trees may be removed.

Condition 18 - third line: Put a period after "requirements" and delete the rest of the condition.

Condition 22 - delete last sentence.

Condition 28 - shall read: "Best Management Practices (BMP) shall be provided in accordance with the Chesapeake Bay Preservation Ordinance, if not waived (Delete "...if deemed necessary....") by the Director, Department of Environmental Management."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-D-101-5 by RIVER BEND GOLF AND COUNTRY CLUB, INC., under Section 3-E03 of the Zoning Ordinance to amend SP 82-D-101 for country club to permit increase in land area, relocate golf practice facility, building addition and change in hours of operation, on property located at 413 Walker Rd., Tax Map Reference 7-2((1))21; 8-1((1))22, 23, and 41; and 8-3((1))4, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 19, 1993; and

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

1. The applicant is the owner and lessee of the land.
2. The present zoning is R-E.
3. The area of the lot is approximately 181.72 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 William H. Gordon, Associates, Inc., dated June 1992, revised through October 8, 1993 (Four Sheets), 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 recommends a waiver in this instance.

5. The hours of operation shall be limited to the following:

   Clubhouse: 7:00 a.m. to 1:00 a.m.
   Swimming Pool: 7:30 a.m. to 10:00 p.m.
   Golf Course and Golf Practice Facility: 7:30 a.m. to dusk
   Outdoor Tennis Courts: 7:30 a.m. to 11:00 p.m.
   Enclosed Tennis Courts: 6:00 a.m. to 11:00 p.m.

6. The inflation of the air-enclosed bubble shall be permitted only between October 1 and May 31.

7. Country club membership shall be limited to 600 persons.

8. There shall be 163 parking spaces as shown on the special permit plat.

9. The golf practice facility shall be for the members and guests of the country club only and there shall be no parking of vehicles other than golf carts on Lot 21 of this special permit property.

10. The golf practice facility shall not be lighted.

11. There shall be a maximum of 45 tees at the golf practice facility.

12. Interior parking lot landscaping shall be provided in accordance with Article 13 of the Zoning Ordinance.

13. The limits of clearing and grading on Lot 21 shall be as shown on the special permit plat. Prior to site plan approval, a tree save plan shall be submitted for review and approval by the County Urban Forestry Branch. This plan shall identify and provide for the preservation of all vegetation within the limits of clearing and grading, and shall include the elm and maple trees. Dead and dying trees may be removed.

14. Prior to site plan approval, a tree save/tree replacement plan for Lot 23 shall be submitted for review and approval by the County Urban Forestry Branch. This plan shall identify and provide for the preservation of all vegetation within the limits of clearing and grading and shall locate and preserve individual mature, large and/or specimen trees and tree save areas to the greatest extent possible as determined by the County Urban Forestry Branch. The limits of clearing and grading shall align with the existing 308-foot contour line in the vicinity of the loading dock and access drive to the loading dock south of the clubhouse and the bath house, thus preserving the steep slopes adjacent to the existing drainage swale and Environmental Quality Corridor (EQC). The tree save/replacement plan shall provide for the replacement of vegetation which will be lost during clearing and grading activities, with size and number of species to be determined by the County Urban Forestry Branch.

15. The row of trees which lines the entrance drive in the area of the relocated tennis courts shall be preserved. A row of evergreen trees, six feet in planted height, 10 feet on center, shall be maintained along the western and northern sides of the tennis courts along the earthern berm to screen the visual impact of the fencing and lighting of the courts. The type, number, and location of these trees shall be reviewed and approved by the County Urban Forestry Branch and may include those trees relocated from the proposed parking area.

16. A evergreen hedge, with an ultimate height of four (4) feet, shall be maintained on the northeast side of the parking lot of Lot 23 in accordance with the approval of the County Urban Forestry Branch.

17. The existing evergreen trees shall be maintained and additional plantings shall be provided and maintained in the area between the new parking lot and the air-enclosed tennis bubble and the adjacent subdivision to the north.

18. Existing vegetation and the existing fencing along all lot lines shall be preserved and maintained and shall satisfy the transitional screening and barrier requirements.

19. Shade trees and other landscape shrubs shall be planted and maintained on the landscape mounds on Lot 21. The type, size, and quantity shall be approved by the Urban Forestry Branch, DEM.

20. The area between the fairway and the limits of clearing and grading and rough as shown on the special permit plat shall be planted and maintained as a herbaceous/shrub meadow type buffer in order to reduce the velocity of stormwater runoff in this area as determined by the Director, DEM.

21. There shall be no further construction or paving in the area of the floodplain. In addition, vegetation shall be maintained immediately to the southeast of the existing paved area to promote filtration of stormwater runoff prior to its entry into the swale.

22. Erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be in accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the Virginia Erosion and Sediment Control Handbook and shall be coordinated with the Department of Environmental Management(DEM). These methods may include, but shall not be limited to, the provision of either sediment detention facilities or redundant and/or oversized siltation devices.

23. During discharge of swimming pool waters, the following operation procedures shall be implemented:

    Sufficient amounts of lime or soda ash shall be added to the solid cleaning solution in order to achieve a pH approximately equal to the of the receiving stream. The Virginia Water Control Board standards for the class II and class III waters found in Fairfax County range in pH from 6.0 to 9.0 In addition, the standard dissolved oxygen shall be attained prior to the release of pool waters and shall require a minimum concentration of 4.0 milligrams per liter.

    If the water being discharged from the pool is discolored or contains a high level of suspended solids that could affect the clarity of the receiving stream, the water shall be allowed to stand so that most of the solids settle out prior to being discharged.

24. An integrated fertilizer, herbicides and pesticide management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in the Pond and Clark Branch watersheds, shall be implemented for all uses on site, including the golf practice facility on Lot 21. This program and plan shall provide for periodic monitoring and adjustment that demonstrate an intent to reduce the amounts of nutrient, phosphate, and pesticide applied to the property over time. These actions shall be coordinated with the Northern Virginia Soil & Water Conservation District of the Department of Extension and Continuing Education, and reviewed by DEM at site plan review.

25. Any lighting of tennis courts shall be in accordance with the following:

    The combined height of the light standards and fixtures shall not exceed twenty-one (21) feet.

    The lights shall focus directly on the subject property.

    The lights shall focus directly on the property.

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

    The lights, including those associated with the air-enclosed bubble shall be controlled by an automatic shut-off switch.

26. Any attached sign or other method of identification shall conform with Article 12 of the Zoning Ordinance.

27. All septic fields shall be appropriately designed to accommodate the sewer loads that may result from the increased usage as approved by the Health Department.

28. Best Management Practices (BMP) shall be provided in accordance with the Chesapeake Bay Preservation Ordinance, if not waived by the Director, Department of Environmental Management.

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 of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued. 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 1993. This date shall be deemed to be the final approval date of this special permit.

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The Board recessed at 9:40 a.m. and reconvened at 9:55 a.m.

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Page 169, October 19, 1993, (Tape 2), Scheduled case of:

8:00 P.M. JAMES S. CARROLL, VC 93-L-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 6816 Highland St. on approx. 15,269 sq. ft. of land zoned R-4. Lee District. Tax Map 80-4 ((2)) (10) 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. Marie Carroll, 6816 Highland Street, Springfield, Virginia, wife of the applicant, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the BZA had acted on several variance applications in the immediate area which were listed in the staff report.

Ms. Carroll stated that the main reason for the addition was to accommodate their third child which was on the way and to accommodate Mr. Carroll's parents. Mrs. Carroll said they cannot build on the left side because of the brick driveway, the drainpipes and gas line; the driveway also provides access to her husband's workshop. She said that, even if none of those impediments existed, the house splits levels at that point, as do all of the houses in the neighborhood, which is why no one in the neighborhood has built on the left side of the house. Ms. Carroll made a detailed presentation, elaborating on the proximity of neighboring houses, presenting a letter of support, pointing out trees which would be saved, etc. She said another reason for the addition was to have a two-car garage and to protect the cars from tree sap and acorns from the old mature trees.

In answer to a question from Mrs. Harris, Mrs. Carroll said she does not have a garage. Mrs. Harris read from the plat, "existing one-story, brick garage." Mrs. Carroll said it is really is not a garage, it is her husband's workshop and where he stores tools. Mrs. Harris asked if it was built as a garage. Mrs. Carroll said they did not build it as a garage.

Mrs. Carroll showed viewgraphs and photographs of various additions in the neighborhood and Mr. Kelley asked her if she knew how many of them required variances. She said that four property owners had applied for variances and only one was granted. Lori Greenlief said that she believed there was only one variance requested at 6107 Augusta Drive, to allow a house 35 feet from the front lot line, which was granted. Mrs. Harris asked Mrs. Carroll if any of the garage additions in the neighborhood were 46.7 feet long, as she was proposing. Mrs. Carroll said the two-car garages must be at least 20 feet wide. Mrs. Harris said she was directing her attention to the length of 46.7 feet. Mrs. Carroll said that there would be a family room behind the garage; above the garage and family room would be one bedroom, a study/den type of room, and a bath. Mrs. Harris pointed out that Mrs. Carroll was showing the Board examples of garages which were built without requiring variances and trying to draw some similarity between them and her proposed plan, which would require a variance. Mrs. Carroll pointed out a structure which she called huge. She said that she, too, could build a huge addition without a variance and fill up her back yard, but she said it would not look good and adjacent property owners might not approve of the aesthetics.

Mrs. Harris said that one of the standards for variances in the Zoning Ordinance was that, "The strict application of the Zoning Ordinance would effectively prohibit all reasonable use of the property and the granting of the variance will alleviate a clearly demonstrable hardship approaching confiscation." Mrs. Harris said that Mrs. Carroll's statement that she could locate the addition in the back yard by right but chooses not to, indicates that the application does not meet the standard.

Mr. Carroll said he would try to answer the question more directly; he said that a garage could be built in the back yard but it would not be as functional in relationship to the house; with the existing workshop, another structure at that point could affect the runoff; the basement on that side of the house already has drainage problems, necessitating 3 sump pumps around the foundation; and the contractor who worked on the drainage problem could not guarantee the work if any topographical changes were made to the back yard.

Ms. Carroll referenced her petition with over 100 signatures of people who did not object to the application, as well as abutting property owners who did not oppose the application.

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

Mrs. Harris moved to deny VC 93-L-103 for the reasons set forth in the Resolution.

Mr. Pammel said that the size of the addition represented tremendous bulk which the Board could not impose on an adjacent property owner.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-103 by JAMES S. CARROLL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 4.0 ft. from side lot line, on property located at 6816 Highland St., Tax Map Reference 80-4{(2)}{10}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 October 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-4.
3. The area of the lot is approximately 15,269 square feet.
4. The subject property does not have any of the characteristics found in the required standards for a variance.
5. Most of the lots in the area appear to have the same dimensions.
6. The topographic condition of water drainage problems mentioned in testimony was not expanded upon as a situation unique to the lot; the lot is not believed to be unusual in this regard.
7. While the applicant put forth a great deal of effort and time in preparing the presentation, the property has not been shown to have unusual characteristics.
8. The hardship issue was not fully addressed by the applicant.
9. Although testimony stated that the existing accessory structure on the property is not a garage, it is 16 by 30 feet, which is a large structure, whether or not it is used to accommodate vehicles. If the applicants' goal is to house vehicles, a garage addition with a lesser variance could be proposed.
10. The proposed addition is 46.7 feet long and the proposed construction would almost double the size of the house, including the garage area.
11. A variance that extends 46.7 feet into the side yard causes concern when there is no real justification presented; it might be understandable in the case of the garage area, but the variance is very substantial and would change the character of the neighborhood.
12. The existing two-car garages in the neighborhood did not require variances.
13. Existing additions in the area appear to have been located to the rear of the dwellings by-right, rather that to the side of the dwellings, necessitating variances.

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 October 27, 1993.

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Page 171, October 19, 1993, (Tape 2), Scheduled case of:

8:00 P.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. (DEF. FROM 7/13/93 TO ALLOW STAFF TIME TO REVIEW THE REVISED PLAT SUBMITTED ON 7/12/93. DEF. FROM 9/21/93 TO ALLOW APPLICANT TO ADDRESS OUTSTANDING ISSUES. EACH SIDE HAS 10 MINUTES FOR ADDITIONAL TESTIMONY.)

Chairman DiGiulian noted that, when the decision was deferred, it was decided that testimony would be limited to 10 minutes from each side.

Robert L. Lawrence of the law firm of Hazel & Thomas, P.C., P.O. Box 12001, Falls Church, Virginia, represented the applicant and, though he spoke first, chose to save some of his allotted time for rebuttal.

Mr. Lawrence noted that, at the last hearing, he had said he would attempt to secure the necessary right-of-way from either the property on the east or west side of Beulah Road in order to provide a left turn lane; although neither staff nor the Virginia Department of Transportation (VDOT) required a left turn lane, and the applicant's transportation analysis showed that a left turn was not required, there was concern among the citizens about the need for one; therefore, the applicant would try to provide one. Mr. Lawrence said he wrote letters to the owners of the properties.

At this time, Mr. Lawrence reaffirmed the affidavit.

Mr. Lawrence said he had written letters to the property owner immediately to the north, Mr. and Mrs. Love, and to the Northern Virginia Regional Park Authority (NVRPA), advising that they would like to acquire land from them; he attached plats to the letters showing the area they would need to acquire for the additional right-of-way. He submitted copies of the letters to the Board. Mr. Lawrence said they had not received a response from Mr. and Mrs. Love; however, they had received a response from the NVRPA; they met with them and the NVRPA is not opposed to working with the applicant on providing right-of-way. NVRPA told the applicant that they would need to decide how it would impact their future plans for the Park, if it might require the relocation of some public utilities, and whether or not they would want to jointly work with the applicant on providing a left-turn lane into their own site. Mr. Lawrence advised that NVRPA said money was not at issue; they would go forward if they could agree with the applicant on details of the development. Mr. Lawrence said they had told NVRPA that they would pay fair market value for the property, as determined by the three-appraiser method: the applicant would select an appraiser, the owner of the property

Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a church and related facilities. would select an appraiser, the owner would select a third appraiser who would be paid by the applicant, and that would be the basis for fair market value. Mr. Lawrence estimated it would take months for the NVRPA to review all the issues involved.

Mrs. Harris asked if there was written communication from the NVRPA. Mr. Lawrence said there was no written communication; however, they had met with Mr. Hobson, the Executive Director of the NVRPA, and his engineer. Mr. Lawrence advised that one of the neighbors, Mr. Love was present and, in answer to a question from Mrs. Thonen, advised that the Loves live to the north of the subject property.

Chairman DiGiulian advised that Mr. Lawrence would have 4 or 5 minutes for rebuttal, after speakers in opposition has used their 10 minutes of speaking time.

Speaking in opposition were: Baxter Ragsdale, 1510 Black Eyed Susan Lane, Vienna, Virginia, for the Wolftrap Meadows Homeowners Association; and Camille Klein, 1657 Beulah Road, Vienna, Virginia: The concerns involved the compromise of public safety; line of site analysis; lack of a firm commitment to a left turn lane which might help the situation; backed up traffic encountered by drivers rounding the curve because of the limited line of site; incoming traffic conflicting with outgoing traffic, coming and going to services, respectively; worsening traffic conditions from resulting additional development if the special permit is granted; VDOT's line of site requirement will not be met unless an off-site easement is obtained. Further concerns were stated to be: non-compliance with the general standards set forth in the Fairfax County Zoning Ordinance; disharmony with the Comprehensive Plan; conflict with the general purpose and intent of the low density residential zoning district regulations; adverse affect on the development of neighboring properties in accordance with the Comprehensive Plan; hazardous and conflicting interaction with the existing and anticipated traffic in the neighborhood; inadequacy of utility, drainage and other necessary facilities; rejection of a smaller building size; rejection of the elimination of an upper parking area in favor of tree save; rejection of a 36-foot undisturbed transition zone; anticipated outfall from stormwater ponds; inadequancy of the septic system; dismissal of a request to have a fence along property lines constructed prior to clearing and grading; departure of conditions proffered by the applicant from the clear intentions of the conditions recommended by staff; failure to pave the 98-car parking lot with a porous pavement surface to improve infiltration characteristics; and failure to construct barrier fences prior to other development; diversity and intensity of use.

Mr. Lawrence distributed the applicant's Proposed Development Conditions and proceeded to address the concerns submitted by the opposing speakers. He referenced the previous hearing where the Floor Area Ratio (FAR) was noted to be 6%, which he said is less than half of the 15% FAR allowed for non-residential uses in the district. He said that the building is 30 feet high at its peak; whereas a townhouse is allowed to be 35-feet high. The open space area is 50%, whereas the Ordinance calls for 20%. Mr. Lawrence said that the applicant would provide Transitional Screening 2 on all sides of the property, with the exception of the septic field area which they will endeavor to move to the south so that they can also provide the 35-foot transition area there; a development condition addresses this issue. There is a minimum of 25 feet undisturbed; to provide 35 feet undisturbed as staff suggested, the applicant will have to build retaining walls around the parking lots; whereas, if they can grade in the first 10 feet of the 35-foot area, leaving 25 feet undisturbed, they can revegetate the 10 feet and the lower story vegetation will supplement the larger trees and the open appearance of the older vegetation in the 25-foot area. Mr. Lawrence referenced the Development Conditions and the language pertaining to meeting the Arborist on site, reviewing the proposals, and minimizing the disturbance.

Mr. Lawrence addressed the safety issue and, regarding the line of sight, he referenced the Development Condition requiring the applicant to provide a line of site which is approved by VDOT. He referred to the queing concerns raised the speakers and referenced a letter from Greenhorne and O'Mara which spoke about the distance to the site when coming over the hill and quoted, "...the results of this analysis indicate that cars would have to be backed up approximately 350 feet, approximately equal to 14 automobiles, from the proposed entrance before the stopping site distance ever approaches the minimum criteria of 325 feet." Regarding the left-turn lane, Mr. Lawrence referenced the prior hearing and discussion about a warrant analysis done by John Callo, a Transportation Consultant, which determined that there was not 50% of the VDOT warrant for a left-turn lane, based upon the traffic generated at the site and the capacity of the road. Mr. Callo also concluded that the level of service for the intersection at the site would be Level of Service A, not D which is the normal design standard, and not F which is level of most intersections. Mr. Lawrence said that Sunday traffic currently is 31% of the peak hour traffic and, with the inclusion of the church, it is only 39% of the peak hour traffic. He noted that in the staff report that staff had said all the transportation issues had been addressed and had recommended approval.

In answer to a question from Mrs. Harris, Mr. Lawrence advised that 30 seminary students would participate in a morning class, in 10 to 15 cars, for about one hour. He said they had not seen any technical analysis that would justify the concerns expressed by the citizens speaking in opposition regarding excessive traffic or actual safety hazards. Although the

record clearly indicates that it is not required, Mr. Lawrence said the applicant, as a good neighbor, was willing to work out the installation of a left-turn lane.

Mrs. Thonen and Mr. Lawrence discussed the transitional screening issues and Mr. Lawrence attempted to clarify them. Chairman DiGiulian asked Mr. Lawrence if his understanding was correct: The proposal is to provide 35 feet of screening along all property lines, with the exception of the street frontage and the rear property line at the location of the septic field, unless the septic field can be moved; they will provide the requested transitional yard, but they just cannot leave it undisturbed; they must grade a portion of it and then come back in and plant. Mr. Lawrence said that was correct, but an area of 25 feet from the property line will remain undisturbed and only the 10-foot area will have to be disturbed in order to put the parking lot in.

Mrs. Harris asked where all the attendees of the church would go for their stake meetings. Mr. Lawrence said the stake center is in McLean and it is a large facility. To answer Mrs. Harris's question as to whether it could accommodate all the people at the same time, Mr. Lawrence deferred to the President, J. Edgar Scholz, 1811 Abbey Oak Drive, Vienna, Virginia.

Mr. Lawrence again referred to the Development Conditions, advising that they were still requesting a limit of 1 hour between services instead of 1 hours.

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

Mr. Pammel said there obviously were pros and cons in an application of this nature. The two issues which concerned him were: (1) The "location" of a traffic generator, in this instance the church, despite the fact that the applicant had said they will only occupy 6% of the area of the site and they are permitted to occupy 15%. Traditionally, in this County, churches "locate" on arterial and major highways, with some exceptions; as examples, he named Hunter Mill Road, Chain Bridge Road and Route 7, where churches locate because of accessibility to their congregations. They generally do not locate in areas such as the applicant has chosen because of the potential for traffic problems which would overburden the road system. (2) The other concern he had was the condition of Beulah Road. He said that Beulah Road is a rural road that has not been improved, with extremely poor vertical and horizontal alignment, and anyone using the road would do so at their own risk. Since Beulah Road would be the primary source serving this use, he did not believe the location to be a good one and did not believe that the church had thoroughly looked into the location in terms of accessibility to their site.

For the reasons stated above, Mr. Pammel moved to deny the application. The motion was seconded by Mr. Hammack. A discussion ensued in which some Board members gave reasons why they believed the application should not be denied. Chairman DiGiulian called for a vote, which failed 3-4. Chairman DiGiulian, Mrs. Thonen, Mr. Kelley and Mr. Ribble voted nay.

Mr. Kelley made a motion to grant SP 93-H-017 for the reasons outlined in the Resolution, subject to the "annotated" Proposed Development Conditions dated October 19, 1993, as amended: Condition 5 - the last sentence limiting attendance was deleted.

Mr. Kelley stated that the traffic problems and related other problems could be solved with good faith on all sides. He said he believed that, if it became as dangerous as some thought it might, God would do something about it. He believed that one cure might be appropriate signage; the left-turn lane should be followed through and the applicant should provide it, if they can. Mr. Hunter asked Mr. Kelley if providing a left-turn lane was a condition and Mr. Kelley said it was not.

Mr. Ribble seconded the motion.

Mrs. Harris asked about Conditions 17 and 18, addressing the hours of lighting, and asked Mr. Kelley if he wanted to include that language. Mr. Kelley said he did not have any problem with the language, in view of the remote location of the church. Mrs. Harris said that there appeared to be houses around the property. Mr. Kelley said he did not have a problem with changing the language and the changes are reflected in the Resolution. Mr. Ribble seconded the change.

The vote carried by 4-3. Mrs. Harris, Mr. Pammel and Mr. Hammack voted nay.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-H-017 by CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, under Section 3-103 of the Zoning Ordinance to permit a church and related facilities, on property located at 1645 and 1653 Beulah Rd., Tax Map Reference 28-1((1))11 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 October 19, 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.
3. The area of the lot is approximately 6.01 acres.

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

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

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Greenhorne & O'Mara, Inc., entitled, "Church of Jesus Christ of Latter Day Saints", dated January 7, 1992, revised through July 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. 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 286.

6. Ninety-eight five (98) parking spaces shall be provided as shown on the Special Permit Plat. All parking for this use shall be on site.

7. A maximum of 2 wards shall use this church. The services for two congregations (wards) that will use this site shall be spaced so as to allow a minimum of one hour between services.

8. The maximum hours for the morning seminary classes shall be from 6:00 a.m. to 7:00 a.m.

9. The applicant shall adhere to the limits of clearing and grading and tree preservation designations as noted on the Special Permit Plat. At the time of grading plan review, the applicant shall designate limits of clearing and grading, in addition to those shown on the Special Permit Plat, in areas where it is economically feasible to save individual trees without precluding construction of the project in accordance with the Special Permit Plat. If permitted by the Health Department, pursuant to Development Condition Number 21, the proposed drainfield(s) shall be relocated so that Transitional Screening 2 can be provided along the northern property line. A Final Landscape Plan shall be submitted for review and approval by the County Urban Forester in order to ensure that priority is given to the preservation of existing vegetation at least up to 25 feet, supplemented where possible, for an additional 10 feet to the equivalent of Transitional Screening 2, in substantial conformance with the Conceptual Landscape Plan prepared by Greenhorne & O'Mara, Inc., revised as of June 15, 1993.

   Transitional Screening 2 shall be modified along the subject property's frontage with Beulah Road as shown on the Conceptual Landscape Plan. Additional plantings shall be provided along the abandoned driveway for Lot 11 as determined by the County Urban Forester in order to provide adequate screening along the southeast property line.

10. A barrier shall be provided inside the transitional screening yard along the southern property line adjacent to Lot 10 and along the eastern property line adjacent to Lot 16 in the form of a six foot high, board-on-board fence which shall be field located in order to preserve existing vegetation. The barrier requirement shall be waived along all other property lines.

    The existing specimen hardwood trees which are shown on the Special Permit Plat shall be preserved. Any additional specimen hardwood trees which are located on site shall be preserved as determined by the Urban Forester provided preservation will not preclude development as proposed in the Special Permit Plat and as provided for in Development Condition Number 10 and 14.

11. The floor area ratio (FAR) shall be limited to 0.0614.

12. The maximum building height shall be 35 feet. The steeple height shall not exceed 60 feet. The spire may extend an additional 10 feet for a combined building, steeple and spire height of 70 feet.

13. There shall be no regularly scheduled organized outdoor activity associated with this special permit use. Electronic sound amplification devices shall not be utilized for any outdoor activities.

14. Best Management Practices shall be provided to the satisfaction of the Director, Department of Environmental Management. BMPs may be provided by the dry ponds shown on the plat or by a facility other than dry ponds. If it is determined that only one dry pond is necessary in order to meet the requirements of the Chesapeake Bay Preservation Ordinance, the dry pond located in front of the church building shall not be provided and the limits of clearing and grading shall be modified/extended to preserve all specimen hardwood trees currently within the limits of the previously designated pond area. If the stormwater management ponds shown on the Special Permit Plat are not sufficient to provide BMPs as determined by DEM, no parking spaces, landscaping, or transitional screening may be lost to provide such facilities.

15. A right-turn deceleration lane shall be provided to the satisfaction of the Virginia Department of Transportation (VDOT).

16. Adequate sight distance shall be provided to the satisfaction of the Virginia Department of Transportation (VDOT) at the time of site plan review. If adequate sight distance cannot be obtained, the entrance may be relocated along the frontage of the site in order to obtain adequate sight distance as determined by VDOT.

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

    The combined height of the light standards and fixtures shall not exceed twelve (12) feet. Light standards shall be located on the interior of the site, and shall not be located along the outside edges of the parking lot, nor within the islands of the parking lot.

    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 early morning and evening meetings, and shall be connected to an automatic timing device which shuts off the lights at 10:30 p.m.

18. Any mounted building lights shall focus downward and shall not be lit after 10:30 p.m.

19. The lighted identification sign shall not be lit after 10:30 p.m. and shall conform with Article 12, Signs, of the Zoning Ordinance.

20. The architecture of the proposed structure shall be in substantial conformance with the elevations submitted with this application, provided all requirements of the Zoning Ordinance are met.

21. If the Health Department determines that the size of the drainfield(s) can be decreased, the drainfield(s) shall be reduced and Transitional Screening 2 shall be provided along the northern property line.

22. No satellite dish shall be located on site unless it is screened from view from Beulah Road and surrounding properties.

Page 176, October 19, 1993, (Tape 2), CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS, SP 93-H-017, continued from Page 175)

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. Ribble seconded the motion which carried by a vote of 4-3. Mrs. Harris, Mr. Hammack and Mr. Pammel voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 27, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 176, October 19, 1993, (Tape 2), Action Item:

Approval of Resolution from October 12, 1993 Meeting

Mrs. Thonen so moved. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Page 176, October 19, 1993, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Sam & Elizabeth Brooks, VC 93-V-121

Mrs. Thonen moved to deny this request. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 176, October 19, 1993, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Toll Brothers, Inc., SP 93-Y-057 through SP 93-Y-063

Mrs. Thonen moved to deny this request because she believes the cases will be complicated and to ensure that staff and the Board have sufficient time for preparation. Mrs. Harris seconded the motion, which carried by a vote of 7-0.

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Page 176, October 19, 1993, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Monica A. Cochran, VC 93-Y-064

Mrs. Thonen moved to grant this request because the applicant had already begun to build when an error was discovered in the building location. The scheduled date of the hearing is November 30, 1993 at 9:30 a.m. Mr. Ribble seconded the motion, which carried by a vote of 7-0.

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Page 176, October 19, 1993, (Tape 2), Action Item:

Request for Intent-to-Defer
McDaniel Construction Company Appeal
Scheduled for November 3, 1993 at 11:00 a.m.

Mr. Pammel moved to grant this request. Mr. Hammack seconded the motion, which carried by a vote of 7-0.

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Chairman DiGiulian advised that Jane C. Kelsey, Chief, Special Permit and Variance Branch, had requested a change in time from 10:30 to 10:00 a.m. for 2 appeals scheduled for November 30, 1993, to eliminate a gap in the schedule: James M. Seymour, Appeal A 93-V-021 and William A. Steward, III, Appeal A 93-M-017.

Mrs. Harris so moved. Mrs. Thonen seconded the motion, which carried by a vote of 7-0.

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

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

SUBMITTED: December 14, 1993

APPROVED: December 20, 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 October 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 9:08 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 179, October 26, 1993, (Tape 1), Scheduled case of:

9:00 A.M. FRANK SZMUTKO AND SANDRA L. WEISMAN, VC 93-V-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure (garage) 7.5 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 5637 Old Mill Rd. on approx. 23,018 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-1 ((5)) 1.

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

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located on Old Mill Road northwest of the George Washington Memorial Parkway. It is 23,018 square feet in size, is zoned R-2, and is developed with a single-family detached dwelling. Surrounding lots in the Woodlawn Manor subdivision are also zoned R-2 and developed with single-family detached dwellings. The variance request resulted from the applicants' proposal to construct a 16.4 foot high detached garage 7.5 feet from a side lot line. A minimum side yard of 15 feet is required on a lot zoned R-2; therefore, the applicants were requesting a variance of 7.5 feet from the minimum side yard requirement.

The applicants, Frank Szmutko and Sandra L. Weisman, 5637 Old Mill Road, Alexandria, Virginia, presented the case. Ms. Weisman said although they would like to build a garage addition to give them some privacy and noise control from the park, it is primarily for security since there are no other houses on the street. They were recently burglarized and are particularly vulnerable being the only house on the street and bordering on the park. Ms. Weisman said they were trying to locate the garage at the end of the current driveway in such a manner so as not to change the look of the front of the house.

In response to a question from Mrs. Harris as to why the garage could not be moved over to eliminate the need for a variance, Ms. Weisman said that would put the garage farther into the back yard and would require restructuring the driveway. She said she did not believe the size of the garage could be reduced.

Mr. Hammack asked the reason for the two foot offset shown on the proposed garage. Mr. Szmutko said that would allow storage for their yard tools.

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

Mr. Hammack made a motion to grant VC 93-V-083 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 19, 1993.

Mr. Pammel said the house is located to the eastern side of the lot making it the only logical place for the addition.

Mrs. Thonen disagreed and stated she believed that the garage could be moved over and reduced in size and that it should not be built according to the size of the driveway.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-083 by FRANK SZMUTKO AND SANDRA L. WEISMAN, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure (garage) 7.5 feet from side lot line, on property located at 5637 Old Mill Road, Tax Map Reference 110-1((5))1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 26, 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 23,018 square feet.

4. The applicant has satisfied the nine required standards for the granting of a variance.
5. The variance is sought on the lot line that separates Grismill Park and the subject property, which is the controlling issue.
6. It is true there is some element of convenience in the request, but the granting of the variance will not have any impact on anyone in the neighborhood or result in a change in the zoning.
7. The applicants have an unusual situation because their property backs up to parkland, which does allow easy access for the possibility of vandalism or theft.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 accessory structure (detached garage) shown on the plat prepared by R.A. Schoppet, AIA, dated May 11, 1993, revised August 9, 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 detached garage shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and 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 4-2-1 with Mrs. Harris and Mrs. Thonen voting nay. Mr. Ribble abstained.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1993. This date shall be deemed to be the final approval date of this variance.

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9:10 A.M. NELSON PAGE SMITH, VC 93-V-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.3 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 6219 Arkendale Rd. on approx. 10,453 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (23) 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. Smith replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located at 6219 Arkendale Road south of Route 1 and north and east of Quander Road. It is 10,453 square feet in size, is zoned R-4, and is developed with a single-family detached dwelling. Surrounding lots in the Belle Haven subdivision are also zoned R-4 and developed with single-family detached dwellings. The variance request resulted from the applicant's proposal to construct a one story addition 5.3 feet from a side lot line. A minimum side yard of 10 feet is required on a lot zoned R-4; therefore, the applicant was requesting a variance of 4.7 feet from the minimum side yard requirement.

The applicant, Nelson Page Smith, 6219 Arkendale Road, Alexandria, Virginia, said he planned to enclose the screen porch into a family room and possibly add to the front of the addition for a garage. He said the addition would provide additional living space for his growing family.

Chairman DiGiulian asked if the screen porch was in the location shown as 6.1 feet on the plat and the speaker said that was correct. Mr. Smith added the addition would be no closer to the lot line.

In response to questions from the BZA, Mr. Smith said he had considered adding a garage to the front of the addition but that would probably not occur. He said the materials used on the addition would match those on the house.

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

Mrs. Thonen made a motion to grant VC 93-V-086 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 19, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-086 by NELSON PAGE SMITH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.3 feet from side lot line, on property located at 6219 Arkendale Road, Tax Map Reference 83-3((14))(23)24, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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-4.
3. The area of the lot is 10,453 square feet.
4. There is a hardship because the existing structure was built at the time the Zoning Ordinance requirements were not the same as they are now.
5. The request is for a minimum variance, it is an "add to", and the proposed structure is not going to be any closer to the lot line than the existing structure.
6. The applicant has met the nine required standards for the granting of a variance.
7. The Belle Haven subdivision was built right before and after World War II and 80 to 90 percent of the houses are not in compliance with the current 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 variance plat prepared by R.C. Fields, Jr., Land Surveyor, RC Fields, Jr. & Associates, dated June 17, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 182, October 26, 1993, (Tape 1), Scheduled case of:

9:20 A.M. JOHN K. CUNNIFF, VC 93-Y-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-107). Located at 2906 Bree Hill Rd. on approx. 21,430 sq. ft. of land zoned R-1. Sully District. Tax Map 36-2 ((10)) 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. Mr. Cunniff replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. The 21,430 square foot property is located on Bree Hill Road northeast of the intersection of Fox Mill Road and Stuart Mill Road in the Stuart Mill Woods subdivision. The subject property and the surrounding lots are zoned R-1 and developed with single family detached dwellings. The variance request resulted from the applicant's proposal to construct a screen porch and deck addition to be located 20 feet from a front lot line. A minimum front yard of 30 feet is required by the Ordinance on an R-1 zoned lot. Accordingly, the applicant was requesting a variance of 10 feet to the minimum front yard requirement.

In response to Mr. Hammack's question, Mr. Cunniff said the dwelling on Lot 29 was located approximately 100 yards from the shared lot line.

The applicant, John K. Cunniff, 2906 Bree Hill Road, Oakton, Virginia, said that when he purchased the property last November, he had planned to construct a small porch and deck similar to many others in the neighborhood. He said the variance request would not set a precedent for other applications because the other dwellings are not situated on their lots in the same way as his dwelling. Mr. Cunniff said unfortunately the builder of his lot placed the dwelling on the extreme back portion of the one-half acre lot. He said the addition could not be built anywhere else on the lot since the front portion of the lot has a septic system and there is not sufficient room on either side of the dwelling. There is a dirt road behind his lot that provides access to two houses which are located on five acre heavily wooded lots, neither of which are located directly behind his dwelling. Mr. Cunniff said the Neighborhood Architectural Review Committee has approved the request based upon all appropriate County permits being obtained.

Mr. Ribble said it appeared that the 25 foot outlet road at the rear of the applicant's property acts as a buffer from the abutting lot. Mr. Cunniff said that was correct.

In response to a question from Mrs. Harris, Mr. Cunniff said the house was built approximately 14 years ago.

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

Mr. Pammel made a motion to grant VC 93-Y-080 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-Y-080 by JOHN K. CUNNIFF, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20 feet from front lot line, on property located at 2906 Bree Hill Road, Tax Map Reference 36-2((10))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 October 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 21,430 square feet.
4. The applicant has presented testimony that he meets the criteria established by the BZA and the Zoning Ordinance under which a variance can be granted, specifically the location of the structure on the rear most portion of the lot.
5. There is no other place to locate the proposed 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 screen porch and deck addition shown on the plat prepared by Rice Associates, P.C., dated November 14, 1992, Revised through June 24, 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 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 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 184, October 26, 1993, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL G. & ELIZABETH A. WILLIAMS, VC 93-V-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.6 ft. from rear lot line (20 ft. min. rear yard req. by Sect. 3-807). Located at 7723 Durer Ct. on approx. 1,540 sq. ft. of land zoned PDH-3. Mt. Vernon District. Tax Map 98-4 ((6)) 440.

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. Williams replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. The 1,540 square foot property is located on Durer Court northwest of the intersection of Rolling Road and Alban Road in the Newington Station subdivision. The subject property and surrounding lots are zoned PDH-3 and developed with single family attached dwellings. The variance request resulted from the applicants' proposal to construct a kitchen addition to be located 16.6 feet from the rear lot line. These townhouses are developed under the PDH-3 regulations but are most similar to the R-8 Zoning District which requires a minimum rear yard of 20 feet. Accordingly, the applicants were requesting a variance of 3.4 feet to the minimum rear yard requirement.

Mrs. Harris and staff discussed the bay window extension shown on the plat and how it was scaled. Ms. Langdon said it was her understanding from the architecturals that the bay window would be included. She said she had gone by the dimensions shown on the plat.

The applicants, Michael G. and Elizabeth A. Williams, 7723 Durer Court, Springfield, Virginia, said they were essentially trying to extend their kitchen 8.5 feet to allow them more living space. He said the way the townhouses are built, their unit is recessed outward and extends beyond their neighbors' townhouses. He noted their neighbors could extend their kitchens without a variance and added that the Newington Homeowners Association has approved their request.

In response to a question from Mrs. Harris, Mr. Williams said the kitchen would be 8.5 feet deep and 11.5 feet wide.

The BZA and the applicants discussed the offset shown on the plat. Mrs. Williams said their unit extends 3.5 feet beyond their neighbors.

Ms. Langdon responded to Mrs. Harris' earlier question regarding the bay window by stating that a bay window can extend 3 feet into any required yard as long as it is not wider than 10 feet.

Chairman DiGiulian called for speakers in support of the request.

Jim Maglione, 7719 Durer Court, Springfield, Virginia, supported the applicants' request because he believed it would encourage the existing residents to stay in the community and help increase property values.

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

Mrs. Harris made a motion to grant VC 93-V-081 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 19, 1993.

Mrs. Thonen said she would support the motion but added that she would be very unhappy if either of the applicants' neighbors came in requesting a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-081 by MICHAEL G. AND ELIZABETH A. WILLIAMS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.6 feet from rear lot line, on property located at 7723 Durer Court, Tax Map Reference 98-4((6))440, 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 26, 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-3.
3. The area of the lot is 1,540 square feet.
4. The property was acquired in good faith.
5. The applicants' house has unusual characteristics as it is set back further on the lot than others in the neighborhood.
6. The strict application of the Ordinance would produce a hardship in that other homeowners in the area would enjoy the ability to locate a similar addition in their yard without a variance.
7. 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 R. C. Fields, Jr. and Associates, dated April 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 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 November 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 186, October 26, 1993, (Tape 1), Scheduled case of:

9:40 A.M. LARRY L. & PAULETTE T. CAMPBELL, VC 93-D-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into five lots, proposed lots 4 & 5 having lot widths of 6 ft. each (200 ft. min. lot width req. by Sect. 3-E06). Located at 9109 Jeffery Rd. on approx. 10.27 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((1)) 36, 37 and 39.

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. Campbell replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. The property consists of 10.27 acres and is located at 9109 Jeffery Road east of the intersection of River Bend Road and Jeffery Road. The applicant was requesting a variance to the minimum lot width requirement to allow subdivision of three lots into five lots, with proposed Lots 4 and 5 having lot widths of 6 feet each. The Zoning Ordinance requires a minimum lot width of 200 feet in the R-E Zoning District. The applicants were therefore requesting a variance of 194 feet to the minimum lot width requirement for Lots 4 and 5.

The property is currently developed with a single family detached dwelling and is part of a residential area which is zoned R-E and planned for residential use at .1-.2 dwelling units per acre, or 5 to 10 acre lots, although the area is now zoned for lots not less than 2 acres in size. The immediate area is characterized by single family detached dwellings on lots which range in size from 0.5 to 5.1 acres.

It was staff's belief that seven (7) of the nine (9) Required Standards for Variances had not been met as outlined in the staff report and that the plan was not in harmony with the Comprehensive Plan. Additionally, Subdivision Plan 8154-SD-1 had been recommended for approval by the Department of Environmental Management which allows subdivision of the three lots into four lots by-right with a cul-de-sac from Jeffery Road.

Larry L. Campbell, 9109 Jeffery Road, Great Falls, Virginia, submitted to the BZA five letters in support of the request. He said four years ago they began to go through a subdivision process hoping to divide the lot into five lots which would bring a road in from Weant Drive. Because of objections from the neighbors, they decided to back down on that effort and then went forward with a subdivision of four lots. The result of that effort was the subdivision plan which has been recommended for approval by the Department of Environmental Management. Mr. Campbell said they are at the point in the subdivision process that they need to go forward with bonding and construction of a road, and in order for the

road to go into the Virginia Department of Transportation system a house has to be built. He said they have lived on the property for 15 years and they would like to divide the property and leave it undeveloped for an undetermined period of time and possibly pass the lots onto their children. The subdivision effectively forces them to proceed now, which they believe is the main hardship. Following discussions with the neighbors, Mr. Campbell said they had concluded that a pipestem would be much less disruptive to the community as opposed to a public road. (He used the viewgraph to show the size of the adjoining properties.) Mr. Campbell read a letter into the record from an adjoining neighbor who noted problems that were generated by another development in the neighborhood. In closing, he said they would like to defer developing the land at this point in time and added that if the variance were to be approved, he believed the development would be more in harmony with the neighborhood.

Chairman DiGiulian asked why the applicant was requesting a subdivision into five lots when they had already received approval of four lots. Mr. Campbell said with the public road there was only room for four lots, but with the cul-de-sac there is room for five lots.

Mrs. Harris asked why a cul-de-sac could not be constructed at the end of Waring Drive, which is a dedicated road, and have access to three lots off of Jeffrey Road, thereby eliminating the need for the variance. Mr. Campbell said that was very close to their original plan which raised the neighbors objections and they decided not to proceed with the plan. Mrs. Harris said there were other ways the property could be developed without a variance.

Mrs. Thonen said it had been proven that the property could be developed without a variance since the applicant had already obtained subdivision approval. She said she could not support the variance request.

Chairman DiGiulian called for speakers in support of the request.

Randy Atkins, 9108 Weant Drive, Great Falls, Virginia, agreed with the applicants' request as he believed the proposal would preserve the overall quality of development in the Great Falls area, particularly on Weant Drive. He pointed out that Waring Drive does not exist and that he believed if it were developed, it would have a devastating affect on the property owners on Weant Drive and would be inconsistent with the quality of the environment that currently exists.

There were no further speakers in support of the request and Chairman DiGiulian called for speakers in opposition to the request.

Richard Peters, President of the Great Falls Citizens Association, made a presentation on behalf of the Association in support of the application. (A copy is contained in the file.)

Ernest May, III, 9122 Weant Drive, Great Falls, Virginia, owner of Lot 23, said he was really neutral but did have two strong concerns, one of which was the recommendation of opening Waring Drive. His second concern dealt with the stormwater runoff which might possibly be generated by the development of the subject property. Mr. May also favored the applicant developing the site into four lots rather than five.

John Colby, 731 B Walker Road, Great Falls, Virginia, Chairman of the Planning and Zoning Committee of the Great Falls Citizens Association, said the Executive Committee voted unanimously to oppose the variance request following a meeting with the applicants. He agreed with the staff report and said if the site is developed into five lots as opposed to the approved four lots, it would create a hardship on the community and would set an undesirable precedent. Mr. Colby said the Association would support a pipestem for a four lot subdivision effectively combining proposed Lots 4 and 5 into one 1.75 acre lot served by one pipestem.

Mr. Pammel pointed out that the applicant could develop the site into five lots without a variance or any other approvals, other than the submission of a a subdivision plan showing access into the site off Waring Drive. Mr. Colby said he did not believe that would be economically viable.

Charles Kenney, 9116 Weant Drive, Great Falls, Virginia, agreed with the other speakers comments and said he was also opposed to Waring Drive being constructed.

Eric Gilchrist, 9130 Weant Drive, Great Falls, Virginia, was opposed to the removal of tree coverage on the property to the rear of his lot and also objected to the construction of Waring Drive.

In rebuttal, Mr. Campbell said their engineer had indicated that technically Waring Drive could be completed, but based on the neighbors objections, they had revised their plan. He said he was willing to reduce the variance request to four lots to bring the request in line with the support of the Great Falls Citizens Association.

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

Mr. Ribble said he would recommend deferring the case to allow the applicants an opportunity to amend their application and submit revised plats. Mrs. Harris agreed with a deferral since the revisions might prompt the citizens to change their comments.

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Marilyn Anderson, Assistant Branch Chief, suggested December 7, 1993, at 9:00 a.m. Mr. Ribble so moved. Mrs. Harris seconded.

Mr. Campbell agreed to a short deferral but noted there were pending expiration dates on the subdivision plan and they needed to proceed one way or the other within a reasonable amount of time.

The applicants' engineer, Bob Almirall, with Coldwell, Sikes & Almirall, Inc., said there was a waiver on the stormwater management due to expire in December, but perhaps it could be extended. He was concerned that the Department of Environmental Management might not grant an extension. Chairman DiGiulian said if the BZA took action on December 7th that would give the applicants sufficient time to work with the County.

Mrs. Harris noted that it was the applicants' choice to change their application and staff had to have time to review the revisions and that December 7th was a reasonable length of time.

The motion passed by a vote of 5-2 with Mr. Hammack and Mr. Pammel voting nay.

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The BZA recessed at 10:15 a.m. and reconvened at 10:35 a.m.

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Mr. Ribble welcomed Mrs. Harris' parents, Dick and Mary Martini from Michigan, to the meeting.

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Page 188, October 26, 1993, (Tape 1), Scheduled case of:

9:50 A.M. DUNG THI YOUNG, SPA 92-L-004 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 92-L-004 for billiard parlor to permit expansion. Located at 7064 Spring Garden Dr. on approx. 11.8 ac. of land zoned C-6, HC and SC. Lee District. Tax Map 90-2 ((1)) 17 and 90-2 ((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, Mr. Smith, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The 3,164 square foot Billiard Hall is located within the 11.8 acres of the Brookfield Shopping Center at 7064 Spring Garden Drive, at the intersection of Backlick Road and Spring Garden Drive in Lee District. The shopping center is surrounded by the following uses: Apartments to the west behind the shopping center; Single family detached homes to the north and south; and, Commercial Retail to the east. The property is zoned C-6 and is within the Highway Corridor Overlay District and the Sign Control Overlay District.

The applicant was requesting to amend SP 92-L-004 to permit a 1,000 square foot expansion. Four additional pool tables will be placed in the expanded area, and the number of patrons will increase from 30 to 45. No other changes were proposed. The hours of operation of the Billiard Hall are 11:00 a.m. to 11:00 p.m., Sunday night through Thursday night, and 11:00 a.m. to 1:00 a.m. Friday and Saturday nights.

It was staff's opinion that the application complied with the applicable Zoning Ordinance provisions and was in harmony with the Comprehensive Plan. Therefore, staff recommended approval subject to the revised proposed development conditions dated October 26, 1993.

The applicant's agent, Donald Smith, 5618 Wharton Lane, Centreville, Virginia, said the applicant was requesting an expansion of the square footage which would allow the use to expand into the adjoining building and add four pool tables. He said the hours will not change, the estimated number of patrons will be 14 per hour with a maximum number on site at any one time of 45, and the proposed number of employees is three. Mr. Smith said the site plan has been revised to show there is adequate parking to accommodate the requested expansion. He said many of the patrons are walk in and the maximum trip generation, which is early to mid evening, will be four to six cars per hour. Mr. Smith said there will be no sale of alcoholic beverages on site and noted that if the applicant chooses to apply for an ABC License, she must come back to the BZA for approval. He said he has met with the Springvale Citizens Association and the Lee District Land Use Committee and the Committee recommended approval of the request. The Zoning Inspector has indicated there have been no violations or complaints filed against the use.

In response to a question from Mr. Kelley, Mr. Smith said there have been no complaints whatsoever filed with the Office of Zoning Enforcement.

Mr. Hammack asked if the speaker had received a copy of the letter from the Ben Franklin Homeowners Association which noted that the applicant was not in compliance with the existing special permit. Mr. Smith said he had not seen the letter. (He was provided a copy of the letter.)

The BZA discussed with Mr. Smith the ages of the patrons. The applicant, Dung Thai Young, came forward and said the patrons were usually 15 or 16 years of age and that they came either after school or on weekends.

There were no speakers in support of the request and Chairman DiGiulian called for speakers in opposition.

Virginia McEnearney, 7418 Calamo Street, Springfield, Virginia, said during the process of the original special permit the members of the community had been led to believe that the facility would be primarily for the young people of the community. She said the people in the community did not frequent the facility and added that an expansion of a billiard parlor is not the direction that the neighbors would like to see the community go.

Mrs. Thonen discussed with the speaker the type of conditions that the BZA might impose on the use. She added that the BZA could not change the existing conditions, but could if it were to grant the applicant's request for the expansion. The speaker was opposed to the expansion. Mr. Kelley asked why the speaker would object to the expansion. Ms. McEnearney said they would like to see more substantial commercial uses come into the neighborhood shopping center.

In response to questions from Mr. Hammack about who used the facility, Ms. McEnearney said adult males used the facility and said she was not aware of any problems.

Mrs. Thonen said it was her understanding that the former district police captain was concerned about activities occurring on site.

Mr. Pammel welcomed Ms. McEnearney, a former member of the Board of Supervisors, to the meeting.

Bob Gray, 6613 Ridgeway Drive, Springfield, Virginia, said he and other members of the community had visited the site and that it did not appear that youths went to the facility. He opposed the expansion and expressed concern with the type of element that could be attracted to the facility and the possibility that the applicant might obtain an ABC License.

Mr. Kelley asked the speaker to expand upon his concerns since there have been no complaints filed. Mr. Gray said the neighbors just had an uneasy feeling about the use and could not support the expansion. Mr. Hammack said the use has been in existence for a year and a half. Mrs. Thonen said the police are concerned with the whole shopping center, not just the pool hall.

Mr. Smith said he had informed the applicant that she would be in violation of the special permit if she applied for an ABC License.

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

Mrs. Thonen made a motion to defer the public hearing in order to allow staff to contact the police department to determine if there are any problems that the BZA needs to be aware of before acting on the request.

Mr. Kelley called Mr. Gray back to the podium to elaborate on his discussion with the police department. Mr. Gray said he had talked to Captain Ellis who had stated that he could find no documentation of any problems relating to the special permit use.

Mr. Hunter said staff had talked to the police department and agreed with Mr. Grey's interpretation. In response to Chairman DiGiulian's request, Mr. Hunter stated that he believed staff could obtain the police department's comments in writing.

Mrs. Harris seconded the motion because she believed the concerns need to be addressed.

In response to a question from the BZA with regard to any outstanding contracts, Mr. Smith said he did not believe a short deferral would present a problem.

Mr. Hammack said he could not support the motion because there had been no testimony showing the applicant was not complying with the existing special permit.

Mr. Kelley said he would support a two week deferral.

Ms. Anderson suggested November 9, 1993, at 9:30 a.m.

Chairman DiGiulian said the BZA would defer the application in order to receive a written report from the police department and would accept only written testimony from citizens.

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

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10:00 A.M. LUCK STONE ANNUAL REPORT

The applicant's attorney, Roy Spence, came forward and agreed with the report prepared by Susan Langdon, Staff Coordinator, which indicated that Luck Stone was in compliance with all conditions.

Mr. Kelley made a motion to accept the Annual Report as submitted. Mr. Ribble seconded the motion. The motion passed by a vote of 7-0.

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Page 190, October 26, 1993, (Tape 1), Scheduled case of:

10:10 A.M. DONALD P. MULVEY, VC 93-P-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.2 ft. from side lot line and 20.2 ft. from rear lot line (12 ft. min. side yard req. and 25 ft. min. rear yard req. by Sect. 3-307). Located at 8335 Carnegie Dr. on approx. 10,583 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (J) 29.

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

Don Heine, Staff Coordinator, presented the staff report. The 10,583 square foot property is located on the south side of Carnegie Drive within the Dunn Loring Woods Estates Subdivision and is surrounded on four sides by single family detached dwellings in the R-3 District. I-66 is approximately 300 feet south of the property. The applicant was requesting a variance to allow an attached carport to be enclosed into a garage addition, located 10.2 feet from a side lot line and 20.2 feet from the rear lot line. The Zoning Ordinance requires a 12 foot minimum side yard and a 25 foot minimum rear yard; therefore, a variance was requested for 1.8 feet from the side yard requirement and 4.8 feet from the rear yard requirement.

The applicant's son, David Mulvey, 12109 Salemtown Drive, Woodbridge, Virginia, said a variance of 1.2 feet is only needed for one end of the carport.

In response to a question from Chairman DiGiulian, Mr. Mulvey said his father was proposing only to enclose the existing carport.

Mr. Mulvey said his father acquired the property in good faith in 1964 and the carport was added in 1972. He pointed out the lot is too shallow and narrow to construct a garage without a variance, other variances have been granted in the neighborhood, and the granting of the variance would not impact the neighbors.

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

Mr. Kelley made a motion to grant VC 93-P-082 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-P-082 by DONALD P. MULVEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.2 feet from side lot line and 20.2 feet from rear lot line, on property located at 8335 Carnegie Drive, Tax Map Reference 49-1((9))(J)29, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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 10,583 square feet.
4. The applicant has met the nine required standards for the granting of variance.
5. The request is to allow enclosure of an existing carport which, by the photographs, does not look much different when looking from the side of the property.
6. The structure is very attractive.
7. If the house had been located differently on the lot, a variance would not have been required.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 April 14, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 191, October 26, 1993, (Tape 1), Scheduled case of:

10:20 A.M. JAMES A. & SHARON B. KELLEY, VC 93-V-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit six ft. high fence to remain in front yard of a corner lot (4 ft. max. hgt. allowed by Sect. 10-104). Located at 1905 Belle Haven Rd. on approx. 17,837 sq. ft. of land zoned R-4. Mt. 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. Mr. Kelley replied that it was.

Don Heine, Staff Coordinator, presented the staff report. The 17,837 square foot property is located on the western corner of the intersection of Belle Haven and Windsor Roads within the Belle Haven Subdivision and is surrounded on four sides by single family detached dwellings in the R-4 District. Fort Hunt Road is approximately 300 feet east of the property. The applicants were requesting a variance to allow a 6.0 foot high fence to remain in a front yard. Portions of the fence are to be reduced in height from 6.0 feet to 4.0 feet, with

fence posts at a height of 4 feet, 6.5 inches as shown on the variance plat. Lots to the west of the subject property are at a substantially higher elevation. The Zoning Ordinance allows fences in a front yard to be a maximum of 4.0 feet in height; therefore, a variance was requested for 2.0 feet.

The applicant, James A. Kelley, 1905 Belle Haven Road, Alexandria, Virginia, said he planned to lower the two perpendicular sections of the fence that run off Windsor Road to 4.0 feet. He asked that he be allowed to retain the eight fence posts at a height of 4 feet 6.5 inches in order to give stability and a little better appearance. Mr. Kelley asked that the fence located behind the hedge and parallel to Windsor Drive be allowed to remain 6 feet high. He pointed out their lot is the only one in this section of Belle Haven that has both a side and rear yard, albeit it two front yards under the Zoning Ordinance, that is exposed in a downward slope from Windsor Road. Mr. Kelley said Windsor Road is a heavily traveled road with an unusual configuration. He said the County has declined to install speed bumps nor would it designate Windsor Road as a thoroughfare. Mr. Kelley said if the fence is removed from the rear of the lot, they cannot use the back portion of their lot. He said he has lowered the fence based on their next door neighbors' objections during the previous public hearing and noted that the other neighbors have signed a petition in support of the request. (He submitted photographs to the BZA showing other 6 foot high fences on corner lots in the neighborhood.)

In response to questions from Mrs. Harris, Mr. Kelley said he did not believe that the hedge, without the 6 foot high fence, was adequate to prevent debris from being thrown onto his property from cars driving past on Windsor Drive. He said the fence would also protect his child while he is playing in the rear yard with his friends.

Mr. Kelley noted for the record that he was not a relative to the applicant. He agreed there is a tremendous amount of traffic traveling Windsor Road and added that he believed the applicant had made a very good effort to compromise. Mr. Kelley said Windsor Road resembles a roller coaster and pointed out that cars do travel at high speeds.

Mrs. Harris asked how long the applicant had lived on the property and he said three years.

A discussion between the BZA and the applicant as to why the entire fence could not be lowered rather than lowering only portions of the fence.

Chairman DiGiulian called for speakers in support of the request.

Jean Lindsey, 1907 Belle Haven Road, Alexandria, Virginia, spoke in support of the fence and said 1905 Belle Haven Road was at one time the rear portion of her yard. She said that the applicants' yard is bombarded by debris from passing cars and agreed that the fence is needed for safety of the applicants' child.

Mrs. Harris and the speaker discussed how the applicants' situation differed from all other properties along Windsor Road.

There were no speakers in opposition to the request.

Mr. Kelley pointed out that his property was the only one that had both the back and side yards exposed to Windsor Road. A discussion took place between Mrs. Harris and the speaker about the uniqueness of the property.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny VC 93-V-078 for the reasons noted in the Resolution.

Mrs. Harris commended the applicants for attempting to satisfy the neighbors, but noted that the BZA had to satisfy the Zoning Ordinance requirements. She said there seemed to be other lots in the neighborhood that have similar double lot configurations. Mrs. Harris agreed there is a traffic problem and although she is sympathetic to the applicants' situation, she could not support the request.

Mr. Pammel said he could not support the motion because he believed the applicants had proven there is a topographical consideration that does effectively deprive them from using a portion of their rear yard.

Mr. Kelley said he was not present during the previous public hearing, but it appeared that the applicants were encouraged by the BZA to file a new application. He believed that the application should be granted.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-078 by JAMES A. AND SHARON B. KELLEY, under Section 18-401 of the Zoning Ordinance to permit six foot high fence to remain in front yard of a corner lot, on property located at 1905 Belle Haven Road, Tax Map Reference 83-3((14))(13)1, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 26, 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. The applicants did not present any testimony that was different than the BZA heard in January 1993.
5. The same conditions exist.
6. The application is slightly different, but not one that satisfies the hardship requirements.
7. There are other properties in the neighborhood with similar double 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**.

Mrs. Harris seconded the motion which carried by a vote of 4-3 with Chairman DiGiulian, Mr. Kelley, and Mr. Pammel voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1993.

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Page 193, October 26, 1993, (Tape 1), Scheduled case of:

10:30 A.M. JAMES A. & 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. 17,837 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((14)) (13) 1.

William Shoup, Deputy Zoning Administrator, said the appeal relates to the fence that was the subject of the previous variance application and believed the facts were clear in this case. He said the subject property is a corner lot which has two front yards by Zoning Ordinance definition. Mr. Shoup said a 6 foot high fence was erected in a portion of the property which is the front yard along Windsor Road. He said it was staff's position that the fence constitutes a violation of Paragraph 3B of Section 10-104 of the Zoning Ordinance, which limits the fence height in a front yard to 4 feet. Mr. Shoup said there is some discussion in the staff report regarding the appellants' contingency that Windsor Road should be considered a major thoroughfare and therefore they should be afforded the ability to have a fence higher than 4 feet in that front yard. It was staff's position that Windsor Road is not a major thoroughfare, but actually serves as a collector street as defined in the Zoning Ordinance. Mr. Shoup added that if Windsor Road was considered as a major thoroughfare, staff did not believe that the situation would satisfy all the criteria to allow the fence to exceed the 4 foot height limit.

The appellant, James A. Kelley, 1905 Belle Haven Road, Alexandria, Virginia, said since he planned to appeal the variance denial to the Circuit Court he believed the appeal was moot. He stated he believed the BZA and the County have willfully ignored the situation on Windsor Road and that he considered continuing with the appeal a waste of time.

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

Mrs. Thonen made a motion to uphold the Zoning Administrator in A 93-V-005. Mrs. Harris seconded the motion which passed by a vote of 6-1 with Mr. Kelley voting nay.

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Page 194, October 26, 1993, (Tape 1), Scheduled case of:

10:30 A.M. LYNNWOOD S. FITZGERALD, VC 93-L-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 32.0 ft. from street line of a corner lot (35 ft. min. front yard req. by Sect. 3-207). Located at 5951 Franconia Rd. on approx. 19,805 sq. ft. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4 ((1)) 13 and 81-4 ((2)) 39 and 40. (Concurrent with SP 93-L-045). (OUT OF TURN HEARING GRANTED)

10:30 A.M. LYNNWOOD S. FITZGERALD, SP 93-L-045 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 dwelling to remain 26.8 ft. from street line of a corner lot (35 ft. min. front yard req. by Sect. 3-207) and accessory structure to remain 10.4 ft. and 9.7 ft. from side lot line (20 ft. and 15 ft. min. side yard req. by Sect(s). 3-107 and 3-207) and 10.4 ft. from rear lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 5951 Franconia Rd. on approx. 19,805 sq. ft. of land zoned R-1, R-2 and HC. Lee District. Tax Map 81-4 ((1)) 13 and 81-4 ((2)) 39 and 40. (Concurrent with VC 93-L-101). (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. The applicant's agent, John McBride, with the law firm of Hazel & Thomas, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. The 19,805 square foot subject property is a corner lot located at the intersection of Franconia Road and Em Street within the Kathmoor Subdivision. The subject property is developed with a single family detached dwelling and a garage. The dwelling and approximately 16.5% of the garage are in the R-2 District while the remaining portion of the garage is in the R-1 District. The lots to the east and west are also zoned R-1 and R-2 and are developed with single family detached dwellings. The area on the north side of Franconia Road is zoned R-3 and R-8 and developed with St. Johns Lutheran Church and townhouses. The lots to the south of the property are zoned R-1 and developed with single family detached dwellings.

The applicant was requesting approval of a concurrent special permit and variance application. The request for a special permit resulted from two errors in building locations. The first error in building location was to allow an existing dwelling in the R-2 District to remain 26.8 feet from a front lot line. In the R-2 District, the Zoning Ordinance requires a minimum 35 foot front yard; therefore, an error in building location for 8.2 feet was requested. The second error in building location was to allow an existing garage to remain 10.4 feet from a rear lot line and 10.4 and 9.7 feet from the side lot line. The portions of the garage that are 10.4 feet from the side and rear lot lines are in the R-1 District which requires a 20 foot minimum side yard; therefore, an error in building location for 9.6 feet was required. The portion of the garage that is 9.7 feet from the side lot line is in the R-2 District which requires a minimum side yard of 15 feet; therefore, an error in building location was requested for 5.3 feet.

The variance request was to permit construction of an addition for a kitchen to be located 32.0 feet from a front lot line. The Zoning Ordinance requires a 35 foot minimum front yard; therefore, a variance was requested for 3.0 feet.

Mr. McBride said the applicant purchased the property in 1979 and noted that the house was constructed in 1947 by the applicant's parents under a building permit and the applicant added the garage in 1979, also under a building permit. He said the applicant would now like to make the house handicapped accessible due to Mrs. Fitzgerald's being confined to a wheelchair because of cancer. Due to the small size of the laundry room and the kitchen, Mrs. Fitzgerald can no longer use these rooms because of her wheelchair. Mr. McBride said the applicant planned to add a 16 x 16 foot kitchen to the rear of the property and to convert the existing kitchen into the laundry room. He said this would result in a 42 inch hall way that goes straight from the bedroom to the existing kitchen and will align with the new addition and provide a straight access to the proposed kitchen. Mr. McBride said the remodeling cannot be accommodated without encroaching into the minimum front yard and still use the exterior door. He added that the side of the lot is at an angle less than 90 degrees to Franconia Road and the house is situated parallel to Franconia Road, which creates a skewing where any addition to the rear of the house would come closer to the street. Mr. McBride addressed each of the required standards for the granting of a variance. He said although a building permit was obtained for the house in 1947, the house was constructed in the wrong location; therefore, the applicant needed a special permit for a building in error.

A discussion took place between the BZA and the applicant's agent with respect to the original error. Mr. McBride said the applicant's father constructed the house and noted that the original plat showed the lot as a rectangle, but it is not.

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

Mr. Pammel made a motion to grant VC 93-L-101 subject to the Development Conditions contained in the staff report dated October 19, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-101 by LYNNWOOD S. FITZGERALD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 32.0 feet from street line of a corner lot, on property located at 5951 Franconia Road, Tax Map Reference 81-4((1))13 and 81-4((2))39 and 40, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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, R-2, and HC.
3. The area of the lot is 19,805 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 addition shown on the plat prepared by Alexandria Surveys, Inc., dated July 15, 1993, revised September 10, 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 variance 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 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. 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 3, 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 SP 93-L-045 subject to the Development Conditions contained in the staff report dated October 19, 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-045 by LYNNWOOD S. FITZGERALD, 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 26.8 feet from street line of a corner lot and accessory structure to remain 10.4 feet and 9.7 feet from side lot line and 10.4 feet from rear lot line, on property located at 5951 Franconia Road, Tax Map Reference 81-4((1))13 and 81-4((2))39 and 40, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 26, 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 locations and the specified dwelling and detached garage 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 use(s) indicated on the special permit plat, entitled Variance Plat, prepared by Alexandria Surveys, Inc., dated July 15, 1993, revised September 10, 1993, submitted with this application, as qualified by these development conditions.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. 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 6-0. 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 3, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 197, October 26, 1993, (Tape 1), Action Item:

Request for Reconsideration
Jesus Christ of Latter Day Saints, SP 93-H-017

Mr. Kelley made a motion to deny the request for reconsideration. Mrs. Thonen seconded the motion which passed by a vote of 5-1 with Mr. Pammel voting nay. Mr. Hammack was not present for the vote.

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Page 197, October 26, 1993, (Tape 1), Action Item:

Approval of Resolutions from October 19, 1993

Mrs. Thonen so moved. The motion passed by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 198, October 26, 1993, (Tape 1), ACTION ITEM:

Request for date and time for Ebrahim A. Babazadeh Appeal

Mr. Ribble made a motion to accept the appeal as being timely filed and scheduled the public hearing for January 4, 1994, at 10:30 a.m. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 198, October 26, 1993, (Tape 1), Action Item:

Request for date and time for George L. Lane Appeal

Mr. Ribble made a motion to accept the appeal as being timely filed and scheduled the public hearing for January 11, 1994, at 10:30 a.m. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 198, October 26, 1993, (Tape 1), Action Item:

Approval of Minutes from September 21, 1993

Mrs. Thonen made a motion to accept the Minutes as submitted. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 198, October 26, 1993, (Tape 1), Action Item:

Request for Out of Turn Hearing for Edward C. Robinson, VC 93-L-102

Mrs. Harris made a motion to deny the applicant's request. Mr. Ribble seconded the motion which passed by a vote of 6-0. Mr. Hammack was not present for the vote.

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Page 198, October 26, 1993, (Tape 1), Action Item:

Request to do Intent to Defer
McLean Children's Academy, SPR 82-D-083-2

(This case was previously deferred from September 21, 1993 to November 3, 1993 to allow the applicant to obtain a shared parking agreement. This agreement has not yet been received by staff and the applicant was requesting a deferral.)

Marilyn Anderson, Assistant Branch Chief, suggested a deferral date of January 11, 1994, at 9:30 a.m. Mrs. Thonen made a motion to issue an intent to defer to the date and time suggested by staff. Mrs. Harris seconded the motion which passed by a vote of 6-0. Mr. Hammack was not present for the vote.

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Mr. Kelley said he had voted earlier in the public hearing against upholding the Zoning Administrator in the James A. and Sharon B. Kelley Appeal, A 93-V-005, and would like to enter his reason into the record. He said he believed Windsor Road should be a major thoroughfare from his personal observations and that he did not know the difference between a thoroughfare and a collector street.

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Mrs. Harris said she would like to make a comment regarding the request for reconsideration relating to the Jesus Christ of Latter Day Saints, SP 93-H-017. She said she was on record at the public hearing as being opposed to having a church built on the site, but she did not believe the letter submitted by the neighbors addressed any information that was not discussed at the public hearing. Therefore, she could not support the request for a reconsideration of the BZA's action to grant SP 93-H-017.

Chairman DiGiulian said he believed the neighbors simply did not like the BZA's action.

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As there was no other business to come before the Board, the meeting was adjourned at 12:14 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 30, 1993

APPROVED: December 7, 1993

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 3, 1993. The following Board Members were present: Vice Chairman John Ribble; Mary Thonen; Robert Kelley; and James Pammel. Chairman John DiGiulian; Martha Harris; and Paul Hammack were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:02 a.m. and Mrs. Thonen gave the invocation.

Vice Chairman Ribble stated that Chairman DiGiulian's wife was ill and extended the Board of Zoning Appeals wishes for a speedy recovery.

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Page 199, November 3, 1993, (Tape 1), Scheduled case of:

9:00 A.M. BERRYMAN & HELEN S. DAVIS, VC 93-D-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.3 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-407). Located at 6711 Haycock Rd. on approx. 9,030 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-4 ((20)) 7.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Weeks 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 screened porch 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 to the minimum rear yard requirement.

The applicants' agent, Scott L. Weeks, with REAMCO Inc., dba Patio Enclosures, Inc., 6826 Hill Park Drive, Lorton, Virginia, addressed the BZA. He stated that the location of the house on the lot, as well as the excessive shallowness of the rear yard, had caused the need for the variance. Mr. Weeks explained that because of medical problems the applicants cannot use the existing patio.

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

Mr. Pammel made a motion to grant VC 93-D-087 for the reasons reflected in the resolution and subject to the development conditions contained in the staff report dated October 26, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-087 by BERRYMAN AND HELEN S. DAVIS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.3 feet from rear lot line, on property located at 6711 Haycock Road, Tax Map Reference 40-4((20))7, 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 3, 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 9,030 square feet.
4. The application has satisfied the necessary standards for the granting of a variance; specifically, the unusual location of the residence on the property which has caused the need for the variance.
6. The structure is located in one corner towards the rear of the property which prohibits construction of a screened porch without a variance.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated June 28, 1993, revised through July 14, 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 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 200, November 3, 1993, (Tape 1), Scheduled case of:

9:00 A.M. JOHN E. STAIT, VC 93-P-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.3 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-407). Located at 2843 Woodlawn Ave. on approx. 6,324 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((3)) 115. (Concurrent with SP 93-P-034).

9:00 A.M. JOHN E. STAIT, SP 93-P-034 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 8.8 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 2843 Woodlawn Ave. on approx. 6,324 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((3)) 115. (Concurrent with VC 93-P-088).

Vice Chairman Ribble stated that the notices were not in order and asked for a deferral date. Marilyn Anderson, Senior Staff Coordinator, suggested December 14, 1993.

Mrs. Thonen made a motion to defer the cases to the suggested date. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian; Mrs. Harris; and Mr. Pammel absent from the meeting.

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9:00 A.M. FAIRFAX COUNTY WATER AUTHORITY, SP 93-D-035 Appl. under Sect(s). 8-915 of the Zoning Ordinance to permit a waiver of the dustless surface requirement. Located at 12015 John Donnelly St. on approx. 108.4 ac. of land zoned R-2. Dranesville District. Tax Map 11-1 ((1)) 1 and 3.

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. Mr. Etris replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit to allow a gravel covered 1.84 acre storage yard and a 1.63 acre temporary parking lot to remain in the northwest portion of the property. Mr. Heine said staff believed the proposed use conforms with the previously accepted proffers and conditions imposed by the Board of Supervisors, would be in harmony with the recommendations of the Comprehensive Plan, and would satisfy the required standards. Therefore, staff recommended approval subject to the development conditions contained in the staff report dated October 26, 1993.

The applicant's agent, Robert Etris, 8560 Arlington Boulevard, Fairfax, Virginia, said the staff report was complete and accurate.

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

Mrs. Thonen made a motion to grant SP 93-D-035 for the reason reflected in the Resolution and subject to the development conditions contained in the staff report dated October 26, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-035 by FAIRFAX COUNTY WATER AUTHORITY, under Section 8-915 of the Zoning Ordinance to permit a waiver of the dustless surface requirement, on property located at 12015 John Donnelly Street, Tax Map Reference 11-1((1))1 and 3, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 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 108.4 acres.
4. The applicant has conformed to the proffers and conditions accepted and imposed by the Board of Supervisors with the approval of SE 064-78, RZ 92-D-010, and SEA 92-D-064 and will satisfy the required standards if the maintenance requirements for gravel surfaces contained in the proposed development conditions are implemented.

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 Martin B. Sultan, dated May 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 only for the construction yard and temporary gravel parking lot located in the northwest corner of the property as shown on the special permit plat.

5 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 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 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 Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 202, November 3, 1993, (Tape 1), Scheduled case of:

9:00 A.M. BAINBRIDGE K. FRAVEL, VC 93-S-089 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 3.6 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 7900 Harwood Pl. on approx. 13,706 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((3)) 562.

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. Mr. Fravel replied that it was. The BZA waived the staff report and asked for the location of the property.

Donald Heine, Staff Coordinator, stated that the 13,706 square foot property is located on the north side of Harwood Place within the Keene Mill Manor Subdivision. He noted that the subject property is surrounded on four sides by single family detached dwellings in the R-3 District. Mr. Heine said that Keene Mill Road is located approximately 200 feet south of the property.

The applicant, Bainbridge K. Fravel, 7900 Harwood Place, Springfield, Virginia, addressed the BZA. He stated that the topographic conditions of the steep sloping, densely wooded lot precluded placing the shed anywhere else on the lot. Mr. Fravel said that he had no storage space and would like to incorporate the shed into the carport. He explained that he had renovated his house and would like to finish the project with the carport/shed.

In response to Mr. Pammel's question regarding the hardship issue, Mr. Fravel said that because of the topography the back yard is unusable; therefore, there is no other location for the addition.

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

Mr. Kelley made a motion to grant VC 93-S-089 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 26, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-089 by BAINBRIDGE K. FRAVEL, under Section 18-401 of the Zoning Ordinance to permit addition 3.6 feet from side lot line, on property located at 7900 Harwood Place, Tax Map Reference 89-2((3))562, 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 3, 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 13,706 square feet.
4. The applicant has satisfied the necessary standards for the granting of a variance.
5. The applicant's testimony, as well as the photographs, shows that the backyard is totally unusable.
6. The lot narrows extremely and has exceptional topographical conditions.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Delashmutt Associates LTD., dated December 29, 1992, revised July 9, 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 carport and storage room 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. Pammel seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 204, November 3, 1993, (Tape 1), Scheduled case of:

9:00 A.M. LUCIA B. HOFFMANN, SP 93-P-031 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to min. yard req. based on error in bldg. location to permit carport to remain 0.4 ft. from side lot line (5 ft. min. side yard req. by Sect(s). 3-407 and 2-412). Located at 2928 Summerfield Rd. on approx. 8,400 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((14)) 30. (DEFERRED FROM 9/14/93 FOR NOTICES)

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

Donald F. Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit for an error in building location to allow an existing carport to remain 0.4 feet from a side lot line. A minimum side yard of 10 feet with a permitted extension of 5 feet for a carport is required by the Zoning Ordinance; therefore, the applicant was requesting a variance of 4.6 feet to the minimum side yard requirement.

Mr. Heine noted that the carport also extends 1.0 foot into the 30 foot minimum required front yard. Since this extension is less than 10% of the minimum front yard requirement, the Zoning Administrator has the authority to grant administrative approval of the error. He explained that should the BZA grant this special permit for a reduction to the minimum side yard requirement, the proposed development conditions require the applicant to obtain an administrative approval from the Zoning Administrator.

The applicant's agent, Gail S. Forrest, Route 1, Box 24, Jeffersonton, Virginia, addressed the BZA. She stated that the applicant, Lucia Hoffmann, is a handicapped senior citizen and needs the carport for protection during inclement weather. Ms. Forrest said that the non-compliance was done in good faith and noted there was no other location for the carport. She explained that because of the placement of the structures on the lots, many other houses in the City Park Homes have similar carports. Ms. Forrest expressed her belief that to force compliance would create an undue hardship on the applicant. In summary, she stated there was no detrimental impact on the neighbors and asked the BZA to grant the request.

In response to Mr. Pammel's question regarding the floor plan on the north side of the house, Ms. Forrest said the bedrooms are located on that side of the house.

In response to Mr. Pammel's question regarding whether variances had been granted for the other carports in the area, Mr. Heine said that he did not know.

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

Mr. Pammel made a motion to grant SP 93-P-031 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 7, 1993.

Mrs. Thonen stated that neither the BZA, nor staff, knows the history of the other carports in the area.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-P-031 by LUCIA B. HOFFMANN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit carport to remain 0.4 feet from side lot line, on property located at 2928 Summerfield Road, Tax Map Reference 50-4((14))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 November 3, 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. There is evidence that similar situation exist within the immediate neighborhood where carports exist very close to the property line.

I. The applicant has presented testimony indicating the need for the carport.

J. There is no other place to locate the carport.

K. The applicant has demonstrated that there is a hardship and there is no other alternative.

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 use(s) indicated on the special permit plat, entitled Special Permit, Lot 30, Section 1, prepared by Alexandria Surveys, Inc., dated July 22, 1992, submitted with this application, as qualified by these development conditions.

3. The carport previously constructed without an approved Building Permit shall be inspected and certified by a professional Engineer of Architect to determine that the construction conforms to the Virginia Uniform Statewide Building Code (VaUSBC) in effect at the time of the construction. Any structure that does not meet the VaUSBC in effect at the time of construction shall obtain a current Building Permit that meets the current codes and regulations, and shall obtain all required inspections.

4. The applicant shall obtain approval of a reduction to the minimum yard requirements from the Zoning Administrator to allow the carport to be located 29 feet from the front lot line. If such approval is not granted, the structure shall be brought into conformity with the Zoning Ordinance.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. 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 206, November 3, 1993, (Tape 1), LUCIA B. HOFFMANN, SP 93-P-031, continued from Page 205)

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 206, November 3, 1993, (Tape 1), Action Item:

Approval of Resolutions from October 26, 1993 Hearing

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

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Page 206, November 3, 1993, (Tape 1), Action Item:

Approval of Minutes from September 14, 1993 Hearing

Mr. Pammel made a motion to approve the Minutes as submitted. Mr. Kelley seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

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Page 206, November 3, 1993, (Tape 1), Action Item:

Request for Waiver of the Twelve-Month Waiting Period
Philip Banks, SP 93-M-014

Marilyn Anderson, Senior Staff Coordinator, addressed the Board of Zoning Appeals and stated that Mr. Banks would like to speak to the request. She explained that he would be arriving at approximately 10:30 a.m. and asked the BZA to hold the matter over to the end of the scheduled agenda.

Mr. Kelley made a motion to pass over the request. The Chair so moved.

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Page 206, November 3, 1993, (Tape 1), Action Item:

Request for Out of Turn Hearings

Lawrence McCarty, SP 93-D-069, VC 93-D-134

Community of The Missionary Servants of St. Joseph, Inc.
VC 93-M-131 and SP 93-M-068

Franconia Weslyn Church and Discovery Day Care Center, SPA 76-L-068

Mrs. Thonen noted that the agenda was full and made a motion to deny the out-of-turn hearing request for SP 93-D-069 and VC 93-D-134. Mr. Kelley asked that the vote on the motion be deferred and asked staff to suggest a date for an additional meeting.

After a brief discussion regarding the three out-of-turn hearing requests, it was the consensus of the Board of Zoning Appeals to hold the requests over to the end of the scheduled agenda.

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Page 206, November 3, 1993, (Tape 1), Scheduled case of:

9:30 A.M. JULIE AND PAUL WOLFTEICH, VC 93-L-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.67 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 6230 Higham Dr. on approx. 25,218 sq. ft. of land zoned R-1 and HC. Lee District. Tax Map 81-4 ((2)) 8. (OUT OF TURN HEARING GRANTED)

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. Ms. Wolfteich replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated the applicants were requesting a variance to construct a kitchen addition 12.67 feet from a side lot line. The Zoning Ordinance requires a minimum side yard of 20 feet; therefore, the applicants were requesting a variance of 7.33 feet to the minimum side yard requirement.

The co-applicant, Julie Wolfteich, 6230 Higham Drive, Alexandria, Virginia, addressed the BZA. She stated that the addition would extend no further into the side yard than the existing structure, there would be no detrimental impact on the neighborhood, and the addition would not be visible from the street. Ms. Wolfteich explained that the proposed site is the only logical location for the addition. She presented a letter of support from the adjacent neighbor and said that the other neighbors had also expressed their support for the request. In summary, Ms. Wolfteich asked the BZA to waive the eight-day waiting period.

In response to Mrs. Thonen's question as to whether the bulk of the house exceeded the bulk limit, Ms. Langdon said it did not.

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

Mrs. Thonen made a motion to grant VC 93-L-094 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 26, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-094 by JULIE AND PAUL WOLFTEICH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.67 feet from side lot line, on property located at 6230 Higham Drive, Tax Map Reference 81-4((2))8, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 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 and HC.
3. The area of the lot is 25,218 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The property, although zoned R-1, is basically a little over a half-acre in size which puts it in the R-2 zoning category.
6. We have many situations of this type throughout the County where the zoning and the actual development do not coincide.
7. If R-2 standards were applied, there would not be any doubt or any question.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by David Holmes Peabody, Architect, dated July 23, 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. Pammel seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 208, November 3, 1993, (Tape 1), Scheduled case of:

9:30 A.M. EARL J. WHITE, JR., VC 93-V-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 6042 Edgewood Terrace on approx. 8,100 sq. ft. of land zoned R-4 and HC. Mount Vernon District. Tax Map 83-3 ((14)) (3) 29. (OUT OF TURN HEARING GRANTED)

Vice Chairman Ribble noted that the applicant was not present.

Mr. Kelley made a motion to hold the case over to the end of the scheduled meeting. Mrs. Thonen seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Harris, and Mr. Hammack were absent from the meeting.

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Page 208, November 3, 1993, (Tape 1), Scheduled case of:

9:30 A.M. W. L. BERRY HOMES, INC., SP 93-Y-036 through SP 93-Y-042 Appls. under Sect(s). 3-C03 and 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements on Tax Map 53-3 ((4)) (5) to permit:

Lot 41, 32.8 ft. front, 15 ft. and 14 ft. side yards. Located at 15459 Eagle Tavern Ln. on approx. 13,000 sq. ft. of land;
Lot 42, 34.8 ft. front, 15 ft. and 14 ft. side yards. Located at 15461 Eagle Tavern Ln. on approx. 13,000 sq. ft. of land;
Lot 44, 15 ft. and 13 ft. side yards. Located at 15462 Eagle Tavern Ln. on approx. 13,000 sq. ft. of land;
Lot 45, 37.8 ft. front and one 10 ft. side yard. Located at 15460 Eagle Tavern Ln. on approx. 13,000 sq. ft. of land;
Lot 46, 32.8 ft. front, 14 ft. and 15 ft. side yards. Located at 15458 Eagle Tavern Ln. on approx. 13,000 sq. ft. of land;
Lot 48, 39.8 ft. front, 16 ft. and 14 ft. side yards. Located at 15454 Eagle Tavern Ln. on approx. 13,212 sq. ft. of land, and
Lot 49, 35.8 ft. front and two 16 ft. side yards. Located at 15452 Eagle Tavern Ln. on approx. 13,247 sq. ft. of land.

(40 ft. min. front and 20 ft. min. side yards req. by Sect. 3-C07). Zoned R-C and WS. Sully District.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William Donnelly, III, with the law firm of Hazel and Thomas, P.C., 3110 Fairview Park Drive, Suite 1400, Falls Church, Virginia, replied that it was. Mr. Donnelly asked that the cases be deferred until a full Board could be present.

In response to Mr. Kelley's question regarding the letters of opposition, Mr. Donnelly said that the deferral would allow the applicant an opportunity to meet with the neighbors.

Vice Chairman Ribble called for speakers to the deferral and the following citizens came forward.

John Mills, 1546 Eagle Tavern Lane, Centreville, Virginia, addressed the BZA. He said although the applicant had ample opportunity to contact the concerned citizens, they did not do so. He expressed his belief that the case should be heard as scheduled. Vice Chairman Ribble said the applicant had completed the notification requirements and may not have been aware of the neighbors' concerns.

Wayne D. Perry, 15463, Eagle Tavern Lane, Centreville, Virginia, addressed the BZA. He said that he had written to the applicant expressing his concerns and had not received a reply. He, too, expressed his belief that the applicant had the opportunity to contact concerned citizens and asked the BZA to proceed with the hearing.

In response to Mr. Kelley's question regarding dates for an additional hearing, Marilyn Anderson, Senior Staff Coordinator, suggested dates of December 20, 1993, and January 5, 6, 12, 13, 1994.

Mr. Kelley made a motion to defer the cases. The motion failed for the lack of a second.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval of seven special permits to allow modifications of the front and/or side yard setbacks on seven lots:

Request Number 1 for Lot 41 was to allow modification to minimum yard requirements to permit the dwelling to be located 32.8 feet from the front lot line and 15 feet and 14 feet, respectively, from the side lot lines. The Zoning Ordinance requires a minimum 40.0 foot front yard and a minimum 20 foot side yard; therefore, the applicant was requesting a modification of 7.2 feet to the minimum front yard requirement and 5 feet and 6 feet to the minimum side yard requirement.

Request Number 2 for Lot 42 was to allow modification to the minimum yard requirements to permit the dwelling to be located 34.8 feet from the front lot line and 15 feet and 14 feet, respectively, from the side lot lines. The Zoning Ordinance requires a minimum 40.0 foot front yard and a minimum 20 foot side yard; therefore, the applicant was requesting a modification of 5.2 feet to the minimum front yard requirement and 5 feet and 6 feet to the minimum side yard requirement.

Request Number 3 for Lot 44 was to allow modification to minimum yard requirements to permit the dwelling to be located 5 feet and 7 feet, respectively, from the side lot lines. The Zoning Ordinance requires a minimum 40.0 foot front yard and a minimum 20 foot side yard; therefore, the applicant was requesting a modification of 5 feet and 7 feet to the minimum side yard requirement.

Request Number 4 for Lot 45 was to allow modification to minimum yard requirements to permit the dwelling to be located 37.8 feet from the front lot line and 10 feet from a side lot line. The Zoning Ordinance requires a minimum 40.0 foot front yard and a minimum 20 foot side yard; therefore, the applicant was requesting a modification of 2.2 feet to the minimum front yard requirement and 10 feet to the minimum side yard requirement.

Request Number 5 for Lot 46 was to allow modification to minimum yard requirements to permit the dwelling to be located 32.8 feet from the front lot line and 15 feet and 14 feet, respectively, from the side lot lines. The Zoning Ordinance requires a minimum 40.0 foot front yard and a minimum 20 foot side yard; therefore, the applicant was requesting a modification of 7.2 feet to the minimum front yard requirement and 5 feet and 6 feet to the minimum side yard requirement.

Request Number 6 for Lot 48 was to allow modification to the minimum yard requirements to permit the dwelling to be located 39.8 feet from the front lot line and 16 feet and 14 feet, respectively, from the side lot lines. The Zoning Ordinance requires a minimum 40.0 foot front yard and a minimum 20 foot side yard; therefore, the applicant was requesting a modification of .2 feet to the minimum front yard requirement and 4 feet and 6 feet to the minimum side yard requirement.

Request Number 7 for Lot 49 was to allow modification to minimum yard requirements to permit the dwelling to be located 35.8 feet from the front lot line and 16 feet from each side lot line. The Zoning Ordinance requires a minimum 40.0 foot front yard and a minimum 20 foot side yard; therefore, the applicant was requesting a modification of .2 feet to the minimum front yard requirement and 4 feet to the minimum side yard requirement.

Ms. Langdon noted that the requests were not for modification to the house locations, but for modifications to the minimum yard requirements with the houses to be located within these requested yards. Therefore, the applicant was requesting not to be restricted to the dwelling footprint shown on the Special Permit Plat, but to the requested yards only. She stated that one of the Standards requires that the modification shall result in a yard not less that the minimum yard required on June 25, 1982. Ms. Langdon explained that the property was previously zoned R-2 (Cluster) with a minimum side yard requirement of 8.0 feet with a total side yard requirement of 24 feet. The requested modifications meet this standard.

Ms. Langdon stated that staff had submitted the applicant's proposed development condition which had been received on Monday, November 2, 1993. She noted that staff had no objection to the proposed condition.

In response to Mr. Pammel's question regarding the minimum side yard requirements for the R-2 (Cluster) District, Ms. Langdon stated the lots had previously been zoned R-2 (Cluster) which required a minimum 8 foot side yard with a total 24 foot side yard. Mr. Pammel said the subdivision had been in accord with the R-2 (Cluster) District which complied with all the required criteria. He noted the property is grandfathered under the R-C Provision, and in effect, meets the requirement of the R-2 (Cluster) District.

Mr. Donnelly addressed the BZA and stated that Bruce Berlage, President of Berry Homes, and Peggy Keyes, Planner with Hazel and Thomas, were present to answer any questions the BZA may have. He said that the applicant was requesting special permits to reduce the minimum yard requirements on seven lots in Virginia Run. Mr. Donnelly expressed his belief that the proposed yards would be comparable to other lots in the area and would allow the applicant to build structures that would be in character with other structures in the subdivision. He explained that in the 1980's, the property was rezoned from R-2 Cluster to R-C. Although a court order had grandfathered the lots, it provided that the R-C yard requirements would apply to any lot not having a Residential Use Permit (RUP) by the end of 1993. Mr. Donnelly noted that the severe recession in the real estate market had delayed the sale of the lots; therefore, the deadline for the issuance of the RUP cannot be met. He stated that the Board of Supervisors had recently amended the Zoning Ordinance to allow the BZA to approve special permits to reduce the minimum yard requirement in Virginia Run from the R-C to the original R-2 Cluster requirements subject to one condition: "The development will be harmonious with existing development in the neighborhood and will not adversely impact the public health, safety, and welfare of the area." Mr. Donnelly expressed his belief that the proposed development would be in keeping with the existing development in Virginia Run. He used the viewgraph to demonstrate that the proposed structures would be located similarly to the existing structure in the neighborhood. Mr. Donnelly stated that the applicant was requesting not to be restricted to the dwelling footprint shown on the Special Permit Plat, but to the requested yards only. He noted that the lots were not presently under contract and explained that the largest model was shown on the plats and the applicant would like the liberty to build smaller structures as stipulated in the applicant's proposed development condition. In summary, Mr. Donnelly stated that the applications would be in harmony with the area, would not adversely impact the neighborhood, and asked the BZA to grant the request.

In response to questions from the BZA, Mr. Donnelly stated that he would address the drainage issue during rebuttal. He said that he had received a copy of Mr. Perry's letter, but had not received a copy of Mr. Mills' letter. He said that after reading Mr. Perry's letter, he had tried to contact him, but Mr. Perry's phone number is unlisted.

Vice Chairman Ribble called for speakers in support and the following citizen came forward.

John O'Connell, of Toll Brothers, stated that his company would be coming before the BZA in January with a similar application. He reiterated Mr. Donnelly's contention that the applications met the criteria as specified in the Zoning Ordinance.

There being no further speakers in support, Vice Chairman Ribble called for speakers in opposition and the following citizens came forward.

John Mills, 15464 Eagle Tavern Lane, Centreville, Virginia, addressed the BZA and explained that Lot 44 adjoins his property. He expressed his belief that because of drainage problems, the application for Lot 44 should not be granted. Mr. Mills said that clearing and grading would increase the drainage problems which already exist on his property. He also expressed concern regarding the open space between the two lots. Mr. Mills explained that he had been granted a variance which had allowed him to build a deck and an enclosed porch five feet closer to the lot line than allowed under the Zoning Ordinance. In summary, he expressed his belief that the applicant had ample opportunity to discuss his concerns before the public hearing.

In response to Mr. Pammel's question regarding the side yard dimensions, Mr. Mills stated that his structure was fifteen feet from the side yard line.

Wayne Perry, 15463 Eagle Tavern Lane, Centreville, Virginia, addressed the BZA. He, too, expressed his concern that the applicant should have contacted him before the public hearing. Mr. Perry explained that the primary concern was drainage. He explained that his structure had been built four feet closer to the lot line than specified in the Building Permit; therefore, it is approximately 8 feet from the side lot line. In summary, Mr. Perry expressed concerns regarding the size of the proposed structure, clearing and grading, and asked the BZA to deny the request.

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

Speaking in rebuttal, Mr. Donnelly presented a letter from the applicant's engineer regarding potential drainage problems. He noted that the letter indicated that the reduction to the minimum yard requirement would not adversely affect the drainage on Mr. Perry's lot. He also noted that Mr. Perry's existing structure, which is the same model proposed by the applicant, was approximately 8.9 feet from the adjoining side lot line, and the applicant's structure would be 15 feet from the same side lot. Mr. Donnelly stated that the grading plan would have to be approved and final inspection obtained before an Occupancy Permit would be granted; therefore, the adjoining property owners were protected from any adverse impact on their lots.

In response to Vice Chairman Ribble's question regarding a potential drainage problem on Mr. Mills' lot, Mr. Donnelly said that the applicant had not been aware of any drainage problem; therefore, he did not have the engineer inspect the property. Again, he restated his belief that the Fairfax County inspection process would protect the neighborhood lots from any adverse impact and expressed his belief that the applications would adhere to the provisions of the Zoning Ordinance.

In response to Mr. Kelley's question as to whether he was satisfied with the engineer's report, Mr. Donnelly admitted the engineer did not do a full engineering review of the situation. He explained that such action would have been premature and noted that the Department of Environmental Management (DEM) would have to review the situation during the site plan process.

In response to Mrs. Thonen's question as to why the lots that had been given DEM's approval were experiencing drainage problems, Mr. Donnelly had no answer. He suggested that a development condition be added to ensure the proposed use would not adversely affect the drainage situation on adjoining lots.

There being no further speakers to the request, Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant SP 93-Y-036 through SP 93-Y-042 for the reasons reflected in the Resolutions and subject to the development conditions contained in the staff report dated October 26, 1993 with the modifications as 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 93-Y-036 by W. L. BERRY HOMES, INC., under Sections 3-C03 and 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements to allow a front yard of 32.8 feet and side yards of 15.0 and 14.0 feet, on property located at 15459 Eagle Tavern Lane, Tax Map Reference 53-3((4))(5)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 3, 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 13,000 square feet.
4. The applicant presented testimony that they are in full compliance with the standards of the Zoning Ordinance
5. The modifications are in harmony with the development which is taking place in the District.
6. The lots were recorded under the R-2 Cluster Zoning Ordinance requirements.
7. The lots are grandfathered under the provisions rezoning the property to the R-C District which came after the lots were approved.
8. The applicant is simply requesting to be allowed to develop in accordance with the yard requirements as set forth in the R-2 Cluster District which would be in harmony with the development that has transpired within the District. In particular, those lots adjacent to the lots under application today.
9. The testimony from Mr. Perry and Mr. Mills indicated that their side yard dimensions complied with the R-2 Cluster District.
10. Mr. Mills had previously obtained a variance so that his side yard dimension is approximately 9 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 9-913 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 front and side yards 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 June 1988, revised through April 20, 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.

4. The development of these lots will not adversely effect the adjacent lots by reason of storm drainage and the Department of Environmental Management (DEM) is directed to perform a careful review of the site grading plan when it is submitted to ensure that there will not be any adverse impact on the adjacent property.

5. The modifications requested is the maximum modification permitted and in no case will there be an expansion of the requested modification to the minimum yard requirement without an amendment to this special permit.

6. The applicant is not restricted to the dwelling footprint but to the requested yards only, as shown on the special permit plat prepared by Dewberry and Davis, dated June, 1988, revised through April 20, 1993.

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 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 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 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 Application SP 93-Y-037 by W. L. BERRY HOMES, INC., under Sections 3-C03 and 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements to allow a front yard of 34.8 and side yards of 15.0 and 14.0 feet, on property located at 15461 Eagle Tavern Lane, Tax Map Reference 53-3((4))(5)42, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 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 13,000 square feet.
4. The applicant presented testimony that they are in full compliance with the standards of the Zoning Ordinance
5. The modifications are in harmony with the development which is taking place in the District.

6. The lots were recorded under the R-2 Cluster Zoning Ordinance requirements.
7. The lots are grandfathered under the provisions rezoning the property to the R-C District which came after the lots were approved.
8. The applicant is simply requesting to be allowed to develop in accordance with the yard requirements as set forth in the R-2 Cluster District which would be in harmony with the development that has transpired within the District. In particular, those lots adjacent to the lots under application today.
9. The testimony from Mr. Perry and Mr. Mills indicated that their side yard dimensions complied with the R-2 District.
10. Mr. Mills had previously obtained a variance so that his side yard dimension is approximately 9 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 9-913 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 front and side yards 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 June 1988, revised through April 20, 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.

4. The development of these lots will not adversely effect the adjacent lots by reason of storm drainage and the Department of Environmental Management (DEM) is directed to perform a careful review of the site grading plan when it is submitted to ensure that there will not be any adverse impact on the adjacent property.

5. The modifications requested is the maximum modification permitted and in no case will there be an expansion of the requested modification to the minimum yard requirement without an amendment to this special permit.

6. The applicant is not restricted to the dwelling footprint but to the requested yards only, as shown on the special permit plat prepared by Dewberry and Davis, dated June, 1988, revised through April 20, 1993.

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 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 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 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 Application SP 93-Y-038 by W. L. BERRY HOMES, INC., under Sections 3-C03 and 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements to allow side yards of 15.0 and 13.0 feet, on property located at 15462 Eagle Tavern Lane, Tax Map Reference 53-3((4))(5)44, 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

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WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 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 13,000 square feet.
4. The applicant presented testimony that they are in full compliance with the standards of the Zoning Ordinance
5. The modifications are in harmony with the development which is taking place in the District.
6. The lots were recorded under the R-2 Cluster Zoning Ordinance requirements.
7. The lots are grandfathered under the provisions rezoning the property to the R-C District which came after the lots were approved.
8. The applicant is simply requesting to be allowed to develop in accordance with the yard requirements as set forth in the R-2 Cluster District which would be in harmony with the development that has transpired within the District. In particular, those lots adjacent to the lots under application today.
9. The testimony from Mr. Perry and Mr. Mills indicated that their side yard dimensions complied with the R-2 District.
10. Mr. Mills had previously obtained a variance so that his side yard dimension is approximately 9 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 9-913 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 front and side yards 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 June 1988, revised through April 20, 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.

4. The development of these lots will not adversely effect the adjacent lots by reason of storm drainage and the Department of Environmental Management (DEM) is directed to perform a careful review of the site grading plan when it is submitted to ensure that there will not be any adverse impact on the adjacent property.

5. The modifications requested is the maximum modification permitted and in no case will there be an expansion of the requested modification to the minimum yard requirement without an amendment to this special permit.

6. The applicant is not restricted to the dwelling footprint but to the requested yards only, as shown on the special permit plat prepared by Dewberry and Davis, dated June, 1988, revised through April 20, 1993.

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 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 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 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 Application SP 93-Y-039 by W. L. BERRY HOMES, INC., under Sections 3-C03 and 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements to allow a front yard of 37.8 feet and one side yard of 10.0 feet, on property located at 15460 Eagle Tavern Lane, Tax Map Reference 53-3((4))(5)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 November 3, 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 13,000 square feet.
4. The applicant presented testimony that they are in full compliance with the standards of the Zoning Ordinance
5. The modifications are in harmony with the development which is taking place in the District.
6. The lots were recorded under the R-2 Cluster Zoning Ordinance requirements.
7. The lots are grandfathered under the provisions rezoning the property to the R-C District which came after the lots were approved.
8. The applicant is simply requesting to be allowed to develop in accordance with the yard requirements as set forth in the R-2 Cluster District which would be in harmony with the development that has transpired within the District. In particular, those lots adjacent to the lots under application today.
9. The testimony from Mr. Perry and Mr. Mills indicated that their side yard dimensions complied with the R-2 District.
10. Mr. Mills had previously obtained a variance so that his side yard dimension is approximately 9 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 9-913 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 front and side yards 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 June 1988, revised through April 20, 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.

4. The development of these lots will not adversely effect the adjacent lots by reason of storm drainage and the Department of Environmental Management (DEM) is directed to perform a careful review of the site grading plan when it is submitted to ensure that there will not be any adverse impact on the adjacent property.

5. The modifications requested is the maximum modification permitted and in no case will there be an expansion of the requested modification to the minimum yard requirement without an amendment to this special permit.

6. The applicant is not restricted to the dwelling footprint but to the requested yards only, as shown on the special permit plat prepared by Dewberry and Davis, dated June, 1988, revised through April 20, 1993.

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

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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 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 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 Application SP 93-Y-040 by W. L. BERRY HOMES, INC., under Sections 3-C03 and 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements to allow a front yard of 32.8 feet and side yards of 15.0 and 14.0 feet, on property located at 15458 Eagle Tavern Lane, Tax Map Reference 53-3{(4)}(5)46, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 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 13,000 square feet.
4. The applicant presented testimony that they are in full compliance with the standards of the Zoning Ordinance
5. The modifications are in harmony with the development which is taking place in the District.
6. The lots were recorded under the R-2 Cluster Zoning Ordinance requirements.
7. The lots are grandfathered under the provisions rezoning the property to the R-C District which came after the lots were approved.
8. The applicant is simply requesting to be allowed to develop in accordance with the yard requirements as set forth in the R-2 Cluster District which would be in harmony with the development that has transpired within the District. In particular, those lots adjacent to the lots under application today.
9. The testimony from Mr. Perry and Mr. Mills indicated that their side yard dimensions complied with the R-2 District.
10. Mr. Mills had previously obtained a variance so that his side yard dimension is approximately 9 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 9-913 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 front and side yards 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 June 1988, revised through April 20, 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.

4. The development of these lots will not adversely effect the adjacent lots by reason of storm drainage and the Department of Environmental Management (DEM) is directed to perform a careful review of the site grading plan when it is submitted to ensure that there will not be any adverse impact on the adjacent property.

5. The modifications requested is the maximum modification permitted and in no case will there be an expansion of the requested modification to the minimum yard requirement without an amendment to this special permit.

6. The applicant is not restricted to the dwelling footprint but to the requested yards only, as shown on the special permit plat prepared by Dewberry and Davis, dated June, 1988, revised through April 20, 1993.

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 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 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 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 Application SP 93-Y-041 by W. L. BERRY HOMES, INC., under Sections 3-C03 and 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements to allow a front yard of 39.8 feet and side yards of 16.0 and 14.0 feet, on property located at 15454 Eagle Tavern Lane, Tax Map Reference 53-3((4))(5)48, 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 3, 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 13,212 square feet.
4. The applicant presented testimony that they are in full compliance with the standards of the Zoning Ordinance
5. The modifications are in harmony with the development which is taking place in the District.
6. The lots were recorded under the R-2 Cluster Zoning Ordinance requirements.
7. The lots are grandfathered under the provisions rezoning the property to the R-C District which came after the lots were approved.
8. The applicant is simply requesting to be allowed to develop in accordance with the yard requirements as set forth in the R-2 Cluster District which would be in harmony with the development that has transpired within the District. In particular, those lots adjacent to the lots under application today.
9. The testimony from Mr. Perry and Mr. Mills indicated that their side yard dimensions complied with the R-2 District.
10. Mr. Mills had previously obtained a variance so that his side yard dimension is approximately 9 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 9-913 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 front and side yards 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 June 1988, revised through April 20, 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.

4. The development of these lots will not adversely effect the adjacent lots by reason of storm drainage and the Department of Environmental Management (DEM) is directed to perform a careful review of the site grading plan when it is submitted to ensure that there will not be any adverse impact on the adjacent property.

5. The modifications requested is the maximum modification permitted and in no case will there be an expansion of the requested modification to the minimum yard requirement without an amendment to this special permit.

6. The applicant is not restricted to the dwelling footprint but to the requested yards only, as shown on the special permit plat prepared by Dewberry and Davis, dated June, 1988, revised through April 20, 1993.

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 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 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 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 Application SP 93-Y-042 by W. L. BERRY HOMES, INC., under Sections 3-C03 and 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements to allow a front yard of 35.8 feet and side yards of 16.0 feet, on property located at 15452 Eagle Tavern Lane, Tax Map Reference 53-3((4))(5)49, 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 3, 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 13,247 square feet.
4. The applicant presented testimony that they are in full compliance with the standards of the Zoning Ordinance
5. The modifications are in harmony with the development which is taking place in the District.
6. The lots were recorded under the R-2 Cluster Zoning Ordinance requirements.
7. The lots are grandfathered under the provisions rezoning the property to the R-C District which came after the lots were approved.
8. The applicant is simply requesting to be allowed to develop in accordance with the yard requirements as set forth in the R-2 Cluster District which would be in harmony with the development that has transpired within the District. In particular, those lots adjacent to the lots under application today.
9. The testimony from Mr. Perry and Mr. Mills indicated that their side yard dimensions complied with the R-2 District.

10. Mr. Mills had previously obtained a variance so that his side yard dimension is approximately 9 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 9-913 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 front and side yards 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 June 1988, revised through April 20, 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.

4. The development of these lots will not adversely effect the adjacent lots by reason of storm drainage and the Department of Environmental Management (DEM) is directed to perform a careful review of the site grading plan when it is submitted to ensure that there will not be any adverse impact on the adjacent property.

5. The modifications requested is the maximum modification permitted and in no case will there be an expansion of the requested modification to the minimum yard requirement without an amendment to this special permit.

6. The applicant is not restricted to the dwelling footprint but to the requested yards only, as shown on the special permit plat prepared by Dewberry and Davis, dated June, 1988, revised through April 20, 1993.

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 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 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 219, November 3, 1993, (Tape 2), Scheduled case of:

10:00 A.M. HALLOWING POINT ASSOCIATION, INC., SPA 74-V-029 Appl. under Sect(s). 8-915 and 3-E03 of the Zoning Ordinance to amend SP 74-V-029 for community park and recreation area to permit removal of existing boat ramp and pier and replace with new ramp, pier, jetties and revetment and a waiver of the dustless surface requirement. Located at 5949 & 6001 River Dr. on approx. 152,544 sq. ft. of land zoned R-E. Mount Vernon District. Tax Map 122-2 ((3)) 1 and 122-2 ((2)) 39. (IN ASSOCIATION WITH SE 93-V-035).

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. Mr. Kirk replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval to amend Special Permit, SP 74-V-029, for a community park and recreation area to replace the existing boat ramp, pier, and shoreline protection with a 40 by 70 foot concrete boat ramp, two launching piers, two stone jetties, and a rip-rap revetment. She explained that the boat ramp would be located in the middle of the property with the two piers positioned on either side of the ramp, and the jetties positioned on either side of the piers. Ms. Langdon said that the rip-rap revetment which will cover approximately 400 feet of the shoreline would be constructed along the shoreline on both

sides of the boat launch. She noted that the applicant was also requesting a modification of the transitional screening and barrier requirements along the northern, eastern, and western lot lines to use the existing vegetation and the eight foot high fence around the tennis court as shown on the proposed plat.

Ms. Langdon stated that in association with the special permit amendment, the applicant had submitted Special Exception, SE 93-V-033, for uses in the floodplain. She noted these uses would include the boat ramp, pier, jetties, and revetment, as well as the existing tennis court, multi-use court, and gravel parking area. The uses requested under the special permit are located within the 100 year floodplain which necessitated the special exception application. Ms. Langdon explained that because the Board of Supervisors and the Planning Commission will not hear the special exception application until later in the month, staff had submitted revised proposed development conditions which included Condition 15 which would render the special permit null and void if the special exception was denied.

In conclusion, Ms. Langdon stated that the proposed amendment would be in harmony with the recommendations of the Comprehensive Plan and would satisfy the required standards. Therefore, staff recommended approval subject to the adoption of the revised proposed development conditions dated October 18, 1993.

In response to Mr. Ribble's question as to whether the Board of Supervisors would hear SE 93-V-033 if the BZA denies SPA 74-V-029, Ms. Langdon said the Board of Supervisors could hold a hearing for the existing uses in the floodplain.

Mrs. Thonen stated that if the Board of Supervisors denies the special exception, the special permit will be moot. Ms. Langdon said that was correct.

The applicant's agent, Michael Kirk, 5941 River Drive, Lorton, Virginia, addressed the BZA. He stated that the replacements were necessary because of erosion problems, disrepairs, and a need to update the facility. Mr. Kirk said that the facility's use is restricted to Hollowing Point Association's residents and the local fire department; therefore, the new facility would not create additional traffic. He explained that the project had been approved by the Corp of Engineers, the Fairfax County Wetlands Board, and the Virginia Marine Resources Commission. He also noted that James Zook, Director, of Comprehensive Planning, had stated in his correspondence that staff had determined the proposed use is consistent with the Zoning and Subdivision Ordinances. Mr. Kirk said that the applicant had a waiver of the water quality control requirement of the Chesapeake Bay Preservation Ordinance.

Mr. Kirk asked the BZA to delete Conditions 10, 13, and 14. He explained that the forty year old facility is surrounded by a fence with a locked gate; therefore, the applicant believed the construction would cause no environmental impact on the area. In addition, Condition 13 would require the site entrance on River Drive to be redesigned and constructed as determined by DEM and the Virginia Department of Transportation (VDOT). He noted that the engineers at VDOT had indicated they were mystified as to why the driveway had to be redesigned. Mr. Kirk expressed his belief that the existing driveway was adequate and noted a 30 foot driveway would require the removal of a large tree. He referred to the last bullet in Condition 14 which would require that there shall be pavement to a point twenty-five feet into the entrance drive to inhibit the transfer of gravel off-site and noted there gravel has never cause a problem in the area. In conclusion, Mr. Kirk referred to Condition 10 which would require an eight foot high chain link fence on all sides of the tennis court. He noted that, with the exception of the side adjoining the basketball court, all sides were presently fenced and asked the BZA not to require that section of the tennis court to be fenced.

In response to Mr. Kelley's question as to whether three sides of the tennis court had an eight foot chained link fence, Mr. Kirk said he was correct.

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

Michael Ostergard, 6000 River Drive, Alexandria, Virginia; Derk Perkins, 6060 River Drive, Alexandria, Virginia, addressed the BZA. They expressed support for the proposal and for the requested modification. They also expressed their belief that any further expansion of the driveway would alter the character of the property.

There being no further speakers to the request, Vice Chairman Ribble closed the public hearing.

Mr. Kelley made a motion to grant SPA 74-V-029 subject to the development conditions contained in the staff report addendum dated October 18, 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 Amendment Application SPA 74-V-029 HALLOWING POINT ASSOCIATION, INC., under Sections 8-915 and 3-E03 of the Zoning Ordinance to amend SP 74-V-029 for community park and recreation area to permit removal of existing boat ramp and pier and replace with new ramp, pier, jetties and revetment and a waiver of the dustless surface requirement, on property

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located at 5949 and 6001 River Drive, Tax Map References 122-2((3))1 and 122-2((2))39, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 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 152,544 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 8-403 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 Amendment Plat prepared by Yanasse Hangen Brustlin, Inc. dated June 30, 1993, Revised September 15, 1993 and approved with this application, as qualified by these development conditions.

3. A copy of this Special Permit Amendment 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 Community Park and Recreation Area 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 plant and these development conditions.

5. A copy of this Special Permit SHALL BE provided to all members of the Hallowing Point Association, Inc.

6. Twenty (20) parking spaces shall be provided as shown on the special permit plat. All parking shall be 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 or boat launch area.

8. Membership shall be limited to Hallowing Point property owners.

9. Transitional screening shall be modified along the northern, eastern and western lot lines. Existing vegetation shall be deemed satisfactory to fulfill the requirements for Transitional Screening 1.

10. The barrier requirement shall be waived along all lot lines, provided the tennis courts are fenced with an eight (8) foot high chain link fence on the three sides that are away from the basket ball court and as presently exist.

11. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch of the Department of Environmental Management prior to site plan approval. This plan shall emphasize the preservation of the existing vegetation on site. No vegetation shall be removed except as designated on the plat for the installation of the revetment. Any additional vegetation removal must be approved and replacement plantings which are compatible with existing hardwood tree species on site shall be required as determined by the Urban Forestry Branch.

    The tree preservation/tree replacement plan shall also address the requirements of Section 118-3-3(d) of the Chesapeake Bay Preservation Ordinance for the establishment of a buffer area in the Resource Protection Area that is effective in retarding runoff, preventing erosion and filtering nonpoint source pollution from runoff. The applicant may designate a picnic area on the site plan to remain in turf grass. The remainder of the RPA buffer is to be restored to a natural condition using native grasses, shrubs and tree species which will emulate a natural undisturbed shoreline condition as determined by the Urban Forestry Branch in conjunction with the Special Projects Branch of the Department of Environmental Management.

12. Best Management Practices (BMPs) designed to meet phosphorous removal efficiencies are required by the Chesapeake Bay Preservation Ordinance unless waived by the Department of Environmental Management (DEM). If a waiver of the BMP requirement is not approved, an amendment to this application shall be required to address the issue of stormwater management and phosphorus removal.

13. 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.

    Runoff shall be channelled away from and around driveway and parking areas.

    Travel speeds shall be limited to ten (10) mph.

    During dry periods, application of water shall be made in order to control dust.

    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 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 Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 222, November 3, 1993, (Tape 2), Scheduled case of:

10:00 A.M. TRUSTEES OF THE LUTHERAN CHURCH OF THE ABIDING PRESENCE, SPA 84-S-003-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 84-S-003 for church and related facilities to permit building additions and reduce number of parking spaces. Located at 6304 Lee Chapel Rd. on approx. 3.13 ac. of land zoned R-1. Springfield District. Tax Map 78-3 ((1)) 22.

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. Mr. Jensen 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 to allow a new 8,908 square foot fellowship hall and a 900 square foot expansion of the chancel. The fellowship hall would be located on the north side and the chancel expansion on the south side of the existing church. Mr. Hunter noted that the applicant was also requesting the number of parking spaces be reduced from 141 to 132. Sixty-two parking spaces are required.

In conclusion, Mr. Hunter stated that the proposed amendment would be in harmony with the recommendations of the Comprehensive Plan and would satisfy the required standards. Therefore, staff recommended approval subject to the proposed development conditions dated October 26, 1993.

The applicant's representative, Robert L. Jensen, 7172 Game Lord Drive, Springfield, Virginia, addressed the BZA. He referred to proposed Development Condition 7, which requires a tree preservation plan, and noted there are five trees that must be removed in order to complete the project. He expressed his belief that Condition 7 was not relevant and would cost the applicant a great deal of money and asked the BZA to delete the condition. In summary, Mr. Jensen said the staff report was complete and accurate. He asked the BZA to grant the request.

There being no speakers to the request, Vice Chairman Ribble asked for staff comments.

Mr. Hunter stated that staff believed the tree preservation plan could be shown on the site plan; therefore, staff had no objection to deleting Condition 7. He explained that the language could be incorporated into Condition 4 to insure the tree preservation would be shown on the site plan.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant SPA 84-S-003-3 subject to the development conditions contained in the staff report dated October 26, 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 Amendment Application SPA 84-S-003-3 by TRUSTEES OF THE LUTHERAN CHURCH OF THE ABIDING PRESENCE, under Section 3-103 of the Zoning Ordinance to amend SP 84-S-003 for church and related facilities to permit building additions and reduce number of parking spaces, on property located at 6304 Lee Chapel Road, Tax Map Reference 78-3((1))22, 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 3, 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 3.13 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 Sections 8-303 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Bengston, DeBell & Elkin, LTD, dated May 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. Tree preservation plan shall be incorporated within the site plan submission.

5. The seating capacity in the main worship area shall not exceed 248 seats.

6. Transitional Screening 1 shall be maintained in accordance with the Special Permit Plat approved with this application except for the following modifications:

   Landscape plantings along the lot line adjacent to Brittford Drive in the area between the westernmost driveway and Lee Chapel Road shall be maintained.

   Along the lot line adjacent to Lee Chapel Road, landscape plantings shall be maintained to soften the visual impact of the building and the detention pond from the surrounding residential neighborhoods, and

Plantings between the western lot line and the parking area shall be maintained to satisfy the intent of Transitional Screening 1.

7. Best Management Practices (BMPs) for the control of stormwater runoff shall be provided as determined necessary by the Director of the Department of Environmental Management (DEM) to meet the requirement of the Chesapeake Bay Preservation Ordinance. If the Director, DEM determines that the proposed stormwater management dry pond needs to be enlarged in order to accommodate the requirements of the Chesapeake Bay Ordinance, none of the existing vegetation located in the adjacent 25 foot transitional screening yards shall be removed in order to accommodate a larger pond.

8. The barrier requirement shall be waived along all lot lines.

9. There shall be 132 parking spaces provided as shown on the Special Permit Plat. All parking shall be on site.

10. Interior parking lot landscaping shall be provided and maintained in accordance with Article 13, Landscaping and Screening.

11. Dedication for public street purposes to forty-five (45) feet from the centerline of Lee Chapel Road shall be provided along the full frontage of the property and shall convey to the Board of Supervisors in fee simple on demand. Grading and construction easements shall be provided along Lee Chapel Road and along Brittford Drive as required by the Director, Department of Environmental Management (DEM).

12. 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 be seen from off the property.

13. A sign shall be permitted in accordance with Article 12, Signs of the Zoning Ordinance.

14. Parking lot lighting shall be on standards not to exceed twelve (12) feet in height and shielded in a manner that would prevent light or glare from projecting onto adjacent properties.

15. If required by the Director, DEM, the existing well shown on the Special Permit Plat shall be capped, and relocated or filled as approved by the County Health Department.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. 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 for either the fellowship hall or chancel addition has started and is diligently pursued. 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 Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 224, November 3, 1993, (Tape 2), Scheduled case of:

10:30 A.M. VILLAGE CENTER AT DULLES ASSOCIATES, SP 93-H-043 Appl. under Sect(s). 4-603 of the Zoning Ordinance to permit pool hall/billiard hall. Located at 2445-H2 Centreville Rd. on approx. 32.02 ac. of land zoned C-6. Hunter Mill District. Tax Map 16-3 ((1)) 15B.

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. Mr. Montes replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit to establish a pool/billiard hall within an existing shopping center. He noted that the proposed 8,260 square foot facility would be located on the top floor of the Clock Tower Building within the 32.02 acres Village Center at Dulles Shopping Center. Mr. Heine said that the proposed use would contain 24 pool tables, a restaurant, which is a permitted use in the C-6 District, and 89 parking spaces. The hours of operation

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would be 10:00 a.m to 2:00 a.m., Sunday through Thursday, and 10:00 a.m to 4:00 a.m. on Friday, Saturday, and holidays.

In conclusion, Mr. Heine stated that the proposed special permit would be in harmony with the recommendations of the Comprehensive Plan and would satisfy the required standards. Therefore, staff recommended approval subject to the Proposed Development Conditions dated October 26, 1993.

The applicant's architect, Victor Montes, with the firm of Lucarelli, Montes, and Wells, 6809 Redmond Drive, Suite 200, McLean, Virginia, addressed the BZA. He stated that the initial concept for the facility was to establish a high-class billiard hall. He explained that the restaurant would have a limited menu which would cater to the finer foods. Mr. Montes expressed his belief that the facility would enhance the area and would provide excellent food and entertainment. Mr. Montes noted that the applicant was attempting to create an atmosphere which would attract a better class of clientele than that of the usual pool halls. In summary, he noted that there would be no modification to the building, no screening would be required, and asked the BZA to grant the request.

In response to Vice Chairman Ribble's question as to the proposed hours of the facility, Mr. Montes stated that the development conditions were acceptable.

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

Mrs. Thonen made a motion to grant SP 93-H-043 subject to the development conditions contained in the staff report dated October 26, 1993 with the modifications as reflected in the Resolution.

Mr. Pammel seconded the motion. He stated that he would like to add a condition which would restrict the sale of alcoholic beverages at the facility.

After a brief discussion, it was the consensus of the BZA that alcoholic beverages not be restricted, but noted that an Alcoholic Beverage Control License would have to be obtained.

After a brief discussion regarding the hours of operation on the billiard hall, it was the consensus of the BZA to limit the hours of operation to 10:00 a.m. to 12:00 midnight, Sunday through Thursday, and 10:00 a.m. to 2:00 a.m. on Friday and Saturday.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-H-043 by VILLAGE CENTER AT DULLES ASSOCIATES, under Section 4-603 of the Zoning Ordinance to permit pool hall/billiard hall, on property located at 2445-H2 Centreville Road, Tax Map Reference 16-3((1))15B, 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 3, 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 C-6.
3. The area of the lot is 32.02 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 of the Zoning Ordinance.

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

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

2. This 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 February 19, 1992, revised May 5, 1992, revised by Victor Montes September 15, 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. If determined necessary by the Director, Department of Environmental Management (DEM), 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 10:00 a.m. to 12:00 midnight, Sunday through Thursday, and 10:00 a.m. to 2:00 a.m. on Friday and Saturday.

6. The maximum number of pool/billiard tables on site shall be 24.

7. Juveniles under seventeen shall be accompanied by an adult after 7:00 p.m.

8. School age children shall not be allowed during school hours of the regular school year, not to include summer school.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established and 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 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 11, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 226, November 3, 1993, (Tape 2), Scheduled case of:

9:30 A.M. EARL J. WHITE, JR., VC 93-V-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.9 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 6042 Edgewood Terrace on approx. 8,100 sq. ft. of land zoned R-4 and HC. Mount Vernon District. Tax Map 83-3 ((14)) (3) 29. (OUT OF TURN HEARING GRANTED)

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. Mr. White replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to construct a one story addition 7.9 feet from the side lot line. The Zoning Ordinance requires a minimum side yard of 10 feet; therefore, the applicant was requesting a variance of 4.1 feet from the minimum side yard requirement.

The applicant, Earl J. White, Jr., 6042 Edgewood Terrace, Alexandria, Virginia, addressed the BZA. He stated that he wished to add a second story addition onto the existing structure. Mr. White explained that the original structure had been built under the previous Zoning Ordinance and the addition would not extend any farther into the side yard than the existing house.

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

Mr. Kelley made a motion to grant VC 93-V-107 for the reasons reflected in the Resolution subject to the development conditions contained in the staff report dated October 26, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-107 by EARL J. WHITE, JR., under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.9 feet from side lot line, on property located at 6042 Edgewood Terrace, Tax Map Reference 83-3((14))(3)29, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 3, 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 and HC.
3. The area of the lot is 8,100 square feet.
   The applicant has met the necessary standards for the granting of a variance.
4. The addition will not encroach any further into the side yard than the existing structure.
5. The house was originally built in conformance with the Zoning Ordinance which has since changed, thereby requiring a variance.
6. The request is for a fairly common feature for houses in the area.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the variance plat prepared by Kenneth W. White. Land Surveyor, dated August 11, 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.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 3, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 228, November 3, 1993, (Tape 2), Scheduled case of:

10:30 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. DEF. FROM 4/6/93 FOR BOS TO REVIEW SHARED PARKING REQUEST. TO BE READVERTISED. DEFERRED FROM 9/21/93 FOR DECISION ONLY.)

Mr. Pammel made a motion to defer SPA 82-D-083-4 to January 11, 1994 at 9:30 a.m. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

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Page 228, November 3, 1993, (Tape 2), Scheduled case of:

11:00 A.M. MCDANIEL CONSTRUCTION CO., INC. BY MICHAEL G. MCDANIEL, APPEAL 93-P-013 Appl. under Sect. 18-301 of the Zoning Ordinance to appeal the determination of the Zoning Administrator that the appellant is operating a construction materials yard that is not associated with an active construction project on property located in an R-2 District, and is therefore in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 2402/2404 Luckett Ave. on approx. 25,300 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((38)) 11.

Vice Chairman Ribble noted that on October 19, 1993, the BZA issued an intent-to-defer A 93-P-013.

Mr. Kelley made a motion to defer the appeal to December 14, 1993 at 10:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

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Page 228, November 3, 1993, (Tape 2), Action Item:

Scheduling of an Additional Public Hearing

Vice Chairman Ribble stated staff could schedule an additional public hearing in order to accommodate the out-of-turn hearings request on any of the following dates: Christmas Week Monday, December 20, 1993; Tuesday, January 5, 1994; Wednesday, January 6, 1994; Tuesday, January 12, 1994; and Wednesday, January 13, 1994.

Mr. Kelley made a motion to schedule the public hearing on Monday, December 20, 1993 at 9:00 a.m. He noted that the Board of Supervisors would not be meeting on that date. Mrs. Thonen seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Harris, and Mr. Hammack absent from the meeting.

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Page 228, November 3, 1993, (Tape 2), Action Item:

Request for Out of Turn Hearings for

John Laurence McCarty and Carol A. McCarty, SP 93-D-069, VC 93-D-134

Community of The Missionary Servants of St. Joseph, Inc.
VC 93-M-131 and SP 93-M-068

Franconia Weslyn Church and Discovery Day Care Center, SPA 76-L-068

Mr. Pammel made a motion to grant the out-of-turn hearing and schedule them for December 20, 1993 at 9:00 a.m.

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

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Page 229, November 3, 1993, (Tape 2), ACTION ITEM:

Request for Waiver of the Twelve-Month Waiting Period
Philip Banks, SP 93-M-014

Mr. Kelley expressed his belief that the applicant should speak to the request. He instructed Mr. Banks that the original application would have to be modified. The applicant, Phillip Banks, 3221 Dashiell Road, Falls Church, Virginia, said he understood.

Mr. Kelley made a motion to grant a waiver of the twelve-month waiting period for the refiling of a new application. Mrs. Thonen seconded the motion.

The BZA noted that although they could not give engineering guidance to the applicant, he could receive guidance from the original hearing's records.

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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, Associate Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: December 14, 1993

APPROVED: December 20, 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 November 9, 1993. The following Board Members were present: Vice Chairman John Ribble; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian and Martha Harris were absent from the meeting.

Vice Chairman Ribble 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 231, November 9, 1993, (Tape 1), Scheduled case of:

9:00 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. (INTENT TO DEFER ISSUED 9/28/93. NO DATE SET. NOTICES NEED TO BE DONE.)

Vice Chairman Ribble noted that an Intent to Defer previously had been issued at the applicant's request, so that the Board could hear the applicant's special permit amendment first. Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested a hearing date of January 25, 1994 at 10:00 a.m. and Mrs. Thonen so moved. Mr. Pammel seconded the motion, which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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Page 231, November 9, 1993, (Tape 1), Scheduled case of:

9:00 A.M. PETER PRY, VC 93-M-090 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (carport and shed) 20.0 ft. from front lot line and 7.0 ft. from side lot line (30 ft. min. front yard and 12 ft. min. side yard req. by Sect. 3-307). Located at 7404 Annanwood Ct. on approx. 15,190 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((9)) 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. Peter Vincent Pry, 7404 Annanwood Court, Annandale, Virginia, replied that it was.

David Hunter, Staff Coordinator, stated that the subject property is located west of Annandale Road and east of Hummer Road. It is developed with a single family detached dwelling and surrounding lots are also zoned R-3.

Mr. Pry presented the statement of justification, previously submitted in writing and incorporated into the file. He said construction had already begun when he found out that he and the builder had erroneously established lot line locations. Mr. Pry said the primary reason for the project was to accommodate a handicapped family member. He said that some of the neighbors objected to the proposed construction on the basis of aesthetics, which he believed was outweighed by the needs of the handicapped family member.

The following people spoke in support of the application: Helen Roberts, 3542 Coco Place, Annandale, Virginia, professional designer; Sandy Gulrick, 3706 Ivydale Drive, Annandale, Virginia, home remodeling; Angie France, 3625 Embassy Lane, Fairfax City, Virginia, real estate broker and appraiser; Christopher Call, 7938 Forest Pathway, Springfield, Virginia, certified general real estate appraiser and certified expert witness; Joan Riggs, mother of Mrs. Pry and the handicapped person who would be using the proposed improvements; and Ruth Pry, 7404 Annanwood Court, Annandale, Virginia, the appliant's spouse.

Comments in favor of the application were: The applicant needs more space to accommodate his growing family and handicapped family member; the proposed location is the only feasible place for the construction; the applicant's project will motivate the neighbors to improve their own homes; the applicant's project will not hurt property values; this type of gentrification process generally tends to enhance the values in such neighborhoods; architectural diversity already existed before the Prys began their project and photos of examples were submitted.

Mr. Call referenced examples of remodeling in the area but, in answer to a question from Mrs. Thonen, he said he did not know whether or not they required variances. In answer to a question from Mr. Kelley, Mr. Call said that he had been hired to testify.

Regarding the money already spent on the project, Mr. Ribble noted that financial hardship was not one of the criteria for granting a variance.

A signed petition was submitted and the following people spoke in opposition to the application: Pat Goddard, 3701 Larchmont Drive, Annandale, Virginia; Paul and Diane McCracken, 7405 Annanwood Court, Annandale, Virginia; Mary Caliandro, 7412 Annanwood Court, Annandale, Virginia; Alice and John Mihos, 7406 Annanwood Court, Annandale, Virginia; and Darlene Yarbrough, 7411 Annanwood Court, Annandale, Virginia.

Comments in opposition were: It is the policy of the Broyhill Crests Citizens Association to oppose requests for the variances from setback provisions when they are considered not to be

in the best interests of the community; the proposed construction would impact the character of the community and single family aspects of the area; one of the proposed land uses blocks the views from the neighboring properties and the proposed construction is opposed by almost all the residents of Annanwood Court; the subject property will be cluttered with over-construction; granting this request would set an ominous precedent, encouraging others to purchase property in the community with the intent of building beyond traditionally code-restrictive and respectable bounds; the existing remodeling in the area shows no record of having required variances, especially to the degree of this application; the claim by the applicant that the locations of the lot lines were not known at the beginning of the project was challenged by the fact that the applicant should have received a plat of survey when the dwelling was purchased and that their hired professional contractor should have been able to read such a plat and should have had knowledge of the required minimum yard requirements in the area; the project should not have been started until compliance with minimum yard requirements had been established, making any resulting hardship self-imposed; the large size of the dwelling is architecturally not in harmony with neighboring properties; a 3-car carport in the front yard is not required to accommodate a handicapped person; Annanwood Court currently has 2 or 3 handicapped residents who have never asked for special privileges; property values have been impacted by the warehouse appearance of the new construction; the applicant chose to buy an outdated house and proceeded to engage in major remodeling, necessitating a variance and creating a self-imposed hardship; the statement that the applicant did not know where the property lines were located was challenged by a neighbor who said he had helped the applicant to establish the location of the property lines two years ago; it was stated that the applicant removed the boundary marker because he said it was in his way.

Mr. Pry came to the podium for rebuttal, stating that they were never confused about the side yard property lines and it was untrue that he removed the rear boundary marker. He said the marker was stolen. Mr. Pry referenced the testimony of the appraiser that projects of this type do not decrease property values and stated that it is relevant to the issue of granting a variance. He spoke further about the financial aspects of his project.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel said he agreed with Mr. Pry's statement that any improvement within a neighborhood would improve the property values. He said that the concept that any addition or expansion would have a detrimental impact upon a community was not true. Mr. Pammel said that people have a right to architectural diversity.

Mr. Pammel said, however, that there were aspects of this application that concerned him and the statements made about the self-imposed hardship were right on target. Mr. Pammel went on to state findings of fact which are outlined in the Resolution. Because of those findings, he made a motion to deny VC 93-M-090.

Mrs. Thonen stated that the Board could only consider the land use, whether it impacts the neighborhood, and whether the variance requested is minimal; the size of the variance being requested in this instance is completely out of line and any resulting hardship is self-imposed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-090 by PETER PRY, under Section 18-401 of the Zoning Ordinance to permit construction of addition (carport and shed) 20.0 ft. from front lot line and 7.0 ft. from side lot line, on property located at 7404 Annanwood Ct., Tax Map Reference 60-3((9))4, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 approximately 15,190 square feet.
4. The hardship is self-imposed because the applicant did not get the advice of professionals who could have located the property line if it was in dispute; they could have given them the limits and constraints of the Zoning Ordinance, to which they would have had to confine the expansion.
5. There is nothing unusual or exceptional about the lot; it is almost identical to every other lot on that side of the street; it is not shallow or narrow; it does not have an irregular configuration; there are no topographic considerations; it is notdifferent from any other lot in the area. The Board must base its findings on these facts, according to law.

6. The applicant would not lose reasonable use of the land if deprived of the variance; he would have reasonable use of the land with or without the carport.
7. Emphasis is placed on the fact that the applicant has not satisfied the Board that physical conditions exist under which a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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 4-0. Mr. Hammack was not present for the vote. Chairman DiGiulian and Mrs. Harris were absent from the meeting

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993.

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Page 233, November 9, 1993, (Tape 1), Scheduled case of:

9:00 A.M. BRET LOWELL AND HOLLY ROSS, VC 93-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 1963 Virginia Ave. on approx. 25,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 72 and 73.

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. Bret Lowell, 6859 Williamsburg Pond Court, Falls Church, Virginia, replied that it was.

Mr. Lowell requested a deferral because some of the neighbors had expressed concerns about the application. He said he was confident they would be able to work out the differences with the neighbors and resubmit a site plan which would have neighborhood approval. Mr. Lowell said staff had indicated December 20, 1993 at 9:30 a.m. as a possible date and time for the hearing and he requested deferral until that time. Mr. Kelley so moved.

Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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9:00 A.M. RICCO T. & MILDRED AMADIO, VC 93-M-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line (15 ft. min. side yard req. by Sect(s). 3-207 and 10-104). Located at 5017 Dodson Dr. on approx. 20,000 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((13)) 7A.

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. Mildred Amadio, 5017 Dodson Drive, Annandale, Virginia, replied that it was.

David Hunter, Staff Coordinator, described the location of the property.

Ms. Amadio presented the statement of justification, previously submitted in writing and incorporated into the file.

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

Mrs. Thonen made a motion to deny VC 93-M-009 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-099 by RICCO T. & MILDRED R. AMADIO, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line, on property located at 5017 Dodson Dr., Tax Map Reference 71-4((13))7A, 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 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-2.
3. The area of the lot is approximately 20,000 square feet.
4. The appearance of the lot does not indicate any hardship; it looks like the other lots in the area.
5. The applicants already have a one-car garage, which indicates that they are not being denied reasonable use of their land.
6. It appears that the proposed garage could be located in the back, which might not be as convenient, but the Board cannot consider convenience.

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

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

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993.

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Page 235, November 9, 1993, (Tape 1), Scheduled case of:

9:00 A.M. JAMES M. BRANHAM, VC 93-M-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.2 ft. from side lot line and 6.0 ft. high fence within the front yard (15 ft. min. side yard req. by Sect. 3-207 and 4 ft. max. fence height permitted by Sect(s). 10-104). Located at 3426 Blair Rd. on approx. 15,075 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 906.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. David Isaac, 6274 B Rose Hill Court, Alexandria, Virginia, the applicant's agent, replied that it was.

David Hunter, Staff Coordinator, described the location of the property.

Mr. Isaac presented the statement of justification, previously submitted in writing and incorporated into the record. He stated that the applicant had purchased a single family dwelling with a carport in Lake Barcroft last summer. The applicant has a classic antique car and the insurance company informed him that the car must be kept in an enclosed garage; he contracted with Mr. Isaac to design an enclosure for the carport. Mr. Isaac described his plans for the enclosure. He said the Lake Barcroft Architectural Review Board had no opposition to the application.

In answer to a question from Mr. Kelley about the fence, Mr. Isaac said it was discovered during a survey of the property that the fence passes in front of the house, which is the front yard, and the 6-foot high fence protrudes into the property. Mr. Isaac said the fences in the area were built without benefit of a surveyor and they meander on and off everyone's property; this one serves as a back yard fence for the neighbor's property.

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

Mr. Kelley moved to grant VC 93-M-100 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-100 by JAMES M. BRANHAM, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.2 ft. from side lot line and 6.0 ft. high fence within the front yard, on property located at 3426 Blair Rd., Tax Map Reference 61-1((11))906, 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 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 approximately 15,075 square feet.
4. The applicant is proposing simply to enclose an existing carport, moving no closer to the property line.
5. There is no opposition to the application.
6. The lot has a peculiar shape.

7. The fence has been there for some time without causing any problem.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 Charles E. Runyon, Certified Land Surveyor, dated July 30, 1993, and certified August 2, 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 seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. ROBERT AND CYNTHIA BURCIAGA, VC 93-Y-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-207). Located at 5004 Flint Rock Ct. on approx. 10,343 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 55-1 ((9)) 676.

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. Cynthia Burciaga, 5004 Flint Rock Court, Chantilly, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, described the location of the property, stating that surrounding properties to the east and north are zoned PDH-2 and developed with single family detached dwellings; to the south and east is Homeowner Association property, also zoned PDH-2.

Ms. Burciaga presented the statement of justification, previously submitted in writing and incorporated into the record. She advised that, had they elected to include this option at the time the house was built, it could have been built by right by the builder under the previous zoning classification.

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

Mr. Hammack moved to grant VC 93-Y-092 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-092 by ROBERT AND CYNTHIA BURCIAGA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20.0 ft. from rear lot line, on property located at 5004 Flint Rock Ct., Tax Map Reference 55-1((9))676, 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 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 PDH-2 and WS.
3. The area of the lot is approximately 10,343 square feet.
4. The photographs indicate that it would be difficult to locate the screened porch so that it would be adjacent to the existing doors on the second story.
5. During construction, with prior zoning, the builder could have constructed the deck or screened porch addition as new construction as a matter of right.
6. The lot is of an irregular triangular shape and the house is positioned within that shape in such a way that a minimum variance is required in order to put the screened porch addition at the rear.
7. There would be no impact on anyone behind the dwelling.
8. To deny the application would deprive the applicant of reasonable use of the property.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by The BC Consultants, dated July 22, 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. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 238, November 9, 1993, (Tape 1&2), Scheduled case of:

9:30 A.M. JAMES W. & FRANCES JEAN BAILES, VC 93-L-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. from side and rear lot lines (15 ft. min. side yard and 12 ft. min. rear yard req. by Sect(s). 3-207 and 10-104). Located at 3300 Collard St. on approx. 9,750 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((19)) 17.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James W. Bailes, 3300 Collard Street, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, described the location of the property, stating that the surrounding lots are also zoned R-2 and developed with single family detached dwellings.

In answer to a question from Mr. Pammel, Ms. Langdon referenced page 1 of the staff report, citing an error in the stated minimum rear yard requirement, and changing it from 25' to 12'.

Mr. Bailes submitted photos of the property to the Board and presented the statement of justification, previously submitted in writing and incorporated into the file. Mr. Bailes said the 5 variances granted in the community were shown in the photos he submitted earlier. He said the photos also showed that his proposed structure was in harmony with other properties in the neighborhood.

In answer to a question from Vice Chairman Ribble regarding why the proposed structure could not be placed in the back yard other than the fact that it would preclude use of the back yard, Mr. Bailes said that getting into the structure would require a very sharp left turn and not only the structure but the driveway also would cover a large portion of the back yard.

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

Mrs. Thonen moved to grant VC 93-L-098 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1993.

Mr. Hammack said he would support the motion partly because the lot is substandard: 9,750 square feet in an R-2 Zoning District. He said it is an older neighborhood in which the lots are very deep and narrow with only 65 feet of frontage and the owners of substandard lots have difficulty constructing in compliance with the Zoning Ordinance. Further, he said the photographs submitted by the applicant demonstrate that garages constructed before the present Zoning Ordinance was adopted are all closer to the lot lines, some as little as 1, 3, 5 and 6 feet away and one right on the property line. Mr. Hammack said granting this request would be in conformance with the neighborhood, which the Board should take into consideration.

Vice Chairman Ribble said he knew the neighborhood well and many of the property owners had constructed garages in exactly the same place as proposed by the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-098 by JAMES W. & FRANCES JEAN BAILES, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 6.0 ft. from side and rear lot lines, on property located at 3300 Collard St., Tax Map Reference 92-2((19))17, 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 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-2.
3. The area of the lot is approximately 9,750 square feet.
4. The proposed structure will not impact the neighborhood.
5. Locating the proposed structure in the middle of the back yard by right would totally deprive the applicant of use of the back yard, more so because of the concrete driveway leading to the structure. It would look odd to have the large driveway curving into the center of the yard, to the garage in the center of the yard.
6. The lot is restrictive because it is narrow and long.
7. The inconvenience of having to locate the garage in the back yard would certainly outweigh any convenience the proposed location might lend the applicant.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 detached garage shown on the plat prepared by Larry N. Scartz, Certified Land Surveyor, dated September 10, 1992, Revised July 23, 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. Hammack seconded the motion which carried by a vote of 5-0 Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 240, November 9, 1993, (Tape 2), Scheduled case of:

9:30 A.M. GEORGE H. LEACH, VC 93-M-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 4204 Kings Mill Ln. on approx. 11,231 sq. ft. of land zoned R-3. Mason District. Tax Map 71-2 ((16)) 79.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. George H. Leach, 4204 Kings Mill Lane, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, described the location of the property, stating that surrounding lots are also zoned R-3 and developed with single family detached dwellings.

Vice Chairman Ribble advised Mr. Leach that the Board members had read his written justification contained in the staff report and asked if he wished to add anything.

Mr. Leach asked for a few moments to reiterate some points made in the statement, which he did. He said the purpose of the variance was to enhance the value of his property and to improve its general convenience of use by replacing an existing carport with a garage. Mr. Leach said that expanding the footprint of the existing carport would be an aesthetic enhancement, as well as allowing more space for ease of movement and storage.

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

Mr. Pammel expressed concern about the application because many of the applicant's statements fell into the realm of convenience and property appreciation, which are not considerations the Board is allowed to make. Although most dwellings do have garages with good reason, this application falls into a gray area; nevertheless, he said he would move to grant VC 93-M-093 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-093 by GEORGE H. LEACH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.8 ft. from side lot line, on property located

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at 4204 Kings Mill Ln., Tax Map Reference 71-2((16))79, 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 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 approximately 11,231 square feet.
4. The plat indicates no other viable alternate location because of the storm sewer easement to the rear and north side, further restricting the areas in which the applicant can build and necessitating a variance.
5. The property has an unusual configuration in that the property lines taper from the front of the property to the rear of the property.

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

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

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

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

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

1. This variance is approved for the location and the specified garage addition shown on the plat prepared by Harold A Logan Associates, P.C., dated July 28, 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 seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 242, November 9, 1993, (Tape 2), Scheduled case of:

9:30 A.M. DONALD AND SUZANNE COTCHEN, SP 93-M-048, Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition to remain 9.8 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 3123 Shadeland Dr. on approx. 12,067 sq. ft. of land zoned R-3. Mason District. Tax Map 51-3 ((11)) 152. (OUT OF TURN HEARING GRANTED)

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. Donald Cotchen, 3123 Shadeland Drive, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordination, described the location of the property, stating that surrounding lots are also zoned R-3 and developed with single family detached dwellings.

Mr. Cotchen presented his statement of justification, previously submitted in writing and incorporated into the record.

Frank Parenti, 3121 Shadeland Drive, Falls Church, Virginia, immediately next door to the applicant, spoke in support of the application and had previously sent a letter in support. Mr. Parenti spoke of two concerns: During the course of the construction of the enclosure, a berm was created next to the addition which slopes toward his house. He was concerned that the berm might cause water seepage in their basement which is about 10 feet away from the property line. He wanted the approval to be contingent upon the removal or leveling of the berm so that water would not move in the direction of his basement. The second concern was that there might be other changes; he wanted assurance that the improvements would be confined to only the subject project and that no other improvements would be made by future owners.

Vice Chairman Ribble advised that the property owner had certain rights to make improvements that do not affect minimum yard requirements. He referenced the fact that the minimum side requirement on Mr. Parenti's lot was 12 feet, yet his dwelling was situated 10 feet from the property line.

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

Mr. Kelley moved to grant SP 93-M-048 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1993, as amended. Condition 4 was added: "The berm previously created during construction shall be regraded so as not to increase any water flow towards the adjacent property owner."

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-048 by DONALD AND SUZANNE COTCHEN, 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 9.8 ft. from side lot line, on property located at 3123 Shadeland Dr., Tax Map Reference 51-3((11))152, 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 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.

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 Rice Associates, P. C., dated September 10, 1993, submitted with this application, as qualified by these development conditions.

3. The screened porch 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 (VaUSBC) in effect at the time of construction and a copy of the certification shall be submitted to the Permit Plan Review Branch, OCP. Any structure that does not meet the VaUSBC in effect at the time of the construction shall obtain a current Building Permit that meets current codes and regulations, and shall obtain all required building inspections.

4. The berm previously created during construction shall be regraded so as not to increase any water flow towards the adjacent property owner.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required 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 legally 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 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. RICHARD F. ROSEN, VC 93-D-109 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 1640 Maddux Lane on approx. 15,712 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-4 ((11)) 5. (OUT OF TURN HEARING GRANTED)

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 F. Rosen, 1640 Maddux Lane, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, described the location of the property, stating that surrounding lots are also zoned R-2 and developed with single family detached dwellings.

Vice Chairman Ribble advised that the written statement of justification, previously submitted and incorporated into the record, had been read by the Board members. Mr. Rosen said that, while listening to other applicants, he became convinced that there were other relevant points he should bring out. He said that the project had begun but was halted and put on hold because of the odd, non-conforming appearance of the addition. In its present state, Mr. Rosen said the addition is not acceptable to the community. The request for a variance was made to enable the applicant to change the shape of the addition to a rectangle, thereby making it acceptable to the neighbors.

Vice Chairman Ribble asked if he was correct in understanding Mr. Rosen to have said that, originally, he planned to build within the minimum yard requirements, but that he believed it would look odd. Mr. Rosen said that was true, the shape of the addition had been criticized by neighbors, so construction was stopped and a variance was being requested to change the shape of the addition to be in conformance with existing neighborhood characteristics. Mr. Rosen said he wished to make clear that the addition would be within the footprint of the existing patio wall.

Mr. Hammack commented on the large size of the addition and the fact that it was proposed to be two-stories high. He asked Mr. Rosen why the entire addition could not be shifted to the left to eliminate the need for a variance. Mr. Rosen said the addition was designed to be in line with the plumbing in the bedrooms and bathroom to which it backs up, and to have the family room back up to the kitchen; moving it to the left would not be a workable alternative. He said that the children's play area also would be lost if the addition were moved to the left.

Carl Selleck, 19105 Harkness Lane, Gaithersburg, Maryland, said he was constructing the addition for the applicant. Mr. Selleck said that once the neighbors saw the shape of the basement walls and compared them to the rest of the neighborhood, they realized that the shape did not conform to surrounding construction. He reiterated Mr. Rosen's comments about the addition lining up with the existing rooms and plumbing and the loss of the children's play area, adding that the change in shape would be more aesthetically pleasing.

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

Mr. Hammack moved to deny VC 93-D-109 for the reasons set forth in the Resolution.

Mr. Pammel seconded the motion.

Mr. Kelley said he would vote against the motion to deny because he believed the Board should approve the application. He said he was impressed by the applicant's willingness to stop construction at considerable expense because of the neighbors' disapproval and that, if the dwelling were situated differently on the lot, the applicant could construct the entire addition by right.

The motion carried by a vote of 4-1. Mr. Kelley voted nay. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

In answer to a question from the applicant, Vice Chairman Ribble advised that he could appeal to the Circuit Court.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-109 by RICHARD F. ROSEN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line, on property located at 1640 Maddux Lane, Tax Map Reference 31-4((11))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 November 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 approximately 15,712 square feet.
4. The applicant evokes sympathy; however, this variance is too great to consider.
5. The request is for a two-story building to be constructed to 5.5 feet of the lot line on one corner, when there is room on the property for a partial reconfiguration that could either eliminate the need for the variance or, at least, minimize it
6. It is reasonable to want to protect a children's play area on one side of the house, but that is clearly a convenience; a play area could be opened up on the opposite side of the house if the proposed construction were shifted over.
7. The variance is too large to be approved; the addition is too large, 34 feet by approximately 26 feet; and there is room for reconfiguration.

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

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

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 4-1. Mr. Kelley voted nay Chairman DiGiulian and Mrs. Harris were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993.

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The Board recessed at 11:20 a.m. and reconvened at 11:35 a.m.

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Page 245, November 9, 1993, (Tape 2), Scheduled case of:

9:30 A.M. DUNG THI YOUNG, SPA 92-L-004 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 92-L-004 for billiard parlor to permit expansion. Located at 7064 Spring Garden Dr. on approx. 11.8 ac. of land zoned C-6, HC and SC. Lee District. Tax Map 90-2 ((1)) 17 and 90-2 ((2)) 1. (DEF. FROM 10/26/93 FOR ADDITIONAL INFORMATION. WRITTEN TESTIMONY ONLY.)

Vice Chairman Ribble noted that this case had been deferred for written testimony only.

Mrs. Thonen said that a letter from the Chairman had been written to the Police Captain at the Franconia Station within whose venue the applicant's establishment is located. The Captain said he had not received any complaints about activities within the establishment. He said that the former Captain felt differently. He also said that he had met with Supervisor Joseph Alexander, Lee District, and his aides. Mrs. Thonen said she had spoken with Joe Alexander who asked if the Board had received any definite information to cause them to deny the application. She said she had no such information and believed that she had no choice but to recommend approval of the application. She acknowledged that some letters were received stating there was a lot of drinking, "hanging out" and fighting late at night outside of the applicant's establishment.

Mrs. Thonen moved to grant SPA 92-L-004 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 26, 1993, as amended. Condition 9 was added:

> School children seventeen (17) years of age or under shall not be allowed on the premises during school hours of the regular school year, not including summer school; they shall not be allowed on the premises after 7:00 p.m. unless accompanied by an adult, parent or guardian, unless they are participating in an activity sponsored by the billiard cafe, such as billiard instructions or league play; all instructions and league play shall be supervised by the management.

A lengthy discussion ensued, resulting in the final wording of this condition. During the discussion Mr. Hammack and Mr. Kelley said they could not support the condition as originally stated because it was too restrictive; modifications were made during the discussion. Additional discussion took place later in 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 92-L-004 by DUNG THI YOUNG, under Section 4-603 of the Zoning Ordinance to amend SP 92-L-004 for billiard parlor to permit expansion, on property located at 7064 Spring Garden Dr., Tax Map Reference 90-2((1))17 and 90-2((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 November 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 C-6, HC and SC.
3. The area of the lot is approximately 11.8 acres of land.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-503 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 Pedro A. Porro, A.I.A dated May 15, 1992, revised May 10, 1993 and approved with this application, as qualified by these development conditions. This approval shall only govern the 3,464 square foot area occupied by the approved Billiard Hall.

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. If this Special Permit is subject to the provisions of Article 17, Site Plans as determined by the Director, DEM, 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. on Sunday night through Thursday night, and 11:00 a.m. to 1:00 a.m. on Friday and Saturday night.

6. Parking spaces shall be provided in accordance with the provisions of Article 11 of the Zoning Ordinance.

7. No sale or consumption of alcoholic beverages shall be permitted on site without approval of the Board of Zoning Appeals.

8. A maximum of four (4) pool tables shall be placed in the expanded area (Unit 12-B).

9. School children seventeen (17) years of age or under shall not be allowed on the premises during school hours of the regular school year, not including summer school; they shall not be allowed on the premises after 7:00 p.m. unless accompanied by an adult, parent or guardian, unless they are participating in an activity sponsored by the billiard cafe, such as billiard instructions or league play; all instructions and league play shall be supervised by the management.

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. Kelley seconded the motion which carried by a vote of 4-1. Mr. Pammel voted nay. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 247, November 9, 1993, (Tape 2), Scheduled case of:

10:00 A.M. MAENG Y. YI, VC 93-V-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.33 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 9003 Stratford Ln. on approx. 12,947 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 111-1 ((3)) (4) 8.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Maeng Y. Yi, 9003 Stratford Lane, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, described the location of the property, stating that it is surrounded on four side by single family detached dwellings also zoned R-3.

Mr. Yi presented the statement of justification, previously submitted in writing and incorporated into the file. He submitted a letter of support from the neighbor at 9005 Stratford Lane.

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

As a case in point, Mr. Pammel referenced the first case heard that day, which proposed a complete remodeling of the residence and substantial expansion of the footprint of the original residence. The Board found on that application that there was no prevailing argument to show hardship and/or loss of use of the property.

In this case, Mr. Pammel moved to deny VC 93-V-091 for the reasons set forth in the Resolution.

Mr. Hammack stated he believed the applicant's objectives were commendable and the improvements were substantial. He said he could not really disagree with anything Mr. Pammel said in his motion, although the plans seemed to indicate that a minimal variance would still allow the applicant to construct a garage. He wondered if the Board would be amenable to granting a lesser variance of 2.7 feet or less, which would allow the applicant to move forward without severely altering the design.

Mr. Pammel said he noticed other variances had been granted in the area and Mr. Ribble said many of the variances had been granted to convert carports into garages and that kind of thing, but nothing of this magnitude.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-091 by MAENG Y. YI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.33 ft. from side lot line, on property located at 9003 Stratford Ln., Tax Map Reference 111-1((3))(4)8, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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 approximately 12,947 square feet.
4. The plat reveals nothing to distinguish the lot as unusual compared to the other lots in the area; they are all of similar size and shape.
5. There is a slight topographical issue but, basically, it is a uniform lot; it is 85 feet in width and the depth is 146.54 feet on one side and 153.21 feet on the other side.
6. Basically, the applicant desires to build a new structure on the lot, considerably larger than the existing footprint and encroaching into the required yards as set forth by the Code.

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 4-1. Mr. Hammack voted nay. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993.

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Page 249, November 9, 1993, (Tape 2), Scheduled case of:

10:00 A.M. ELIZABETH CELMER, VC 93-V-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 6207 Arkendale Rd. on approx. 12,876 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (23) 18.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William C. May, 5252 Cherokee Avenue, Alexandria, Virginia, the applicant's agent, replied that it was.

Mr. Kelley said this property was in his neighborhood and he would like to defer hearing it because he had missed it on the agenda and had not had the opportunity to review it. He said there was some opposition to the application and he would like to have the opportunity to go by and personally look at the property because variances usually are granted without much controversy in this neighborhood.

Mr. Pammel seconded the motion for deferral and suggested the date of December 20, 1993 at 9:30 a.m.

The applicant's agent, Mr. May, said they had just learned of the opposition the previous day. He said they were shocked by the existence of the letter because the complainant had told the applicant that he had no opposition to the application. Mr. May said he had no problem with the deferral.

The motion to defer carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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Page 249, November 9, 1993, (Tape 2), Scheduled case of:

10:00 A.M. EUGENE F. GALLAGHER, VC 93-P-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-407). Located at 2913 Cleave Dr. on approx. 10,448 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 51-3 ((3)) 111 and 112.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Eugene F. Gallagher, 2913 Cleave Drive, Falls Church, Virginia, replied that it was.

Don Heine, Staff Coordinator, described the location of the property, stating that it is surrounded on four sides by single family detached dwellings also zoned R-4.

Mr. Gallagher presented the statement of justification, previously submitted in writing and incorporated into the file.

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

Mrs. Thonen moved to grant VC 93-P-096 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 3, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-096 by EUGENE F. GALLAGHER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line, on property located at 2913 Cleave Dr., Tax Map Reference 51-3((3))111 and 112, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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-4 and HC.
3. The area of the lot is approximately 10,448 square feet.
4. The shape of the lot is so unusual that it conspicuously meets the standard of exceptional shape.
5. The variance is very minimal.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Richard H. Goehner, dated August 2, 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 screen porch 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. Mr. Kelley was not present for the vote. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 17, 1993. This date shall be deemed to be the final approval date of this variance.

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10:30 A.M. AZITA AHN D/B/A STAR CLEANERS, APPEAL 93-M-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination of the Zoning Administrator that Sign Permit No. 9302-7581-004 for appellant's sign was issued in error and that the sign exceeds the maximum allowable sign area for accessory service uses in violation of Sect. 12-209. Located at 5100 Leesburg Pike on approx. 43,978 sq. ft. of land zoned C-2. Mason District. Tax Map 62-3 ((5)) A.

William E. Shoup, Deputy Zoning Administrator, stated that the property is located in the Skyline Executive Center and developed with a 3-story office building. The appellant is appealing the determination that a sign permit for the appellant's building-mounted sign was issued in error and that the sign exceeds the maximum allowable sign area permitted for an accessory service use under the provisions of Section 12-209 of the Zoning Ordinance. Mr. Shoup said the position of the Zoning Administrator's Office is set forth in the staff report dated November 2, 1993, and he proceeded to summarize some of the key issues.

Mr. Shoup said that the appellant's business is a drop-off/pick-up dry cleaning operation located in the 3-story office building on the C-2 property. Under the Zoning Ordinance, that type of business is considered a personal service establishment. Personal service establishments are only permitted in the C-2 District as accessory service uses and must be oriented to cater primarily to the employees of the principal use, which in this case is the office building. In keeping with that intent, accessory service uses are limited in the amount of floor area they may occupy and also are limited to no more than 15 square feet of sign area for all such uses in the building; there is only one other accessory service use in the building and, based on the parking, it does not have a sign, nor is it permitted to have a sign; therefore, the appellant may use but may not exceed the 15 square feet of sign area that is allowed.

Mr. Shoup further stated that, in February of this year, the appellant applied for a sign permit for a 26-square-foot sign; staff inadvertently reviewed this application as a general commercial use, where the allowable sign area is based on the building frontage, and a sign permit was approved for the 26 square foot sign. Subsequently, it was discovered that the permit was in error and a notice of violation was issued, which is the subject of this appeal. Mr. Shoup noted that Section 18-114 of the Zoning Ordinance precludes any office of the County from approving any permit that would violate the Zoning Ordinance and provides that any such erroneous approval is null and void on its face. Based on that provision, Mr. Shoup said it was their position that the approved sign permit is null and void and the appellant's sign is in violation of Section 12-209 of the Zoning Ordinance. Mr. Shoup noted that the position taken is consistent with the longstanding rule in Virginia that administrative approvals of permits issued in violation of Zoning Ordinance provisions are void and confer no rights to the permittee.

Vice Chairman Ribble asked Mr. Shoup if the above holds true for building permits and he said that it does; in fact, some of the case law in Virginia is oriented towards erroneously approved building permits.

Vice Chairman Ribble called on the appellant.

The appellant was represented by Leeta Keller, 6719 Lowell Avenue, McLean, Virginia, who said that a building permit was obtained for the use which is solely a pick-up/drop-off use, there is no dry cleaning done on the site. She said that a sign contractor was hired who applied for a sign permit which usually involves a waiting period of about 5 days. The process involves a zoning inspector going to the site and measuring the frontage, checking all items contained in the application, and recomputing the figures, before the building permit is issued. The permit was issued and the sign was erected at a cost to the applicant of $2,400. Five months later, the applicant received a letter from the County advising that the sign permit had been issued in error and the only recourse was to appeal to the Board of Zoning Appeals (BZA).

Ms. Keller said it was her understanding that, since the time of the foregoing events, the Board had adopted a provision allowing the appellant to go before the Board of Supervisors to request a special exception; however, her client could not afford the $1,950 filing fee, nor could she afford to lose the $2,400 already spent.

Mr. Hammack asked Mr. Shoup if it were possible that the filing fee for the special exception could be waived, to which he replied that the Board of Supervisors had the authority to waive the filing fee; however, the appellant would have to go to her Board member and make a request.

Mrs. Thonen raised the issue of frontage measurement and Mr. Shoup asked for a few minutes to re-check the process.

Vice Chairman Ribble, in the interim, asked if there was anyone else present to address the appeal and received no response.

Mr. Shoup advised that the cleaning establishment had its own entrance into the building but, because it is an office building and the other tenants use a common entrance, there is a difference in the way the frontage is calculated; it would be based upon the frontage of the entire office building, divided up between all the tenants.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel advised that he would make two motions. He moved that the Board of Zoning Appeals uphold the determination of the Zoning Administrator in appeal A 93-M-015.. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

Mr. Pammel next moved that the BZA send a memorandum under Chairman DiGiulian's signature, indicating what had transpired and the fact that the appellant is under financial hardship, having spent $2,400 to erect a sign and then being told that it was in violation and had to be removed; the cost of a special exception is an additional $1,950, which the appellant cannot afford. He said the BZA should respectfully request that the supervisor of the respective district bring the matter before Board of Supervisors and ask that they allow the particular sign at this location with a waiver of fees. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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Page 252, November 9, 1993, (Tape 3), Scheduled case of:

10:30 A.M. DONALD H. AND LINDA L. FRAZIER, APPEAL 93-D-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that the construction of stairs to within approx. 22 ft. of the front lot line does not comply with the minimum front yard requirement for the R-2 District and the appellants are therefore in violation of Par. 1 Sect. 2-307 of the Zoning Ordinance. Located at 7318 Westerly Lane on approx. 18,827 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-3 ((13)) 6.

Vice Chairman Ribble called for this appeal.

Mr. Pammel moved that this appeal be deferred to December 20, 1993 at 9:30 a.m. because of a written request from the appellant's agent, William H. Hansbarger, with the law firm of Baskin, Jackson & Hansbarger, P.C., 301 Park Avenue, Falls Church, Virginia, indicating the death of a very close associate whose funeral was being held that day.

Mr. Hammack seconded the motion.

Steve Corrick, 7323 Westerly Lane, McLean, Virginia, said he lives directly across the street from the subject property and understood that the issue was strictly a legal one, not one of extenuating circumstances, discretion, etc.; therefore, if at all possible, the Board perhaps could just proceed to deal with the legal issue which would certainly be more convenient for the opponents.

Vice Chairman Ribble asked Mr. Corrick if the date of December 20, 1993 suited him and he said it did.

Joseph Pinelli, 1107 Delf Drive, McLean, Virginia, who lives next door to the appellant, said that it made it difficult for those present in opposition to have the three of them appear and find that the appeal would not be heard. Vice Chairman Ribble said that was the reason they were being consulted about the hearing date, so that it would be convenient for them.

The motion to defer carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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Page 252, November 9, 1993, (Tape 3), Action Item:

Approval of Resolutions from November 3, 1993

Mr. Pammel moved to approve the resolutions as submitted, with the exception of:

Dulles Billiard Center
SP 93-H-043

Discussions made it advisable to reconsider the conditions imposing restrictions on youth. A discussion ensued, during which the Board amended the Conditions as follows:

7. Juveniles under seventeen shall be accompanied by an adult after 7:00 p.m.

8. School age children shall not be allowed during school hours of the regular school year, not to include summer school.

During this discussion, it was also agreed to amend Condition 9, previously imposed on:

Dung Thi Young
SPA 92-L-004
(heard earlier in the meeting)

Page 253, November 9, 1993, (Tape 3), DUNG THI YOUNG, SPA 92-L-004, continued from Page 252)

9. School children seventeen (17) years of age or under shall not be allowed on the premises during school hours of the regular school year, not including summer school; they shall not be allowed on the premises after 7:00 p.m. unless accompanied by an adult, parent or guardian, unless they are participating in an activity sponsored by the billiard cafe, such as billiard instructions or league play; all instructions and league play shall be supervised by the management.

Mr. Pammel moved to approve the Resolutions, including SP 93-H-043 as amended.

Mr. Hammack said he believed the age of patrons was not really a land use issue, absent some showing that there was an existing problem, especially since age was not a factor in considering golf courses or bowling alleys or any other kind of recreational establishments; he said he would abstain from voting on the clarification, since he did not participate in the original discussion.

Mr. Kelley seconded the motion, which carried by a vote of 4-1. Mr. Hammack abstained. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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Page 253, November 9, 1993, (Tape 3), Scheduled case of:

Request for Date and Time
Arthur J. & Carol R. Cohen Appeal

Mr. Pammel moved to accept the appeal and schedule it for January 11, 1994 at 10:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mrs. Thonen noted that their were 10 cases scheduled for that date and suggested January 4, 1994. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that their were 8 cases, including 2 appeals and 7 cases being heard together, scheduled for the 4th, which was not much difference than the schedule for January 11th.

Mr. Pammel moved to schedule the appeal for January 4, 1994 at 10:30 a.m. Mr Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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Page 253, November 9, 1993, (Tape 3), Scheduled case of:

Request to issue Intent-to-Withdraw
James M. Seymour Appeal, A 93-V-021

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 12:50 p.m.

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: December 21, 1993 APPROVED: January 4, 1994

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 16, 1993. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble called the meeting to order at 8:05 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 255, November 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. JOHN CAPETANAKIS, VC 93-V-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed lots 2 and 3 each having lot widths of 10 ft. (50 ft. min. lot width req. by Sect. 3-806). Located at 2116 Huntington Ave. on approx. 23,669 sq. ft. of land zoned R-8. Mount Vernon District. Tax Map 83-1 ((1)) 62.

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. Mr. Capetanakis replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the 23,669 square foot lot is located on the north side of Huntington Avenue west of Route 1 and is undeveloped and wooded. The site is zoned R-8 and surrounded by R-4 zoned lots to the east and R-8 development to the north. Adjacent parcel 61 to the west is also zoned R-8 and developed with a single family detached dwelling. The applicant was requesting a variance to the minimum lot width requirement in order to subdivide the property into three lots with proposed Lots 2 and 3 having lot widths of 10 feet. The R-8 District requires a minimum lot width of 50 feet; therefore, Lots 2 and 3 require a variance of 40 feet. The variance application must satisfy all of the nine variance standards required by Sect. 18-404 of the Zoning Ordinance. In staff's opinion, the application did not satisfy all of the Variance Standards.

Mr. Hunter said a variance was not necessary for reasonable use of the property since a single family detached dwelling or four single family attached dwellings could be developed on the property. The applicant met all of the bulk standards except for the minimum lot width requirement, for which this application was filed.

The applicant, John Capetanakis, 2116 South Kent Street, Arlington, Virginia, agreed that four townhouses could be constructed on the property without a variance, but added that the general preference among the neighbors is for the property to be developed with single-family detached dwellings. He referenced the statement of justification submitted with the application and said he believed the proposal would be better for the neighborhood. He added that he had submitted a letter from the citizens association in support of the application.

In response to questions from Mrs. Harris, the applicant said it would be a hardship on the neighborhood if the property is developed with townhouses. He said the previous owner had obtained preliminary approval for the townhouse development but went bankrupt before he could complete the process.

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

Mr. Hammack made a motion to deny VC 93-V-105 for the reasons noted in the Resolution.

Mrs. Thonen said she could not support the motion because she believed the lot is exceptionally narrow with a width of 102.31 feet and that she believed a lower density would be a better development.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-105 by JOHN CAPETANAKIS, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lots 2 and 3 each having lot widths of 10 feet, on property located at 2116 Huntington Avenue, Tax Map Reference 83-1((1))62, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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-8.
3. The area of the lot is 23,669 square feet.
4. It is an unusual case, but the applicant has not satisfied the hardship requirement that shows there is anything exceptional about the lot in that area, or that he could not have reasonable use of the property by developing it as four townhouses, or perhaps in some other configuration of single-family houses.

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. Pammel seconded the motion which carried by a vote of 4-2 with Vice Chairman Ribble and Mrs. Thonen voting 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 November 30, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 256, November 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. TRUSTEES OF ST. PAUL'S LUTHERAN CHURCH, SP 93-P-046 Appl. under Sect(s). 3-103 and 8-915 of the Zoning Ordinance to permit a church and related facilities, a nursery school and a waiver of the dustless surface requirement. Located at 7426 Idylwood Road on approx. 8.55 ac. of land zoned R-1 and HC. Providence District. Tax Map 40-3 ((1)) 9 and 7A.

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, Mr. Langen, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. The property is a 8.54 acre lot in the R-1 and H-C Districts located on the northwest corner of the intersection of Idylwood Road and Leesburg Pike. The property adjoins multi-family dwellings in the PDH-20 District on the north, single family detached dwellings in the R-2 District across Route 7 on the east, attached dwellings in the R-8 District on the south, and attached dwellings in the R-12 District on the west. The church which was constructed in 1962, prior to the current Zoning Ordinance, is located on Lot 7 and is now used for offices and meeting rooms relating to church uses. The 300 seat sanctuary, education building, and parking lot are located on Lot 9.

The applicant was requesting a special permit to establish a nursery school for a maximum of 99 children in the education building, which required the church and related facilities to also come under special permit. The applicant was also requesting a waiver of the dustless surface for the small parking lot on Lot 7A. The only physical change to the site would be a fence enclosing the outdoor recreation area between the sanctuary and the education building.

It was staff's conclusion that the proposed use will be in harmony with the recommendations of the Comprehensive Plan and will satisfy all the General Standards and Standards for Group 5 Uses. Therefore, staff recommended approval of SP 93-P-046 subject to the imposition of the Proposed Development Conditions.

The applicant's attorney, Charles R. Langen, 6800 Little River Turnpike, Annandale, Virginia, said the church was established approximately 30 years ago and is attempting to establish a nursery school. He said the requirements, such as parking, have either been met or exceeded in each instance. Mr. Langen said he believed the use for 99 children with the hours of 9:00 a.m. to Noon and 1:30 p.m. to 3:30 p.m. was reasonable and will be good for both the community and the church.

Vice Chairman Ribble asked if the applicant agreed with the development conditions. Mr. Langen said he believed the condition relating to the dedication for the widening of Idylwood Road (Condition Number 13) was a little harsh, but the applicant was willing to work with the County. He noted for the record that there are no eternal easements going across the subject property for any other use other than any request or requirement they would have along Idylwood Road.

Mrs. Harris said the BZA had received a letter from the owner of Lot 6 which addressed easements. Mr. Langen said the issue had been taken to court, but that he did not believe the church should be granting easements for a commercial use and profit.

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

Mr. Pammel made a motion to grant SP 93-P-046 subject to the Development Conditions contained in the staff report dated November 9, 1993.

Vice Chairman Ribble and Mr. Kelley indicated they believed the applicant should not be required to dedicate any land since this was for a use within an existing building. Mr. Pammel amended his motion to delete Condition Number 13 which required dedication along Idylwood Road.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-P-046 by TRUSTEES OF ST. PAUL'S LUTHERAN CHURCH, under Sections 3-103 and 8-915 of the Zoning Ordinance to permit a church and related facilities, a nursery school and a waiver of the dustless surface requirement, on property located at 7426 Idylwood Road, Tax Map Reference 40-3((1))9 and 7A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 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-1 and HC.
3. The area of the lot is 8.55 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 Walter L. Phillips, Incorporated

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dated June 28, 1993 and revised August 3, 1993 through October 15, 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. If required by the Director, Department of Environmental Management, 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 300.

6. The maximum daily enrollment of the nursery school shall not exceed ninety-nine (99) children and the maximum number of children for either session shall not exceed 50.

7. The hours of operation of the nursery school shall be limited to 9:30 a.m to noon for the morning session and 1:00 p.m. to 3:30 p.m. for the afternoon session, Monday through Friday.

8. There shall be a total of 104 parking spaces provided and all parking shall be on site and as shown on the Special Permit Plat.

9. 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 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.

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

11. The existing on site vegetation shall be deemed to satisfy the transitional screening requirements for all lot lines.

12. The barrier requirement shall be waived along all lot lines.

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 uses have been established and have 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. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 30, 1993. This date shall be deemed to be the final approval date of this special permit.

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8:00 P.M. THE FITNESS AUTHORITY, SP 93-H-049 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit a health club. Located at 11445 Isaac Newton Sq. on approx. 3.01 ac. of land zoned I-5. Hunter Mill District. Tax Map 17-4 ((5)) 6-S1 and 6-S5. (Concurrent with VC 93-H-111). (OUT OF TURN HEARING GRANTED)

8:00 P.M. THE FITNESS AUTHORITY, VC 93-H-111 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing parking spaces to remain 8 ft. from front lot line (10 ft. min. distance req. by Sect. 11-102). Located at 11445 Isaac Newton Sq. on approx. 3.01 ac. of land zoned I-5. Hunter Mill District. Tax Map 17-4 ((5)) 6-S1 and 6-S5. (Concurrent with SP 93-H-049). (OUT OF TURN HEARING GRANTED)

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, Ms. McMahon, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. The property is located in the Isaac Newton Square Industrial Park which is located at the intersection of Wiehle Avenue and Sunset Hills Road. The industrial park is zoned I-5 and the subject parcel contains 3.01 acres. The site is surrounded by industrially zoned land. The applicant was requesting approval of a special permit in order to establish a health club within an existing building in the industrial park, which will occur in three phases. In Phase I, the health club will occupy the majority of the building with office and warehouse uses sharing the remainder of the space. In Phase II, the health club will expand and share the space with only the office use. In Phase III, the health club will occupy the entire building. It is anticipated that Phases II and III will begin about five years after the club opens. Seventy-seven parking spaces will be provided, which exceeds the minimum requirement in the Zoning Ordinance. The proposed hours of operation are from 6:00 a.m. to 10:00 p.m., Monday through Friday, and from 9:00 a.m. to 9:00 p.m. on Saturday and Sunday. Staff did not anticipate any adverse impact from the use and believed that the use met all of the standards for special permit approval. Thus, staff recommended approval of SP 93-H-049 subject to the development conditions being implemented.

Ms. Greenlief said concurrent with the special permit was a variance application to allow parking spaces to be located 8.0 feet from the front lot line. Article 10 of the Zoning Ordinance requires a minimum distance of 10.0 feet between parking spaces open to the air and a front lot line. In this case, the front lot line for this lot within the industrial park, cuts through the middle of the existing parking lot placing the parking spaces 8.0 feet from the front lot line.

The applicant's agent, Toni L. McMahon, 9719 Kings Crown Court, Fairfax, Virginia, said the applicant agreed with all the development conditions. She said all other approvals were ready to go forward and asked that the eight day waiting period be waived.

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

Mrs. Thonen made a motion to grant SP 93-H-049 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 9, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-H-049 by THE FITNESS AUTHORITY, under Section 5-503 of the Zoning Ordinance to permit a health club, on property located at 11445 Isaac Newton Square, Tax Map Reference 17-4((5))6-S1 and 6-S5, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 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-5.
3. The area of the lot is 3.01 acres.
4. The applicant has met all of the standards for the granting of a special permit.
5. The use will not generate any additional impact on the industrial park.
6. The use will meet the Comprehensive Plan.
7. The development is there and the parking is sufficient.

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 CTI Consultants, Inc., dated September 3, 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. 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 during Phase I shall be seven (7). The maximum number of employees on site at any one time during Phases II and III shall be ten (10).

6. There shall be 77 parking spaces provided as shown on the special permit plat.

7. There shall be a maximum of 130 health club patrons on site at any one time during Phase I, a maximum of 171 health club patrons on site at any one time during Phase II and a maximum of 185 health club patrons on site at any one time during Phase III.

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* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued. The establishment of Phase I shall be deemed to establish all phases. 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. Chairman DiGiulian was absent from the meeting. The Board of Zoning Appeals waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 16, 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-H-111 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 9, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-H-111 by THE FITNESS AUTHORITY, under Section 18-401 of the Zoning Ordinance to permit existing parking spaces to remain 8 feet from front lot line, on property located at 11445 Isaac Newton Square, Tax Map Reference 17-4((5))6-S1 and 6-S5, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 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-5.
3. The area of the lot is 3.01 acres.

4. The parking now exists and the granting of the variance will not cause any more setback than it was at that time.
5. The applicant has met the nine required standards for the granting of a variance.

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

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

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

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

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

1. This variance is approved for the location of the nineteen (19) parking spaces shown adjacent to the front lot line on the plat prepared by CTI Consultants, Inc., dated September 3, 1993, submitted with this application and not transferable to other land.

Mr. Hammack and Mr. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting. The Board of Zoning Appeals waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 16, 1993. This date shall be deemed to be the final approval date of this variance.

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Mrs. Thonen made a motion to waive the eight day waiting period for both SP 93-H-049 and VC 93-H-111. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 261, November 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. CHRISTIE D. LAZO, VC 93-B-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 0.77 ft. from side lot line and 20.34 ft. total side yards (8 ft. min. side yard and 24 ft. min. total for side yards req. by Sect. 3-207). Located at 4215 Nutwood Way on approx. 10,530 sq. ft. of land zoned R-2 (Cluster). Braddock District. Tax Map 69-1 ((3)) 127.

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. Mr. Lazo replied that it was.

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Don Heine, Staff Coordinator, presented the staff report. He said the 10,530 square foot property is located on the east side of Nutwood Way within the Old Creek Estates Subdivision west of Olley Lane. The subject property is surrounded by single family detached dwellings in the R-2 District developed under the Cluster Provisions of the Zoning Ordinance. The applicant was requesting a variance to allow an addition consisting of a two car garage to be located 0.77 feet from a side lot line. The Zoning Ordinance requires a 18 foot minimum side yard with total minimum side yards of 24 feet; therefore, a variance was requested for 7.23 feet from the side yard requirement and 3.66 feet from the total minimum side yards requirement.

The applicant, Christie D. Lazo, 4215 Nutwood Way, Fairfax, Virginia, said he had resided on the property for the past 15 years and has always paid his taxes. He said the property is very narrow and pointed out that the granting of the variance would allow him to construct a garage which would protect his four vehicles from further vandalism. Mr. Lazo said to construct the addition in the rear yard would require the removal of several mature pine trees and would require the removal of large quantities of soil, which would be very expensive.

Mrs. Harris asked if the applicant had received a copy of the letter from Mr. Reeder in opposition to the request. Mr. Lazo said he had not and staff provided him with a copy.

A discussion took place between Mrs. Harris and the applicant regarding the size of the proposed addition. Mr. Lazo said the 44 foot length was required to accommodate the four vehicles, and the upper part of the addition would be a new master bedroom and a study.

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

Mrs. Harris made a motion to deny VC 93-B-104 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-104 by CHRISTIE D. LAZO, under Section 18-401 of the Zoning Ordinance to permit construction of addition 0.77 feet from side lot line and 20.34 feet total side yards, on property located at 4215 Nutwood Way, Tax Map Reference 69-1((3))127, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 16, 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 10,530 square feet.
4. The property was acquired in good faith.
5. There is a slight topographic condition on the lot in that it does rise up in the back, but it's size, width are very similar to every other lot on the street.
6. The strict application of the Ordinance would not produce an undue hardship.
7. A garage could be located on the property that would require a much lesser variance and if an addition needed to be added it could be reconfigured to serve the applicant's needs.
8. The original footprint of the house shows 42 feet x 22 feet and to allow the addition would almost double the size of the house.
9. Understand the applicant's concern for his four cars, but the request is for an enormous addition that is very close to the side lot line at 0.77 feet, where 8 feet is required.

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. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 30, 1993.

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Page 263, November 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. BALWANT S. GARCHA, SP 93-M-047 Appl. under Sect(s). 8-914 and 8-918 of the Zoning Ordinance to permit accessory dwelling unit and reduction to minimum yard requirements based on error in building location to allow carport to remain 8.0 ft. from side lot line (10 ft. min. side yard req. by Sects. 3-207 and 2-412). Located at 4816 Montgomery St. on approx. 35,967 sq. ft. of land zoned R-2. Mason District. Tax Map 71-4 ((10)) 85.

Vice Chairman Ribble said the notices were not in order in this case. Jane Kelsey, Chief, Special Permit and Variance Branch, said staff had talked with both the applicant and one speaker who was present, and had agreed upon a deferral of January 18, 1994, at 8:00 p.m. Mrs. Thonen so moved.

Vice Chairman Ribble polled the audience to determine if anyone else was present who might wish to speak to the deferral. There was no reply.

Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 263, November 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. MOUNT VERNON ON THE POTOMAC CITIZENS ASSOCIATION, SPA 76-V-277-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 76-V-277 for marina to permit boat and trailer parking. Located at 9527 Mt. Vernon Landing on approx. 10.30 ac. of land zoned R-2. Mount Vernon District. Tax Map 110-3 ((11)) D, pt. E. (DEF. FROM 9/21/93 TO ALLOW APPLICANT TO RESOLVE OUTSTANDING ISSUES. EACH SIDE HAS 10 MINUTES FOR ADDITIONAL TESTIMONY.)

Vice Chairman Ribble said this case had been deferred to allow the applicant to work with the community.

The applicant's agent, Wendy Burnley, 9401 Mount Vernon Circle, Alexandria, Virginia, came forward.

Jane Kelsey, Chief, Special Permit and Variance Branch, questioned whether the applicant had submitted a revised affidavit. Mr. Burnley said the revision had been submitted to the County Attorney's office on November 12, 1993.

Vice Chairman Ribble asked the speaker to explain to the BZA what had taken place at the community's annual meeting.

Ms. Burnley said two proposals, Plan A and Plan B, showing the paving that would need to be done around the marina and tennis courts were distributed to each member of the community and each member had three opportunities to comment on the proposals. She said 72 lot owners voted to utilize the current paved area with a minimum of additional paving to accommodate 28 boat trailers and cars, Plan B, and 1 lot owner voted for Plan A. Ms. Burnley affirmed that the neighborhood supported the adoption of the alternative plan and noted that almost everyone walks to the tennis courts and to the marina. She introduced Kathy Manafort

A discussion took place between the BZA and the speaker relating to the condition that referenced parking spaces for 16 boat trailers. Ms. Burnley said currently there are only ten people who are paying slip fees and have boats at the marina. She said it appeared that perhaps some of the boat trailers belonged to friends of the lot owners and those have been weeded out.

In response to a question from Mr. Hammack about how the parking spaces should be designated, Susan Langdon, Staff Coordinator, said staff had based their review on the Ordinance requirement, which is 16 spaces for the parking of cars at the marina and the tennis courts. She said that, added to the 16 boat/trailer spaces, brings the total number of parking spaces to 32.

Mrs. Harris asked the size of a boat/trailer parking space compared to that of a vehicle. Ms. Langdon said the plat shows the spaces as one and a half times, but that she could not respond as to what the Department of Environmental Management might require.

A discussion took place between the BZA and the applicant regarding the size of the parking spaces referenced in Condition Number 5 as compared to those in the Plan B. Ms. Manaport said the neighbors' main objection was not the number of spaces but the arrangement, in particular the additional parking spot between the tennis courts and the driveway. The neighbors expressed concern with their view of the water being blocked by adding additional parking spaces.

Ms. Manaport said there are a number of people who only keep their boats at the marina during the off season and there is a new program that requires the lot owners to obtain a sticker for their trailers.

Mr. Pammel asked for a clarification as to what plat the BZA was supposed to be reviewing, since there appeared to be a discrepancy between the plats referenced by the applicants and the one before the BZA. Ms. Manaport said Plan A followed County regulations and Plan B was the club's proposal to have a minimal amount of paving.

Ms. Langdon said Plan B was dated "Revised September 24, 1993", which was the one the BZA should be reviewing.

Mrs. Harris commended the applicants for working with the community. She asked if there was a compromise to have some parking spaces designated for boat/trailer and others for cars, which would meet the County regulations, and still make the neighbors happy. Ms. Manaport said that was the plan that was presented to the BZA at its September 21, 1993, and the BZA directed the applicant to go back to the community.

Ms. Burnley said in the six months that she has been going down to the marina on a daily basis there have been no cars coming to the marina. She said the applicant would be willing to stripe the area and designate parking spaces.

In response to a question from Mr. Hammack, Ms. Langdon said 16 parking spaces are required for the combined use of the marina and the tennis courts.

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

Mr. Pammel made a motion to grant SPA 76-V-277-2 for the reasons noted in the Resolution and subject to the Development Conditions contained in the Addendum dated November 9, 1993. He revised Condition Number 5 to read:

> Fourteen (14) vehicle and fourteen (14) boat/trailer parking spaces for a total of twenty-eight (28) spaces shall be provided on site. . . .

Mrs. Harris said the applicant only needed to stripe the vehicle spaces and leave the remainder open.

Following a discussion between the BZA members, Mr. Pammel amended his motion to read:

> Sixteen (16) vehicle parking spaces to be striped and the remainder of the area will be paved area. All parking shall be on site.

The applicant asked if the approval required any additional paving, and Mr. Pammel said that it did not. Jane Kelsey, Chief, Special Permit and Variance Branch, said if the approval was per the plan before the BZA, the plan did show additional paving. Vice Chairman Ribble informed the applicant that new plats would need to be submitted.

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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-277-2 by MOUNT VERNON ON THE POTOMAC CITIZENS ASSOCIATION, under Section 3-203 of the Zoning Ordinance to amend SP 76-V-277 for marina to permit boat and trailer parking, on property located at 9527 Mt. Vernon Landing, Tax Map Reference 110-3((11))D, pt. E, 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 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-2.
3. The area of the lot is 10.30 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 Holland Engineering dated April 24, 1992, revised through September 24, 1993 and the landscape plan prepared by SRA dated December 15, 1992, revised through September 24, 1993 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. Sixteen (16) vehicle parking spaces to be striped and the remainder of the area will be paved area. All parking shall be on site.

6. 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.

7. The maximum number of memberships shall be 115.

8. The maximum number of boat slips shall be 36.

9. 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 as approved by the Urban Forestry Branch.

10. Wheel stops shall be provided in the spaces designated for boat and trailer parking in accordance with the PFM standards, per review and approval of DEM at the time of site plan review. Additional measures to protect and provide appropriate drainage for the vegetation along the eastern and northeastern lot lines shall be provided in accordance with standards set forth by the Urban Forestry Branch of the Department of Environmental Management.

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 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and will become final on the date the revised plats are submitted. This date shall be deemed to be the final approval date of this special permit.

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The BZA recessed at 9:12 p.m. and reconvened at 9:20 p.m.

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Page 266, November 16, 1993, (Tape 1), Scheduled case of:

8:00 P.M. MCLEAN BIBLE CHURCH, SPA 73-D-151-4 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-D-151 for church and related facilities to amend development conditions. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A.

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, Mr. Hansbarger, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the application property was located at 850 Balls Hill Road, north of the intersection of Balls Hill Road and Georgetown Pike. The property is zoned R-1 and consists of 5.75 acres. To the east are lots zoned R-1 and developed with single-family detached dwellings. To the north, south, and west the site is surrounded by Virginia Department of Transportation (VDOT) right-of-way for Interstate 495. The site is currently developed with a 23,917 square foot church that seats 980 and a 245 space parking area. The applicant was requesting approval of a special permit amendment to amend Condition 5, which states: "The maximum number of seats in the main area of worship shall be 980 with a corresponding minimum of 245 parking spaces. All parking shall be on site as shown on the special permit plat." The applicant was proposing the last sentence of the Condition to read: "Should the minimum required spaces not be sufficient to accommodate the cars of those attending a particular church function, the applicant will use its best efforts to encourage and will direct parking to locations other than the neighborhood streets, where parking is permitted." No physical changes to the site were proposed with the amendment.

Between November 1992 and January 1993, the Zoning Enforcement Branch, Office of Comprehensive Planning, received numerous complaints from residents in the neighborhoods adjacent to the church concerning church attendees parking on neighborhood streets. A complainant stated that church attendees were parking on gravel shoulders, in ditches, turning in private driveways, and blocking streets. On January 25, 1993, the Zoning Enforcement Branch issued a Notice of Violation to the applicant for failure to comply with Condition Number 5 of SPA 73-D-151-3, which reads in part: ". . . All parking shall be on site as shown on the special permit plat." In an attempt to resolve the off-site parking problems, the church has found alternative parking at Cooper Middle School located directly across Georgetown Pike from the church. The parking arrangement appears to have resolved the problems generated by parking on neighborhood, residential streets. The approval, however, does not constitute an official shared parking agreement. A shared parking agreement must be submitted to the Department of Environmental Management (DEM) for review and approved by the Board of Supervisors.

Staff believed that the applicant's proposed amendment to Condition 5 could again result in church attendees parking on adjacent residential streets and not resolve the obvious parking problem associated with the use. Therefore, Ms. Langdon said staff did not support the proposed amendment requested by the applicant, but would support a change in Condition 5 to

read: "The maximum number of seats in the main area of worship shall be 980 with a corresponding minimum of 245 parking spaces. All parking shall be on site as shown on the special permit plat, or at a location as approved by the Board of Supervisors under a shared parking agreement." With the implementation of the Proposed Development Conditions contained in Appendix 1, including Condition 5 which requires parking on site or at a location approved by a shared parking agreement by the Board of Supervisors, staff believed that the applicant would be in compliance with all applicable Zoning Ordinance provisions and recommended approval of SPA 73-D-151-4.

Mr. Hammack asked if staff had seen the wording to Condition 5 recommended by the applicant. Ms. Langdon said staff had just received a copy. She said staff did not object to the wording in Condition 5, but did believe that the wording was more restrictive than that proposed by staff.

In response to a question from Mrs. Thonen regarding a shared parking agreement, Ms. Langdon said the agreement has not yet been approved by the Board of Supervisors.

With respect to Mr. Hammack's question regarding the applicant's proposed wording in Condition 14, Ms. Langdon said the applicant had submitted a form to staff signed by a member of the School Board allowing them to park at Cooper School. She added that the applicant is in violation of their Special Permit, which requires that all parking must be on site.

Mrs. Thonen said the BZA did not the authority to approve a shared parking agreement.

William H. Hansbarger, 301 Park Avenue, Falls Church, Virginia, said the case was before the BZA after an awful lot of work with the Special Permit and Variance staff, citizens, and the Zoning Enforcement Branch. He said since the time the Notice of Violation was issued, the applicant has filed the special permit amendment and obtained a parking agreement with Cooper Middle School. Mr. Hansbarger said since the church has been parking at the school there has been no problem with the church attendees parking on the neighborhood streets, which he believed to be the ultimate goal of all parties. He said the applicant plans to file a request for a shared parking agreement, but until the Board of Supervisors approves that request the applicant needs some type of approval which will allow them to continue to park at the school.

Mr. Kelley asked what would happen if the BZA deferred action until the Board of Supervisors heard the shared parking agreement. Mr. Hansbarger said the applicant agreed to withdraw the appeal, which makes the applicant in violation of their special permit since all parking is not on site. Mr. Kelley reiterated Mrs. Thonen's comments that the BZA did not have the authority to approve a shared parking agreement and asked staff if that was correct.

Jane Kelsey, Chief, Special Permit and Variance Branch, said Mr. Kelley and Mrs. Thonen were correct.

In response to a question from Mrs. Harris about the shared parking agreement, Mr. Hansbarger said the formal submission has not been made, but the process has begun.

Mrs. Harris asked how long the process would take. Ms. Langdon said the applicant must first submit all the documents to DEM for their review before DEM can prepare a report for the Board of Supervisors. She said this could take several weeks depending on DEM's workload. Ms. Kelsey said the Supervisor from the Dranesville District has asked that DEM expedite the case.

Ms. Kelsey said to her knowledge staff had not received a withdrawal letter on the appeal. Betsy Hurtt, Clerk to the BZA, informed Ms. Kelsey that the letter was received at the close of business today.

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

Warren Dennis, 7113 Hollyrood Drive, McLean, Virginia, outlined the background and said the neighbors had always interpreted the phrase "on site" be interpreted to preclude neighborhood parking. He recognized the fact that the church was there, that it was not a bad neighbor, nor a bad use. Mr. Dennis said he believed the BZA could confirm that parking could not be on the neighborhood streets, and this would not overstep their authority. Mr. Dennis said perhaps the BZA could approve the applicant's request by removing the phrase "Cooper's School" and merely leaving it open for other approved sites.

Mr. Kelley again asked what harm there would be if the BZA deferred action. Mr. Dennis said if there was any possibility that the cars would end up back on the neighborhood streets, the neighbors would have to proceed with the pending litigation. (He submitted a signed petition into the record.)

Tom H. Brain, 7112 Hollyrood Drive, McLean, Virginia, said based on the applicant altering their request, he would have to agree and concur not only with staff's position but also with the modified wording as submitted by Mr. Hansbarger. He believed the wording would preclude neighborhood parking in the future and that has been the neighbors' goal for the past year. (He submitted a copy of his prepared statement into the record.) Mr. Brain said he hoped that the BZA's action would not provide a loophole which would allow the church to again park in the neighborhoods.

Mrs. Harris said if the BZA did not approve the applicant's request the church is in violation and a revocation hearing could be held, or the BZA could defer action until the Board of Supervisors acts on the shared parking agreement, or the BZA could approve something in between. She said there was no loophole.

Mr. Brain said apparently someone has given the church permission to park at the school. Vice Chairman Ribble said the best thing the BZA could do was to confine the parking on site and recommend to the Board of Supervisors and the Department of Environmental Management that they expedite the shared parking agreement.

Mr. Dennis said the church has withdrawn their appeal and he was concerned that the applicant would reinstate the appeal, which would leave the neighbors in an uncertain circumstance since they believed the issue had been brought to a finality. He said if the appeal is reinstated than the litigation would still be pending.

Since there were no additional speakers in support of the request, Vice Chairman Ribble called for speakers in opposition.

Theodore Simpson, 7120 Georgetown Pike, McLean, Virginia, opposed the applicant's request and the proposed compromise solution. He said prior to the completion of the expansion, the church met and parked at Langley High School and he saw no reason why they could not continue doing so and transport the attendees to the church. Mr. Simpson said the church is not a neighborhood church and studies have shown that fifty percent of the attendees are coming from out of town. He said the subject property is a prime location for the church because of its close proximity to the Beltway. Mr. Simpson said the applicant's request to park off site should be denied unless it is far enough away from the church to prevent people from walking to the church.

In rebuttal, Mr. Hansbarger said the common goal of all parties involved is not to have parking on the neighborhood street. He said the church has a situation where they cannot get all the cars on site for the people who want to attend the church. The applicant has taken the next best step which is to park at an alternate location and will continue to do so, if the BZA approves the applicant's request. Mr. Hansbarger said the church and the neighbors understand that parking will be on site and at some other approved location. He said there is no requirement in the Zoning Ordinance that stipulates a shared parking agreement under the circumstances that surrounds the application. Mr. Hansbarger said it is only required when there is not enough on site parking to meet the minimum requirements of the Ordinance, and the applicant does have enough on site parking. He said if the application cannot go forward the problem will begin all over.

Mr. Kelley and Mr. Hansbarger discussed what the church would do if the BZA deferred action. Mr. Hansbarger said he had agreed to withdraw the appeal at the citizens' request and added that the church would not back out of the parking agreement it had with Cooper School if the BZA did not approve the request.

In response to a question from Mrs. Harris regarding the Notice of Violation, Ms. Kelsey said in a similar instance the Zoning Enforcement Branch had held the Notice in abeyance because the applicant had a pending request for shared parking and a special permit. She said she could not speak for the Zoning Administrator, but she saw no reason why it would not be done if the request was acted on in due diligence.

Mr. Hansbarger said he believed the request could be filed within the next week or two, and again stated that the Zoning Ordinance did not require the applicant to make such an application.

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

Mr. Hammack said he believed it was the consensus of the BZA to defer action to give the applicant an opportunity to apply for a shared parking arrangement and then to revisit the issue after the Board of Supervisors has acted. He agreed with Mr. Kelley and noted that the BZA has never been asked to review an application with respect to Cooper School as a parking area for the church and that he would be uncomfortable voting on the issue. Mr. Hammack said the BZA has in the past denied off site parking to another church in McLean because of the amount of traffic. He made a motion to defer SPA 73-D-151-4 for approximately 90 days. Mrs. Harris seconded the motion. Ms. Kelsey suggested February 8, 1994, at 9:00 a.m. The motion passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Kelley made a motion that staff communicate to the Board of Supervisors its request that the Board expedite the hearing on the shared parking agreement. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 268, November 16, 1993, (Tape 1), Action Item:

Approval of Resolutions from November 9, 1993

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Pammel seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 269, November 16, 1993, (Tape 1), ACTION ITEM:

Request to do Intent to Withdraw
James W. Spears Appeal, A 93-V-012
Currently Scheduled for November 30, 1993

Mrs. Thonen made a motion to issue an intent to defer A 93-V-012. Mr. Pammel seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 269, November 16, 1993, (Tape 1), Action Item:

Request to Change Time of Public Hearing
Crosspointe Appeal

Mrs. Thonen made a motion to change the time for Crosspointe Appeal from 10:30 a.m. to 10:00 a.m. on January 4, 1994. Mr. Pammel seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 269, November 16, 1993, (Tape 1), Action Item:

Request to Change Time of Public Hearing
Cohen Appeal and Lane Appeal

Mrs. Harris made a motion to change the time for Cohen and Lane Appeal from 10:30 a.m. to 10:00 a.m. on January 4, 1994. Hearing no objection, the Chair so moved. Chairman DiGiulian was absent from the meeting.

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Page 269, November 16, 1993, (Tape 1), Information Item:

Discussion Regarding December 7, 1993 Public Hearing

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that two applicants asked to be moved to a later date; therefore, the BZA's December 7th agenda showed a time gap. She suggested that any cases the BZA might defer on November 30th be deferred to that date.

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

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: December 14, 1993

APPROVED: December 20, 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 November 30, 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 271, November 30, 1993, (Tape 1), Scheduled case of:

9:00 A.M. HRAIR H. KAZANJIAN, VC 93-L-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to be 26 ft. and 28.5 ft. from front lot lines (40 ft. min. req. by Sect. 4-807), parking spaces 6.5 ft. and 5.5 ft. from front lot lines (10 ft. from front lot line req. by Sect. 11-102), modify required landscape strips (10 ft. min. from public ROW and 4 ft. from land not in ROW req. by Sect. 13-202), and allow loading space in min. front yard (prohibited by Sect. 11-202). Located at 7210 Richmond Hwy. on approx. 15,998 sq. ft. of land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 79B. (OUT OF TURN HEARING GRANTED.) DEF. FROM 9/14/93 FOR DECISION ONLY. DEF. FROM 9/28/93 FOR REVISED PLATS. DEF. FROM 10/12/93 TO RESOLVE OWNERSHIP ISSUE)

Mrs. Harris noted that the Board of Zoning Appeals had received a letter from the applicant requesting deferral.

Chairman DiGiulian asked staff for a deferral date. Marilyn Anderson, Senior Staff Coordinator, suggested December 14, 1993 at 9:30 a.m.

Mrs. Harris made a motion to defer VC 93-L-063 to the suggested date and time. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 271, November 30, 1993, (Tape 1), Scheduled case of:

9:00 A.M. CENTREVILLE VOLUNTEER FIRE DEPARTMENT, INC., VC 93-Y-125 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 20 ft. from front lot line and temporary trailers 25 ft. from another front lot line (40 ft. min. front yard req. by Sect. 4-807). Located at 5856 Old Centreville Rd. on approx. 113,445 sq. ft. of land zoned C-8, HC, SC and WS. Sully District. Tax Map 54-4 ((1)) 60 and 63. (OUT OF TURN HEARING GRANTED 10/19/93).

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

Lorrie Kirst, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. She said that in March 1993 the Board of Supervisors approved a series of applications which approved the expansion of the fire station. Ms. Kirst explained that the expansion was necessary in order to house the fire fighters, and also to provide quarters for women fire fighters. The expansion would include the incorporation of a 0.87 acre portion of Parcel 60 into the site, a 13,745 square foot building addition, the expansion of the parking lot, and two temporary trailers to house fire fighters. She noted that the applicant had made a proffered commitment to dedicate to Fairfax County for public street purposes approximately 32,132 square feet for the Route 28/Route 29 interchange.

Ms. Kirst stated that the application before the BZA was a request for a variance to allow an addition to be located 20 feet from the future right-of-way of the Route 28/Route 29 interchange and to allow a temporary trailer for the temporary housing of fire fighters to be located 25 feet from the front lot line along Old Centreville Road. A minimum front yard of 40 is required by the Zoning Ordinance; therefore, the applicant was requesting variances of 20 feet to the minimum front yard for the addition and 15 feet to the minimum front yard for the trailer.

Mrs. Harris noted that the trailer would come no closer to the front lot line than the existing structure. Ms. Kirst said it would be approximately the same.

The applicant's attorney, Sarah H. Reifsnyder, with the law firm of Blankingship and Keith, 4020 University Drive, Suite 312, Fairfax, Virginia, addressed the BZA. She stated that the Board of Supervisors had approved the expansion and that during the Site Plan Review process, the applicant was informed that the two variances would be required. She noted that once the addition was completed, the temporary trailers would be removed.

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

Mr. Hammack made a motion to grant VC 93-Y-125 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated November 23, 1993.

Mrs. Harris and Mr. Pammel made some additional comments which Mr. Hammack incorporated into the findings of fact 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 93-Y-125 by CENTREVILLE VOLUNTEER FIRE DEPARTMENT, INC., under Section 18-401 of the Zoning Ordinance to permit addition 20 feet from front lot line and temporary trailers 25 feet from another front lot line, on property located at 5856 Old Centreville Road, Tax Map Reference 54-4((1))60 and 63, 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 30, 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 C-8, HC, SC and WS.
3. The area of the lot is 113,445 square feet.
4. The applicant has satisfied the necessary standards for the granting of a variance.
5. Unusual situations exist due to the dedication of land for an interchange, in the site of the fire department, and in the various uses around it.
6. The variance would not change the character of the zoning district.
7. The fire station was built in the early 1950s.
8. The temporary trailer will come no closer to the front lot line than the original structure.
9. The addition, which will be located at the rear of the building, will not impair sight distance or traffic.
10. Without the variance for the addition, which is necessary to meet the needs of the community, there would be a severe impact on the public's safety.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 building addition and temporary trailers shown on the plat prepared by Walter L. Phillips, dated October 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 building addition shall be architecturally compatible with the existing fire station.

Pursuant to Sect. 18-407 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 8, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 273, November 30, 1993, (Tape 1), Scheduled case of:

9:00 A.M. LEE E. PERRY, VC 93-H-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 1920 Baton Dr. on approx. 15,555 sq. ft. of land zoned R-2. Hunter Mill District. Tax Map 28-3 ((11)) 78. (DEF. FROM 9/28/93 - NOTICES NOT IN ORDER.)

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. Perry replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to construct a garage and storage room addition 10.3 feet from the side lot line. A minimum side yard of 15 feet is required by the Zoning Ordinance; therefore, the applicant was requesting a variance of 4.7 feet to the minimum side yard requirement.

The applicant, Lee E. Perry, 1920 Baton Drive, Vienna, Virginia, addressed the BZA. He stated that he would like to enclose the carport which is screened by an existing stand of pine trees. Mr. Perry explained that he would also like to extend the carport so that it would be level with the existing structure. He expressed his belief that the addition would be harmonious with the neighborhood and asked the BZA to grant the request.

In response to questions from the BZA, Mr. Perry stated that because of the odd shape of the exceptionally narrow lot, the backyard is virtually unusable. He also noted the variance would negate safety and security concerns, as well as storage problems. In summary, Mr. Perry said that the addition would not intrude any further into the side yard than the existing carport.

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

Mr. Pammel made a motion to grant VC 93-H-066 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated September 21, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-H-066 by LEE E. PERRY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.3 feet from side lot line, on property located at 1920 Baton Drive, Tax Map Reference 28-3((11))78, 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 30, 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 15,555 square feet.
4. The applicant has presented testimony that the property is unusual in that it is narrow and does not meet the lot width requirements for the R-2 District. The lot width is 7 feet less than the normal requirement of 100 feet in the R-2 District.
5. The applicant is enclosing a carport which will not encroach any further into the side yard than the existing structure.
6. There are a stand of mature trees and a fence along the side lot where the addition will be located.

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

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

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

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

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

1. This variance is approved for the location and the specified garage and storage room addition shown on the plat prepared by R. C. Fields, Jr. and Associates, dated May 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 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 8, 1993. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. STUART M. & LISA A. CLAYTON, VC 93-S-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.6 ft. and deck 12.4 ft. from rear lot line (13 ft. min. rear yard req. for deck and 25 ft. min. rear yard req. for addition by Sect(s). 2-412 and 3-507). Located at 7697 Green Garland Dr. on approx. 9,126 sq. ft. of land zoned R-5. Springfield District. Tax Map 98-1 ((18)) 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. Ms. Clayton replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicants were requesting variances to allow a screened porch addition 12.6 feet from the rear lot line and a 9.02 foot high deck to be located 12.4 feet from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard for an addition and a 25 foot minimum rear yard with a permitted extension of 12 feet for a deck; therefore, the applicants were requesting variances of 12.4 feet for the addition and 0.6 feet for the deck to the minimum rear yard requirements.

The applicant, Lisa A. Clayton, 7697 Green Garland Drive, Springfield, Virginia, addressed the BZA. She explained that the 8 foot easement, the Homeowners Association regulations, and the 25 foot set back requirement from the pipe stem driveway precluded placing the addition elsewhere on the lot. Ms. Clayton noted that the architectural style, as well as the placement of the structure on the lot, had caused the need for the variance. In summary, she said the existing deck would be enclosed and an open deck added. She noted that the neighbors supported the request, the addition would enhance the property, and asked the BZA to grant the request.

In response to questions from the BZA, Ms. Clayton stated that because of the County's and Homeowners Association's requirements, the proposed location was the only site on which to build the addition. She said the adjoining neighbors on Lot 33 had enclosed their deck but because of the placement of the structure on the lot a variance was not needed.

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

Mrs. Thonen made a motion to grant VC 93-S-106 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated November 23, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-106 by STUART M. AND LISA A. CLAYTON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.6 feet and deck 12.4 feet from rear lot line, on property located at 7697 Green Garland Drive, Tax Map Reference 98-1((18))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 November 30, 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 9,126 square feet.
4. The applicant has presented testimony that the addition cannot be constructed elsewhere on the lot.
5. There is an extraordinary situation in that the applicants are required to build the addition on the back of the house. There is an 8 foot easement on the northwest side and a 12 foot setback requirement from the pipestem driveway.
6. The strict application of the Zoning Ordinance would cause an undue hardship.
7. There would be no detrimental impact on the neighbors.
8. There would be no change to the Zoning Ordinance or to the character of the zoning district.
9. The variance would be in harmony with the spirit and purpose 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 specified screened porch addition and deck shown on the plat prepared by Huntley, Nyce, and Associates, Ltd., dated July 20, 1993, certified July 22, 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 screened porch 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 December 8, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 276, November 30, 1993, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE J. HOLTZ, JR., VC 93-Y-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.2 ft. from rear lot line (25 ft. min. rear yard req. by Sect(s). 16-403 and 3-207). Located at 3015 Gatepost Ln. on approx. 10,827 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) (7) 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. Holtz replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow a storage shed addition to be constructed on the rear of the garage 19.2 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicant was requesting a 5.8 foot variance to the minimum rear yard requirement.

Mrs. Harris questioned whether a variance would be needed if the shed were not attached to the rear of the garage. Mr. Heine said a shed would have to be placed 8 feet from the side lot line for total of 24 feet and 10 feet from the rear lot line.

The applicant, George J. Holtz, 3015 Gatepost Lane, Herndon, Virginia, addressed the BZA. He stated that the unusual shape of the lot, along with the need to comply with the Franklin Farm's covenants, had caused the need for the variance. He explained the covenants require that the shed be an integral part of the deck or garage. Mr. Holtz said the material used to construct the shed would be compatible with the existing garage, the roof line would merely be extended, and noted the design had been approved by Franklin Farm's Architectural Board. In summary, Mr. Holtz said the property backed up to open space, the shed would be aesthetically pleasing, there would be detrimental impact on the neighbors, and asked the BZA to grant the request.

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

Mrs. Harris made a motion to grant VC 93-Y-108 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated November 23, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-108 by GEORGE J. HOLTZ, JR., under Section 18-401 of the Zoning Ordinance to permit construction of addition 19.2 feet from rear lot line, on property located at 3015 Gatepost Lane, Tax Map Reference 35-2((8))(7)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 November 30, 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-2.
3. The area of the lot is 10,827 square feet.
4. The lot has an unusual shape and backs up to dedicated park land.
5. The situation on the subject property is not so general as to make it practical to formulate a new general regulation by the Board of Supervisors.
6. Strict application of the Zoning Ordinance would produce undue hardship.
7. The applicant's requirement to meet the covenant of the Homeowners Association that prohibits additions in the front has caused the need for the variance.
8. The requirement that the shed be attached to the house has caused the need for the variance.
9. The minimum variance would allow the applicant to build the shed while meeting the subdivision's covenant.

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

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

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 shed addition shown on the plat prepared by Site Design Engineering, Inc., dated August 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 shed 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. Hammack 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 December 8, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 278, November 30, 1993, (Tape 1), Scheduled case of:

9:30 A.M. GROUP W. RADIO, INC. (HOU./WASH.), SP 93-L-013 Appl. under Sect(s). 8-915 of the Zoning Ordinance to permit a waiver of the dustless surface requirement. Located at 3900 San Leandro Pl. on approx. 11.49 ac. of land zoned R-3. Lee District. Tax Map 101-2 ((1)) 10E and pt. 10A. (IN ASSOCIATION WITH SE 93-L-013).

Marilyn Anderson, Senior Staff Coordinator, addressed the BZA and explained that the Board of Supervisors had approved a Zoning Ordinance Amendment which no longer makes a dustless surface requirement a special permit use; therefore the issue is moot. She stated that the Director, Department of Environmental Management, has been given the authority to grant the use.

In response to Mrs. Harris' question as to whether the applicant would have to submit a written request for withdrawal, Ms. Anderson said no.

Mr. Pammel made a motion to dismiss SP 93-L-013. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 278, November 30, 1993, (Tape 1), Scheduled case of:

9:30 A.M. MONICA COCHRAN, SP 93-Y-064 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to allow addition to remain 14 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 15342 Jordans Journey Dr. on approx. 14,081 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-3 ((5)) 10. (OUT OF TURN HEARING GRANTED 10/19/93).

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

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting approval to allow a screened porch addition to remain 14.0 feet from a side

lot line. The Zoning Ordinance requires a 10 foot minimum side yard in the R-C District; therefore, the applicant was requesting a modification of 6.0 feet to the minimum side yard requirement. Ms. Langdon said the property was previously zoned R-2 Cluster with a minimum side yard requirement of 8.0 feet for a total side yard of 24.0 feet, which standard the proposed modification would meet.

The applicant, Monica Cochran, 15342 Jordans Journey Drive, Centreville, Virginia, addressed the BZA. She stated that after obtaining a Building Permit and constructing the porch, she was told the Building Permit had been issued in error. She explained the error was discovered when she attempted to amend the original Building Permit. Ms. Cochran said that while the deck and screened porch are 14 feet from the side lot line, the original structure was built 11.9 feet from the side lot line. In summary, she stated there would be no detrimental impact on the neighbors and asked the BZA to grant the request.

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

Mr. Ribble made a motion to grant SP 93-Y-064 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated November 23, 1993.

Mrs. Thonen seconded the motion.

Mr. Pammel noted that although the applicant had indicated a Building Permit had been obtained, Development Condition 3 would require the applicant to obtain a Building Permit.

At the request of the Chairman, Ms. Cochran returned to the podium. She stated that after a Building Permit had been obtained and the porch constructed, she had changed the design of the steps. When she attempted to revise the Building Permit to reflect the change, she was informed the Building Permit was issued in error. Mr. Cochran explained that final approval had been obtained for both the porch and the steps.

After a brief discussion, it was the consensus of the BZA to amend Mrs. Thonen's motion and delete Development Condition 3.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-064 by MONICA COCHRAN, under Section 3-C07 of the Zoning Ordinance to allow modification to minimum yard requirements to allow addition to remain 14 feet from side lot line, on property located at 15342 Jordans Journey Drive, Tax Map Reference 53-3((5))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 November 30, 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 14,081 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.

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 screened porch 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 Greenhorne & O'Mara, Inc., dated November 6, 1987, revised by Monica A. Cochran, dated October 18, 1993, submitted with this application and not transferable to other land.

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. 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 December 8, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 280, November 30, 1993, (Tape 1), Action Item:

Approval of Resolutions from November 16, 1993 Hearing

Mr. Pammel made a motion to approve the Resolutions as submitted. Mrs. Harris seconded the motion which carried by a vote of 6-0 with Mr. Hammack not present for the vote.

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Page 280, November 30, 1993, (Tape 1), Action Item:

Approval of Minutes
September 28, October 5, and October 12, 1993 Hearings

Mr. Pammel made a motion to approve the Minutes as submitted. Mrs. Harris and Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack not present for the vote.

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Page 280, November 30, 1993, (Tape 1), Action Item:

Request for Date and Time
Robert R. Powell Appeal

Mrs. Thonen noted that there was a question as to whether the appeal had been timely filed.

William E. Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA). He stated in the November 22, 1993 memorandum, staff had suggested that the BZA defer action on the acceptance of the appeal. Mr. Shoup explained that Mr. Powell was appealing the Notice of Violation which contends there are too many dogs on the property. He said the appellant, who is presently out of the country, had requested a deferral so he could make a decision on whether to apply for a special permit. He noted that if the appellant filed for a special permit, he would like the appeal filing fee to be credited to the special permit fee. Mr. Shoup asked the BZA not to take action on the issue.

In response to Mrs. Thonen's question as to whether action on the acceptance of the appeal should be deferred, Mr. Shoup said yes and suggested the action be deferred to the third week in December. He noted that the appellant's position would not be jeopardized by the deferral.

Mrs. Thonen made a motion to defer acceptance of the Robert R. Powell Appeal to the After Agenda List on January 4, 1994. 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 281, November 30, 1993, (Tape 1), ACTION ITEM:

Request for Date and Time
TAC Group of Virginia, Inc., t/a/ Frugal Fannie's Fashion Warehouse Appeal

Mrs. Harris noted that the Board of Supervisors may have taken some measures that would influence the case and asked if a deferral would be in order.

Marilyn Anderson, Senior Staff Coordinator, addressed the BZA and stated that staff recommended the case be deferred indefinitely. She noted that the Planning Commission was considering a Zoning Ordinance Amendment regarding the issue.

Mr. Shoup recommended the BZA accept the appeal, but indefinitely defer scheduling the appeal.

Mrs. Harris made a motion to accept the appeal and indefinitely defer the scheduling of the case. Mrs. Thonen and Mr. Pammel 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 281, November 30, 1993, (Tape 1), Action Item:

Request for Waiver of the Twelve-Month Waiting Period
Maeng Y. Yi, VC 93-V-091

Mr. Pammel made a motion to grant a waiver of the twelve-month waiting period for the filing of a new application. 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 281, November 30, 1993, (Tape 1), Action Item:

Request for Date and Time
Phillip H. Weston Appeal

After a discussion with William E. Shoup, Deputy Zoning Administrator, as to whether the appeal had been timely filed, it was the consensus of the Board of Zoning Appeals that it had been.

Mr. Pammel made a motion to schedule the appeal for January 25, 1994. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 281, November 30, 1993, (Tape 1), Action Item:

Request for Intent-to-Withdraw
McLean Bible Church Appeal

Mr. Pammel made a motion to grant the request for an intent-to-withdraw McLean Bible Church Appeal currently scheduled for January 25, 1994 at 10:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 281, November 30, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearings
Thomas Blasberg, SP 93-Y-071

Fisher Group, SPA 88-L-042-2

Mrs. Thonen made a motion to deny the out-of-turn hearing requests for SP 93-Y-071 and SPA 88-L-042-2. Mr. Kelley seconded the motion which carried by a vote of 7-0.

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Page 281, November 30, 1993, (Tape 1), Action Item:

Request for Intent-to-Defer
Lawrence P. Troxell Appeal

Mrs. Thonen made a motion to defer the public hearing on the Lawrence P. Troxell appeal until January 25, 1994. The appeal is currently scheduled for December 7, 1993.

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Page 282, November 30, 1993, (Tape 1), SCHEDULED CASE OF:

10:00 A.M. JAMES M. SEYMOUR, APPEAL 93-V-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that a hedge located on the appellant's property obstructs sight distance at the intersection of Sherwood Hall Ln. and Evening Ln. in violation of Par. 1 of Sect. 2-505 of the Zoning Ordinance. Located at 2105 Sherwood Hall Ln. on approx. 13,862 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((13)) 1. (INT. TO DEF. ISSUED 11/16/93)

Mrs. Harris noted that the Board of Zoning Appeal had received a letter requesting withdrawal.

Mrs. Thonen made a motion to allow the withdrawal of A 93-V-021. Mr. Hammack seconded the motion which carried by a vote of 7.0.

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Page 282, November 30, 1993, (Tape 1), Scheduled case of:

10:00 A.M. WILLIAM A. STEWART, III, APPEAL 93-M-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that appellant is operating a contractor's office and shop in an R-2 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 3414 Holly Rd. on approx. 43,560 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 9.

The appellant's attorney, Alan Rosenblum, 526 King Street, Suite 211, Post Office Box 58, Alexandria, Virginia, addressed the Board of Zoning Appeals (BZA) and stated that the appellant was requesting a deferral until January 11, 1994. He explained that the appellant would like to have time to determine the feasibility of obtaining a special exception. Mr. Rosenblum said that if the appellant determined a special exception would not be feasible, the appeal would be withdrawn. He expressed his belief that the appellant was currently in compliance with the Zoning Ordinance.

William E. Shoup, Deputy Zoning Administrator, addressed the BZA and stated that staff did not support the deferral request. He explained that staff did not believe obtaining a special exception for a plant nursery would correct the violation. Mr. Shoup noted that the appellant's property could not meet the special exception requirements of a five acre minimum lot size nor the location on a principle arterial. He further noted that staff believed in order to grant a special exception, the Board of Supervisors would have to modify many of the required standards. Mr. Shoup stated the appellant had indicated in August 1993 that they were going to pursue a special exception application, but have not done so. He asked the BZA to hear the appeal.

Mr. Kelley expressed his belief that the BZA should grant a deferral.

Mr. Hammack noted that the appellant has had ample time in which to file for a special exception. Mr. Rosenblum explained that the appellant was in the process of obtaining additional property in order to meet the special exception requirements. He stated that the original attempt to acquire property had not been encouraging; but, the appellant would like to continue the negotiations. Mr. Rosenblum noted the appellant was in compliance with the Zoning Ordinance, currently has a Home Occupancy License, and was not storing any materials on the property. He asked the BZA for a forty-five day deferral.

Mrs. Harris asked what Mr. Rosenblum was referring to when he indicated the appellant was in compliance. Mr. Rosenblum explained the appellant was not storing equipment or operating a business on the premises. He stated the appellant has continued to operate the home office.

Mrs. Thonen said that when she visited the site, equipment was present and it appeared business was being conducted on the property. She stated that although the appellant is under violation, he can continue to operate the business. Mrs. Thonen noted the violation was issued in August and no attempt had been made to correct the situation.

The BZA expressed concern regarding the deferral. Mr. Rosenblum stated that the appellant was trying to come into compliance and again asked for a deferral.

In response to Mrs. Thonen's question as to whether the appellant was in compliance, Mr. Shoup stated that no recent inspections had been made.

Mrs. Thonen made a motion to hear the appeal as scheduled. Mr. Pammel seconded the motion.

After a brief discussion it was the consensus of the BZA to grant a two week deferral.

Mrs. Thonen withdrew her motion.

Mrs. Harris made a motion to defer A 93-M-017 to December 14, 1993 at 10:00 a.m. Mr. Ribble seconded the motion which carried by a vote of 7-0.

The BZA instructed staff to determine if the appellant was currently in compliance with the original Home Occupancy Permit.

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Page 283, November 30, 1993, (Tape 1), SCHEDULED CASE OF:

10:30 A.M. JIM SPEARS, APPEAL 93-V-012 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the determination of the Zoning Administrator that the appellant is operating a contractor's office and shop and storage yard on property located in an R-1 District, and is therefore in violation of Par. 5 of Sect. 2-302. Located on 9035 Telegraph Rd. on approx. 3.75 ac. of land zoned R-1. Mount Vernon District. Tax Map 108-1 ((1)) 18. (INT. TO DEF. TO 11/30/93 ISSUED ON 9/21. NOTICES NOT NEEDED).

Chairman DiGiulian stated that the appellant had submitted a letter requesting withdrawal.

Mrs. Thonen made a motion to allow the appellant to withdraw the appeal. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 283, November 30, 1993, (Tape 1), Scheduled case of:

Intent-to-Defer
Ourisman Dodge, Inc. Appeal Application A 93-V-023

William E. Shoup, Deputy Zoning Administrator, addressed the BZA and said staff concurred with a deferral. He explained that the appellant and the Virginia Department of Transportation were currently working to resolve the issue.

Mrs. Harris made a motion to issue an intent-to-defer A 93-V-023 which is currently scheduled for December 7, 1993 at 10:30 a.m. The motion carried by a vote of 7-0.

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Page 283, November 30, 1993, (Tape 1), Scheduled case of:

McLean Children's Academy
SPR 82-D-083-2

Barbara A. Byron, Director, Zoning Evaluation Division, OCP, addressed the Board of Zoning Appeals (BZA). In discussing the background of the application, she noted that on April 6, 1993, the BZA deferred the public hearing so the applicant would have the opportunity to obtain a shared parking agreement. Ms. Byron further noted that although the BZA had suggested the Board of Supervisors waive the $1,000 fee, the Board of Supervisors had denied the request. She explained the Board of Supervisors had concerns regarding setting a precedent for profit making institutions.

Ms. Byron stated the Board of Supervisors had also expressed its concern regarding the applicant's situation and asked staff to investigate to see if there was any way to resolve the issue. In addressing the issue, she noted that the Zoning Ordinance has a provision for renewals of special permit applications which reads, "If it is determined that the use is not in accordance with all applicable provisions of this Ordinance, the BZA may, depending upon the nature of the non-compliance, deny the application for renewal or may impose such conditions and restrictions to ensure that the use will be harmonious with and will not adversely affect the use or development of neighboring properties." Ms. Byron explained that the applicant currently has two legal parking spaces as well as several tandem spaces. Subsequent to the original approval, the Zoning Ordinance changed to require the applicant to provide twelve parking spaces.

Ms. Byron referred to the upcoming hearing on January 11, 1994, and asked the BZA to advise staff as to whether it believed the shared parking agreement should be obtained, or whether the application would be acceptable without additional parking spaces.

In response Mrs. Harris' question as to the location of the school, Mr. Hammack stated the site was on the residential side of Route 123 across from McLean Park.

Mrs. Thonen noted the BZA had been instructed that the Board of Supervisors must consider shared parking agreements. Ms. Byron explained that because the application was for renewal and the Zoning Ordinance has changed, the BZA may have some latitude, under the Zoning Ordinance, to permit the continuation of a use which does not meet the current Zoning Ordinance, but met the previous Zoning Ordinance requirement when the use was established.

Mr. Pammel said it was significant that the requirements for the use occurred prior to amendments to the Zoning Ordinance. He noted that the applicant had met the Zoning Ordinance standards under which the original special permit was granted. Mr. Pammel stated the BZA must decide if it could use the flexibility to determine that the applicant would be in compliance with the standards.

Mrs. Harris said the applicant was not in compliance and expressed concern regarding setting a precedent. She stated that although she sympathized with the applicant regarding the fee, she believed a shared parking agreement was needed.

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Page 284, November 30, 1993, (Tape 1), SCHEDULED CASE OF:

McLean Children's Academy
SPR 82-D-083-2

Mrs. Thonen noted that since the BZA had requested the Board of Supervisors waive the fee, the fee has been reduced to $1,000. Ms. Byron confirmed that the $5,800 fee has been readjusted to $1,000.

Chairman DiGiulian stated that there had been no operational problems, just a problem with meeting the current Zoning Ordinance provisions regarding shared parking.

Ms. Bryon suggested the application go forward on January 11, 1994, and the BZA make its determination at the public hearing.

After a brief discussion, it was the consensus of the BZA to research the issue and make the decision at the January 11, 1994 public hearing.

Mr. Hammack made a motion to hear the case at the January 11, 1994 public hearing. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 284, November 30, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearings
Thomas Blasberg, SP 93-Y-071

Fisher Group, SPA 88-L-042-2

Marilyn Anderson, Senior Staff Coordinator, addressed the BZA and asked for clarification regarding the out of turn hearing denials. The BZA confirmed the one motion was made for both SP 93-Y-071 and SPA 88-L-042-2.

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As there was no other business to come before the Board, the meeting was adjourned at 10:40 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: December 21, 1993

APPROVED: January 4, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 7, 1993. The following Board Members were present: Vice Chairman John Ribble; Martha Harris; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian was absent from the meeting.

Vice Chairman Ribble 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 Ribble called for the first scheduled case.

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Page 285, December 7, 1993, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES B. DRAKE, VC 93-L-110 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.3 ft. from street line of a corner lot (20 ft. min. front yard req. by Sect. 3-307) and such that side yards total 19.4 ft. (20 ft. total min. side yards req.). Located at 4400 Hillside Ct. on approx. 9,118 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 92-1 ((10)) 8043.

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. Mr. Drake replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by David Hunter. She said the request was for approval to permit construction of an addition 16.3 feet from the front lot line of a corner lot where a 20 foot minimum front yard is required. The total side yards are 19.4 feet; therefore, a .6 foot variance was required. Ms. Kelsey noted that the reference to the side yard variance requirement was inadvertently omitted from the staff report. She added that the dwelling on Lot 8044 is located approximately 9.3 feet from the shared lot line and 31.3 feet from the front lot line.

Charles B. Drake, 4400 Hillside Court, Alexandria, Virginia, said he believed his request fell within the guidelines of Section 18-404. He said he acquired the property in good faith 17 years ago when he was transferred to the area while serving in the Marines. The lot is a corner lot and very shallow; therefore, it does not leave much room for expansion of an addition and garage. He added that the strict application of the Zoning Ordinance would produce an undue hardship from the standpoint that he would like to remain on the property since he is now retired. There are no objections from the neighbors, the character of the zoning district would not be changed, and there would be no detrimental impact on the neighbors. Mr. Drake said he has received approval of the proposed plan from the neighborhood Architectural Review Committee.

In response to a question from Mrs. Harris about the extension to the front of the existing garage, Mr. Drake said he would like to extend the garage which allow him to park four cars end to end. He said this would allow him extra storage space for two refurbished antique cars. Mr. Drake said there would be living space above the garage.

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

Mr. Hammack made a motion to grant VC 93-L-110 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 30, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-110 by CHARLES B. DRAKE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.3 feet from street line of a corner lot and such that side yards total 19.4 feet, on property located at 4400 Hillside Court, Tax Map Reference 92-1((10))8043, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 7, 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 9,118 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance, in particular the lot is shallow.

5. The house is positioned diagonally in the middle of the lot in such a way that an addition, in this particular case, requires a variance because of the traffic circle that cuts off the front of the lot.
6. The request is for a minimal variance.
7. Given the configuration of the lot and the minimal size of the variance, the applicant's request should be granted.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the variance plat prepared by Rice Associates, P.C., dated May 24, 1993 revised September 14, 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. Pammel seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 15, 1993. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. LARRY L. & PAULETTE T. CAMPBELL, VC 93-D-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of three lots into four lots, proposed Lot 4 having a lot width of 6 feet (200 ft. min. lot width req. by Sect. 3-E06). Located at 9109 Jeffery Rd. on approx. 10.27 ac. of land zoned R-E. Dranesville District. Tax Map 8-2 ((1)) 36, 37 and 39. (DEFERRED FROM 10/26/93 TO AMEND APPLICATION AND SUBMIT REVISED PLATS).

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. Mr. Campbell replied that it was.

Susan Langdon, Staff Coordinator, said a public hearing was held on October 26, 1993 for VC 93-D-085 to allow subdivision of three lots into five lots with proposed Lots 4 and 5 having lot widths of 6 feet each where 200 feet of lot width is required by the Zoning Ordinance. At that public hearing, the applicants stated they would amend the request to allow the subdivision of three lots into four. The BZA deferred the public hearing for the applicant to submit new plats. Ms. Langdon said on November 9, 1993, the applicant submitted a revised plat showing a reduction in the number of proposed lots from five to four. Proposed Lots 1, 2, and 3 front onto Jeffery Road with lot widths of 266.0 feet, 239.74 feet and 200.0 feet, respectively. Lot 4 fronts onto Jeffery Road via a pipestem driveway 6 feet in width. Under this lot configuration, the lots range in size from 2.06 acres to 3.32 acres. It was staff's conclusion that the revised application as submitted was not in harmony with the Comprehensive Plan and was not in conformance with the applicable Zoning Ordinance provisions; specifically, the provisions of Variance Standards 2, 3, 4, 5, 6, 8 and 9 for the reasons stated in the staff report dated October 19, 1993.

Larry L. Campbell, 1909 Jeffery Road, Great Falls, Virginia, said four years ago he and his wife began the subdivision process of the subject property with access being from Weant Drive. When the neighbors voiced objection to the access, they revised the plan to reflect four lots and this plan has been recommended for approval by the Department of Environmental Management (DEM). Mr. Campbell said to complete the subdivision process they must go through bonding and begin construction within eighteen months and at least one house must be constructed on the site before the Virginia Department of Transportation (VDOT) will incorporate the street into its system. He said they have lived on the property for fifteen years and it had not been their intention to develop the site at this time, but merely set aside the lots for their children to be developed in the future. Because they did not wish to proceed at this time, they filed the variance application which would allow access to the lots via a private road or pipestem. Mr. Campbell said there are fifteen surrounding landowners and all but one was in strong support of their proposal at the time of the October 26th public hearing. He said a representative from the Great Falls Citizens Association also spoke at that meeting and indicated that although the Association would not support the request, they would not oppose a four lot development. Mr. Campbell said he believed the revised plan would be better for the community environmentally since fewer trees would have to be removed and noted that the use would still be in harmony with the neighborhood.

In response to a question from Mrs. Harris, Mr. Campbell said they had discussed the plan with representatives of the Great Falls Citizens Association and that he believed the Association would prefer the pipestem arrangement.

Vice Chairman called for speakers in support of the request.

Richard Peters, President of the Great Falls Citizens Association, submitted a written statement to the BZA. (A copy is contained in the file.) He also submitted a letter to the BZA from a neighbor of the applicants in opposition to the request. Mr. Peters said the Association was not strictly in support of the request, but was merely trying to drive home the point that no one gains if the variance is denied and the property is developed with a public road. He proceeded to read his prepared statement into the record.

There were no additional speakers in support and Vice Chairman Ribble called for speakers in opposition.

John Colby, 731 B Walker Road, Great Falls, Virginia, Chairman of the Planning and Zoning Committee of the Great Falls Citizens Association, appealed to the BZA's sense of reason and compared the revised plan to the original plan submitted by the applicants. He said he believed three houses had to be built on the site before VDOT would accept the road into the State system rather than one house as stated by the applicant. Mr. Colby said from a land use standpoint perhaps the pipestem would make more sense than the State road, but it was really a "poker game" as to whether the applicant would build the road. He said the Association was taking a neutral position and leaving it up to the BZA to decide what was best for the community.

Mrs. Harris and Mr. Colby discussed how a variance could be approved under the hardship standard since the applicants have already received subdivision approval. Mr. Colby said it would be a hardship to the community if the State road is built and agreed that it was a self-imposed hardship on the applicants.

Ernest May, III, 9122 Weant Drive, Great Falls, Virginia, owner of Lot 23, said he was neutral and that he would prefer the applicants' proposal rather than the construction of the State road.

Vice Chairman Ribble noted that the BZA was in receipt of one letter in opposition.

During rebuttal, Mr. Campbell said he recognized it was difficult in many cases to demonstrate hardship and again noted that out of the fifteen adjacent neighbors, fourteen strongly supported the request.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to deny VC 93-D-085 for the reasons noted in the Resolution.

Mr. Kelley said he would not support the motion as he believed this was one of the very few times where a variance is better than what can be done by right. He said he believed there was a hardship, the environmental concerns were great, and the application should be granted.

Mrs. Thonen said she could not go against the environment and against the neighbors wishes since they are the ones that are going to be impacted. She believed the rural atmosphere of the neighborhood would best be served by a pipestem development.

Mr. Hammack said the applicants already have an approved site plan for three lots; therefore, they were not just starting the development process. He did not believe the BZA could find that the applicants did not have reasonable use of the property and the granting of the variance would be for convenience.

Mrs. Harris said it was one of the most difficult cases that has been before the BZA because there are positive aspects on both of the issue, but the BZA has a small perimeter with respect to the nine required standards. She said she would support the motion because the property can be developed without a variance.

Vice Chairman Ribble said it was an unusual situation but that he could not find anything to support the hardship requirement.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-085 by LARRY L. AND PAULETTE T. CAMPBELL, under Section 18-401 of the Zoning Ordinance to permit subdivision of three lots into four lots, proposed Lot 4 having a lot width of 6 feet, on property located at 9109 Jeffery Road, Tax Map Reference 8-2((1))36, 37, and 39, 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 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-E.
3. The area of the lot is 10.27 acres.
4. The application does present a dilemma since it is understandable as to the community's feelings about the environmental aspects and probably should be the overriding consideration; but the BZA has to respond to the Code and the criteria established therein. The Code does not give the BZA a great deal of leeway to be flexible in terms of environmental issues as much as it might like. The BZA acted on a similar type of request and the case went to the Circuit Court and the Circuit Court ruled that the BZA had nine criteria that was prescribed by the Code and its decisions had to be made based upon those criteria. In reviewing the case, this is a self-imposed hardship and there are other ways that the property can be developed without a variance. In addition to the alternative of the public street, there is also the option, although not desirable, of using Weant Drive to develop the site. Given these factors, the BZA could not find that the applicants had presented evidence to justify the granting of a variance under the criteria that is established by the law. If the BZA was able to create its own criteria, the application might be more favorable because it does less environmental damage and is probably the best approach.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

Mr.Hammack seconded the motion which carried by a vote of 4-2 with Mrs. Thonen and Mr. Kelley voting 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 15, 1993.

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The BZA recessed at 10:01 a.m. and reconvened at 10:10 a.m.

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Page 289, December 7, 1993, (Tape 1), Scheduled case of:

9:00 A.M. C.J. LESSARD ARCHITECTS, INC., VC 93-D-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 17-A having lot width of 20 ft. (200 ft. min. lot width req. by Sect. 3-E06). Located at 11328 Fairfax Dr. on approx. 6.77 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((2)) 17.

Jane Kelsey, Chief, Special Permit and Variance Branch, pointed out that no action was required by the BZA. She said the case was merely noted for information as to why there was a time gap on the agenda. Ms. Kelsey said the next case, Diocesan Missionary Society of Virginia, SP 93-S-044, noted on the agenda had also been moved at the applicant's request. In response to a Board member's question, she said the applicants had put their requests in writing since the new hearing would be outside the ninety day time limitation.

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Page 289, December 7, 1993, (Tape 1), Scheduled case of:

10:00 A.M. DARREL E. deCHABY, APPEAL 93-D-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator determination that the breeding of Lady Gouldian Finches for commercial purposes in a residential district is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 1631 Wrightson Dr. on approx. 25,296 sq. ft. of land zoned R-3. Dranesville District. Tax Map 30-4 ((28)) (4) 5.

Vice Chairman Ribble called the applicant to the podium. Darrel E. deChaby, 1631 Wrightson Drive, McLean, Virginia, came forward and introduced his wife to the BZA.

William Shoup, Deputy Zoning Administrator, said the property is located at 1631 Wrightson Drive, is zoned R-3, is approximately 25,296 feet in size, and is developed with a single-family detached dwelling unit. Mr. Shoup said staff's position was set forth in the staff report dated November 30, 1993 and briefly summarized a few key points. He said the issue of the appeal involved the appellant's breeding of birds, specifically Lady Gouldian

Finches for commercial purposes. In response to a complaint, Zoning Enforcement inspected the property and based on that inspection and conversations with the appellant it was determined that the appellant is breeding and selling the birds. Mr. Shoup said such birds are considered commonly accepted pets as defined in Article 20 of the Zoning Ordinance and under Par. 1 of Sect. 2-512, commonly accepted pets are allowed to be kept as an accessory use on any property, provided they are kept for personal enjoyment and not for commercial purposes. He said that since the appellant was keeping the birds for commercial purposes he was not in compliance with Par. 1 of Sect. 2-512 and there was in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance.

Mr. Hammack and Mr. Shoup discussed whether there were any provisions in the Zoning Ordinance that would allow an exception for a minimum number of animals for breeding, or a definition of commercial purposes. Mr. Shoup said Section 2-512 addresses the keeping of animals such as dogs and the number that can be kept on a given size property. He added there are also provisions which allow the BZA to grant permission to exceed that number, but there was nothing relating to this issue.

In response to a question from Mrs. Harris about the appellant's business license which had been issued for a business consultant, Mr. Shoup said there was no record of any other business license being issued.

Mrs. Thonen asked if the appellant's wife was also giving dancing lessons on the property. Vice Chairman Ribble said perhaps it would be more appropriate to hear from the appellant.

Mr. deChaby commended Mr. Shoup for his impeccable work on the case, and hoped that his work for the Federal Government reflected the same as Mr. Shoup's. He said all staff members that he had dealt with over the past several weeks had been very courteous and considerate. Mr. deChaby displayed photographs of the Finches on the viewgraph and said the birds are very difficult to breed. He said the birds are native to Australia which has very strict regulations against exporting the birds; therefore, anyone wishing to buy a Finch in this country must buy one that is commercially bred. Mr. deChaby said he and his wife had presumed they were in compliance with all County regulations over the past dozen years they have been breeding the birds. He explained that the business license had been issued to him as a business consultant because that was what he had been advised to list on the application.

Mrs. Harris and Mr. deChaby discussed why the County would have advised him to misrepresent his business in order to obtain a business license. Mr. deChaby said there had not been a category for the breeding of birds at that time and noted that the business license was issued several years ago. In response to a question from Mr. Hammack, Mr. deChaby said he obtained the business license in 1979.

Mr. deChaby said he had been advised by Claude Kennedy, Supervising Field Inspector, to talk to Melinda Artman, Deputy Zoning Administrator, Permit Plan Review Branch. He said he would have to in good conscience tell anyone who might be interested in purchasing the business that they were not allowed to breed the birds in Fairfax County. Mrs. Harris said that rule applied only to residential property.

Mr. deChaby said when he talked to Ms. Artman's receptionist he was told that it was perfectly all right to breed exotic birds, but after she checked with Ms. Artman she told him that she had been mistaken. He said he only mentioned this confusion in order to help others who might be in the same situation and understood that he was in violation of the Ordinance. Mr. deChaby pointed out that he has always conducted the business very openly and the children from the Kent Garden School have visited the birds as well as neighbors. He added there is no traffic impact on the neighbors, the operation does not present a noise problem, and there is no health factor involved.

Vice Chairman Ribble informed the speaker that his alloted time had expired.

In summation, Mr. deChaby said he understood the regulation was in the Zoning Ordinance, but asked someone to explain the reason for the regulation.

Vice Chairman Ribble said the BZA had received two letters in opposition and asked the speaker if he had seen the letters. Staff presented Mr. deChaby with copies.

Mrs. Harris said the zoning regulations are made to exclude subjectivity and noted that a residential community should remain a residential community. She added that when she obtained a business license she had to list the specific purpose for which she was obtaining the permit.

Mrs. Thonen again asked if the appellant's wife taught dancing lessons on the property. Lisa deChaby said that she taught ballet under a valid permit and was in compliance with all County regulations.

A discussion took place between Mr. Hammack and Mr. Shoup with regard to the uses allowed under the business license. Mr. Shoup said the appellant obtained a business license but not a home occupation permit, which he believed was part of the problem. He said perhaps at the time the business license was issued there was not the coordination between departments that takes place now.

Mr. Pammel said he viewed the use as a hobby and questioned what regulations people fell under who make projects in their homes and sell them at craft fairs. Mr. Shoup said that was a permitted home occupation and noted that the appellant fell under a different provision. Mr. Hammack asked if a horse breeder would fall under the same provision and Mr. Shoup said the provision addressed commonly accepted pets and does not address livestock.

The BZA and Mr. Shoup discussed other types of pets and the breeding of those pets and how they would be addressed by staff.

In response to a question from Mrs. Harris as to what the appellant could do to bring the use into compliance, Mr. Shoup said there are no provisions to address the use.

Vice Chairman Ribble pointed out that the appellant would not be before the BZA if a complaint had not been filed.

During rebuttal, Mr. deChaby admitted there was a regulation that he was not in compliance with and encouraged the BZA to pursue a revision to the Ordinance that would allow citizens to conduct such hobbies in their homes. He asked for some guidance as to the number of birds he could keep and breed as a hobbyist. Mr. deChaby asked for some leeway in the amount of time he could take to sell his business.

Mr. Hammack said the BZA has another situation that became difficult because the applicant received money for her services. He asked staff if there was a limitation on the number of birds the appellant could keep on the property. Mr. Shoup said the regulations only addressed domestic fowl; therefore, it would not be applicable in this case. In response to a question from Mr. deChaby, Mr. Hammack said he could trade the birds but could not accept money.

Mr. Kelley said he believed the BZA was getting into an area that it did not belong. Vice Chairman Ribble suggested that the appellant discuss what he can and cannot do with staff.

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

Mrs. Harris said this has been a very interesting case and from the onset the appellant has been very honest about what he was doing and has made no attempt to hide his business. She said through possible miscommunications with the County ranging over the last 15 years the County's intention was never made clear to the appellant and perhaps if it had been the appellant would have altered his operation. Mrs. Harris said there is no question that the appellant is in violation of the Zoning Ordinance and that she believed the Ordinance should be fine tuned with respect to this type of issue.

Mr. Kelley seconded the motion and emphasized that the use was for commercial purposes and that the BZA was not getting into the area of hobbies.

Mr. Hammack said this was one of those cases that the issue could be resolved without the BZA taking action and suggested deferring the case as he believed the use should be permitted under some circumstances.

Mrs. Thonen called for the question. Vice Chairman Ribble called for the vote and the motion passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Ms. deChaby thanked the BZA for its kindness and said her husband's modesty would not allow him to say that he has a national reputation as a bird breeder. She said it would be helpful if there was some way he could continue.

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Page 291, December 7, 1993, (Tape 1), Scheduled case of:

10:30 A.M. OURISMAN DODGE, INC., APPEAL 93-V-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator determination that appellant has not satisfied all of the conditions imposed by the Board of Supervisors in the approval of SE 87-V-106 and is therefore in violation of Par. 2 of Sect. 9-004 of the Zoning Ordinance. Located at 5900 Richmond Hwy. on approx. 230,842 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-2 ((1)) 2C.

Vice Chairman Ribble said the BZA had issued an intent to defer this case to February 8, 1994, at 9:30 a.m. at its November 30th meeting. Mr. Hammack so moved. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 291, December 7, 1993, (Tape 1), Scheduled case of:

10:30 A.M. LAWRENCE P. TROXELL, APPEAL 93-D-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator determination that a deck was constructed at the rear of appellant's house without Zoning Administrator approval of a Building Permit, in violation of Sect. 18-601 of the Zoning Ordinance. Located at 2123 Maleady Dr. on approx. 9,306 sq. ft. of land zoned R-3. Dranesville District. Tax Map 16-1 ((8)) 335.

Vice Chairman Ribble said the BZA had issued an intent to defer this case to January 25, 1994, at 9:30 a.m. at its November 30th meeting. Mrs. Thonen so moved. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Mr. Hammack said he believed it was a bad policy for an appellant to file an appeal and then keep requesting deferrals in order to buy time. William Shoup, Deputy Zoning Administrator, said since the information was added to the Notice of Violation letters informing citizens of the appeal process, staff had received a greater number of appeals. He added that citizens were filing the appeal to protect their rights while trying to resolve the issue.

Mr. Hammack suggested that perhaps the BZA should consider adopting a general policy with respect to deferrals on appeals. He asked staff to let the BZA know if they saw a pattern developing and pointed out that the citizens filing the appeals were already under violation. Vice Chairman Ribble suggested that perhaps Mr. Hammack could talk to staff later and try to reach a decision as to what could be done, if anything.

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Page 292, December 7, 1993, (Tape 1), Scheduled case of:

Approval of November 30, 1993 Resolutions

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 292, December 7, 1993, (Tape 1), Scheduled case of:

Request for Additional Time and Change of Permittee for
Green Trails Associates, SP 90-S-004

Mrs. Harris made a motion to approve the change in name of the permittee in SP 90-S-004. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mrs. Harris asked staff if the applicant really needed eighteen months. Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicant had to begin construction and since this was a new developer they would need the eighteen months.

Mrs. Harris made a motion to grant the applicant's request making the new expiration date October 11, 1994. Mr. Hammack seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 292, December 7, 1993, (Tape 1), Scheduled case of:

Request for Additional Time for
Parkwood Baptist Church, SPA 84-A-048-2

Mrs. Harris made a motion to grant the applicant's request making the new expiration date December 10, 1994. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 292, December 7, 1993, (Tape 1), Scheduled case of:

Approval of Minutes for October 26, 1993

Mr. Hammack made a motion to approve the Minutes as submitted. Mr. Pammel seconded the motion and asked that the second paragraph on page 2 be changed to ". . . logical place for the addition." The motion passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 292, December 7, 1993, (Tape 1), Scheduled case of:

Request to do Intent to Defer for
Michael A. McDaniel Appeal, A 93-P-013

William Shoup, Deputy Zoning Administrator, said the appeal involved a long standing violation and was originally scheduled for November 3rd and just prior to the deadline of the

notices the appellant informed staff that the initial was incorrect in the appellant's name. He said the appeal was deferred to this date and the appellant again had not satisfied the notice requirement set forth in the Zoning Ordinance and said staff was concerned that the appellant was trying to prolong the violation. Mr. Shoup asked that if the BZA chose to grant the deferral, that it stress to the appellant that if the notice requirement is not met for the next public hearing the appeal would be dismissed.

In response to a question from Mrs. Harris, Mr. Shoup said the next notice package would be for January 25th.

Mr. Kelley said he would be willing to dismiss the appeal at the December 14th public hearing.

Mrs. Harris made a motion to defer A 93-P-013 to January 25th at 9:00 a.m. with the provision that there would be no further deferrals granted.

Mr. Kelley opposed the motion and said he believed any applicant should be given one deferral, but he believed the appellant was playing games. He said the appellant should come before the BZA on December 14th and explain why he has not met the notice requirement. Mr. Pammel agreed with Mr. Kelley's comments.

Mr. Hammack seconded the motion as put forth by Mr. Kelley. The motion passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 293, December 7, 1993, (Tape 1), Scheduled case of:

Out-of-Turn Hearing Request for
Arthur and Carol Cohen, VC 93-H-148

Mrs. Harris said the applicants had also filed an appeal and they were requesting that the variance and appeal be scheduled for the same day. She said she assumed that the appeal would be moot if the variance was granted. Jane Kelsey, Chief, Special Permit and Variance Branch, said that was correct. Ms. Kelsey said notice packages for January 4th had already been mailed to the applicants, and asked that the BZA schedule both cases on February 23rd.

William Shoup, Deputy Zoning Administrator, said an out of turn hearing had been granted for the appeal, but the applicant took some time in filing the variance application therefore it caused a delay in scheduling the variance.

In response to a question from Mrs. Harris, Mr. Shoup explained that the issue involved a determination that was made with respect to the subdivision surrounding the subject property. He said the creation and dedication of the subdivision created right-of-way on three sides of the property and staff took the position there were front yard requirements on all three sides. The Cohens appealed that decision and filed the variance from the front yard requirement. Mrs. Harris asked if there was an existing structure and Mr. Shoup said it was a vacant lot. He said the Cohens wanted to build a home on the subject property, but Supervisor Dix has made a motion for a quick take of the property because three-fourth's of the property will eventually become right-of-way.

Mr. Pammel said part of the problem was that the applicants had not filed the variance in a timely fashion to allow coordination; therefore, he was inclined to schedule both cases on February 23rd.

Mrs. Harris made a motion that the out of turn hearing request be denied and that both cases be scheduled on February 23rd. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 293, December 7, 1993, (Tape 2), Action Item:

McLean Bible Church Appeal, A 93-D-003

Jane Kelsey, Chief, Special Permit and Variance Branch, asked the BZA's concurrence in the applicant's request to withdraw A 93-D-003. Mr. Hammack made a motion to allow the withdrawal of A 93-D-003. Mrs. Harris seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Mr. Kelley called the BZA's attention to Information Item 4 on its After Agenda List for December 7th with regard to the letter received from Mildred R. Armadio whose case was heard and denied on November 9th. He said the fourth paragraph of the applicant's letter referenced her husband's heart condition and the disrepair of the existing garage door as a hardship.

Vice Chairman Ribble said the letter did not reference anything relating to the hardship requirement under the Zoning Ordinance. He said he did not believe the BZA treated them with indifference.

Mr. Kelley noted that Supervisor Trapnell had received a copy of the letter and asked if staff had been contacted by the Supervisor's office. Jane Kelsey, Chief, Special Permit and Variance Brance, said she had been out of the office for a couple of weeks due to illness in her family, but the Clerk had indicated there had been no calls from Supervisor Trapnell's office with respect to the letter.

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As there was no other business to come before the Board, the meeting was adjourned at 11:15 a.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: January 11, 1994 APPROVED: January 11, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 14, 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. 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 295, December 14, 1993, (Tape 1), Scheduled case of:

9:00 A.M. RUBEN E., JR., AND KATHERN WEATHERHOLTZ, VC 93-B-112 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 5.5 ft. and deck 5.0 ft. from side lot line (7 ft. min. side yard req. for carport and 12 ft. min. side yard req. for deck by Sects. 3-307 and 2-412). Located at 8302 Five Gates Rd. on approx. 11,969 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((6)) 64.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Ruben E. Weatherholtz, Jr., 8302 Five Gates Road, Annandale, Virginia, replied that it was.

Don Heinz, Staff Coordinator, described the location of the property, stating that the variance was being requested to allow a 10-foot high deck.

The applicant, Mr. Weatherholtz, presented the statement of justification, previously submitted in writing and incorporated into the record.

Mr. Weatherholtz said that the existing dwelling behind his property is approximately 30 feet from his property line, up an incline.

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

Mr. Hammack moved to grant VC 93-B-112 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-112 by RUBEN E., JR., AND KATHERN WEATHERHOLTZ, under Section 18-401 of the Zoning Ordinance to permit construction of carport 5.5 ft. and deck 5.0 ft. from side lot line, on property located at 8302 Five Gates Road, Tax Map Reference 70-1((6))64, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 14, 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 11,969 square feet.
4. The lot has a narrow frontage.
5. Testimony indicated that it would be difficult to place the carport in any other location on the lot because of the topography and tree growth.
6. The variance requested is minimal.
7. The distance to the adjoining house on Lot 65 is substantial, precluding any impact by the applicant's proposal.
8. There is a sanitary sewer easement between Lot 64 and Lot 65 which allows an additional buffer.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 carport addition and deck shown on the plat prepared by Dewberry & Davis, dated August 24, 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 carport addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and 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. 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 22, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 296, December 14, 1993, (Tape 1), Scheduled case of:

9:00 A.M. LARRIE & MIRNA FERREIRO, VC 93-B-113 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 6.0 ft. from side lot line and deck 9.0 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 11210 Bellmont Dr. on approx. 20,500 sq. ft. of land zoned R-C and WS. Braddock District. Tax Map 67-2((2))3A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Larrie D. Ferreiro, 11210 Bellmont Drive, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the surrounding lots are also zoned R-C and WS and developed with single family detached dwellings.

Mr. Ferreiro presented the statement of justification, previously submitted in writing and incorporated into the record.

Thomas Stafford, 11212 Bellmont Drive, Fairfax, Virginia, who lives next door to the applicant on Lot 38, spoke in favor of the application, stating that Mr. Ferreiro took the neighborhood "eye sore" and did a considerable amount of landscaping and interior improvement, greatly enhancing the appearance of the neighborhood. He said that the approval of the applicant's request would further improve the appearance of the neighborhood and bring the property up to the standard of the other homes in the area.

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

Mr. Hammack asked staff if it had any idea when the particular subdivision was put on record and they did not know; however, Mr. Stafford said it was between 1956 and 1958.

Mr. Pammel moved to grant VC 93-B-112 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-113 by LARRIE & MIRNA FERREIRO, under Section 18-401 of the Zoning Ordinance to permit construction of additions 6.0 ft. from side lot line and deck 9.0 ft. from side lot line, on property located at 11210 Bellmont Drive, Tax Map Reference 67-2((2))3A, 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 14, 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 20,500 square feet.
4. The lot is unusual because it is acre located in a 5-acre zoning district which makes it a non-conforming lot; it is the smallest lot in the subdivision; there are two other lots which appear to be in the 1-acre range and the rest are larger.
5. The improvements proposed for this lot are constrained because of topographical considerations, the location of the septic field in the rear yard and the location of the structure on the lot, leaving little in the way of options other than to locate the improvements as proposed by the application, thus necessitating 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 locations and the specified additions shown on the plat prepared by Rice Associates, dated August 10, 1992, revised by Larrie D. Ferreiro, revised through October 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 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. 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 22, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 298, December 14, 1993, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH VILLEGAS, VC 93-L-115 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.9 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207) and permit fence 7.3 ft. in height to remain in rear yard (7 ft. max. height allowed by Sect. 10-104). Located at 8207 Martha St. on approx. 7,249 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 101-4 ((5)) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Joseph Villegas, 8207 Martha Street, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located between Richmond Highway and Buckman Road in the Gustafson Subdivision; the lots to the north, west and south are also zoned R-2 and developed with single family detached dwellings; to the east is commercial property zoned C-6.

Mr. Villegas presented the statement of justification, previously submitted in writing and incorporated into the record.

Mr. Pammel moved to grant VC 93-L-115 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-115 by JOSEPH VILLEGAS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.9 ft. from side lot line and permit fence 7.3 ft. in height to remain in rear yard, on property located at 8207 Martha Street, Tax Map Reference 101-4((5))20, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 14, 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 7,249 square feet.
4. The size of the lot does not conform to the zoning of the district in which the property is located, requiring the applicant and other property owners in the area to seek relief from the Board of Zoning Appeals to make nominal additions which would probably otherwise be permitted if the lot were zoned according to the lot size.
5. The property is uniformly shaped but simply does not meet the requirements of the R-2 District and probably would more appropriately be zoned R-4 or R-3 at the minimum to allow it to meet the requirements with a very minimal variance required.
6. Since the non-conforming lot is located in a district with greater requirements, requiring a greater variance, the hardship has been proven.
7. The request is certainly reasonable and does not impact upon adjacent properties; there is a 10-foot side yard that will be maintained.
8. The 0.3-foot variance for the fence is minimal.

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

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

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

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

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

1. This variance is approved for the location and the specified addition and fence shown on the plat prepared by Alexandria Surveys, Inc., dated June 1 1993, revised through October 29, 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. 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 22, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 300, December 14, 1993, (Tape 1), Scheduled case of:

9:00 A.M. MR. & MRS. HEEJOON KIM, VC 93-D-114 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 4.9 ft. from rear lot line (13 ft. min. rear yard req. by Sect(s). 3-207 and 2-412). Located at 1360 Snow Meadow Ln. on approx. 14,051 sq. ft. of land zoned R-2 (C). Dranesville District. Tax Map 29-2 ((13)) 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. The applicant's agent, Bruce E. Bowers, Jr., 1654 Birch Road, McLean, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the McLean Hamlet Subdivision are also zoned R-2 and developed with single family detached dwellings.

Mr. Bowers presented the statement of justification, previously submitted in writing and incorporated into the record.

In answer to a question from Mrs. Harris, Mr. Bowers said that the deck would be a sun deck at this time, but might be changed to a screened porch in the future if the circumstances of the family change; however, it was not envisioned that it would become an enclosed addition. In the event the applicant wished to convert the deck to an enclosed addition, Mrs. Harris said she wished to make sure the applicant knew that another appearance before the BZA would be required to obtain a variance.

Mrs. Harris said that the hardship issue had not been addressed to justify the request for a variance to build a large deck instead of proposing a smaller deck which could be built by right. Mr. Bowers said that the applicant liked to entertain and a 13-foot deck would not provide adequate space.

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

Mr. Ribble moved to grant VC 93-D-114 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 7, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-114 by MR. & MRS. HEEJOON KIM, under Section 18-401 of the Zoning Ordinance to permit construction of deck 4.9 ft. from rear lot line, on property located at 1360 Snow Meadow Lane, Tax Map Reference 29-2((13))6, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 14, 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).
3. The area of the lot is 14,051 square feet.
4. The property is an irregular-shaped pipestem lot.
5. The proposed location is the only place the deck can be placed.

6. The lot backs up to wetland common area space and the construction will not negatively impact any houses in the neighborhood as they are built forward of the proposed location.

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

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

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

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

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

1. This variance is approved for the location and the specified deck shown on the plat prepared by Phillip A. Bievins, Certified Land Surveyor, dated August 2, 1993, revised September 15, 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.

Pursuant to Sect. 18-407 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. Mrs. Harris 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 December 22, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 301, December 14, 1993, (Tape 1), Scheduled case of:

9:30 A.M. JOHN E. STAIT, VC 93-P-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.3 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-407). Located at 2843 Woodlawn Ave. on approx. 6,324 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((3)) 115. (Concurrent with SP 93-P-034). (DEFERRED FROM 11/3/93 FOR NOTICES)

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9:30 A.M. JOHN E. STAIT, SP 93-P-034 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 8.8 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 2843 Woodlawn Ave. on approx. 6,324 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((3)) 115. (Concurrent with VC 93-P-088). (DEFERRED FROM 11/3/93 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. John E. Stait, 2843 Woodlawn Avenue, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located east of Graham Road and south of Lee Highway. The subject property and surrounding lots in the Greenway Downs Subdivision are zoned R-4 and developed with single family detached dwellings.

Mr. Stait presented the statement of justification, previously submitted in writing and incorporated into the records.

Mrs. Harris moved to grant VC 93-P-088 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 26, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-088 by JOHN E STAIT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.3 ft. from front lot line, on property located at 2843 Woodlawn Avenue, Tax Map Reference 50-4((3))115, 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 14, 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 6,324 square feet.
4. The topographical conditions are not unique; however, the construction proposed is simply a covering over a stoop and handrails on stairs going up to the front door.
5. The proposed construction will not intrude any further into the front yard than the existing stoop.
6. Strict application of the Zoning Ordinance would produce a hardship.
7. The applicant is attempting to maintain a safe environment for his family by installing the covering over the stoop and handrails on the front walkway.
8. The variance will definitely be in harmony with the intended spirit and purpose of the Ordinance and will not be contrary to the public interest.

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

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

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 specified structures and additions shown on the plat prepared by Kenneth W. White, Land Surveyor, dated June 21, 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. 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 22, 1993. This date shall be deemed to be the final approval date of this variance.

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Mrs. Harris moved to grant SP 93-P-034 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 26, 1993, as amended.

A discussion ensued regarding Proposed Development Condition 3. Mrs. Harris questioned that the language was different from what was usually imposed. Mr. Hunter said that the condition had been used routinely for some time. After several Board members said they did not approve of the condition as it was written, Mrs. Harris moved to delete the present language and replace it with the stipulation that the applicant obtain a Building Permit from Fairfax County. Mr. Hammack seconded the motion.

At this point, Mr. Hunter stated that a Building Permit had been obtained by the previous owner on December 22, 1971; therefore, Mrs. Harris struck Condition 3. Mr. Hammack seconded the motion, which carried unanimously.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-P-034 by JOHN E. STAIT, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 8.8 ft. from side lot line, on property located at 2843 Woodlawn Avenue, Tax Map Reference 50-4((3))115, 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 ; 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 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 Kenneth W. White, Land Surveyor, dated June 21, 1993 submitted with this application, as qualified by these development conditions.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. 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 legally 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. 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 22, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 304, December 14, 1993, (Tape 1), Scheduled case of:

9:30 A.M. ELBERT J., JR. AND DEBORAH A. MAYS, SP 93-H-050 Appl. under Sect(s). 2-512 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals to allow four dogs on a lot containing less than 12,500 sq. ft. Located at 2140 Golf Course Dr. on approx. 3,033 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 26-2 ((3)) (7A) 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. Elbert J. Mays, Jr., 2140 Golf Course Drive, Reston, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the area surrounding the site is also zoned PRC and is developed with single family attached dwellings. He said that the applicants own four dogs which are housed and cared for on the property; they are left alone 4 days per week while the applicants work between 10 a.m. and 6 p.m. The dogs will be kept indoors except for mornings after 7 a.m., for 30 minutes to an hour. In the afternoons, the four dogs are let outside for about an hour and in the evenings they are allowed outside but brought in by 9 p.m. In an effort to minimize the noise from barking, the applicants' have committed to allowing only two dogs outside at any one time. The dogs are allowed outside in the back and side yards which are enclosed by a four foot high fence along the rear of the property and a six foot high fence along the side of the property which borders Golf Course Drive.

Mr. Hunter stated that a Notice of Violation was issued to the applicants on July 20, 1993, as a result of a complaint about the number of dogs kept on the property.

Mr. Mays presented the statement of justification, previously submitted in writing and incorporated into the record. He said they brought two animals with them from their previous place of residence and acquired 2 puppies from a litter produced in the interim. One of the two puppies had a congenital liver defect and was extremely ill; they obtained treatment for him at great expense and found it emotionally impossible to get rid of him. Mr. Mays said they had checked to find that they were in compliance with the area covenants and were not aware that they were not in compliance with the Fairfax County Zoning Ordinance.

The Mays were visited by a Zoning Inspector, Ms. Hogue, who told me they could get rid of the dogs or apply for a special permit.

Mr. Mays said they would do anything requested of them in order to keep the dogs: Curb the noise, clean up the debris more frequently, etc. He said they had been totally unaware that there were any objections to the dogs and would have been happy to work with someone to correct the cause of the objections. Since the County allows two dogs on a lot the size of the Mays' lot, he agreed to allow only two dogs out at any one time.

Chairman DiGiulian advised that the Board had received several letters in opposition to the application.

Patricia Girard, 2138 Golf Course Drive, Reston, Virginia, said she and her husband shared a retaining wall with the Mays. She said she had sent a letter but also came to speak because, although Mr. Mays said he had moved the dogs to another room, further away from the Girards, she could still hear them. She said the barking was very disturbing.

In rebuttal, Mr. Mays reiterated that he did not know about the dissatisfaction of the neighbors and no one had called him to complain, except for one night when he had fallen asleep and Mrs. Girard called to tell him that his dogs were barking outside, for which he took full responsibility. He said that two of the dogs had been poisoned in August, requiring emergency treatment.

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

Mr. Kelley said this was a close call and moved to grant SP 93-H-050 with a modification to the Proposed Development Conditions. Development Condition 3 would read as follows: "The yard shall be kept free of animal debris insofar as practical. The yard used to exercise the dogs shall be cleaned on a semi-weekly basis and the collected waste shall be sealed, awaiting trash collection. The other conditions would remain as they were.

The motion failed for lack of a second.

Mrs. Harris moved to deny SP 93-H-050 for the reasons outlined in the Resolution.

Mr. Hammack seconded the motion, stating that there had been occasions in the past when the Board had granted special permits when there were mitigating circumstances involving advanced age or other special circumstances which seemed to justify a concession. In this instance, 3,300 square feet is a very small space in which to accommodate four hounds. The hounds are all young and, although one of them is not healthy, he is doing fine at the present time.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-H-050 by ELBERT J., JR., AND DEBORAH H. MAYS, under Section 2-512 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals to allow four dogs on a lot containing less than 12,500 square feet, on property located at 2140 Golf Course Drive, Tax Map Reference 26-2((3))(7A)68, 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 14, 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 PRC.
3. The area of the lot is 3,033 square feet.
4. There is significant opposition in the neighborhood with various reasons cited, including the number of dogs.
5. The Ordinance limits the number of dogs to 2 on this size lot and the applicant has 4.

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

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

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

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

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

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

Mr. Hammack seconded the motion which carried by a vote of 5-1. Mr. Kelley voted 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 22, 1993.

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Page 306, December 14, 1993, (Tape 1), Scheduled case of:

9:30 A.M. HRAIR H. KAZANJIAN, VC 93-L-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to be 26 ft. and 28.5 ft. from front lot lines (40 ft. min. req. by Sect. 4-807), parking spaces 6.5 ft. and 5.5 ft. from front lot lines (10 ft. from front lot line req. by Sect. 11-102), modify required landscape strips (10 ft. min. from public ROW and 4 ft. from land not in ROW req. by Sect. 13-202), and allow loading space in min. front yard (prohibited by Sect. 11-202). Located at 7210 Richmond Hwy. on approx. 15,998 sq. ft. of

land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 79B. (OUT OF TURN HEARING GRANTED. DEF. FROM 9/14/93 FOR DECISION ONLY. DEF. FROM 9/28/93 FOR REVISED PLATS. DEF. FROM 10/12/93 TO RESOLVE OWNERSHIP ISSUE. DEF. FROM 11/30 TO RESOLVE OWNERSHIP ISSUE.)

Chairman DiGiulian advised that he had a note requesting a deferral on this case.

Lori Greenlief, Staff Coordinator, stated that there was a problem involving the ownership of the land. She said the applicant was very close to a resolution and all that remained to be done was to get certain parties in the County together to sign some documents.

Neil T. Hitchcock, Agent of the applicant, 1221 Cameron Street, Alexandria, Virginia, outlined the outstanding items, involving the County Attorney's Office, and requested a deferral to January 4, 1994.

A discussion ensued about how long a deferral should be granted to ensure that the outstanding issues would be resolved.

It was the consensus of the Board that the hearing would be deferred to January 4, 1994 at 9:00 a.m.

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Page 307, December 14, 1993, (Tape 1), Scheduled case of:

10:00 A.M. MCDANIEL CONSTRUCTION CO., INC. BY MICHAEL A. MCDANIEL, APPEAL 93-P-013 Appl. under Sect. 18-301 of the Zoning Ordinance to appeal the determination of the Zoning Administrator that the appellant is operating a construction materials yard that is not associated with an active construction project on property located in an R-2 District, and is therefore in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 2402/2404 Luckett Ave. on approx. 25,300 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((38)) 11. (DEFERRED FROM 11/3/93 FOR NOTICES).

Chairman DiGiulian advised that he had a request for a deferral on this appeal.

William E. Shoup, Deputy Zoning Administrator, advised that this appeal had come before the Board the previous week in response to the appellant's December 13, 1993, letter requesting a deferral, at which time there was some discussion about dismissing the case for lack of prosecution, based upon the fact that the notices had not been done; the notices also had not been done for the previously scheduled hearing, causing concern about diligent prosecution. Also at that time, it was requested by the Board that the appellant be present on this date to explain why notices were not being done.

Michael A. McDaniel, 2405 Luckett Avenue, Vienna, Virginia, came to the podium and was asked by Chairman DiGiulian to tell the Board why the notices had not been sent. Mr. McDaniel detailed what his intentions were, stating that he had applied for a permit to start construction on the property in question. He said the way the appeal read led him to believe it said that they were applying for permission to have a permanent storage yard on the property, which he said was never his intention. He said nothing on the property was permanent and, when they rezoned the property, they sent notices to people that the property was being rezoned.

Mrs. Harris said she did not understand Mr. McDaniel's answer to the question. She said he had received notice from the Zoning Administrator that he was operating a construction materials yard on the property not associated with an active construction project, which was in violation of the Zoning Ordinance, adding that the problem was not related to a rezoning or any other type of issue. Mrs. Harris explained to Mr. McDaniel that, when he made his appeal, the law required him to send out notices to the adjacent property owners to make them aware of the appeal. She stated that the question was why the appellant had not sent out the notices in compliance with the regulations.

Mr. McDaniel said the sign on the property appeared to him to imply that he was trying to rezone the property as a permanent yard. In answer to a question from Chairman DiGiulian, Mr. McDaniel said the property was the last remaining lot of a subdivision and they were attempting to secure a permit to build on the lot. He said the reason why they had not done so previously was monetary; they have now obtained enough money to begin the process and he intended to do so. Mr. McDaniel made the following statements about his understanding of the situation: He said he was told when he took out the permit that he would have to be out twenty days after the last house in the subdivision was completed and the subject property will be the location of the last house in the subdivision. He said the other permit available to him at that time said that he had eighteen months from the date of the permit to get out. Mr. McDaniel said he never had any intention of using the subject property for permanent storage.

Mr. Hammack asked staff if they had investigated Mr. McDaniel's understanding that he could store the construction materials on the site under the subdivision permit. Mr. Shoup said he believed Mr. McDaniel was getting into the merits of the appeal, which was not the issue at

this time. The Zoning Administrator's Office had taken a position regarding a previously issued temporary special permit that the appellant had obtained for a contractor's office on the site; however, there was a long history of what had occurred on the property and that is the issue of the appeal, the determination of the Zoning Administrator in regard to the temporary special permit.

Chairman DiGiulian asked, if the appellant were to obtain the permit to which he had referred, would the appeal then be moot and would the violation then go away. Mr. Shoup said that the problem was that, to get the temporary special permit for the materials yard, it would have to be associated with an active construction project, and there has not been anything active in this subdivision for years. Chairman DiGiulian asked, if the appellant were to obtain a special permit to build a house on the last lot and started construction, would that wipe out the violation. Mr. Shoup said the appellant could obtain a temporary special permit. Chairman DiGiulian asked Mr. McDaniel if he was in the process of getting that permit. Mr. McDaniel said that he was, but monetary constraints were at issue. In answer to a question from Chairman DiGiulian, Mr. McDaniel said his engineer was working on it and he would probably have his permit problem resolved by the first of February 1994.

Chairman DiGiulian suggested that the Board set a date, based on Mr. McDaniel's input, and go forward with hearing the appeal on that date.

Mrs. Harris said she believed they were getting into the merits of the case instead of concentrating on the reason the applicant was there, which was to answer why he had not sent out the notices; the Board could not go forward with the appeal until he did so. She said that she had yet to hear a reason why Mr. McDaniel had not sent out the notices. Mr. McDaniel said that the first time, the notices were sent out incorrectly in his son's name. The second time, he interpreted the notification to say that he was changing the property to a permanent yard, which was not his intent, and that was the reason why he had not sent out the notices.

Mr. Hammack told Mr. McDaniel that, if he did not send the notices out, the Board would dismiss the appeal and he would lose his temporary permit. He recommended to the appellant that he acquire the building permit which would make the appeal moot, or send out the notices.

Chairman DiGiulian reiterated Mr. Hammack's recommendation that the appellant send out the notices in sufficient time to meet the February hearing date requirements. In answer to a request for clarification from the appellant, Mr. Hammack said that, if he did not comply with the requirement of sending out the notices, the appeal would be dismissed, which would in effect uphold the determination of the Zoning Administrator.

Mr. Ribble advised that some of the Board members would like to dismiss the appeal that day. Mrs. Harris advised the appellant that she believed him to be totally remiss in not sending out the notices after all the time that had elapsed, stating that she believed his reason was that he disagreed with the determination of the Zoning Administrator, which was a given, and was the reason for the hearing.

Mr. Shoup clarified the question of the notices having been sent out incorrectly. He said that the notice package originally had the appellant listed as Michael G. McDaniel instead of Michael A. McDaniel. Mr. Shoup said that, when the applicant received the original notice package, he should have advised staff of the error and staff could have corrected the inconsistency and prepared another notice package in sufficient time for the appellant to meet the requirements.

Mr. Hammack reiterated the need for the appellant to send out the notices and the consequences of not complying with the requirements, which was reemphasized by Chairman DiGiulian. The appellant indicated that he understood and would comply.

Mr. Kelley moved to defer A 93-P-013 to February 8, 1994 at 10:00 a.m.

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

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Page 308, December 14, 1993, (Tape 1), Scheduled case of:

10:00 A.M. WILLIAM A. STEWART, III, APPEAL 93-M-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that appellant is operating a contractor's office and shop in an R-2 District in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 3414 Holly Rd. on approx. 43,560 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 9. (DEF. FROM 11/30 AT APP'S. REQ.)

Chairman DiGiulian noted that a withdrawal had been requested. Mr. Hammack so moved. Mrs. Harris 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.

Mr. Kelley asked that the record show that he did not like the way the attorney for the appellant handled this case. Chairman DiGiulian said he agreed. Mr. Kelley asked that his opinion be transmitted to the appellant's attorney.

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Page 309, December 14, 1993, (Tape 1&2), Scheduled case of:

10:30 A.M. ANTHONY BENKAHLA, APPEAL 93-L-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that appellant's operation of an eating establishment with 6 parking spaces for 44 seats and three (3) employees is in violation of Par. 6 of Sect. 11-104 of the Zoning Ordinance. Located at 5641 Telegraph Rd. on approx. 12,059 sq. ft. of land zoned C-8. Lee District. Tax Map 83-1 ((1)) 40.

Andrew Zimmer came to the podium and stated that he was appearing as counsel for the appellant and requested a deferral. He said the appellant was negotiating with the Virginia Department of Transportation (VDOT) to acquire an adjacent, vacant piece of land that abuts his lot, with the possibility of increasing the parking for his business. He said that could alleviate the hardship cause by insufficient parking space.

Chairman DiGiulian said that Mr. Zimmer's statement implied his agreement that the appellant did not now have sufficient parking space, to which Mr. Zimmer replied, "That is correct." Chairman DiGiulian stated that it might be more appropriate if he dropped the appeal.

The appellant, Anthony Benkahla, said he had been granted an Occupancy Load Certificate for 40 seats, with the existing parking and facilities. He said a Zoning Inspector had come to his establishment due to a complaint of a neighbor and said that the appellant had more seating than allowed by the Zoning Ordinance for the number of available parking spaces. Mr. Benkahla described the area as commercial with a lot of pavement. He said he would like the Board to grant a deferral or approve the existing arrangement. In answer to a question from Chairman DiGiulian, Mr. Benkahla said he would like a deferral of 1 to 1 months to resolve the situation and, if he did not have the situation resolved by that time, he would ask the Board to approve the existing arrangement with the 6 parking spaces he now had.

Chairman DiGiulian asked William E. Shoup, Deputy Zoning Administrator, if the applicant was able to acquire more parking, would he not be required to have a new site plan approved. Mr. Shoup said that was correct, the appellant would have to go through a site plan process. Chairman DiGiulian said he did not believe that could be accomplished in 1 months, nor did he believe additional parking on another piece of property would affect the appeal. The appellant said that the County had taken some of the property for Telegraph Road in 1980, which created a hardship for parking. Mrs. Harris said that the appellant's building permit was obtained in 1992 and was not affected by the previous events.

Mr. Shoup said that, when the appellant proposed his eating establishment, he came forward with a building permit and it was determined at that time that he would need a parking tabulation because it constituted a change in use from a previously-approved office use. Initially, the structure was occupied as a residence since 1952; however, there was an approved conversion to a palmistry business. The appellant's proposed change to a restaurant/eating establishment required the parking tabulation to be based on the Zoning Ordinance provisions for an eating establishment, which is based on the number of seats and the number of employees. The appellant represented on the parking tabulation that the existing 6 parking spaces on site would accommodate the use, based on his representation that he would have just 20 seats at tables and 2 employees. Mr. Shoup said that, after a complaint was received, the establishment was inspected and was found to have over 40 seats at tables and 3 employees on site; therefore, he was issued a Notice of Violation, which he was appealing.

Chairman DiGiulian observed that the addition of another piece of property and additional parking would not affect the violation, as he understood it.

Mr. Pammel explained to the appellant that the interpretation of an inspection by the Department of Environmental Management (DEM) and their determination that the establishment had the capacity to accommodate 40 seats on one hand, on the other hand had to meet the requirement of the Zoning Ordinance as to how many parking spaces were required to accommodate 40 seats and 3 employees. He explained to the appellant that he fell short of having sufficient parking spaces to accommodate the number of seats and employees. It was suggested by the Board that the appellant withdraw the appeal.

Mr. Zimmer said that the applicant chose not to withdraw the appeal and was requesting a deferral to perfect the appeal.

Mrs. Harris moved to uphold the determination of the Zoning Administrator that the applicant's eating establishment with 6 parking spaces for 44 seats and 3 employees is in violation of Paragraph 6, Section 11-401 of the Zoning Ordinance.

Realizing that there was a request before the Board for a deferral, Mrs. Harris moved to deny the request for a deferral and recommended that the appeal be heard at this time.

Mr. Pammel 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.

Chairman DiGiulian advised that the appeal would be heard.

Mr. Shoup directed the Board's attention to the staff report dated December 7, 1993, outlining the details of the appeal. Many of the details had already been discussed. Mr. Shoup said that, after a complaint had been received, an inspection revealed that the appellant had been operating with 6 4-person booths, 4 tables with chairs, 4 counter stools and 3 employees; this combination equates to a parking requirement of 14 parking spaces under the Zoning Ordinance provisions. Mr. Shoup said it was the position of the Zoning Administrator's Office, as reflected in the Notice of Violation, that the appellant was in violation of the Zoning Ordinance provisions. He said, as Mr. Pammel had pointed out, he believed the appellant was confusing the Occupancy Load Certificate that is posted by DEM and indicates that they have a right to have 40 people in the facility with the parking requirement, which is a different issue.

In answer to a question from Mr. Pammel, Mr. Shoup acknowledged that the appellant did obtain a Non-RUP based upon the permit and representation of operating a restaurant with 20 seats.

Mr. Zimmer said he could not understand why other business were complaining about the appellant, to which Chairman DiGiulian replied that it might be because the appellant's customers were parking in spaces designated for the other businesses. Mr. Pammel advised Mr. Zimmer that he was addressing issues not germane to the issue before the Board and suggested he might seek a variance. Chairman DiGiulian said he did not believe the Board could grant a variance based on parking requirements. It was agreed that was not the issue before the Board.

The appellant said he was under the impression that he was before the Board to seek a variance. Chairman DiGiulian asked the appellant if he had not signed the appeal application.

In answer to a question from Chairman DiGiulian, the appellant said that there were more parking spaces under the previous ownership. It was ultimately revealed that there had been no further taking of spaces after the appellant took over the property.

Mrs. Harris explored the issue of why the appellant ended up with 40 seats, when his architect had signed the parking tabulation on his behalf agreeing to 20 seats. The appellant challenged the 40-seat accommodation, saying that it was overstated.

Harry Fitzwater, Regional Property Manager for Property Development Associates, owners of adjacent Lots 38 and 003 which are occupied by their tenant, Erwatz and Krantz, came forward. He said he made the original complaint against the appellant. While he would like to be a good neighbor, he said he wished to oppose the application for a waiver because the congestion at the intersection is such that it precluded any on-street parking and the parking on the appellant's property is very limited and the overflow used the parking spaces of their tenant, infringing upon their right to have parking available for their customers.

Mr. Fitzwater requested that the Board not waive the requirements for the appellant while imposing the requirements on his tenants. He said they had been forced to incur the cost of new fencing and signage in their attempt to control the situation. Mr. Fitzwater said the appellant was parking on land which is part of the Virginia Department of Transportation (VDOT) right-of-way and noted that the appellant indicated that he was planning to acquire the land. Mr. Fitzwater said that, if the County eventually determined the land to be surplus land, his company would also be interested in making a bid for it.

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

Mr. Hammack moved to uphold the Zoning Administrator's decision, stating that, after hearing the appellant's explanations and testimony, it appeared that he might be misinformed about what his legal options are; however, he made the appeal, he does not deny that he has available seating in excess of the capacity that is permitted under the Zoning Ordinance for the number of parking spaces available, and he may want to apply for a variance at some point in the future. Mr. Hammack said that was not the kind of proceeding presently before the Board, nor could that type of relief be granted incidental to this particular appeal. Mr. Hammack said he had heard nothing which would lead him to believe that the Zoning Administrator's determination and the zoning violation were not valid.

Mr. Pammel seconded the motion, making the observation that the establishment currently exceeds the capacity that was permitted by the Non-Residential Use Permit granted by the County.

As a point of clarification, Mr. Shoup stated that Article 18 of the Zoning Ordinance provides no authorization for approval of a variance to the number of parking spaces required, precluding the appellant from pursuing a variance.

The motion carried by a vote of 5-0 and the decision of the Zoning Administrator was upheld. Mr. Ribble was not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 311, December 14, 1993, (Tape 2), ACTION ITEM:

Approval of Resolutions from December 7, 1993

Mrs. Harris so moved. Mr. Pammel 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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Page 311, December 14, 1993, (Tape 2&3), Action Item:

Request for Date and Time
Jody G. Bennett Appeal

Mr. Pammel advised that he would abstain, consistent with his previous actions regarding the Golf Park application.

Jane W. Gwinn, Zoning Administrator, noted that Ms. Bennett was present and that the Board might also want to hear from her.

Ms. Gwinn referenced her December 8, 1993, memorandum, presenting 3 issues which she believed to be of concern in the consideration of this the acceptance of this appeal, and suggested that the Board not accept the appeal.

Ms. Gwinn said the first issue was whether the appellant was attempting to appeal a decision which never was made: Ms. Bennett was appealing the decision of the County Executive to waive or modify special permit conditions. As presented in the background material, the County Executive took action under Article 17 of the Zoning Ordinance, regarding required improvements for trails. Ms. Gwinn said there was no decision by the County Executive regarding special permit conditions; as noted, there was an administrative decision by Barbara A. Byron, Director, Zoning Evaluation Division, as agent of the Zoning Administrator, regarding whether the special permit required trails and along which roads. It would appear that Ms. Bennett was attempting to appeal that decision; however, that was not what was presented in her appeal statement and it was the Zoning Administrator's position that she was attempting to appeal a decision that never occurred. The County Executive never took action to waive special permit requirements.

Ms. Gwinn went on to say that, even if the County Executive had done what Ms. Bennett inferred, Ms. Bennett had already appealed that decision to the Board of Supervisors (BOS) under the site plan appeal provision, and that the BOS had taken action to deny that appeal. Having elected to pursue a remedy, it would be inappropriate for Ms. Bennett to try to change approaches at this point and appeal the exact same decision to the Board of Zoning Appeals (BZA).

Mr. Hammack asked for a point of clarification regarding Condition 21 which said that the applicant shall complete all trails indicated on the property in the adopted Comprehensive Plan (Plan) and questioned if any of those trails had been waived by the County Executive; he also questioned whether the County Executive had the authority to waive trails that are in the adopted Plan; he further questioned when a trail is in the adopted Plan and when it is not in the adopted Plan.

Ms. Gwinn replied that, under the Zoning Ordinance, the site plan requirements require the provision of trails as shown on the adopted Plan; the site plan ordinance also provides that any improvement required by the site plan approval may be waived by the County Executive; his decision to waive or not to waive may then be appealed to the BOS.

Mr. Hammack asked Ms. Gwinn if the County Executive had waived trails which were on the adopted Plan and she said that was correct. Mr. Hammack said the Board had always been told that they may not waive trails on the adopted Plan. Ms. Gwinn said that was because the Zoning Ordinance specifically provides that authority to the County Executive but not to the Board of Zoning Appeals nor the Board of Supervisors.

Mrs. Harris noted that, if the BZA had not imposed a condition about the trails, she could understand how the waiver might have occurred; however, the condition was imposed by the BZA stating that the trails shall be required. Mrs. Harris questioned if imposing the condition did not preclude the County Executive from waiving the trails. Ms. Gwinn said that was correct; if there was a condition of the special permit that said the applicant shall provide the trails, the County Executive did not have the authority under Article 17 to waive them. She said what had occurred in this instance was that a decision was made by Ms. Byron that, under the special permit conditions, trails were not required along all three of the roads at issue by the special permit; that the special permit only required the trails along Hunter Mill Road and the trail requirement along Crowell Road and the Dulles Airport Access Road were not required by the special permit, but rather were a Comprehensive Plan site plan requirement. Ms. Gwinn said she tried to point out the distinction in her memo without getting into the merits of the appeal. Again, she said, the trails could be required on the property by two different methods: One by the special permit and the other by the site plan ordinance.

Mr. Kelley said he would like to go back to his motion on the case. He said the condition under consideration was not in the original iteration of the staff report and he was under the impression that there would be no trails required anywhere except on Hunter Mill Road. Ms. Byron asked if he was referring to the time of the public hearing and the decision on Golf Park and he said yes. Ms. Byron said she had looked through the record and could not find anything specific confirming or denying that. Mr. Kelley asked if the County Executive

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had waived the trail on the Dulles Airport Access Road and not on Crowell Road. Ms. Byron said that was essentially correct; she believed that in some ways it was misleading to call it a waiver of the trail on Crowell Road because there have been accommodations made for the future construction of the trail on Crowell Road, which is something that frequently occurs in the site plan process. She said that, whether or not there is a condition imposed through a special permit, variance, special exception or zoning, it is frequently the procedure to allow what the County Executive did, which was to get an easement and provide money in lieu of the actual construction, so the trail could be provided at a later date.

Mr. Kelley asked to go on the record that Mr. Thoburn's appeal to the BOS, as he understood it, stated that he did not feel that he should have to escrow money for the trail on Crowell Road. Ms. Byron said that was correct; Mr. Thoburn believed that it was inappropriate for the County to ask him to grant the easement or escrow the money for Crowell Road; therefore, he appealed to the BOS and his appeal was denied.

Mrs. Harris said she had a question about how they got to the point of determining what trails were under the BZA condition and what trails were not. She asked how the determination was made as to which trails were open to interpretation and which were not, based upon the condition in the special permit.

Ms. Byron said she believed that doing so would be addressing the merits of the appeal, but she would gladly try to recreate the history. When Mr. Thoburn submitted his site plan, he submitted a request for trail waivers, which was referred to her through the site plan process. The question essentially was: What did the special permit conditions imposed by the BZA require, which could then affect DEM's decision on what to recommend to the County Executive in the context of the site plan? Ms. Byron said that she began looking into the history of the condition and trying to figure out what it meant. She said Mr. Kelley was correct in that it was not a staff condition, nor was it a condition that even emanated from the BZA; it was a condition that came from the Planning Commission the night of the Planning Commission's decision on its recommendation to the BZA. The condition was opposed by the, then, Commissioner of the District in the language that was subsequently adopted by the BZA.

Ms. Byron said that the language in the condition is unfortunately not as clearly written as it might be; she took that language, in conjunction with other elements of the approval, as follows: The special permit plat has a dotted symbol for trails, showing that trails would be within the property line along Hunter Mill Road and outside the property line on the Dulles Airport Access Road, and outside the property line on Crowell Road.

Mrs. Harris asked if the trails on the Comprehensive Plan and the trails on the special permit plat were in the same locations. Ms. Byron said that the trails on the Comprehensive Plan are not property-specific in terms of whether or not they are inside someone's property; the notation on the Comprehensive Plan Trails Map says that it shows on which side of the road a trail will be located: north, south, east or west.

In answer to a question from Mr. Kelley, Ms. Byron said that she was referring to the actual map that is part of the Comprehensive Plan; however, she previously was referring to the special permit plat submitted by Mr. Thoburn, showing the trail within his property on Hunter Mill Road. Ms. Byron confirmed, in answer to Mr. Kelley's question, that Mr. Thoburn had not requested a waiver of the trail on Hunter Mill Road.

Ms. Byron went on to say that Mr. Thoburn's special permit plat showed a trail within his property on Hunter Mill Road, and outside of his property on Crowell Road and the Dulles Airport Access Road. Ms. Byron reiterated that the Comprehensive Plan is not parcel-specific, it is just side of the road-specific. She said that note 14 on the special permit plan says that the graphic representation of the Comprehensive Plan Trails Plan as shown on his special permit plat reflects what the Comprehensive Plan Trails Plan would call for around his property; that note was not contested. Ms. Byron said there are at least two other conditions of the special permit approval that begin, "...not withstanding any note on the special permit plat..."; Condition 21 does not contain that preamble. She said that the language of Condition 21 ties together Mr. Thoburn's plat, the note, and the Comprehensive Plan Trails Plan, leading her to the conclusion that the only trails required by the provisions of Condition 21 are those shown on the special permit plat as being on Mr. Thoburn's property. Ms. Byron said that, in discussions of the site plan and whether or not his request should be recommended for approval, she came to that conclusion.

DEM subsequently recommended to the County Executive, through the Deputy County Executive, that he fully waive the trail along the Dulles Airport Access Road and allow the escrow of funds and the granting of an easement in lieu of actual construction along Crowell Road. There had been some additional research done along the Dulles Airport Access Road and no instance could be found where the County had required anyone to build a trail within the FAA property. The Deputy County Executive approved the waiver which was subsequently appealed to the BOS by Mr. Thoburn who did not want to do the Crowell Road escrow and easement, and by Mrs. Bennett who took the opposite view, that he be required to do the trails. The BOS denied both appeals, thereby upholding the decision of the County Executive. Mrs. Bennett then filed this appeal with the BZA.

Mrs. Harris said she was endeavoring to educate herself about the trails system and asked if there was any other property along Crowell Road and the Dulles Airport Access Road, between the subject property and those roads, that is owned by anyone other than the applicant. She further said that she understood that people who are making a countywide trails map could not draw plat-by-plat exactly where a particular trail should be located, but they could draw along a certain side of a road; so, in their minds, they are assuming that whenever that property is developed, that trail will be on that side of the road. Ms. Byron said it might not even happen when the property is developed because, frequently, the trails are done as sidewalks in conjunction with a public road improvement project. Mrs. Harris said her question was, if the trail was not property-specific and the applicant delineated the trail off his property, on whom was the onus placed to develop the trail, and at what time in the future. Ms. Byron said the applicant delineated it on the public right-of-way and not on another person's property, so she guessed it was his intent that it would be developed in conjunction with the improvements to Crowell Road at such time as they would occur, or at such time as the FAA decided to put in a trail system or improve the Dulles Airport Access Road. Mrs. Harris asked if this was consistent with the manner in which other property owners could deal with the trail issue throughout the County. Ms. Byron said that the specific development conditions, graphic representation and note on the plat are probably unique to this application, but it is common that some might ask that construction be postponed or ask to be relieved of the requirement for a trail.

Mrs. Harris asked, if she had 100 acres and had a trail designated on the Comprehensive Plan on three or four sides, could she in the site plan process simply draw the trail off her property and say that was where the trail was supposed to be located. Ms. Byron said she could request it at the time of site plan review and DEM would have to consider the individual circumstances and whether or not, for instance, there was a road project coming through; sometimes, because of unforeseen circumstances, despite where it is represented on the Comprehensive Plan, a trail gets built on the other side of the road, or there are physical characteristics that make it prohibitive to having a trail where it was originally envisioned. Mrs. Harris asked if DEM decided where a trail would be located. Ms. Byron said they could work with an applicant to determine whether it would be located within the right-of-way, outside of it, or on the property.

Mr. Kelley asked, if Condition 21 said there should be a trail along Hunter Mill Road, period, would they be having this discussion? Ms. Byron said she could not really answer that, but Mr. Thoburn had agreed to do the trail on Hunter Mill Road and he was not contesting the condition, so she guessed the answer to his question was they probably would not be there having that discussion. Mr. Kelley said that the only reason, then, that a trail was being insisted upon, was that Mr. Thoburn wanted to get a waiver and, if he were not seeking a waiver, this would not be an issue either. He said he understood it was a condition of the waiver that Mr. Thoburn provide a trail or the funds for Crowell Road. Ms. Byron said she believed that question should be asked of Ms. Bennett because it gets to the heart of her appeal. She believed her position would be that Mr. Thoburn should not have been relieved of any trail responsibility. Mr. Kelley said he did not agree with Ms. Bennett and was trying to determine if this was just a condition of the site plan waiver. Ms. Gwinn said it was their position that the trails along Crowell Road and the Dulles Airport Access Road were required by the site plan ordinance, because the site plan ordinance dictates that trails are required as shown on the adopted Comprehensive Plan; so, what was prompting all of this was the Zoning Ordinance requirement to implement the Comprehensive Plan Trail requirements.

Chairman DiGiulian said he would like to give Ms. Bennett a chance to speak.

Chairman DiGiulian reminded Ms. Bennett that she was there to address the scheduling of the appeal and not the merits of the appeal.

Ms. Bennett read a prepared statement into the records.

Ms. Bennett said the County Attorney's staff had raised the question of whether she was seeking to appeal a decision which had not taken place and referenced the verbal interpretation attributed to Ms. Byron, stating that she had no way of knowing whether the interpretation had been made. She said that the County Attorney's Office was critical of her appeal and even chastised her by saying that she should have appealed Ms. Byron's administrative determination to the BZA.

Ms. Bennett said that, at the BOS meeting on November 4, 1993, Supervisor Gerry Hyland commented that he had been a member of the BZA for eight years. He questioned the right to override a clear condition imposed by the BZA and the right to determine it was waivable. He further stated that, during the hearing process, the applicant had made every attempt to try to have the trails waived. She said she had never before heard that only the Hunter Mill Road trail was to be built.

Ms. Bennett said that the site plans contained the note that, at the site review process, the applicant would ask for a waiver of the trails requirement. She said that was removed on the final site plan and Supervisor Hyland told the applicant that he should complete all the trails shown on the Comprehensive Plan. Mrs. Harris questioned if Mr. Hyland had said that and the Board had voted it down. Ms. Bennett said she believed he was intimating why the question was before the BOS instead of the BZA. Mrs. Harris asked Ms. Bennett if she had not

had a choice of bringing the appeal before the BZA and she replied she did not because she had not known that a verbal interpretation had been made. In answer to a question from Mrs. Harris, Ms. Bennett said she called the County Executive's Office on October 20, 1993, when she heard that the trails had been waived, and asked where she could make her appeal. She said she was told by a secretary that she would have to make an appointment to speak with the County Executive by phone for 1 minutes about the appeal. She told him he made a decision he had no right to make and asked where she should make the appeal. She said she had an October 15, 1993, letter from Anthony H. Griffin, Deputy County Attorney for Planning and Development, approving the site plan waiver and imposing the establishment of an escrow account.

Ms. Byron stated that an issue of timeliness was not being raised with Ms. Bennett's appeal. One of the benefits of having a written appeal is that it establishes a time frame. Mr. Hammack asked if it is was not inconsistent to say the appeal was timely filed but then saying she cannot appeal. Ms. Byron said there were two different issues. The issues raised were whether Ms. Bennett was an aggrieved party and whether she had appealed elsewhere, but they were not saying that she missed her 30-day opportunity to bring a application for appeal before the BZA. Ms. Byron referenced a letter from the County Executive dated November 3, 1993, to Philip Hudock, the attorney representing Ms. Bennett and 18 other citizens in the appeal against the Golf Park, in which the County Executive notes for Mr. Hudock that the waiver was granted after an administrative interpretation found that the special permit conditions did not require construction of the Dulles Airport Access Road and Crowell Road trails. Mr. Hammack asked if this was public record and available to Ms. Bennett. Ms. Byron said the letter had been sent to Mr. Hudock who was Ms. Bennett's attorney.

Returning to Mrs. Harris's question, Ms. Byron said that frequently and on a daily basis she is asked questions regarding a site plan in process and not all interpretations are committed to writing. In this case, if she had written a letter, it would merely have stated that the BZA did not require the trails. Ms. Byron believed that no additional benefit would have been provided which Ms. Bennett did not have today.

In answer to a question from Mrs. Harris, Ms. Byron said that DEM had brought the issue to her attention when reviewing the site plan in view of the waiver request. Ms. Byron further stated that many members of County staff were aware that this application was under intense scrutiny and everyone was concerned about doing the right thing.

Mrs. Harris expressed a wish that the interpretation had been in writing and Ms. Byron referred her to the County Executive's letter to the attorney indicating that it was not a decision of the County Executive but it was an administrative decision, Ms. Byron's decision, although she was not named.

Mr. Kelley suggested that Ms. Bennett continue with her presentation. Ms. Bennett contended that the County Executive had no legal right to waive the trails because the BZA had consistently imposed the trails on the site plan.

Mrs. Harris read from the letter of Irving Birmingham, Director, DEM, to Mr. Griffin, making the recommendations mentioned above. She questioned that the letter did not specifically state what was said in Condition 21 when it was imposed by the BZA. Mrs. Harris asked Ms. Bennett if she was present when the BOS heard her appeal. Ms. Bennett said that the BOS had sent a letter stating that the appeal would be heard on December 13, 1993. Ms. Bennett said she received word from a "reliable source" that the appeal was scheduled to be heard 4 hours hence on November 15, 1993. In response to a question from Mrs. Harris as to whether she was at the hearing and whether the BOS discussed whether the trails had been conditioned by the BZA, Ms. Bennett said that Mr. Hyland had tried to raise the issue and Ms. Byron gave her interpretation. She said Supervisor Robert Dix, Centreville District, made a motion to deny Mr. Thoburn's appeal and Mr. Hudock's appeal. She said there was no opportunity for public comment.

Ms. Byron agreed that Ms. Bennett did not have much time to prepare, but at the end of the discussion, before Mr. Dix made his motion, Mr. Davis did ask whether a representative would like to speak to the Board and someone did come up and there was some opportunity to address the Board. Ms. Bennett agreed that there was some opportunity, but said her husband got up to say they were not prepared for discussion.

Mr. Kelley asked Ms. Bennett to comment about her standing. She said it was the last part of her presentation, which she read into the record.

Ms. Bennett questioned the requirement that she had to be an aggrieved person. She said the County Attorney had already agreed that she was aggrieved because she had been accepted as an aggrieved party in the court case, having been accepted as an aggrieved party by the Judge.

Mr. Kelley asked for a response to Ms. Bennett's statement. Ms. Gwinn said that the State Code provisions are different regarding an appeal to the BZA and an appeal of a decision of the BZA to the Circuit Court; to appeal a BZA decision to the Circuit Court, the State Code provides that any person aggrieved or any taxpayer or any officer may appeal the decision of the BZA to the Circuit Court. Ms. Gwinn said that, when 19 citizens filed an appeal of the BZA's decision, the County Attorney's Office, knowing that the 19 obviously were taxpayers, saw no reason to challenge and so did not challenge individual petitioners in that suit. The

provision for appealing a decision of the Zoning Administrator to the BZA is different; it just says any person or Board aggrieved, but does not have the broad inclusion of any taxpayer.

Ms. Bennett asked for a definition of an aggrieved person. Mr. Hammack said that a person could be considered aggrieved if their property were somehow impacted or if a financial impact were somehow inflicted upon their property.

Mr. Kelley said he did not believe the BZA should hear the case. He said it was obvious from the testimony that the County Executive, acting through a Deputy, does have the authority to waive trails and the Zoning Ordinance specifically provides that authority to the County Executive according to the Comprehensive Plan. Mr. Kelley did not believe that anyone wanted a trail on the Dulles Airport Access Road. He questioned Ms. Bennett's motives and said he did not believe she was an aggrieved person; he questioned that she was aggrieved because of the waiver of a trail which was not yet built, because she would be unable to walk on it. He said he agreed with the County Attorney on all three issues of why the BZA should not hear the appeal. He believed that other members who needed more time to explore the issue should have that time, so he would vote for a deferral.

Ms. Bennett said she believed the BZA would set a precedent with their decision on this issue and objected to the fact that, if someone did not get a favorable decision from the BZA, they had recourse to challenge the decision through another avenue. She also said it would be a nightmare to have to appeal verbal decisions.

Mr. Hammack told Ms. Bennett that the issue of verbal decisions has been around for quite awhile and he agreed with her. He said the County Attorney's Office had advised the BZA that the Zoning Administrator can make verbal decisions and that they are appealable. He said, in his opinion, they ignore the basic requirements of due process. He said he agreed with her about the precedent, but that Mr. Kelley was right about the County Executive having the authority to waive requirements imposed by the BZA. He said he would support a motion to defer in order to further study the issue; the opinions of the County Attorney's Office have some weight and he believed the should be considered carefully.

Mrs. Harris moved to defer making a decision on whether or not to accept the appeal until January 18, 1994, in order to allow staff the opportunity to provide the Board with a transcript of the previous special permit hearing, the plat, development conditions and any other documents upon which the interpretation was based.

Mr. Kelley objected to waiting so long to make a decision.

Mr. Hammack seconded the motion.

A discussion ensued about Condition 21 and the necessity to study previous transcripts and documents.

The motion failed by a vote of 3-1-1. Mr. Kelley voted nay because he wished to have it scheduled sooner. Mr. Pammel abstained. Mrs. Thonen was absent from the meeting.

Upon further discussion, it was learned that Mr. Kelley would not be available for the night meeting on January 18, 1994, and wished to be present because he had an interest in the case.

Ms. Byron advised that she believed staff could have the requested package ready for the Board's review by the next meeting.

Ms. Gwinn noted that the 90-day time frame was approaching and recommended deferring the appeal until the first meeting in January for a decision on whether or not it would be accepted. Chairman DiGiulian said that if, as Ms. Byron had said, the Board could have the documents available to them by their next meeting, it would be a good idea to defer the decision until the first meeting in January.

Mrs. Harris moved to schedule the appeal as the first case on January 11, 1994 at 9:00 a.m., with no dissenting votes. It was decided that no testimony would be taken at the next hearing; however, the Board might ask questions of the parties involved. Mr. Hammack noted that the three Board members not present during the current discussion might wish to ask questions at the next hearing.

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Page 315, December 14, 1993, (Tape 2), Action Item:

Request for Intent-to-Defer
Crosspointe Appeal A 93-V-008
Currently scheduled for January 4, 1994

Mrs. Harris noted that the request for deferral was being made to allow the Board of Supervisors (BOS) time to consider an amendment to the Zoning Ordinance which would address the Zoning Administrator's concern for the appeal.

Page 316, December 14, 1993, (Tape 2), CROSSPOINTE APPEAL A 93-V-008, continued from Page 315)

Jane W. Gwinn, Zoning Administrator, noted that on December 13, 1993, the Board of Supervisors adopted an amendment to the Zoning Ordinance which is the subject of the appeal, and that the appellant has a PCA, FDPA and SE scheduled to be heard in January 1994 which could render the appeal moot. In answer to a question from Mr. Kelley, Ms. Gwinn said she did not oppose the request.

Mrs. Harris moved to reschedule A 93-V-008 to February 15, 1994. Mr. Hammack seconded the motion which carried by a vote of 4-0. Mr. Pammel and Mr. Ribble were not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 316, December 14, 1993, (Tape 2), Action Item:

Appellant's Request that the
Appeal be left on the
January 4, 1994 Agenda
to Remain Within the 90-day Requirement
Arthur J. & Carol R. Cohen Appeal

Mrs. Harris said she remembered that the appellant had originally asked that their variance and their appeal could be heard on the same day. She moved to grant the request. Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Pammel and Mr. Ribble were not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 316, December 14, 1993, (Tape 3), Action Item:

Request for Intent-to-Defer
Golf Park, SPA 92-C-070
Made by Hunter Mill Defense League
(currently scheduled for December 20, 1993)

The Board of Zoning Appeals moved to deny the request for a deferral and ruled it moot because the Court had already made a decision on the Golf Park litigation.

It was noted that any information desired by the Hunter Mill Defense League could be obtained by reading the staff report.

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As there was no other business to come before the Board, the meeting was adjourned at 12:50 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: December 20, 1993

APPROVED: January 8, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 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 9:08 a.m. and Mr. Ribble 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 317, December 20, 1993, (Tape 1), Scheduled case of:

9:00 A.M. COMMUNITY OF THE MISSIONARY SERVANTS OF ST. JOSEPH, INC., SP 93-M-068 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit a convent. Located at 3438 Charles St. on approx. 14,035 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((18)) 18. (Concurrent with VC 93-M-131). (OUT OF TURN HEARING REQUEST GRANTED).

9:00 A.M. COMMUNITY OF THE MISSIONARY SERVANTS OF ST. JOSEPH, INC., VC 93-M-131 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.9 ft. from side lot line, permit dwelling to remain 6.8 ft. and 11.7 ft. from side lot lines, and permit garage to remain 2.6 ft. from rear and 2.1 ft. from side lot lines (12 ft. min. side yard req. by Sect. 3-307 and 13.5 ft. min. rear yard req. by Sect. 10-104). Located at 3438 Charles St. on approx. 14,035 sq. ft. of land zoned R-3. Mason District. Tax Map 61-2 ((18)) 18. (Concurrent with SP 93-M-068). (OUT OF TURN HEARING REQUEST 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. The applicant's attorney, Ray Keating, replied that it was.

Regina Murray, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. She said the application property is located on the west side of Charles Street on Parcel 18. The property is in the Bailey's Crossroads area, just south of Leesburg Pike, consists of 14,035 square feet of land area zoned R-3, and contains a one-story single family detached dwelling which is 6.8 feet from the south side lot line and 11.7 feet from the north side lot line. A detached garage is located at the rear of the lot and is approximately 2.6 feet from the rear lot line and 2.1 feet from the side lot line.

The applicants were requesting approval to allow a convent of six unrelated persons to reside at the site. Structured programs are not proposed to occur on site and no employees are proposed to visit the site.

Concurrent with the special permit request was a variance request to allow a 480 square foot building addition to the existing residential structure located 6.9 feet from the south side lot line. The proposed addition resulted in a requested variance of 5.1 feet from the 12 foot side yard requirement in the R-3 District. The existing dwelling required a variance of 5.2 feet from the south side yard requirement and a variance of 0.3 feet from the north side yard requirement. The existing garage required a variance of 9.9 feet from the side yard requirement and a variance of 10.9 feet from the rear yard requirement.

There were no outstanding issues associated with the proposed applications; therefore, staff recommended approval subject to the proposed conditions contained in the staff report.

Mrs. Harris asked when the garage was built. Ms. Murray said perhaps the applicant could address the timing of the construction.

Ray M. Keating, Jr., attorney for the applicant, 140 Little Falls Street, Falls Church, Virginia, said the Sisters purchased the property in January 1990 and noted that the garage and existing structure predates the current Ordinance. He said there are presently four persons residing in the house and although there is a chapel on site, there are no classes conducted. Mr. Keating said the Order was founded in 1870 in Spain and the Sisters have been in the Falls Church area since 1957. He said the Order's primary purpose is to do charitable work among the poor, especially among young people. Mr. Keating said the expansion would allow two additional persons to reside in the house, there would be no change in the residential character of the area, and the expansion will not impact the community.

In response to a question from Mrs. Harris, Mr. Keating said the plumbing necessitates that the addition be placed in the proposed location.

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

Mr. Pammel made a motion to grant SP 93-M-068 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-M-068 by COMMUNITY OF THE MISSIONARY SERVANTS OF ST. JOSEPH, INC., under Section 3-303 of the Zoning Ordinance to permit a convent, on property located at 3438 Charles Street, Tax Map Reference 61-2((18))18, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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.
3. The area of the lot is 14,035 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 8-303 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 Coldwell Sikes & Associates, Inc., dated January 22, 1990, approved with this application, as qualified by these development conditions.

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

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

5. The maximum number of persons residing at any one time at the site shall be six (6).

6. There shall be three (3) parking spaces provided as shown on the special permit plat.

7. Transitional screening and barrier requirements shall be waived along the entire periphery of the site.

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

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* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued. 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 December 28, 1993. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel made motion to grant VC 93-M-131 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

Mrs. Harris said the garage was there sometime before the current Zoning Ordinance and is in keeping with the character of the neighborhood in its placement. Mr. Pammel incorporated this finding into his motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-131 by COMMUNITY OF THE MISSIONARY SERVANTS OF ST. JOSEPH, INC., under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.9 feet from side lot line, permit dwelling to remain 6.8 feet and 11.7 feet from side lot lines, and permit garage to remain 2.6 feet from rear and 2.1 feet from side lot lines, on property located at 3438 Charles Street, Tax Map Reference 61-2((18))18, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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.
3. The area of the lot is 14,035 square feet.
4. The applicant has demonstrated a hardship does exists in that there is no other practical location for the addition.
5. The addition to the house will encroach no more into the side yard than the present structure.
6. The garage was there sometime before the current Zoning Ordinance and is in keeping with the character of the neighborhood in its placement.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 existing garage, the existing dwelling, and the specified addition to the dwelling shown on the plat prepared by William S. Sikes, Jr. dated January 22, 1990, 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 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 28, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 320, December 20, 1993, (Tape 1), Scheduled case of:

9:00 A.M. JOHN LAURENCE MCCARTY AND CAROL A. MCCARTY, VC 93-D-134 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 15 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-107). Located at 8354 Old Dominion Dr. on approx. 24,642 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 20-3 ((15)) 61. (Concurrent with SP 93-D-069). (OUT OF TURN HEARING REQUEST GRANTED).

9:00 A.M. JOHN LAURENCE MCCARTY AND CAROL A. MCCARTY, SP 93-D-069 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-107). Located at 8354 Old Dominion Dr. on approx. 24,642 sq. ft. of land zoned R-1 (Cluster). Dranesville District. Tax Map 20-3 ((15)) 61. (Concurrent with VC 93-D-134). (OUT OF TURN HEARING REQUEST GRANTED).

Chairman DiGiulian called the applicant to the podium and asked if the affidavits before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's architect, Arthur Cohen, replied that they were.

Don Heine, Staff Coordinator, presented the staff report. He said the 24,642 square foot property is located on the north side of Old Dominion Drive within the Greenway Heights Subdivision. The property is in the R-1 District and developed under the cluster provisions of the Zoning Ordinance. The lots to the north and east are also in the R-1 District and developed under the cluster provisions of the Zoning Ordinance. The lots to the west and south are developed under the conventional R-E District regulations.

The applicants were requesting approval of concurrent special permit and variance applications. The special permit was a request for an error in building location to allow an existing screen porch and room addition to remain 15 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, an error in building location for 10 feet was requested.

The variance application was to allow the enclosure of the existing screen porch in order to provide a room addition located 15.0 feet from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, a variance was requested for 10.0 feet.

Mr. Cohen said the applicants purchased the property in August 1977 in good faith and with the understanding that the existing screen porch was in violation of the Zoning Ordinance. In July 1984, the applicants filed an application for a kitchen/breakfast room addition to be located immediately contiguous to the screen porch. Mr. Cohen said the enclosure would be the same dimensions of the screen porch and the materials used would match those used in the 1984 construction. He said the proposal will not impact the neighbors since there is extensive landscaping in the rear yard.

With regard to the variance, Mr. Cohen said the variance for the new addition fell within the same constraints of the special permit; therefore, the same arguments could be made for both applications.

In response to a question from Mrs. Harris, Mr. Cohen said the screen porch was not a part of the original dwelling but it was constructed prior to the applicants purchasing the property.

Mrs. Harris asked staff if there was any documentation indicating when the screen porch was built. Mr. Heine said there was none available.

Jane Kelsey, Chief, Special Permit and Variance Branch, said it was staff's understanding that the porch was built prior to the effective date of the current Zoning Ordinance. She explained that under the previous Ordinance a screen porch could extend into a required yard, but under the current Ordinance a screen porch is considered an addition and cannot extend.

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

Mr. Ribble made a motion to grant VC 93-D-134 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-D-134 by JOHN LAURENCE MCCARTY AND CAROL A. MCCARTY, under Section 18-401 of the Zoning Ordinance to permit addition 15 feet from rear lot line, on property located at 8354 Old Dominion Drive, Tax Map Reference 20-3((15))61, 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 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 (Cluster).
3. The area of the lot is 24,642 square feet.
4. The applicant has met the nine standards required for a variance, in particular the situation of the house on the irregular lot leaves a shallow rear 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 (screen porch enclosure) shown on the plat prepared by Coldwell & Associates, Inc., dated August 9, 1977, revised through October 12, 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 variance 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 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. 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 28, 1993. This date shall be deemed to be the final approval date of this variance.

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Mr. Ribble made a motion to grant SP 93-D-069 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report with the deletion of Condition Number 3.

Mrs. Harris asked staff if building inspections were done at the time of construction. Mr. Heine said there was no documentation indicating inspections were conducted.

Jane Kelsey, Chief, Special Permit and Variance Branch, said staff could find no record of a building permit being obtained for the original screen porch, but the applicants had received a building permit for the addition. She said if the normal procedures were followed, inspections would have been done in accordance with the building permit.

Mr. McCarty came forward and said he had a clear and distinct memory of inspections being made.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-069 by JOHN LAURENCE MCCARTY AND CAROL A. MCCARTY, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit addition to remain 15 feet from rear lot line, on property located at 8354 Old Dominion Drive, Tax Map Reference 20-3((15))61, 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 20, 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 locations and the specified room 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 use(s) indicated on the special permit plat, entitled House Location, Lot 61, Section 2, Greenway Heights, prepared by Coldwell & Associates, Inc., dated August 9, 1977, revised through October 12, 1993, submitted with this application, as qualified by these development conditions.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. 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. Hammack and 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 28, 1993. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley asked staff if Condition Number 3 had been adopted as standard language in applications. Jane Kelsey, Chief, Special Permit and Variance Branch, said the condition previously used by staff stipulated that a building permit shall be obtained. She said the Department of Environmental Management had indicated that many times although a building permit was obtained, inspections were not finalized, and asked staff to incorporate language that required the inspections for safety reasons.

Chairman DiGiulian asked if that was applicable when the construction was performed by a prior owner. Ms. Kelsey said that it was.

Mr. Hammack asked if this was a legal requirement. Ms. Kelsey said the County Attorney's office reviews most conditions prior to their implementation. Mr. Hammack asked if it was a Code requirement and Ms. Kelsey said that it was.

Following a discussion among the Board members, Mr. Kelley said it appeared that the burden was being placed on the homeowner rather than the County.

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9:00 A.M. FRANCONIA WESLYAN CHURCH & DISCOVERY DAY CARE CENTER, SPA 76-L-068 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend S-68-76 for church and related facilities to permit a child care center. Located at 5506 Trin St. on approx. 4.121 ac. of land zoned R-3. Lee District. Tax Map 81-4 ((1)) 91. (OUT OF TURN HEARING REQUEST 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. The applicant's agent, Jerald Clark, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the 4.1 acre site is located at 5506 Trin Street, is zoned R-3, and is located on the north side of Trin Street at Old Rolling Road approximately one quarter mile north of Franconia Road. The subject property is developed with a 160 seat church and related facilities including a parsonage, a two story classroom building, an open pavilion, and 50 parking spaces on site. Access to the site is by way of two existing entrances on Trin Street. The site is surrounded by single family detached residences in the Brookland Estates subdivision.

The applicant was requesting to amend Special Permit, S 68-76, for a church and related facilities to permit a child care center with a maximum daily enrollment of 49 students. There was no new construction proposed. The proposed hours of operation are 6:00 a.m. to 6:00 p.m., Monday through Friday, and there will be 10 employees. The proposed play area consists of approximately 4,000 square feet and will be located adjacent to the pavilion. The applicant had committed to screening the north, east, and west sides of the play area with five foot high Leland Cypress Trees.

In staff's opinion, the application was in harmony with applicable recommendations of the Comprehensive Plan and met the Zoning Ordinance standards for child care centers. Therefore, staff recommended approval of SPA 76-L-068 subject to the proposed Development Conditions contained in Appendix 1 of the Staff Report.

In response to a question from Mrs. Harris as to the dropoff and pickup point, Mr. Hunter said the entrances would be made one-way and the children would be dropped off in the u-shaped area of the driveway.

The applicant's representative, Mr. Clark, asked that the application be approved.

Mrs. Harris asked if the speaker agreed with the development conditions and Mr. Clark said that he did.

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

Mrs. Harris made a motion to grant SPA 76-L-068 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 SPA 76-L-068 by FRANCONIA WESLYAN CHURCH AND DISCOVERY DAY CARE CENTER, under Section 3-303 of the Zoning Ordinance to amend S-68-76 for church and related facilities to permit a child care center, on property located at 5506 Trin Street, Tax Map Reference 81-4((1))91, 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 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.
3. The area of the lot is 4.121 acres.
4. The property is well suited to the applicant's proposed use.
5. The parking lot is such that the cars can come in and drop off the children and re-enter the street without causing any problem to the traffic flow on Trin Street.
6. The play area is in a good location and with the additional trees, it will be a noise barrier for the surrounding residential property.
7. It is a well designed plan and should be granted.

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 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 Gerald L. Clark, A.I.A., Architect, dated July 15, 1993, revised through November 17, 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 53 parking spaces provided as shown on the Special Permit Amendment Plat. All parking shall be on site.

5. The driveway entrances shall be signed and striped to allow for a one-way circulation pattern. One driveway should serve as the entrance and the other as the exit.

6. The maximum number of seats in the main area of worship shall be 160.

7. The maximum daily enrollment for the child care center shall be 49.

8. The maximum number of students in the play area at any one time shall not exceed 40.

9. Existing vegetation shall be used to provide the required transitional screening along all lot lines. Leland Cypress trees, a minimum of 5 feet in height at planting, shall be provided around the north, east and west sides of the proposed play area in order to screen the view of the play area from the adjacent residential properties.

10. The barrier requirement shall be waived along all lot lines.

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. The maximum number of child care center employees on site at any one time shall be twenty (10).

13. The hours of operation for the child care center shall be limited to 6:00 A.M. to 6:00 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. 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 28, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 325, December 20, 1993, (Tape 1), Scheduled case of:

9:30 A.M. BRET LOWELL AND HOLLY ROSS, VC 93-D-097 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. from side lot line

(15 ft. min. side yard req. by Sect. 3-207). Located at 1963 Virginia Ave. on approx. 25,000 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (5) 72 and 73. (DEFERRED FROM 11/9/93 AT APPLICANT'S REQUEST TO ALLOW TIME TO MEET WITH NEIGHBORS).

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. Lowell replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located at 1963 Virginia Avenue northwest of the Fairfax County/Arlington County line. The subject property is 25,000 square feet in size, is zoned R-2, and is developed with a single-family detached dwelling which will be removed for the construction of the proposed dwelling. The request for variance resulted from the applicants' proposal to construct a two story dwelling 10.0 feet from a side lot line. A minimum side yard of 15 feet is required on a lot zoned R-2; therefore, the applicants were requesting a variance of 5.0 feet from the minimum side yard requirement.

On November 9, 1993, the applicants requested a deferral of VC 93-D-097 in order for them to meet with neighbors and the BZA voted unanimously to defer the case to December 20, 1993. Mr. Hunter said on December 6, 1993 the applicants submitted a revised variance plat which depicted a relocated entrance driveway which allowed several specimen hardwood trees located in the front yard to remain.

Bret Lowell, 6859 Williamsburg Pond Court, Falls Church, Virginia, said they were requesting a 5 foot variance in order to build a new home. He addressed each of the nine standards. Mr. Lowell outlined the distinct features of the property which would justify the granting of a variance such as: a house on the adjacent right side of the property is located 7 feet from the shared lot line, a water condition which adversely affects the property, a line of hardwood trees, and an easement. He said the proposed house would only be 65 feet wide with the front of the house being only 55 feet wide. Mr. Lowell said there is a delapidated 50 year old house on the property which will be removed in order to build a new house. The existing structure is 78 feet wide and sits 10 feet from the left side lot line and 12 feet from the right side lot line. Mr. Lowell said the new house would also be located 10 feet from the left side lot line and 25 feet from the right side lot line and discussed the location of the houses on the adjacent lots. He said the property has exceptional topography as it drops 25 feet from the front left corner to the back right corner and within the building envelope drops a full story from front to back and from left to right. Mr. Lowell said the topography has made it necessary to have a rear entry garage and a driveway running along the right side which will alleviate the possibility of water running onto the neighbor's property. There is also a sanitary easement along the right side of the property line which extends 5 feet onto their property and noted that he believed it would be senseless to build a garage on top of the easement. He said they would like to construct the driveway in such a way that the line of hardwood trees on the south side of the lot will be preserved. Mr. Lowell said there are no lots in the neighborhood that have all the characteristics of the subject property.

In response to a question from Mr. Hammack as to why the house could not be shifted over to alleviate the need for the variance, Mr. Lowell said if so, there will be only 3 feet between the house and the driveway.

The co-applicant, Holly Ross, 6859 Williamsburg Court, Falls Church, Virginia, said the proposed house would be in keeping with the character of the neighborhood and would improve the subject property and the neighborhood. She said they requested a deferral from November 9th in order to meet with the neighbors to discuss tree preservation and following that meeting asked their architect to redesign the driveway around the trees. Ms. Ross said on December 13th they submitted forty letters signed by the neighbors representing twenty-nine properties in support of the request.

The applicant's architect, Tom O'Neal, said because of the sewer easement and the need to get a berm along the lot line to keep the rain water from running into the neighbor's yard, they believed it was necessary to have a minimum of 10 feet on that side of the house.

A discussion took place between the BZA and the architect with regard to the possible drainage problem and why the house could not be reconfigured. Mr. O'Neal said they believed it was more appropriate to deal with the water situation in the proper way rather than to shift the house. He said the design is what the applicants would like to build.

Harold Logan said he had worked with the architect to try to resolve the drainage problem and added that the new house is basically going in the same location as the existing house. Mr. Hammack pointed out that the proposed house will be twice the size of the existing house.

The adjacent property owner, Elena Moreno, 1965 Virginia Avenue, McLean, Virginia, said she and her husband supported the applicants' request because the proposed house would be further away from the shared lot line and the proposed berm would alleviate additional runoff onto their property.

Tom Steindler, 1966 Virginia Avenue, McLean, Virginia, said he appreciated the applicants' working with the community in order to preserve the trees since the trees are an important part of the neighborhood.

Mrs. Harris and the speaker discussed the nexus between the proposed driveway and the applicants' request for a variance.

There were no further speakers in support of the request and Chairman DiGiulian called for speakers in opposition to the request.

Brook Kane, 6102 Franklin Park Road, McLean, Virginia, President of the Franklin Area Citizens Association, said the neighborhood is very unique. She pointed out that there are other properties which have similar topographic conditions and that she believed the granting of the variance would create a "domino" effect.

Mr. Pammel and the speaker discussed the location of the proposed house and the setbacks. Ms. Kane said the proposed house would be much larger than the existing structure and pointed out that the house could be moved over to alleviate the need for the variance. She said for the past six years the Association has opposed every side yard variance.

Wallace Sansone, 1962 Virginia Avenue, McLean, Virginia, believed the granting of the variance would be precedent setting and noted that the proposed house could be constructed on the site without a variance.

In rebuttal, Mr. Lowell said if the variance was not granted they would be forced to sell the property and added the house cannot be reduced in width. He said the lot is grandfathered and two houses could be built on the site but he believed that would ruin the neighborhood. Mr. Lowell disagreed that the granting of the variance would be precedent setting.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny VC 93-D-097 for the reasons noted in the Resolution.

Mrs. Harris agreed that the house could be reconfigured to alleviate the need for the variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-097 by BRET LOWELL AND HOLLY ROSS, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 feet from side line, on property located at 1963 Virginia Avenue, Tax Map Reference 41-1((13))(5)72 and 73, 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 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-2.
3. The area of the lot is 25,000 square feet.
4. The case was very close in many ways as it is obvious that the applicants have put a great deal of thought into the dwelling that they would like to construct on the property.
5. The proposed structure is a very handsome one and a very large structure in some ways, at least larger than the ones that are there.
6. The applicants were seeking a 5 foot variance for the side of the building that is 32 feet in length and would go up to 30 feet or more.
7. The architect testified that the applicants could put a front loading garage but chose not to.
8. It seems that some of the reasons the applicants gave to justify the house also demonstrate what they really seek is a convenience; specifically, in dealing with a rear loading garage the applicants have had to use developable space in the building envelope to build a garage in order to save some of the trees.
9. The applicants could move the house over to eliminate the variance because they are starting fresh on this project and can build within the allowed building envelope.
10. It is not an extension of an existing dwelling nor constrained by other factors.
11. There are topographical constraints, but they are not the ones that really dictate the request for the variance.
12. The BZA must decide whether the granting of a variance would alleviate a hardship approaching confiscation of the property and this request is for a convenience or a self-inflicted hardship in order to accommodate the development of the property the way they would like to have it developed.

13. The architect testified that a turning radius was needed in the rear yard for a three car garage, but that is a convenience.

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

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

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

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

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

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 December 28, 1993.

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Page 328, December 20, 1993, (Tape 1), Scheduled case of:

9:30 A.M. ELIZABETH CELMER, VC 93-V-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 6207 Arkendale Rd. on approx. 12,876 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (23) 18. (DEFERRED FROM 11/9/93 AT BOARD'S REQUEST TO ALLOW VIEWING OF PROPERTY AND TO ALLOW APPLICANT TO MEET WITH NEIGHBORS).

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 May, replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He said the application was deferred from November 9th in order for Board member, Mr. Kelley, to view the property and to allow the applicant an opportunity to respond to the opposition. Mr. Heine said the 12,876 square foot property is located on the east side of Arkendale Road within the Belle Haven Subdivision. The subject property is surrounded on four sides by single family detached dwellings in the R-4 District and U.S. Route 1 is located north of the property.

The applicant was requesting a variance to allow an addition for a kitchen to be located 5.0 feet from a side lot line. The Zoning Ordinance requires a 10.0 foot minimum side yard and a variance was requested for 5.0 feet from the side yard requirement.

Mr. May said staff had done an excellent job in the preparation of the staff report; he agreed to the proposed development conditions and believed the nine required standards had

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been met. He addressed the two opposition letters by stating that the area of the proposed addition is well landscaped with mature trees and a privacy fence and both will remain. Mr. May said the combination of the fence and landscaping negate any perceived encroachment on the part of Mr. Crenshaw, an opposing neighbor. He said given the pie-shaped nature of the lot, the request to construct the addition within 5 feet of the lot line is only relevant at the closest point and added that the topography of the lot slopes from the front to rear significantly. Mr. May said the other opposing neighbor, Mr. Whitehead, lives on the property abutting the rear lot line of the applicant's property and pointed out that because of the radical range of elevation, the applicant's house cannot be seen from inside the Whitehead residence.

The applicant's husband, Don Farrell, came forward and said when they purchased the house in 1976 he put the house in his wife's name for estate purposes. He said they have done a lot of modifications to the house but postponed constructing the addition because of a marine clay problem they had on the northeast corner of the house a couple of years ago. Mr. Farrell said he talked to Mr. Crenshaw on July 12th, and at that time Mr. Crenshaw voiced no objection to the addition and agreed to the removal of a Magnolia tree. He disagreed that the addition would adversely impact the Whitehead property and said the proposal would allow the applicant to expand the kitchen and dining room.

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

In response to a question from Mrs. Harris, Mr. Farrell said it would be a one-story addition.

Mr. Kelley made a motion to grant VC 93-V-095 for the reasons noted in the Resolution and subject to the Development Conditions.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-095 by ELIZABETH CELMER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.0 feet from side lot line, on property located at 6207 Arkendale Road, Tax Map Reference 83-3((14))(23)18, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 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 and HC.
3. The area of the lot is 12,876 square feet.
4. The application meets all of the required standards for the granting of a variance, in particular the lot has some exceptional topographic conditions, in that there is a severe drop in the rear yard that would make putting the addition anywhere else on the lot impossible.
5. There have been greater variances granted in the Belle Haven Subdivision.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Kephart & Company, dated June 30, 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 4-1 with Mr. Pammel voting nay. Mr. Hammack 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 December 28, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 330, December 20, 1993, (Tape 2), Scheduled case of:

9:30 A.M. DONALD H. AND LINDA L. FRAZIER, APPEAL 93-D-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that the construction of stairs to within approx. 22 ft. of the front lot line does not comply with the minimum front yard requirement for the R-2 District and the appellants are therefore in violation of Par. 1 Sect. 2-307 of the Zoning Ordinance. Located at 7318 Westerly Lane on approx. 18,827 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-3 ((13)) 6. (DEFERRED FROM 11/9/93 AT APPLICANT'S REQUEST).

Chairman DiGiulian called the staff report.

William Shoup, Deputy Zoning Administrator, said the property is located at 7318 Westerly Lane, is zoned R-2, is located in the Bedford Acres Section II subdivision, contains an area of 18,827 square feet, and is developed with a three-story single-family dwelling. He said staff's position was set forth in the staff report dated December 3, 1993 and proceeded to summarize some key issues. Mr. Shoup said the subject property was created by subdivision in August 1966 and a 15 foot wide strip of land along the frontage of the property was dedicated for public street purposes as reflected on the viewgraph. In 1988, the appellants purchased the property and in September 1991 they obtained a building permit for a large addition to the house, which included a front porch and stairs protruding straight out from the structure. (He called the BZA's attention to the location plat on the viewgraph.) Mr. Shoup said based on the location plat the entire addition, including the stairs, satisfied the 35 foot minimum front yard requirement of the R-2 Zoning District based on the indication that the front lot line was the right-of-way line established from the 1966 dedication. The addition was subsequently constructed and a complaint was filed with the Zoning Enforcement Branch. During a site inspection, the Inspector discovered that the front steps had been altered from what had been represented on the building permit and the steps now extended to within 22 feet of the front lot line. Mr. Shoup said the appellants indicate that the stairs are no closer to the front lot line than what was represented on the building permit, and this appears to be based on their revocation of dedication of the 15 foot strip of land. He said although road construction never occurred in that strip, a portion of the road is used

to access other lots. Mr. Shoup said the County Attorney's office has reviewed the issue of revoking the dedication and it was determined under Sect. 15.1-478 of the Virginia Code, that the land was transferred to the County and there was no requirement that the County accept the dedication. He said it was staff's position that the dedication cannot now be unilaterally revoked by the appellants and the only way the appellants can use the dedicated strip would be through approval of a vacation by the Board of Supervisors. In closing, Mr. Shoup said it was staff's position that the minimum front yard has to be established from the original dedicated right-of-way established in 1966; therefore, the addition does not meet the minimum front yard requirement.

A discussion took place between Mr. Ribble and Mr. Shoup with regard to procedures followed when land is dedicated to the County. Mark Taylor, with the County Attorney's office, said his office does review deeds, both for public improvement easements and for dedication of right-of-way, for a variety of reasons. He said it is the law, as established by statute back to at least 1964, that the recordation of the subdivision plan showing among other things a dedication of a street legally, effectively, and by itself irrevocably transferred in fee simple the areas indicated on the plat as dedicated for public streets to the County.

Mrs. Harris questioned staff as to whether the dedication would have been shown on the plat at the time the appellants purchased the property. Mr. Shoup said it should have been. Chairman DiGiulian asked how much land the appellants had been paying taxes on and Mr. Shoup said he did not know.

Mr. Taylor said the revocation is simply a nullity, and noted in 1966 with the recordation of the plat the dedication was itself an effective fee simple transfer of the right-of-way to the County. He said the County owns the property and the appellants have only paid taxes based on the lot area shown on the 1966 plat, which excludes the 15 foot wide strip at the front of the appellants' property.

Mr. Hansbarger said he believed staff had defined the issue of whether or not there has been an effective dedication of the 15 foot wide strip. He said back in 1966, the West Langley subdivision was created and there was one acre left over, which was the Mary Fairfax Butler property, from which Lot 6 was created. At the time the subdivision was recorded, there was a 15 foot easement that extended from the one acre site to Balls Hill Road, subsequently there was a 15 foot outlot road that extended to Mary Fairfax Butler going east and that outlot road was adjacent to the subject property. Mr. Hansbarger said the main issue dealt with whether or not there has been an effective dedication and whether or not there has been an abandonment of that dedication; the appellants contend there has not been an effective dedication because it was never accepted by the County. Mr. Hansbarger quoted Sect. 15.1-473 of the Virginia Code and argued that the definition of subdivision under Sect. 23-1 of the Code, which stipulates that the division of land into two parts is not a subdivision, the property was not a subdivision since it did not follow the standard procedure. (He used the viewgraph to discuss the plat and to show photographs depicting the property.) Mr. Hansbarger said the 15 foot strip has never been used, it has never been accepted by the County, and it has never been a road. He called the BZA's attention to the plat approved for Section I and noted that it was approved for the Board of Supervisors by the County Executive and has a totally different stamp. Mr. Hansbarger said dedication of a property occurs only when the owner offers that interest to a public entity and that public entity accepts; he said this did not happen in this case and asked the BZA to dismiss the Notice of Violation.

The BZA and Mr. Hansbarger discussed whether the plat showed the 15 foot strip of land as part of the property when the appellants purchased the property. Mr. Shoup said there was a copy of the deed contained in the staff report as Attachment 5.

Mr. Hansbarger said it did not appear to him that the steps were any closer to the lot line than on the plat approved with the building permit or as built. Chairman DiGiulian said the plat submitted for construction showed the depth of the lot at 194 feet on the left side but the new plat shows the 15 foot strip across the front; therefore, the steps are closer to the lot line than what was shown on the building permit application.

Mr. Taylor responded to an earlier question regarding the deed of transfer by stating that the deed of transfer does refer back to the original deed of dedication, which created Lots 6 and 7.

Chairman DiGiulian called for speakers who would like to address the appeal.

Joseph Pinelli, 1107 Delf Drive, McLean, Virginia, represented the West Langley Citizens Association, and stated that he lived next door to the property. He called the BZA's attention to the letter from the Association and neighbors asking that the setbacks be enforced and that the land, which was previously dedicated, not be given back; a map showing the location of the homeowners who signed the petition; and, a photograph of the house. Mr. Pinelli said the appellants' house is a 45 foot high four-story dwelling that is located only 45 feet from his house which casts a shadow onto his property and invades his privacy. He said the house does not violate the setbacks, only the steps, and added that the house should have been pushed back at least 15 to 20 feet. (He used the viewgraph to show photographs depicting the subject property.) Mr. Pinelli said because of the extensive grading that occurred on the subject property, his property now has a drainage problem.

In closing comments, Mr. Shoup emphasized that it was staff's position that the appellants do not have the right to revoke the dedication and noted that the proper procedure would be for them to seek a vacation from the Board of Supervisors.

Mr. Pammel discussed with Mr. Shoup as to when the adjacent subdivision, particularly Lot 13A, was recorded. Mr. Shoup said he did not know. Mr. Pammel said it appeared that there was never an intent to have a public street.

A discussion took place between Mr. Hammack and Mr. Taylor regarding the Virginia Code compared to the County Ordinance. Mr. Taylor said leaving the County Ordinances aside and viewing the matter solely under the Virginia Code, it was very clear that Bedford II was a subdivision and the recordation of the plat effectively transferred the area shown as dedicated for public street purposes to the County. Mr. Ribble said he believed the Virginia Code should control since that was part of the oath that each member took when they were appointed to the BZA.

Mr. Hansbarger said he believed the law was clear and that the subject property was not part of a subdivision and the 15 foot strip of land has been abandoned by the County. He noted a petition from some of the homeowners who were in favor of dismissing the Notice of Violation and stating that they would like the lane to remain private.

A discussion took place between the BZA and Mr. Hansbarger as to when the abandonment by the County took place and why the appellants had not originally included the additional land area into the computation when applying for the building permit.

Mr. Pammel said if Crestview owned the original Bedford Acres at the time of dedication than the properties would have been under common ownership and would have been a subdivision. Mr. Hansbarger said the lots were never in common ownership.

The co-appellant, Linda Frazier, said their lot, which had been owned by Allen Dobson, an independent builder at the time, and the lot next to them, which was also part of the Mary Fairfax Butler tract, was never part of the Crestview Homes Development.

David Frazier said it had not been their intent to flaunt the County regulations and noted that they had redesigned the steps after talking with the neighbors and the inspector.

Mrs. Harris discussed with the appellant as to why the steps were built closer to the front lot line if the additional 15 feet was not on the plat originally. Mr. Frazier said they tried to follow all the procedures and had been told by the inspector that the steps were in compliance. He said after the Notice of Violation was issued they had a second site survey done, based upon discussions with Mr. Hansbarger, to show how the lot would look based on them owning the 15 foot strip of land and the offer to dedicate was revoked.

Chairman DiGiulian asked if the house as built is closer to the front lot line that was shown on the original plat. Mr. Frazier said it was not. Chairman DiGiulian asked if the house is farther away from the rear lot line than shown on the plat submitted with the building permit application. Mr. Frazier said the rest of the structure was entirely built on the footprint of the house that they renovated. Chairman DiGiulian asked if the house was enlarged and the speaker said it was. Chairman DiGiulian said the plat that was before the BZA clearly showed all the proposed construction well behind the 35 foot building restriction line and showed the depth of the lot at 194 feet, and in order to get to the 37 feet, the 15 foot strip had to be incorporated. He asked how the house got closer to the front lot line than was shown on the original permit application. Mr. Frazier said that was done based on the survey where there was confusion as to the location of the front lot line.

Mrs. Harris asked if the appellants checked with the County to determine if they owned the 15 foot strip. Mrs. Frazier said the house did not move from the original site and the 15 foot confusion was not discovered until they received the Notice of Violation. She said the grade on the right side of the property did not change and it is about 8 feet and the grade on the other side of the house is about 22 inches, and the only way to get to the street is by grading down a few feet at a time. Mrs. Frazier said she talked with the inspector and was told that the design could be changed without submitting additional documentation.

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

Mrs. Harris said after reading the information she had questions that she would like answered regarding the 15 foot strip of land. Mr. Ribble agreed.

Mr. Hammack said he felt comfortable in making a motion to uphold the Zoning Administrator's decision. He said in looking over the documents it appeared that the deed in 1966 clearly showed an intent to dedicate the street frontage and it was recorded. When the appellants took title to the subject property, the right-of-way and the 15 foot outlot road was shown thereby putting them on notice that they did not own the property. Mr. Hammack said after reviewing the Code that the staff relies on, Sect. 15.1-478, and the earlier acts of Assembly he was satisfied there was a dedication, and a formal acceptance of the dedication by the County was not necessary. He believed the appellants should have been before the BZA with either a special permit or variance application.

Mr. Kelley seconded the motion.

Mr. Ribble said he also would like to do further research into the State Code before making a decision. He agreed that the developer went through all the dedication requirements in 1966 and that the plat was executed by a County official, for whatever reason.

Mrs. Harris asked Mr. Hammack what section of the Code he was basing his motion on. Mr. Hammack said in looking at the Acts of Assembly that were effective in 1964 it says that any plat recorded, under which any of these deeds of dedication is made, may be vacated with the consent of the governing body. (He read different excepts from the Code.) He said he would not object to a deferral.

Mr. Pammel said it appeared that the appellants had relied on the County for guidance and there were other avenues in which to resolve the issue such as a variance, special permit, or vacation.

Chairman DiGiulian pointed out that the BZA had to make a decision on what was before the BZA at this time, but that he also would like an opportunity to review the Code.

Following further discussion, Mrs. Harris made a motion to defer the case to allow the BZA to research the Code.

Jane Kelsey, Chief, Special Permit and Variance, suggested January 25, 1994, at 9:30 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.

Chairman DiGiulian said he did not believe any additional input was needed from either side unless a BZA member had questions.

Mr. Pammel asked staff to bring back to the BZA on January 25th the original chain of title dealing with ((13))Lots 1 through 4, as well as the owners of Lots 6 and 7, and determine if both lots were in common ownership at any time.

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The BZA recessed at 12:12 p.m. and reconvened at 12:27 p.m. Mr. Pammel said it was necessary for him to leave and that he would abstain from participating in the Golf Park public hearing.

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Mr. Kelley said he believed a motion in the previous case, A 93-D-016, had not officially been withdrawn and that he would withdraw his second. Mr. Hammack said he would withdraw his motion to uphold the Zoning Administrator's decision.

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Page 333, December 20, 1993, (Tape 2), Scheduled case of:

9:30 A.M. GOLF PARK, INC., SPA 91-C-070 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for commercial recreation use (golf driving range) to permit amendment of conditions. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23 and 26; and 18-4 ((8)) A, 1A, 2, 3, 4 and 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. Thoburn replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the property is located south of Crowell Road, west of Hunter Mill Road and north of the Dulles Airport Access Road, is zoned R-E, and contains 46.57 acres. The applicant was requesting an amendment to the previously imposed development conditions on an existing special permit for a group 6 commercial recreation use which was granted on April 23, 1992.

Ms. Greenlief called the BZA's attention to the approved special permit plat which depicted a possible undulating berm located along the Crowell Road frontage with an indication that the berm will be 6 feet to 8 feet in height. The background in the staff report discussed the history and the construction of these berms, but essentially they are constructed and are higher than the 6 to 8 feet indicated on the special permit plat. Thus, the applicant applied for this amendment to allow the berms to remain as they are currently built.

Staff believed that the application met the standards and recommended approval of SPA 91-C-070 subject to the development conditions contained in Appendix 1 of the staff report. Ms. Greenlief said the development conditions were identical to those previously imposed with the exception of Condition Number 26 which was added to address the berms.

The BZA and staff discussed the height of the existing berms and those approved under the special permit. Ms. Greenlief said the highest elevation is 362 feet near the eastern side of the property, and the tee line on the western side of the property is 341 foot elevation, making it a difference of 21 feet. She said the height differences range from .7 to 11 feet.

Mrs. Harris asked if there was going to be additional plantings on top and along side the berms. Barbara Byron, Director, Zoning Evaluation Division, said the landscape plan shows four rows of trees between the top of the berm and Crowell Road. She said the previous conditions imposed by the BZA regarding landscaping will still be in effect.

The applicant's agent, John Thoburn, 1630 Hunter Mill Road, Vienna, Virginia, said there are two height ranges on the approved special permit plat and that it had been his understanding, as far as the plat, that the heights shown were the minimum that the berms could be constructed. Mr. Thoburn said the berms were built under an approved grading plan by right totally apart from the driving range approval, so if the driving range never goes in, the berms will remain. He said as far as the height goes, the berms were originally deemed acceptable by Site Plan, Department of Environmental Management (DEM), but during the process for the driving range, because of the extraordinary number of telephone calls received by staff from the citizens in the area, the plat has been under extraordinary scrutiny and that he believed there have been attempts to try to find any legalistic way to throw up road blocks. Mr. Thoburn said from the top of what will be the tee line to the peak of the berm next to that is 11 feet; therefore, he believed it was within the 10 to 12 foot range. Staff determined that it had to be measured from the original topography and since Crowell Road is lower in that particular location than the tee line and if measuring 10 to 12 feet from the original topography people standing at the tee line would be looking into the neighbors' yards. (He called the BZA's attention to the photographs which had been distributed showing Dulles Toll Road, the surrounding office buildings, and an example of the proposed landscaping that will be planted.) Mr. Thoburn said the average difference in elevation in what staff deemed approved and what exists is on the average of 5 feet in height and he pointed out that when the landscaping matures the tops of the berms will not be visible. He said the changes in elevation of the properties along Crowell Road, particularly travelling east, necessitated the higher elevation of the berms to provide screening to the neighbors and to people standing at the tee line. Mr. Thoburn believed the berms enhanced the neighborhood.

Chairman DiGiulian informed the audience that the BZA would hear testimony relating to the berms only. He called for speakers in support.

Douglas Cooper, 10119 Evanshire Court, Oakton, Virginia, said he was a golfer, that he looked forward to having the facility open, and that he believed the berms provided a pleasant view for people travelling on Crowell Road.

Chairman DiGiulian called for speakers in opposition.

John Paul Hyde, 9905 Rosewood Hill Circle, Vienna, Virginia, Vice President of the Chase Hill Civic Association, chastised the BZA for not enforcing the Zoning Ordinance and told them it was time "to pull up their socks and do their job."

Mrs. Harris said she had given the case an enormous amount of time and that she did not appreciate being told "to get off her duff" and follow the Ordinance, which was something that she did every time she heard a case.

Mr. Kelley asked the speaker what specifically he disliked about the berms. Mr. Hyde said the berms are higher than that approved under the special permit.

The following speakers also came forward to oppose the application: Jody Bennett, 1459 Hunter Mill Road, Vienna, Virginia; Lori Cromin, 1410 Park Lake Circle; Camille Klein, 1657 Beulah Road, Vienna, Virginia; Carol Dowell, owner of Lots 1A-5; Reuben Cook, 10106 Tamarack Drive, Vienna, Virginia; Jeanette Twomey, 1504 Bookmeade Place, Vienna, Virginia; Donna Schuster, 1620 Crowell Road, Vienna, Virginia; Ron Stanton, 10309 Brown Mill Road, Vienna, Virginia; Don Skidmore, 10900 Equestrian Court, Reston, Virginia; Karen Mansfield, 1503 Brookmeade Place, Vienna, Virginia; and, Robert W. Ruedisueli, 1537 Crowell Road, Vienna, Virginia.

The speakers objected to the height of the berms because they are higher than what was approved, the visual impact, the incompatibility with the neighborhood, and also questioned the environmental impact and the integrity of berms. One of the speakers, Rueben Cook, asked if the BZA would request that staff answer the question of whether or not there is an angle of repose and if these berms exceed that, since they are built above that angle, if they will begin to collapse. Another concern of the speakers was that the berms are possibly a step toward coming back at a later time and requesting lights. The speakers asked the BZA to deny the application.

In rebuttal, Mr. Thoburn said he believed it was important to remember that the berms were built under an approved grading plan and are legal as they exist. He pointed out that he has thirty months in which to implement the special permit. Mr. Thoburn said from the height of the tee line to the top of the berm is 11 feet and the area in which the club house will be built was reduced by 8 feet from the original topography. He said he did not believe the

height of the berms was not the real issue with the neighbors but that they were merely trying to make the implementation of the driving range more difficult. Mr. Thoburn said he was trying to be a good neighbor and had allowed space for a shoulder along Crowell Road and a trail.

A discussion took place between the BZA and Mr. Thoburn with respect to the special permit grading plan. He said the special permit grading plan is presently in bonding.

Mrs. Harris questioned why the applicant had proceeded to construct the berms under an agricultural grading plan rather than come in for a special permit amendment. Mr. Thoburn said he was not aware that there would be a problem with the height of the berms since they had been constructed under an approved agricultural grading plan. Mrs. Harris expressed concern that the conditions imposed by the BZA on a certain application is open to interpretation and said the applicant was aware of the conditions imposed on the special permit. Mr. Thoburn said it was unfortunate that the site plan did not stipulate a maximum or minimum height for the berms and pointed out that he was trying to rectify the mistake. Mrs. Harris said as far as she was concerned there was no room for an interpretation and the berms should have been constructed between 10 to 12 feet and 6 to 8 feet.

Chairman DiGiulian closed the public hearing.

Ms. Byron noted that the difference in the topography at the northern end of the tee before any grading occurred on the site and the rough grading plan referenced by one of the speakers was approximately 3 feet. She said DEM, in concert with the applicant's engineer, had discussed whether or not an 8 foot trail could fit in with the berms and it was determined that it could.

Mr. Kelley made a motion to defer the application since the BZA had received, just prior to the public hearing, a packet regarding the Jody Bennett Appeal, which dealt with the trail issue. He said the package also contained information relating to this case. Mr. Kelley suggested that the application be deferred to January 11th at the same time the Bennett Appeal is scheduled. Mr. Ribble seconded the motion.

Mrs. Harris agreed to the deferral and encouraged the BZA members to go out and look at the berms.

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

(Mrs. Bennett submitted to the BZA a copy of two letters, one dated October 7, 1993, and one dated October 15, 1993, from William J. Leidinger, County Executive, to the applicant's agent, John Thoburn. Copies are contained in the file. The file also contains copies of some of the speakers prepared statements.)

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Page 335, December 20, 1993, (Tape 1), Action Item:

Approval of Minutes for
October 19, November 3, and November 16, 1993

Mr. Ribble made a motion to approve the Minutes as submitted. Mr. Kelley seconded the motion which passed by a vote of 5-0 with Mr. Pammel 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 2:25 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: February 1, 1994

APPROVED: February 8, 1994

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on December 21, 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 8:10 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 337, December 21, 1993, (Tape 1), Scheduled case of:

8:00 P.M. FAIRFAX COUNTY BOARD OF SUPERVISORS, VC 93-Y-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition to non-residential structure 45 ft. from side lot line (63 ft. min. side yard req. by Sect. 3-107). Located at 4618 West Ox Rd. on approx. 8.66 ac. of land zoned R-1 and WS. Sully District. Tax Map 56-1 ((1)) pt. 2 and 55-2 ((1)) pt. 4 and 4A.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Murtaza G. Sheikh, Project Manager, Project Management Division, Department of Public Works, 12000 Government Center Parkway, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She noted that although the property is zoned R-1 and WS, it is developed with the West Ox Solid Waste Transfer Station. Ms. Langdon explained that the site is surrounded to the north, east, and west by the Fairfax County Landfill and the Fire Training Center. The Virginia Department of Transportation Facility and the Virginia State Convict Camp 30 are located to the south.

Ms. Langdon stated that the applicant was requesting a variance to construct an addition 45 feet from the side lot line. The Zoning Ordinance requires a 63 foot minimum side yard; therefore, the applicant was requesting a variance of 18 feet to the minimum side yard requirement. In summary, Ms. Langdon stated that staff recommended approval subject to the development conditions contained in the staff report with one modification. Staff recommended Development Condition 3 be deleted.

The applicant's representative, Mr. Sheikh, addressed the BZA. He stated that the expansion of the facility would allow the County to transfer a larger volume of solid waste. Mr. Sheikh asked the BZA to grant the request.

Mrs. Harris asked staff where the proposed addition would be located. Ms. Langdon used the viewgraph to depict the location and explained that the property line turned to the south.

In response to Mr. Hammack's question as to whether the addition could be built elsewhere without a variance, Mr. Sheikh said no.

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

Mr. Hammack made a motion to grant VC 93-Y-116 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated December 14, 1993 with the deletion of Development Condition 3 as reflect in the Resolution.

(NOTE: Further into the meeting, the BZA waived the eight-day waiting period.)

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-116 by FAIRFAX COUNTY BOARD OF SUPERVISORS, under Section 18-401 of the Zoning Ordinance to permit construction of addition to non-residential structure 45 feet from side lot line, on property located at 4618 West Ox Road, Tax Map Reference 56-1((1)) pt. 2 and 55-2((1)) pt. 4, and 4A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 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 8.66 acres.
4. The applicant has satisfied the required standards for the granting of a variance.
5. The site has an industrial use permitted in a R-1 district and the property is not susceptible to the construction of the station in a different location.
6. Only a corner of the proposed addition requires the variance.

7. The variance would not change the character of the zoning district or 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 addition shown on the plat prepared by Gordon Associates, entitled Variance Plat, I-66 Transfer Station, dated September 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.

Pursuant to Sect. 18-407 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 4-0 with Mr. Pammel not present for the vote. Mrs. Thonen and Mr. Ribble were absent from the meeting.

The BZA waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 338, December 21, 1993, (Tape 1), Scheduled case of:

8:00 P.M. EDWARD ROBINSON, VC 93-L-102 Appl. under Sect(s). 18-401 and 10-103 of the Zoning Ordinance to permit construction of addition 18.3 ft. from rear lot line and permit accessory structure to cover more than 30% of the minimum required rear yard (25 ft. min. rear yard req. by Sect. 3-307). Located at 7603 Hayfield Rd. on approx. 9,025 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 91-4 ((4)) 599.

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. Robinson replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting two variances. The first request was for a variance to construct an addition 18.3 feet from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, the applicant was requesting a variance of 6.7 feet to the minimum side yard requirement. The second request was for a variance to permit an accessory structure to cover 38.2 percent of the minimum required rear yard. The Zoning Ordinance requires that all uses and structures accessory to the single family detached dwelling cover no more than 30 percent of the minimum rear yard.

The applicant, Edward C. Robinson, 7603 Hayfield Road, Alexandria, Virginia, addressed the BZA and submitted a package which contained his justifications, as well as photographs of the pool area. He stated that a series of errors had caused the need for the variance. He explained that after Anthony Pools' overall design for an outdoor swimming pool and spa room addition had received Fairfax County's approval, he awarded them the pool contract. Another firm was awarded the spa room addition contract. Mr. Robinson said that when the design of the spa room was submitted to the County, he was informed that it could not be built without a side yard variance. He noted that he applied for the variance, and the pool construction continued. Mr. Robinson explained that it was several weeks later when he was informed that a second variance to permit an accessory structure to cover more than 30 percent of the minimum required rear yard would also be needed.

Mr. Robinson stated that the contracts had been awarded on the basis of Fairfax County's approval of the original design and noted that he would not have signed the contracts without that approval.

In summary, Mr. Robinson said the exceptional shallowness and topographic conditions of the property had caused the need for the variances. He noted that in order to meet the minimum yard requirement, the builder had to put additional land in the floodplain. The action resulted in a yard loss of approximately 15.5 to 27 feet. Mr. Robinson stated that without the variance the property would experience drainage problems. The variance would not set a precedent and the neighbors supported the request; therefore, he asked the BZA to grant the request and to waive the eight day waiting period.

In response to questions from the BZA regarding the proposed location of the addition, Mr. Robinson used the photograph to show where the addition would be placed. He explained that the footprint of the spa room would be smaller than the original deck.

Mrs. Harris asked what reductions would have to be made in order for the project to comply with the Ordinance. Jane Kelsey, Chief, Special Permit and Variance Branch, stated that a rough calculation would be approximately an 195 square foot reduction.

In response to Mrs. Harris' question regarding the three foot bump out at the rear of the spa room, Mr. Robinson said the spa was designed so that the pool and garden could be viewed.

Ms. Kelsey stated that the applicant might be able to remove part of the walkway around the pool which was calculated in the amount of area covered. She noted that the walkway was not shown on the plat. Mr. Robinson said the walkway was a special stamped concrete using fiber glass embedded in dyed concrete and partial removal would destroy the complete walkway.

Mrs. Harris referred to a previous case which involved a basketball court in the backyard and noted that Jane W. Gwinn, Zoning Administrator, had informed the BZA that an entire backyard could be asphalted if it had no designated purpose. She explained that because lines had been drawn on the asphalt it had become a specific use. Ms. Kelsey said that although she generally remembered the case, she would have to confer with Ms. Gwinn on the specific issue. In response to Mrs. Harris' question as to why the concrete area around the pool was called a walkway, Mr. Heine said it was accessory to the pool and the use. Chairman DiGiulian expressed his belief that the area resembled a patio, not a walkway. Ms. Kelsey suggested the BZA defer the case so that staff could investigate the matter. Chairman DiGiulian asked what was included in the 907.69 square feet, Mr. Heine stated that the 38 percent included the pool, walkway, and addition.

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

Mrs. Harris made a motion to grant VC 93-L-102 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated December 14, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-102 by EDWARD ROBINSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.3 feet from rear lot line and permit accessory structure to cover more than 30% of the minimum required rear yard, on property

located at 7603 Hayfield Road, Tax Map Reference 91-4((4))599, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 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 9,025 square feet.
4. The property was acquired in good faith.
5. The subject property has an unusual characteristics being the ten foot sanitary sewer easement at the back of the property.
6. The house is set back 38 feet from the rear property line making a reasonable type addition to the rear of the structure difficult. It would be a very small room if it were constructed within the building requirement.
7. The strict application of the Zoning Ordinance would effectively prohibit or unreasonable restrict all reasonable use of the property.
8. That the variance will be in harmony with the intended spirit and purpose of the Zoning Ordinance.
9. The walkway is an integral part of the covering of the back yard and would have no visual or detrimental impact on the neighbors.
10. The 10 foot sanitary easement sewer to the back of the property offers an additional barrier between the two properties.

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

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

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

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

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

1. This variance is approved for the uses and accessory structures to cover 38.2% of the area of the minimum required rear yard and the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated August 2, 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. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

The BZA waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 341, December 21, 1993, (Tape 1), Scheduled case of:

8:00 P.M. JOHN LINK, VC 93-L-118 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.6 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 7314 Floyd Ave. on approx. 11,995 sq. ft. of land zoned R-3. Lee District. Tax Map 80-3 ((2)) (32) 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. Link replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to construct an addition 10.6 feet from the side lot line. The Zoning Ordinance requires a 12 foot minimum side yard; therefore, the applicant was requesting a variance of 1.4 feet to the minimum side yard requirement.

The applicant, John R. Link, 7314 Floyd Avenue, Springfield, Virginia, addressed the BZA and noted that the exceptional narrowness of the lot had caused the need for the variance. He stated that he would like to enclose an existing carport in order to provide additional living space for his family. Mr. Link explained that while the current set back requirement is 12 feet, the existing house was built 10.6 feet from the lot line. He said that the addition would be architecturally compatible with the existing structure. In conclusion, Mr. Link stated that there would be no detrimental impact on the neighbors, the property is exceptionally narrow, the existing structure was built under the previous Zoning Ordinance, and there would be no change in the zoning district. He asked the BZA to grant the request.

In response to Chairman DiGiulian's question as to whether the addition would intrude any further into the side lot line than the existing structure, Mr. Link said no.

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

Mr. Kelley made a motion to grant VC 93-L-118 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated December 14, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-118 by JOHN LINK, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.6 feet from side lot line, on property located at 7314 Floyd Avenue, Tax Map Reference 80-3((2))(32)24, 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 21, 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 11,995 square feet.
4. The applicant has satisfied the required standards for the granting of a variance.
5. The property has exceptional narrowness.
6. The addition would not intrude any further into side yard than the existing dwelling.

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

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

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

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

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

1. This variance is approved for the location and the specified carport enclosure shown on the plat prepared by Alexandria Surveys, Inc., dated September 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 (carport enclosure) shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and 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 with Mrs. Thonen and Mr. Ribble absent from the meeting.

The BZA waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1993. This date shall be deemed to be the final approval date of this variance.

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8:00 P.M. FAIRFAX COUNTY BOARD OF SUPERVISORS, VC 93-Y-116

After a brief discussion regarding waiving the waiting period for VC 93-V-116, it was noted by Jane C. Kelsey, Chief, Special Permit and Variance Branch, that there had been no citizen interest, nor had there been anyone other than the applicant's representative present at the hearing.

Mr. Kelley made a motion to waive the eight-day waiting period for VC 93-Y-116 which had been heard earlier in the public hearing. 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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8:00 P.M. RANDALL F. & JANE E. GRAHAM, SP 93-S-053 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 to remain 2.7 ft. from side lot line and 2.7 ft. from rear lot line (8 ft. min. side yard req. and 9.8 ft. min. rear yard req. by Sect(s). 16-102, 3-207 and 10-104. Located at 9115 Triple Ridge Rd. on approx. 13,083 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((9)) 71.

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. Graham replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit for an error in building location to allow an existing storage structure to remain 2.7 feet from a side lot line and 2.7 feet from the rear lot line. The Zoning Ordinance requires an 8 foot minimum side yard and a 9.8 foot minimum rear yard; therefore, the applicant was requesting a special permit of 5.3 feet from the minimum side yard requirement and 7.1 feet from the minimum rear yard requirement, respectively.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. and stated that the BZA had expressed reservations regarding Propose Development Condition 3. She noted that staff had not had the opportunity to discuss the issue. Ms. Kelsey further noted that if the applicant had limited the shed to less than 150 square feet, a Building Permit would not be required; therefore, staff recommended the condition be deleted.

In response to Mrs. Harris' question regarding the shed, Mr. Heine stated that a complaint had been received by the Zoning Enforcement Branch.

Chairman DiGiulian noted that the correspondence received by the BZA regarding this application had also mentioned another application, SP 93-S-052, Leonard and Kathleen Lesjak. He asked for staff comments.

Lori Greenlief, Staff Coordinator, said that Leonard and Kathleen Lesjak were the owners of Lot 68. She explained that the two properties share rear lot lines and both owners had received "Notices of Violation."

The applicant, Randall F. Graham, 9115 Triple Ridge Road, Fairfax Station, Virginia, addressed the BZA. He explained that the Lesjak's shed had been constructed approximately one year before his shed. Mr. Graham stated that he had relied on the advice of friends and in retrospect realized that he should have received the information directly from the appropriate Fairfax County officials. He went on to explain that had he realized the shed would not be within the guidelines of the Zoning Ordinance, it would not have been built.

Mr. Graham referred to the letters of support from the immediate neighbors and expressed his belief that removal or relocation of the structure would cause an undue financial hardship. He also noted that lowering the height would have a negative impact on the aesthetic value of the shed. Mr. Graham stated that the architectural design of the shed was compatible with the house, and asked the BZA to grant the request.

In response to Mrs. Harris' question as to who had made the complaint, Mr. Graham said he did not know. He noted that the most affected neighbor was his fellow applicants, Leonard and Kathleen Lesjak.

In response to Mr. Hammack's question as to what professional builder had given him the incorrect information, Mr. Graham explained that he had lived in the City of Alexandria and had just assumed the setbacks were the same. He further explained that a co-worker, who is a carpenter, had also given him erroneous advice. Mr. Graham noted that he had admired Mr. Lesjak's shed and had also consulted with him. In summary, he stated that in an attempt to build a shed that would be complimentary to the house, he had built the shed too high.

In response to Mrs. Harris' question as to the Zoning Ordinance requirements, Jane C. Kelsey, Chief, Special Permit and Variance Branch, noted that in order to be in conformance, the shed's maximum height would have to be no more than eight and one-half feet.

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

Leonard Lesjak, 9104 John Way, Fairfax Station, Virginia; Michael Howe, 9101 John Way, Fairfax Station, Virginia; Beverly Payton, 9113 Triple Ridge Road, Fairfax Station, Virginia; Robert Brown, 9115 John Way, Fairfax Station, Virginia; Harman Friedman, 9107 John Way, Fairfax Station, Virginia; Peter Potenza, 9116 Triple Ridge Road, Fairfax Station, Virginia; Paula Friedman, 9107 John Way, Fairfax Station, Virginia; Lori Slattery, 8202 Silverline Drive, Fairfax Station, Virginia; Fred Sauter, 9116 John Way, Fairfax Station, Virginia; Ross Reisinger, 9112 Triple Ridge Road, Fairfax Station, Virginia; Brian Kowalczyk, 9100 John Way, Fairfax Station, Virginia; addressed the BZA. They expressed their support for the request and noted that the aesthetically pleasing structure enhanced the neighborhood and increased the property values. They said since there was no detrimental impact on the area, they saw no reason to remove or to modify the shed. They asked the BZA to grant the request.

During the testimony, Mrs. Harris questioned the possibility of altering the structure and Ms. Payton stated that the existing shed was aesthetically pleasing and also provided a visual barrier.

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

Mr. Hammack made a motion to grant SP 93-S-053 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated December 14, 1993 with the modification of Development Condition 3 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-S-053 by RANDALL F. AND JANE E. GRAHAM, 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 to remain 2.7 feet from side lot line and 2.7 feet from rear lot line, on property located at 9115 Triple Ridge Road, Tax Map Reference 97-4((9))71, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on December 21, 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. Testimony has indicated that the error was done in good faith.

I. The applicant has also satisfied Paragraphs C through G.

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 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 use(s) indicated on the special permit plat, entitled "House Location, Lot 71, Triple Ridge II," prepared by Dewberry & Davis, dated May 10, 1988, revised October 1, 1993, submitted with this application, as qualified by these development conditions.

3. The building shall be maintained in good condition.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required 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 required building permit has been obtained and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to obtain the building 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 5-0 with Mrs. Thonen and Mr. Ribble absent from the meeting.

The BZA waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 345, December 21, 1993, (Tape 1), Scheduled case of:

8:00 P.M. LEONARD L. & KATHLEEN D. LESJAK, SP 93-S-052 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow accessory structure to remain 3.5 ft. from side lot line and 2.7 ft. from rear lot line (8 ft. min. side yard req. and 9.6 ft. min. rear yard req. by Sect(s). 3-207, 8-914 and 10-104. Located at 9104 John Way on approx. 14,625 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((9)) 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. Mr. Lesjak replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a special permit for an error in building location to allow an existing shed/workshop to remain 3.5 feet from a side lot line and 2.7 feet from the rear lot line. The Zoning Ordinance requires an 8 foot minimum side yard and a 9.6 foot minimum rear yard; therefore, the applicant was requesting a special permit of 4.5 feet to the minimum side yard requirement and 6.9 feet to the minimum rear yard requirement.

Ms. Greenlief noted that the BZA had expressed reservations regarding Proposed Development Condition 3, but since the structure has an attached covered porch, it would require a building permit.

In response to questions from the BZA regarding the shed/workshop, Mr. Lesjak said that he had constructed the building.

The applicant, Leonard L. Lesjak, 9104 John Way, Fairfax Station, Virginia, addressed the BZA. He stated that the primary use of the structure, which he had designed and built, was to house gardening material. Mr. Lesjak expressed his belief that the shed/workshop was architecturally compatible with the neighborhood and there was no adverse impact to the community.

Mr. Lesjak said that because he is very community and neighborhood oriented, he had contacted the appropriate Fairfax County officials to ask if a Building Permit was needed and to inquire about the Zoning Ordinance restrictions. He explained that although he had taken

these precautions, he had been give erroneous information. Mr. Lesjak also explained that before building the structure, he had also consulted with neighbors and had received their approval.

Mr. Lesjak stated that it was not until June 15, 1993, when Leslie D. Setliff, Senior Zoning Inspector, informed him that the structure was in violation of the Zoning Ordinance, that he realized there was a problem. He said that he was also informed that the action was a result of a complaint from a neighbor. Mr. Lesjak said that although Mr. Setliff refused to disclose the identity of the complainant, he believes a neighbor who lives three blocks from his home had been the originator of the complaint. He explained that the neighbor served in the subdivision's, almost defunct, Architectural Review Committee and was upset that the Committee had not reviewed the plans prior to construction. Mr. Lesjak expressed his belief that the complainant's action was devious and mean spirited and not in the best interest of the community.

In reviewing the options provided by Zoning Enforcement, Mr. Lesjak said that all options except the option of obtaining a special permit would cause an undue financial hardship. He also noted that relocation would cause the removal of at least three mature oak trees.

In summary, Mr. Lesjak thanked staff for their assistance, apologized for the error, and thanked the BZA for hearing the case. He noted that the neighbors supported the request, the structure was built in good faith, and asked the BZA to grant the request.

The co-applicant, Kathleen D. Lesjak, 9104 John Way, Fairfax, Station, Virginia, addressed the BZA. She thanked the neighbors for their support and for attending the meeting. Ms. Lesjak stated that her husband is called "Mr. Neighbor" because of his willingness to assist his neighbors. She also submitted three letters of support to the BZA.

Chairman DiGiulian asked the citizens in support to raise their hands and approximately fifteen people did so. The Chairman then asked Mr. Lesjak if he believed the citizen's testimony would be similar to the testimony given in the previous case, SP 93-S-053, Randall F. and Jane E. Graham. Mr. Lesjak said it would be the same.

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

Mr. Pammel made a motion to grant SP 93-S-052 for the reasons reflected in the Resolution and subject to the Development Conditions contained in the staff report dated December 14, 1993 with the modification of Proposed Development Condition 3 as reflected in the Resolution.

Mrs. Harris noted that staff had indicated that a Building Permit would have to be obtained for the structure.

After a brief discussion, it was the consensus of the BZA that since the Department of Environmental Management (DEM) would enforce the necessary requirements, the condition should not state specific requirements.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-S-052 by LEONARD L. AND KATHLEEN D. LESJAK, 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 to remain 3.5 feet from side lot line and 2.7 feet from rear lot line, on property located at 9104 John Way, Tax Map Reference 97-4((9))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 21, 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. Testimony has indicated that the error was done in good faith.

I. The applicant has also satisfied Paragraphs C through G.

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 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 Dewberry & Davis, dated June 22, 1993, revised October 1, 1993, submitted with this application, as qualified by these development conditions.

3. The building shall be maintained in good condition.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required 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 legally 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.

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

The BZA waived the eight day waiting period.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 21, 1993. This date shall be deemed to be the final approval date of this special permit.

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Page 347, December 21, 1993, (Tape 1), Scheduled case of:

8:00 P.M. BARBARA RADVANYI, VC 93-D-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of stoop and steps 33 ft. from front lot line (40 ft. min. front yard req. by Sect. 3-107). Located at 720 Lawton St. on approx. 23,945 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 98R.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated that the applicant had not realized that she must be present at the hearing and was out of town. She explained that the applicant's son had contacted staff to request the deferral.

Mrs. Harris made a motion to defer VC 93-D-117 to February 8, 1994, at 9:30 a.m. Mr. Hammack

Page 348, December 21, 1993, (Tape 1), BARBARA RADVANYI, VC 93-D-117, continued from Page 347)

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 348, December 21, 1993, (Tape 1), Action Item:

Approval of Resolutions from December 14, 1993 Hearing

Mrs. Harris made a motion to approve the Resolutions as submitted. The Chair so moved.

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Page 348, December 21, 1993, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Patrick J. & Amelia J. Freeman, SP 93-V-114

Mrs. Harris made a motion to deny the request for an out-of-turn hearing. She explained that the Board of Zoning Appeals schedule was full and the case was currently scheduled for February 23, 1994. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Ribble not present for the vote.

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Page 348, December 21, 1993, (Tape 1), Action Item:

Rescheduling of Appeal
George L. Lane Appeal, A 93-V-028

Mrs. Harris expressed her support for the request and noted that the appellant was trying to resolve outstanding issues concerning the sewage disposal system with the Fairfax County Health Department.

Mrs. Harris made a motion to reschedule A 93-V-028 to March 8, 1994, at 9:30 a.m. The appeal was originally scheduled for January 11, 1994. 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 348, December 21, 1993, (Tape 1), Action Item:

Correction to the October 19, 1993 Minutes

Mr. Pammel made a motion to change the word "approve" to "improve" in the sentence, "He said that Beulah Road is a rural road that has not been approved, ...", on Page 28 of the October 19, 1993 minutes which were approved on December 14, 1993

The Chair so moved.

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As there was no other business to come before the Board, the meeting was adjourned at 9:30 p.m.

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

Paul W. Hammack Jr.
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: February 8, 1994

APPROVED: February 15, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 4, 1994. The following Board Members were present: Vice Chairman John Ribble; Vice Chairman Paul Hammack; Mary Thonen; Robert Kelley; and James Pammel. Chairman John DiGiulian and Martha Harris were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:15 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Vice Chairman Ribble called for the first scheduled case.

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Page 349, January 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. HRAIR H. KAZANJIAN, VC 93-L-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to be 26 ft. and 28.5 ft. from front lot lines (40 ft. min. req. by Sect. 4-807), parking spaces 6.5 ft. and 5.5 ft. from front lot lines (10 ft. from front lot line req. by Sect. 11-102), modify required landscape strips (10 ft. min. from public ROW and 4 ft. from land not in ROW req. by Sect. 13-202), and allow loading space in min. front yard (prohibited by Sect. 11-202). Located at 7210 Richmond Hwy. on approx. 15,998 sq. ft. of land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 79B. (OUT OF TURN HEARING GRANTED. DEF. FROM 9/14/93 FOR DECISION ONLY. DEF. FROM 9/28/93 FOR REVISED PLATS. DEF. FROM 10/12/93, 11/30, AND 12/14/93 TO RESOLVE OWNERSHIP ISSUE.)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the applicant had requested the Board to delay hearing this case until later in the meeting because he was meeting with the County Attorney in an attempt to resolve the ownership issue. He expected to have the issue resolved in time to be heard later in the meeting. A discussion ensued and Ms. Kelsey advised that a revised plat was also at issue. Vice Chairman Ribble agreed to pass over this case until later in the meeting.

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Page 349, January 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JOHN MARTIN & EUNICE BRYDEN, VC 93-M-120 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 17.7 ft. from rear lot line and 6.1 ft. from side lot line (25 ft. min. rear yard and 15 ft. min. side yard req. by Sect. 3-207). Located at 3615 Boat Dock Dr. on approx. 16,272 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-4 ((2)) 807.

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. Eunice Bryden, 3615 Boat Dock Drive, Falls Church, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property was located within the Lake Barcroft Subdivision; the property is surrounded on three sides by single family detached dwellings and one vacant lot, zoned R-2; on the east, the property adjoins the Americana Barcroft Apartment Complex, zoned R-20. Mr. Heine said the applicants intend to use the addition for a kitchen and study/library.

Ms. Bryden presented the statement of justification, previously submitted in writing and incorporated into the record.

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

Mr. Hammack moved to grant VC 93-M-120 for the reason set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 28, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-120 by JOHN MARTIN & EUNICE BRYDEN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 17.7 ft. from rear lot line and 6.1 ft. from side lot line, on property located at 3615 Boat Dock Drive, Tax Map Reference 61-4((2))807, 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 4, 1994; and

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

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1. The applicants are the owners of the land.
2. The present zoning is R-2 and HC.
3. The area of the lot is approximately 16,272 square feet.
4. The lot has a triangular shape.
5. The position of the house on the lot really dictates where an addition could be constructed.
6. The addition will not have any detrimental impact on the property to the rear or to the side of the property.

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

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

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

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

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

1. This variance is approved for the location and the specified addition (two-car garage) shown on the plat entitled Variance Plat, Lot 28, Section 4, prepared by Harold A. Logan, Associates, P.C., dated June 24, 1993, revised July 14, 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 garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and 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 Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. BRUCE S. & ELIZABETH E. BROOKS, VC 93-V-121 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from front lot line (25 ft. min. front yard req. by Sect. 3-207). Located at 3000 Doeg Indian Ct. on approx. 15,000 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-2 ((14)) 28.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Elizabeth E. Brooks, 3000 Doeg Indian Court, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented a brief version of the staff report at Vice Chairman Ribble's request.

Mrs. Brooks presented the statement of justification, previously submitted in writing and incorporated into the record.

In support, Robert Cowherd, 3002 Doeg Indian Court, Alexandria, Virginia, a neighbor of the Brooks and Secretary of the Homeowners Association came forward to state that the Board of Directors had approved the project under consideration.

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

Mr. Pammel moved to grant VC 93-V-121 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in th staff report dated December 28, 1993.

Mr. Hammack abstained because he was not present during the entire length of the hearing.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-121 by BRUCE S. & ELIZABETH E. BROOKS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.0 ft. from front lot line, on property located at 3000 Doeg Indian Court, Tax Map Reference 110-2((14))28, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 4, 1994; 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 approximately 15,000 square feet.
4. The lot has an unusual configuration.
5. The location of the structure on the lot precludes building the addition in any other location except that shown on the plat.
6. The 20 ft. sanitary storm sewer easement along the east property line limits the location of 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 addition (two-car garage) shown on the plat entitled Variance Plat, Lot 28, Section 4, prepared by Harold A. Logan, Associates, P.C., dated June 24, 1993, revised July 14, 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 garage addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and 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 4-0-1. Mr. Hammack abstained. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 352, January 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. SALEM BAPTIST CHURCH, VC 93-D-119 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit church to remain 9.0 ft. from front lot line in C-8 District and 15.5 ft. from front lot line in R-1 District (40 ft. min. front yard req. by Sect(s). 4-807 and 3-107). Located at 11414 Old Georgetown Pl. on approx. 0.84 ac. of land zoned C-8 and R-1. Dranesville District. Tax Map 6-4 ((1)) 59. (Concurrent with SP 93-D-051).

9:00 A.M. SALEM BAPTIST CHURCH, SP 93-D-051 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 11414 Old Georgetown Pl. on approx. 0.84 ac. of land zoned C-8 and R-1. Dranesville District. Tax Map 6-4 ((1)) 59. (Concurrent with VC 93-D-119).

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. Rev. Roland Smith, 1303 Monroe Street, Herndon, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the eastern two-thirds of the property and surrounding lots to the north and east are zoned R-1; the western one-third of the site is zoned C-8. The property is developed with an existing church, a gravel parking lot, and privies to be removed.

The request for a special permit results from the applicant's request to construct a 12 x 47 foot addition to the rear of the existing church. The addition will house new bathrooms.

Mr. Hunter noted that the Board of Supervisors had approved an amendment to the Public Facilities Manual and the Zoning Ordinance, allowing an administrative waiver of the dustless surface requirement, which was done in this case.

Rev. Smith presented the statements of justification, previously submitted in writing and incorporated into the record.

In answer to a question from Mr. Kelley, Rev. Smith said that the church was originally built in 1920.

Vice Chairman Ribble advised that he had a letter of support from Richard Peters, President of the Great Falls Civic Association, which was placed in the record.

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

Mrs. Thonen moved to grant VC 93-D-119 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 28, 1994.

Mrs. Thonen moved to grant SP 93-D-051 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 28, 1993.

It was noted that staff had recommended approval of the special permit.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-119 by SALEM BAPTIST CHURCH, under Section 18-401 of the Zoning Ordinance to permit church to remain 9.0 ft. from front lot line in C-9 District and 15.5 ft. from front lot line in R-1 District, on property located at 11414 Old Georgetown Pike, Tax Map Reference 6-4((1))59, 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 4, 1994; 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 and R-1.
3. The area of the lot is approximately 0.84 acres.
4. The church has been continually active at the same location for more than 50 years.
5. It has a very small congregation and the request is not intended to increase traffic into the area, only to add a small room and install bathrooms.
6. A portion of the property was taken by the Virginia Department of Transportation for public street purposes, placing the church in jeopardy.
7. A change in the Ordinance occurred through no fault of the applicant, creating this need for a variance.

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

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified structures and additions shown on the plat prepared by David M. Jensen, Vika, Inc., dated August, 1989 revised December 7, 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.

Pursuant to Sect. 18-407 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 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1994. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-D-051 by SALEM BAPTIST CHURCH, under Sections 30103 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 11414 Old Georgetown Pike, Tax Map Reference 6-4((1))59, Mr. 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 4, 1994; 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 and R-1.
3. The area of the lot is approximately 0.84 acres.
4. The church has been continually active at the same location for more than 50 years.
5. It has a very small congregation and the request is not intended to increase traffic into the area, only to add a small room and install bathrooms.
6. Staff has recommended approval.
7. A portion of the property was taken by the Virginia Department of Transportation for public street purposes, placing the church in jeopardy.
8. Granting the applicant's request will allow compliance with the Ordinance.

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

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

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

1. This 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 David M. Jensen, Vika, Inc., dated August, 1989, revised December 7, 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 as may be determined by the Department of Environmental Management. 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 twenty-one (21) 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 84.

7. Existing vegetation shall be used to provide the required transitional screening along the northern and eastern lot lines.

8. The barrier requirement shall be waived along all lot lines.

9. 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.

10. Any mounted building lights shall focus downward and shall not be lit after 10 p.m.

11. The building height shall be a maximum of 35 feet.

12. Signs shall be permitted in accordance with Article 12, signs of the Zoning Ordinance.

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

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. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 355, January 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JANET S. STEMPLE, VC 93-D-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307). Located at 1512 Bal Harbor Ct. on approx. 8,400 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 10-2 ((3)) 21.

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. Janet S. Stemple, 1512 Bal Harbor Court, Herndon, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Hidden Brook Subdivision; surrounding lots are also zoned R-3 and developed under the cluster provision of the Zoning Ordinance with single family detached dwellings.

Ms. Stemple presented the statement of justification, previously submitted in writing and incorporated into the record.

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

Mr. Kelley moved to grant VC 93-D-123 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 21, 1993.

Mr. Hammack said he would support the application because the builder had placed the house to the rear of the lot; if the house had been sited more to the front of the lot, the addition probably could have been constructed without a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-123 by JANET S. STEMPLE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.2 ft. from rear lot line, on property located at 1512 Bal Harbor Court, Tax Map Reference 10-2((3))21, 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 4, 1994; 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 approximately 8,400 square feet.
4. The lot is narrower than many others in the area.
5. Trees in the rear will block the view of the addition from the nearest neighbor on Lot 28.
6. There does not appear to be any other practical location to place 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 addition shown on the plat prepared by Andrew P. Dunn, dated October 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. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 357, January 4, 1994, (Tape 1), Scheduled case of:

9:30 A.M. TRON W. & KATHLEEN S. BREKKE, SP 93-M-054 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow dwelling to remain 29.6 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located at 6829 Little River Trnpk. on approx. 1.34 ac. of land zoned R-2 and HC. Mason District. Tax Map 71-2 ((1)) 12B.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that lots to the north, south and west are also zoned R-2 and HC and developed with single family detached dwellings; lots to the east are zoned R-5 and HC and developed with single family attached dwellings.

Ms. Strobel presented the statement of justification, previously submitted in writing and incorporated into the record.

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

Mr. Hammack moved to grant SP 93-M-054 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated December 21, 1993.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-054 by TRON W. & KATHLEEN S. BREKKE, 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 29.6 ft. from front lot line, on property located at 6829 Little River Turnpike, Tax Map Reference 71-2((1))12B, 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 4, 1994; 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 Huntley, Nyce & Associates, Lt., dated September 29, 1986, revised August 6, 1993, submitted with this application, as qualified by these development conditions.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining any 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 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 12, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 358, January 4, 1994, (Tape 1), Scheduled case of:

9:30 A.M. VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, SP 93-Y-057 through SP 93-Y-063 Appls. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements on Tax Map 53-4 ((5)) (2) to permit:

Lot 17 31.0 ft. front yard, 19.0 ft. and 13.0 ft. side yards. Located at 6113 Oakengate Way on approx. 14,625 sq. ft. of land;

Lot 25 9.0 ft. side yard. Located at 15051 Stillfield Pl. on approx. 13,135 sq. ft. of land;

Lot 61 39.0 ft. and 26.0 ft. front yards and 8.0 ft. side yard. Located at 6112 Ridge Haven Ct. on approx. 16,446 sq. ft. of land;

Lot 69 25.0 ft. front yard, 14.0 ft. and 11.0 ft. side yards. Located at 15060 Stillfield Pl. on approx. 13,402 sq. ft. of land;

Lot 71 28.14 ft. front yard, 17.0 ft. and 10.0 ft. side yards. Located at 15072 Stillfield Pl. on approx. 13,624 sq. ft. of land;

Lot 72 38.0 ft. front yard, 17.0 ft. and 15.0 ft. side yards. Located at 15076 Stillfield Pl. on approx. 13,064 sq. ft. of land, and

Lot 76 27.0 ft. front yard, 13.0 ft. and 11.0 ft. side yards. Located at 15084 Stillfield Pl. on approx. 14,736 sq. ft. of land.

(40 ft. min. front and 20 ft. min. side yards req. by Sect. 3-C07). Zoned R-C and WS. Sully District.

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. Keith C. Martin, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, the applicant's agent, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff reports, stating that 3 of the applications would need to be deferred because the applicants made were changes in the plats which had made it necessary to re-advertise and re-notify. The 3 applications were SP 93-Y-057, 059 and 062. She said the measurements on the 4 remaining applications also had changed slightly, but the resultant variances were for less than the original requested variances, so re-advertisement and re-notification were not necessary. Ms. Greenlief said that 4 new plats had been distributed to the Board members, as well as a listing of the variances requested and a set of revised development conditions; the revised conditions contained 3 additional conditions which had been discussed with the applicant; conditions 4, 5 and 6 would aid in the review of the grading plan and would help in the issuance of the Residential Use Permits for the dwellings. Ms. Greenlief said staff suggested January 25, 1994, at 9:30 a.m. as a deferral date for the remaining 3 applications.

Mr. Hammack asked if there was any reason why they could not hear all the applications together by deferring them all, until staff had an opportunity to review the revised plats. Ms. Greenlief said that staff had already reviewed the 4 to be heard that day and had revised the development conditions to reflect the changes. She said that time was of the essence for the applicant because some of the lots were imminently going to settlement.

Mr. Martin presented the statements of justification for the 4 cases to be heard that day, previously submitted in writing and incorporated into the record. The four lots currently were zoned R-C. He said that approval would allow residential units to be occupied under the R-2 (Cluster) yard requirements which were in effect under a Consent Decree which was agreed to in 1982 and which remained in effect until the previous week; it became null and void after December 31, 1993.

Mr. Martin requested a waiver of the eight-day waiting period, since he planned to request Residential Use Permits within the next several days because the houses were almost finished and a couple of them had anxious owners ready to settle while the interest rates were low and moving arrangements were made. He said construction had commenced back in the fall when it could be done by-right, but they missed by a week.

In answer to a question from Mr. Hammack as to why Condition 3 required that the Building Permit should be obtained prior to any construction, since they already had been obtained and the dwellings were virtually completed, Ms. Greenlief said that Condition 3 should be stricken.

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

Mr. Pammel moved to grant SP 93-Y-058, SP 93-Y-060, SP 93-Y-061 and SP 93-Y-63, for the reasons set forth in the Resolutions, subject to the Proposed Development Conditions contained in the staff reports, as amended by deleting Condition 3.

Mr. Pammel moved to waive the eight-day waiting period on the 4 cases mentioned above. Mr. Hammack seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

Mr. Hammack moved to defer SP 93-Y-057, SP 93-Y-059 and SP 93-Y-062 until January 25, 1994, at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-058 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 3-C07 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit 10.0 ft. side yard, on property located at 15051 Stillfield Place, Tax Map Reference 53-4((5))(2)25, 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 4, 1994; 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 approximately 13,135 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.

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 side yard 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 December 28, 1993, submitted with this application and not transferable to other land.

3. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved special permit plat.

4. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

5. A composite on a Grading Plan may vary from the approved Special Permit Plan provided it does not exceed the composite on the approved Special Permit Plat.

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 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 5-0. Chairman DiGiulian and Mrs. Harris 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. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 4, 1994. 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 Application SP 93-Y-060 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 3-C07 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit 38.1 ft. front yard, 17.4 ft. and 11.3 ft. side yards, on property located at 15060 Stillfield Place, Tax Map Reference 53-4((5))(2)69, 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 4, 1994; 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 approximately 13,402 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.

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 front and side yards 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 December 28, 1993, submitted with this application and not transferable to other land.

3. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved special permit plat.

4. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

5. A composite on a Grading Plan may vary from the approved Special Permit Plan provided it does not exceed the composite on the approved Special Permit Plat.

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 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 5-0. Chairman DiGiulian and Mrs. Harris 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. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 4, 1994. 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 Application SP 93-Y-061 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 3-C07 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit 28.14 ft. front yard, 17.0 ft. and 14.1 ft. side yards, on property located at 15072 Stillfield Place, Tax Map Reference 53-4((5))(2)71, 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 4, 1994; 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 approximately 13,624 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.

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 front and side yards 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 December 28, 1993, submitted with this application and not transferable to other land.

3. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved special permit plat.

4. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

5. A composite on a Grading Plan may vary from the approved Special Permit Plan provided it does not exceed the composite on the approved Special Permit Plat.

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 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 5-0. Chairman DiGiulian and Mrs. Harris 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. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 4, 1994. 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 Application SP 93-Y-063 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 3-C07 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit 35.4 ft. front yard, 14.1 ft. and 11.6 ft. side yards, on property located at 15084 Stillfield Place, Tax Map Reference 53-4((5))(2)76, 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 4, 1994; 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 approximately 14,736 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.

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 front and side yards 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 December 28, 1993, submitted with this application and not transferable to other land.

3. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved special permit plat.

4. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

5. A composite on a Grading Plan may vary from the approved Special Permit Plan provided it does not exceed the composite on the approved Special Permit Plat.

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 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 5-0. Chairman DiGiulian and Mrs. Harris 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. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 4, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 364, January 4, 1994, (Tape 1&2), Scheduled case of:

10:00 A.M. ARTHUR J. AND CAROL R. COHEN, APPEAL 93-H-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that three front yards are required for those areas of appellants' property which abut the right-of-way for Beulah Rd. Located at 1502 Beulah Rd. on approx. 21,840 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 19-3 ((1)) 37.

J. Randall Minchew, Esquire, Hazel & Thomas, P.C., 44084 Riverside Parkway, Leesburg, Virginia, said he represented the appellants and was prepared to proceed.

William E. Shoup, Deputy Zoning Administrator, said staff's position was set forth in the staff report dated December 23, 1993. He briefly summarized some of the key points. Prior to the mid-1980s, the property was bounded on the east side by Beulah Road and to the north, west and south by residential property. In March of 1984, SE 83-D-106 was approved to allow a cluster subdivision on a tract which abutted the subject property to the north, west and south. Right-of-way dedication associated with the subdivision was approved in December 1985, which created the current situation whereby more than half of the property juts out into the Beulah Road right-of-way. In conjunction with the special exception and the subdivision approval, $38,000 was escrowed for the condemnation of the subject property in response to a condition imposed in the special exception. On December 16, 1992, the appellants purchased the property and proposed to construct a dwelling on the lot. Eventually, the question was posed as to what the minimum required yards would be for the lot and the Zoning Administrator determined that front yards were required from the right-of-way lines to the north and south, which meant that front yards were required on 3 sides of the property instead of the 20-foot side yards that the appellant showed from the north and south property lines. This is an appeal of that decision.

Mr. Shoup said that, since the filing of the appeal, the Board of Supervisors (BOS) authorized the quick-take acquisition of the property and a quick-take certificate was filed on the property.

With respect to staff's position on front yards, as noted in the staff report and based on the definitions that were set forth in the staff report, their position was that right-of-way that is dedicated for public street purposes is considered public street right-of-way and front yards must be required in those areas which abut such a dedicated right-of-way. Mr. Shoup said staff had consistently administered the Zoning Ordinance in that manner. He noted that the position was consistent with situations where a right-of-way wraps around a significant portion of a lot that may be located on a curved street. Mr. Shoup said there were instances where three-quarters of a lot were bounded by a single right-of-way and front yards were required along the entire right-of-way. In this instance, although there are three distinct lot lines involved, the result is the same: Right-of-way for a single road wraps around three-quarters of the lot; therefore, it was staff's position that it should be treated as one continuous front yard wrapping around the property.

In answer to a question from Mr. Hammack, Mr. Shoup said the property had always been vacant. Mr. Hammack asked why the County had not exercised its condemnation rights earlier, since it had required $38,000 to be escrowed for that purpose. Mr. Shoup said he was not

sure what the answer was but that Karen Harwood of the County Attorney's Office was present and could address that issue.

Ms. Harwood said she also did not know why the County had not attempted to exercise its condemnation rights earlier, but she suggested it might have been because there had been no activity with respect to potential development of the property or because there actually were no funds to design the improvements to Beulah Road. She said a determination had never been made that the County would never want to improve Beulah Road in that corner. She did not know if the staff report included statistics from the Police Department which went to the BOS concerning whether or not to take the property via quick-take but, since 1984, there had been approximately 71 accidents in the area of the corner that goes around the property in question. She said that Mr. Cohen's building permit application flagged the situation. Ms. Harwood said that it would be more prudent to pay Mr. Cohen for his property before he went through the trouble of building a house. She said that, as Mr. Shoup had indicated, the County does now own the property by quick-take certificate filed at the end of December. She said the application was going forward because, if some arrangement could not be worked out with the Cohens for some acceptable amount of right-of-way other than the whole, what was still left to be ultimately resolved was the matter of value.

Mr. Kelley said it appeared to him that the matter should be moot and Ms. Harwood said that Mr. Minchew might best address that issue. She said there had been two applications filed by the Cohens: One was a variance application because, in case they lost this appeal, they wanted a variance to set back from the north and south boundaries 20 feet. That has been scheduled for hearing in February. They also appealed the Zoning Administrator's determination that the right-of-way line is used to determine the setback line; therefore, the property has 3 minimum front yard requirements. Ms. Harwood said she believed that the variance application is moot because the Cohens no longer own the property and Mr. Kelley agreed. Ms. Harwood said that the issue of whether the Zoning Administrator was right or wrong in her determination may have an affect on the ultimate value of the property. She said the appeal issue on that point was relevant to what the state of the property was when the County condemned it at the end of December 1993; i.e., was that property in a position where it did not have a problem with setbacks for purposes of issuing a Building Permit, or did it have a problem with setbacks because, as the Zoning Administrator determined, there were 3 front yards on the property which would have required variances.

Mr. Kelley said he did not believe it was the purpose of the BZA to determine value, which he believed was the only remaining issue to be resolved because the Cohens do not own the property, and Ms. Harwood agreed.

Mr. Minchew came forward to speak for the applicant and began by discussing the mootness question. He said that the BZA's mission was to hear questions of law concerning what is correct according to the Zoning Ordinance and that was what they were asking the Board to do. He said the issue of value was critical to the zoning interpretation, second only to the issue of whether the Zoning Administrator was right or wrong. Mr. Minchew said, if the Zoning Administrator is correct, the subject lot which is roughly 1/2 acre in size and has a width of between 80 and 90 feet, must have a front yard from the east, west, and south, which would create a buildable area that he believed was laughable and not developable. He said, if the Zoning Administrator was right, the lot is not buildable and as such its value is much less; if the Zoning Administrator is wrong, which he said they vigorously assert, the lot has value as a developable lot. Mr. Minchew said he believed the interpretation was precipitated by the Cohens' desire to build by right on the property. Mr. Minchew continued by questioning the validity of whether the front yards actually were front yards and whether they were so designated by being premised upon an identifiable street line and went on to discuss the definitions of street, public street, and front lot lines. He said he did not believe the issue to be moot because the appellant was aggrieved and the fact that the property was condemned by quick-take did not render non-existent the appellant's standing as an aggrieved party. Mr. Minchew said he believed it was the BZA's mission to decide if the unimproved, vacant, but platted right-of-way for Beulah Road, as it exists on the north and south sides of the property, is a "street" or a "public street"; if the answer is "no," there is no front yard requirement on the north and south sides and the Zoning Administrator was wrong.

Mr. Kelley said he believed the Board was being asked to determine if the subject lot was buildable by a party that can no longer build because the party no longer owns the property. Mr. Minchew said the sole issue was whether or not the front yards are required as the Zoning Administrator stated. He said he did not know if the lot was buildable or if there were 3 front yards; it might be possible to build a structure with 3 front yards, although it may not be in conformance with neighborhood "norms." Mr. Kelley reiterated that the appellant does not own the property. Mr. Minchew said the appellant might not own the property but the value that is ultimately set will be based upon the law the way it existed on the date of take. He said the only way they could determine the way the law existed on the date of take was by doing what they were doing. Mr. Kelley said that the County wanted the Board to rule the lot unbuildable; they own the property and they could determine whether or not it is buildable if they so desired, just by executive action or whatever normal administrative avenues they follow in such cases. Mr. Kelley said that the issue was moot as far as the Board was concerned, although it may not be moot as far as other tribunals were concerned.

Mr. Minchew continued to argue that a decision was required from the BZA. Mr. Hammack stated that jurisdiction was in the Court to determine the value and that Mr. Minchew would be making the same arguments to the Court that he was making to the BZA. Mr. Minchew said that was true concerning value but, concerning whether or not the lot has 3 front yards, the Court might ask what the BZA had said. Mr. Hammack said that, if the Court wished, they could certify back down to the BZA; however, he believed the Court had jurisdiction to hear all the arguments Mr. Minchew was making. He said he agreed with Mr. Kelley: The County now owns the property, the appellant may have had a valid basis for appeal when he filed; however, the appellant is no longer the owner of the property, the condemnation law is very specific about certain issues, the County or the appellant should file some type of suit to determine value if the appellant did not wish to accept the quick-take price, and it appeared to Mr. Hammack that the jurisdiction to determine the value of the property and all the arguments, pro and con, should be addressed by a court. Mr. Minchew agreed that the variance application was moot by virtue of the fact that the appellant no longer owned title. He said that the standing required that it be a person aggrieved under law and he believed strongly that the appellant was aggrieved, even without title.

Mr. Pammel said he believed that when the application was filed it was a valid appeal of a decision of the Zoning Administrator, but the County has pre-empted the appellants' right to file the appeal because they are no longer the owners of the property. For whatever reason, he said, their right to appeal has been taken away by the County if the Board decides that they have no standing.

Vice Chairman Ribble asked if there was anyone in the audience who would like to address the appeal and there was no response. He then called upon Mr. Shoup for rebuttal or clarification.

Mr. Shoup said it is clear that, eventually, at some point in the future, there will be a road coming though the property and the right-of-way will be utilized. It is dedicated for public street purposes. According to the appellants' argument, front yards could never be required from dedicated right-of-way, which has not been the practice and does not appear to be the intent. Whenever there is a subdivision, right-of-way is dedicated; however, when permits are processed they are processed with the dedicated right-of-way being considered a public street, even though it is just a street on paper, not paved. Mr. Shoup said the County had acquired the property and, at some point, a road would be built; it should be recognized that, in determining front yards involving a dedicated right-of-way, the front yards are imposed from the dedicated right-of-way. He suggested that the appellants also recognized that in the last sentence of their statement, provided in Attachment 2. They state that the right-of-way along the northern and southern boundaries of the subject property would only be relevant if the County acquired the subject property for the purpose of widening Beulah Road and, absent the County actually acquiring the subject property, only the eastern lot line of the subject property which abuts the existing boundary of Beulah Road should be required to satisfy the 40-foot front yard requirement. Mr. Shoup said he believed those statements acknowledged that, when the County owns the property and there is a clear intent that, eventually, at some point in the future, a road will be built, it is proper to impose front yards from the currently existing right-of-way. He said, for those reasons, he believed staff was correct in determining that there are front yards along three sides of the property.

Vice Chairman Ribble asked when the surrounding properties had been condemned and taken. Mr. Shoup said they were dedicated as part of the subdivision and approved in December 1985; this lot was not included in the special exception. The means of getting the dedication to the north and south was through the cluster subdivision in the special exception and, since the subject property was not included in the special exception, it was not taken then.

Mrs. Thonen referenced the Notice of Refusal to Insure Without Exception and said that sounded to her like the appellants were warned that they were taking a chance in considering the property because it was surrounded by dedicated right-of-way and condemned properties, indicating the property might be the object of condemnation procedures in the future.

Ms. Harwood clarified for the record that staff was not asking the BZA to rule that the lot is unbuildable. She said she believed that, assuming the Zoning Administrator's decision is upheld, whether or not anything is built or whatever might be built on the property, remains to be seen because nothing had been submitted for approval, as if the Zoning Administrator's decision was correct.

Mr. Kelley said he still considered the issue moot except for whatever effect the ruling of the BZA might have on future actions. Ms. Harwood said that whatever motion the BZA deemed advisable to make was in their province. She believed they could deduce the proper action to take on their own, as staff did not make the suggestion that the issue was moot; from their perspective, they did not conclude that it was moot.

Mr. Hammack said that, if the BZA made a decision and the appellants disagreed with it and took it to the Circuit Court, the Court could decide it agreed with the BZA and that would end the matter; however, if the Court decided the BZA was wrong, they would have to send it back down to the BZA. Mr. Hammack said he believed the arguments that Mr. Minchew was making really should address the value of the property and they could all be heard by the Court that has the jurisdiction to do the condemnation.

Vice Chairman Ribble advised that Mr. Minchew had two minutes for rebuttal.

Ms. Thonen asked what good it would do even if the BZA ruled there were 3 front yards. Mr. Hammack said that, if the BZA were to support Mr. Minchew's position, he could say the property was more valuable.

Mr. Minchew came forward and stated that the sole question before the BZA was whether or not the northern and southern lot lines were front lot lines. He said he submitted that, if you applied the definition of "street" and "public street," Beulah Road, even though it is platted but vacant and unimproved, does not qualify on the northern and southern lot lines as either "public street" or "street" under the definitions in the Zoning Ordinance and, for that purpose, the northern and southern lot lines were not front lot lines and the Cohens should be able to develop. Should it later be worked out with the County that only standard 20-foot side yards are required on the northern and southern points, he submitted that value should not be considered by the BZA because, as Mr. Hammack suggested, that is an issue of the Court, if it does go to the Court. He said it may be resolved and never go to the Court. Mr. Minchew said he believed the sole mission of the Board was to decide if the Zoning Administrator's determination was right or wrong. He said the appellants were aggrieved by the ruling and the BZA was the only place where they could take appeals of this nature. Mr. Hammack again reiterated that he did not see how the appellants could be aggrieved when they no longer owned the property. Mr. Minchew said that it was because, when the value is later debated, the first question would be: Is this a lot with 3 front yards or 1 front yard? Mr. Hammack again said he believed that was a decision for the Court to make.

Mr. Minchew continued to expand on the issues as already stated.

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

Mr. Kelley said that, due to the fact that the appellants no longer owned the property, the County does, he moved that the Board find the appeal moot and not render any decision on what would have been the merits of the case if they had heard it last week, which would have been a different story. If the Court sends it back to the BZA and says it must make a decision, then it would have to do that. He hoped Mr. Hammack would expand on his motion if he supports it because he believed that, when it came to the transcript it would be important.

Mr. Hammack seconded the motion, stating that he supported Mr. Kelley's motion. He said he was not an expert in condemnation but had worked around that area of the law for a long time; he could remember when Route 66 and Route 495 were condemned and said he was sure it had precipitated many requests for interpretations by property owners hoping to increase the value of their property. He said he believed the Court had the jurisdiction to determine value and, while he understood what Mr. Minchew was saying, the BZA was not the proper body to determine value and could not take value into consideration when making a decision. He said he did not believe the Cohens were in a position to file a grievance because they no longer owned the property and that their actions were directly related to establishing a value on the property in question.

Mr. Pammel said he could not support the appeal because it is relevant to the date it was filed, whether it was filed as a result of an action of the Zoning Administrator, and whether the Cohens were the owners at the time. He said the issue before the BZA was moot because the appellants are no longer the owners. Mr. Pammel said he believed the appellants had a legitimate appeal because they had been the owners, it was a decision that affected them, and he believed it was the obligation of the Board to make a finding on the appeal. Mr. Pammel agreed with a statement by Mr. Hammack that he believed the appellants deserved a decision but that it should come from the Court.

Mr. Hammack said the BZA has never made a decision involving condemned property. Mr. Ribble agreed with Mrs. Thonen that the appellants had notice before they purchased the property as to what might occur at a later date as a result of the condemnation. Mr. Kelley said that Mr. Pammel had a point, the appellants still had an interest, but it was strictly financial, and did not belong before the BZA.

Vice Chairman Ribble called for a vote on Mr. Kelley's motion, which carried by a vote of 4-1. Mr. Pammel voted nay. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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The Board took a short recess at this time.

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9:00 A.M. HRAIR H. KAZANJIAN, VC 93-L-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit building to be 26 ft. and 28.5 ft. from front lot lines (40 ft. min. req. by Sect. 4-807), parking spaces 6.5 ft. and 5.5 ft. from front lot lines (10 ft. from front lot line req. by Sect. 11-102), modify required landscape strips (10 ft. min. from public ROW and 4 ft. from land not in ROW req. by Sect. 13-202), and allow loading space in min. front yard (prohibited by Sect. 11-202). Located at 7210 Richmond Hwy. on approx. 15,998 sq. ft. of land zoned C-8 and HC. Lee District. Tax Map 92-4 ((1)) 79B. (OUT OF TURN HEARING GRANTED. DEF. FROM 9/14/93 FOR DECISION ONLY. DEF. FROM 9/28/93 FOR REVISED PLATS. DEF. FROM 10/12/93 TO RESOLVE OWNERSHIP ISSUE. DEF. FROM 11/30 TO RESOLVE OWNERSHIP ISSUE. DEF. FROM 12/14 TO RESOLVE OWNERSHIP ISSUE.)

Vice Chairman Ribble advised that this application had been heard and deferred because of the ownership issue and the need for a revised plat. He asked the applicant's attorney if he wished to comment.

Gant Redman, 510 King Street, Alexandria, Virginia, the applicant's attorney, came forward, stating that he had worked with Neil T. Hitchcock, Agent, 1221 Cameron Street, Alexandria, Virginia, and Marc Taylor, Assistant County Attorney, on resolving the outstanding issues relative to the two strips, one on either side of the property: a 14-foot strip on the Richmond Highway side and a 4-foot strip on the Fordson Road side, which are needed to finalize the site plan as submitted to DEM. He said they had been able to establish title; the portion in question had been dedicated in June of 1981 to the County, but had not yet been taken into the State maintenance system by VDOT by virtue of their own maps and records. Mr. Redman said they had met with VDOT representatives, who in turn passed it on to the County; they had worked with the Office of Transportation, as well; they had concluded that the mechanism is simply a deed of vacation, accompanied by two plats which they will present to the chief reviewer for Lee District and which had already been presented to the County Attorney's Office and the Office of Transportation. He estimated that the issue could be resolved in 7-10 days.

Vice Chairman Ribble asked if the County Attorney's Office had agreed to the vacation and Mr. Redman said they had.

Vice Chairman Ribble closed the public hearing.

Mrs. Thonen moved to grant VC 93-L-063 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated September 7, 1993.

Mrs. Thonen commented that the application had required a year of work, during which the applicant took an old "eye sore" and turned it into a nice building and she commended the applicant for all the work that was done to resolve the issues. She said some of the hardships the applicant suffered were not even in the Zoning Ordinance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-063 by HRAIR H. KAZANJIAN, under Section 18-401 of the Zoning Ordinance to permit building to be 26 ft. and 28.6 ft. from front lot lines, parking spaces 6.5 ft. and 5.5 ft. from front lot lines, modify required landscape strips, and allow loading space in min. front yard, on property located at 7210 Richmond Highway, Tax Map Reference 92-4((1))79B, 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 4, 1994; 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-9 and HC.
3. The area of the lot is approximately 15,998 square feet.
4. The application had been worked on by many people for a long time to help the applicant meet the requirements.
5. The applicant had taken an old "eye sore" and turned it into a nice building.
6. This case qualified significantly under the hardship requirement.
7. The property is unusually shaped, coming to a point at the highway.
8. The location of the property is unusual.

9. The property was in compliance before the Virginia Department of Transportation took pieces of the land from both sides.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 building, the location of the parking spaces, the width of landscape strips and the location of the loading space shown on the two-page plat, entitled "Development Plan and BZA Plat for Variances and Waivers on Richmond Highway Office and Repair Service", prepared by Holland Engineering, dated May 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. If the proposed right-of-way vacations, as shown on the plat, along Fordson Road and Richmond Highway are not approved, the approval of this variance application shall become null and void.

4. Approval is conditioned upon the submission of revised plats for approval by the Board of Zoning Appeals.

Pursuant to Sect. 18-407 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 5-0. Chairman DiGiulian and Mrs. Harris were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and shall become final on the date the Board approves the revised plats. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. EBRAHIM A. BABAZADEH, APPEAL 93-Y-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's denial of a Building Permit for interior remodeling of structure located at 13101 Lee Hwy. on approx. 1.8250 ac. of land zoned R-1 and WS. Sully District. Tax Map 55-3 ((1)) 28.

Vice Chairman Ribble asked if the appellant was ready to be heard. Ebrahim A. Babazadeh, 3236 Reservoir Road, NW, Washington, D.C., 20007.

William E. Shoup, Deputy Zoning Administrator, identified the property and presented the staff report. He stated that the issue in the appeal was whether the appellant had nonconforming rights to operate an antique shop on the property and that staff's position was that he did not have nonconforming rights for that use and, because retail uses are not permitted in residential districts, a building permit for the interior remodeling of the structure on the property in that R-1 District was properly denied by staff.

Mr. Shoup said that the appellant was seeking to operate an antique shop from the existing structure and was attempting to rely upon a 1951 BZA approval of an exception authorizing an antique shop use on the property. Under current Zoning Ordinance provisions, an antique shop is not permitted on the subject property. Mr. Shoup advised that the antique shop that was approved in 1951 appears to have been in operation in August 1978, when the current Zoning Ordinance became effective; consequently, that use was considered a nonconforming use; as a nonconforming use, it was subject to the provisions of Section 15-103 of the Zoning Ordinance. Paragraph 7 of Section 15-103 provides that: If a nonconforming use ceases for a continuous period of 2 years or more, the nonconforming rights are lost and any use of the property must conform to current regulations.

Mr. Shoup said there was evidence that the Health Department condemned the structure on the property in 1985; a number of notices were issued to secure the building from entry, several of which were sent to the appellant after he purchased the property in 1989. Mr. Shoup further stated that, prior to the appellant's purchase, the property was owned by Robert R. Williams and his wife, who operated an antique shop from the property from 1960 until 1985. Staff had telephone conversations with Mr. Williams who lives in southern Virginia; he indicated that they had ceased the antique shop use in May 1985 and he attempted to sell the property to a man named Bill Bader; the details of the arrangement between Mr. Williams and Mr. Bader were presented in the staff report, but the key point Mr. Shoup wished to make was that Mr. Bader began occupying the property early in 1986, using it for residential purposes. He occupied the property until 1989, shortly before the appellant purchased the property and at no time during those 3 years of his occupancy, was there an antique use on the property. Mr. Shoup said staff just recently was able to locate Mr. Bader who had provided staff with a statement confirming what Mr. Williams had relayed to staff and Mr. Shoup presented the statement to the BZA. Mr. Shoup advised that Business License information provided by the appellant also showed that, since he purchased the property in 1989, there did not appear to have been an active antique shop use on the property.

Mr. Shoup said there was clear evidence that, from 1985 to the present, the antique shop use ceased operation. For approximately 4 years prior to the appellant's purchase, the antique shop use had been discontinued. Consequently, it was staff's position that there are no nonconforming rights to an antique shop use on the property and the Building Permit to renovate was properly denied.

Mr. Babazadeh came forward and said he would like Mr. Williams to be present because he had promised the appellant sewer and water which were not present on the property. The appellant said that Mr. Williams had claimed that another person had taken over the property and had destroyed it and the appellant also wanted that person to be present to show why he had damaged the building. The appellant said he first received a notice in 1989 that the structure was destroyed and must be repaired; he said that was after the tenant had vacated the stucture. Mr. Babazadeh asked to have these questions answered.

Mr. Babazadeh gave a history of his purchase of the property for $55,000, the financing involved, lack of promised sewer and water, payment of $8,878 each month in mortgage payments, $1,336 each year in real estate taxes for five years for commercial property, and real estate assessment showing total land value of $115,025 with no sewer and water, of which $49,095 was the value of the structure. He said he had renewed the business license every year and believed he had an antique business.

Mr. Hammack questioned that the appellant showed he had received no revenue from antique sales. The appellant said they could not operate without sewer and water and did not show revenue received until this year. He said the building had been vandalized and broken into more than 6 times; 3 times are covered by police reports. The appellant said they repaired and secured the structure each time they received a letter of compliance from the Health Department. Mr. Babazadeh said he had complied with every request from the County and had obtained every permit required.

The appellant said that, when he tried to obtain permission to renovate, he was told he needed an asbestos inspection. When he explained he was only doing interior repairs, he was told that he did not require a permit if he was only repairing the windows and walls.

Later, he obtained a permit to repair the roof. He said an inspector came by because of a complaint on 9/1/93. Mr. Babazadeh said the inspector reported that the case was closed. Subsequently, another inspector named Verek came on 10/11/93, to thoroughly investigate the

inside and outside of the building for non-compliance and found none; he said the case was closed. The appellant said there was nothing wrong with the foundation, but the building required additional repairs because of a fire and he went to get another permit. He said Mr. Lowery signed the permit, which was to be the final permit. When he went to pay for the permit, he was sent to Zoning and was denied the permit on 10/8/93. Mr. Babazadeh said he had a right to use the property as an antique shop because the permit which was denied and was the subject of the appeal was for internal remodeling; the only reason he applied for the internal remodeling permit was because he was told he was required to do so by Mr. Lowery.

Mr. Babazadeh cited In Chancery No. 120132 in the Nineteenth Judicial Circuit of Virginia, Gwinn v. Collier, and asked the Board to defer his case pending the Court decision.

Mr. Babazadeh said he has been storing antiques on the property and waiting for sewer and water before opening a retail operation. He asked why the fact that issuing a Non-RUP would not be proper was not discovered in 1992 when he first applied.

Mr. Babazadeh contested the Zoning Administrator's determination.

Mr. Hammack asked the appellant if he had any evidence that the property was used as an antique store between 1985 and 1989 when he purchased the property. Mr. Babazadeh said the only thing he had was the license. He said they had been low-key because of the lack of water and sewer. Mr. Hammack advised that the Zoning Administrator had presented evidence and a copy of a letter to the effect that the person who owned the property immediately prior to the appellant's purchase of the property used it as a residential dwelling between 1986 and 1989, which exceeds the two-year limitation for keeping the use valid. The appellant said he had no knowledge of what had occurred during that period of time, but only knew about the property since he had purchased it.

Vice Chairman Ribble asked the appellant if he had any pertinent papers with him, such as the mortgage and the appellant did not have them.

Sarah Babazadeh, wife of the appellant, at the same address, came forward and said she was the manager of the appellant's business. She said they had only been able to operate at the subject location on a limited basis, such as to pick up items stored there or to meet a customer. She referenced Mr. Shoup's memo of December 28, 1993, stating that his arguments were based on incomplete and/or erroneous information and proceeded to name them. None of the information provided any evidence that the antique shop use had not ceased for longer than the two-year limitation. Ms. Babazadeh referenced Paragraph 6, which she said states that a nonconforming building which is damaged may be restored within two years. She said she believed that should apply to them because they had been trying to restore the constant damage done by vandals and thieves.

Mr. Shoup summed up by stating that this may be a situation in which the appellant was not fully aware of the circumstances surrounding the property when it was purchased; however, he did not deem that to be justification or evidence that the use either continued or was not continued for reasons out of their control or that they should be allowed to re-establish it. Mr. Shoup believed the evidence was clear that the property has not been used as an antique shop since 1985, which exceeds the two-year limitation and, therefore, there is not a valid nonconforming right to use the property as an antique shop.

Ms. Babazadeh referenced Mr. Shoup's statement that the revenue basis for license renewals in 1991 and 92, reflecting 1990-91 income, was zero. She said she had Schedule C's from their 1990-91 income tax statement, prepared by their accountant, for their other location in the District of Columbia, showing several thousand dollars of income. Vice Chairman Ribble asked if it showed income from the property in question and she said it showed income for the business; what they did at the property in question was store things and use it in connection with the D.C. location because they did not have sewer and water. She referenced Mr. Shoup's statement that they had been given notice to secure the property and she said that the property had been vandalized, flowers were pulled up, the sidewalk was stolen, knotted pine paneling was torn off the walls, and so on.

Vice Chairman Ribble called on the appellant for rebuttal.

Mr. Babazadeh came forward and said he had applied for an exception application and received it; it was his belief that, if the Zoning Administration had any objection, they had to appeal it; since they have not, their appeal period had expired; he again cited Gwinn v. Collier.

Vice Chairman Ribble called for speakers and, hearing no response, closed the public hearing.

Mr. Hammack moved to uphold the Zoning Administrator's determination on appeal 93-Y-027. He said there was no question in his mind that Mr. and Mrs. Babazadeh would like to operate an antique shop out of the location that they own on Lee Highway. He said he also believed Mr. Babazadeh had raised some interesting issues which, unfortunately, really go beyond the scope of what the BZA is empowered to consider. He noted that the appellant did maintain his business license each year, although he showed no retail sales in 1991, 92 and 93; he showed $9,000 on one statement in 1989; on one statement he showed no employees. Mr. Hammack said those facts are only a part of the basis for his decision. He said he believed the Zoning

Administrator had furnished evidence to show that the nonconforming use was lost between the years of late 1985 and 1989 when Mr. Babazadeh purchased the property and, unfortunately, he was not aware of the consequences of the Zoning Ordinance at the time. He said the appellant had furnished nothing for the record showing that the property was used as an antique store when he purchased it; he may have paid for it as antique store, as a commercial property; or he may have thought that he was obtaining a commercial property, but had not made himself aware of the Zoning Ordinance requirements. Mr. Hammack said that he could not rule against the unrebutted determination of the Zoning Administrator. He also said he believed the Zoning Ordinance was clear on how a nonconforming use could be lost and that it was lost on the property in question before the appellant purchased it.

Mr. Hammack went on to say that other mitigating circumstances were that the appellant's business licenses showed no income and no employees for a three year period; the property had been condemned; it had not been occupied as a retail location, even though the appellant had made efforts to try to maintain it as a retail location. The position was one that Mr. Hammack said he did not like to take, but he believed that, under the Ordinance, it was the proper decision.

Mr. Pammel seconded the motion.

There was no further discussion and the motion carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

In answer to a question from Mr. Pammel, Mr. Shoup said that antique shops are a special permit use, but they are limited to certain areas of the County, such as Community Business Centers, and there are other standards which could not be met by the appellant's use.

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Page 372, January 4, 1994, (Tape 2), Scheduled case of:

10:00 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. (DEFERRED FROM 7/13/93. DEFERRED FROM 9/28/93). (INTENT TO DEFER TO 2/15 ON 12/14)

Mrs. Thonen moved to defer this appeal to February 15, 1994 at 10:00 a.m. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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Page 372, January 4, 1994, (Tape 2), Action Items:

Approval of Resolutions

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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Page 372, January 4, 1994, (Tape 2), Action Items:

Request for Date and Time for Appeal Application
Robert R. Powell

William E. Shoup, Deputy Zoning Administrator, explained that staff had discussed with the appellant that pursuing a special permit might be more appropriate, whereby the BZA might allow a greater number of dogs to be kept on a lot than otherwise would be permitted. He said it had been recommended back in November that the BZA defer acceptance of the appeal to allow time for the appellant to consider whether he wanted to file a special permit. Mr. Shoup said that the appellant went overseas on a State Department assignment until mid-December and staff had met with Mr. Powell since his return. Mr. Powell said he intended to file a special permit and staff was attempting to acquire clarification on whether he intends to withdraw the appeal. Considering the amount of time that has elapsed since the appeal was filed, Mr. Shoup recommended that the BZA accept it and schedule it for February 23, 1994, at 9:.30 a.m. He said staff would continue to work with Mr. Powell on his desire to file a special permit.

Mr. Pammel moved to schedule this appeal for February 23, 1994 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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Page 373, January 4, 1994, (Tape 2), Action Items:

Request for Acceptance of Appeal Application
Denton Construction Corporation
Clerk suggested date of March 1, 1994

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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Page 373, January 4, 1994, (Tape 2), Action Items:

Approval of Minutes from November 9 and November 30, 1993 Hearings

Mrs. Thonen so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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Page 373, January 4, 1994, (Tape 2), Action Items:

Request for Additional Time
Rebecca Ann Crump, SP 84-S-079

Mr. Hammack so moved, with the new expiration date of December 16, 1994. Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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Page 373, January 4, 1994, (Tape 2), Action Items:

Request for Acceptance of Appeal Application
Bruce L. Hecox
Clerk suggested date of March 1, 1994

Mrs. Thonen so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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Page 373, January 4, 1994, (Tape 2), Action Items:

Request for Change of Permittee
d/b/a The Sporting Club, SPA 81-D-075

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman John DiGiulian and Martha Harris were absent from the meeting.

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Page 373, January 4, 1994, (Tape 2), Action Items:

BZA Snow Emergency Policy
and
1994 Meeting Date Revision of Changing the Meeting
Dates from Tuesday February 1, 1994
to Wednesday February 2, 1994

Jane C. Kelsey, Chief, Special Permit and Variance Branch, submitted these to the Board which voiced no objections.

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As there was no other business to come before the Board, the meeting was adjourned at 11:40 a.m.

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

~~John Ribble~~, Vice Chairman
Board of Zoning Appeals

SUBMITTED: March 4, 1994

APPROVED: March 8, 1994

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 11, 1994. 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. Chairman DiGiulian explained to the audience that the public hearing could not be held due to a scheduling conflict in the Board Auditorium. He suggesting rescheduling the cases to January 26, 1994, at the times indicated on the January 11, 1994 agenda. Mrs. Thonen made a motion to defer the cases to the date and time suggested by the Chairman. Mr. Kelley seconded the motion and asked that the applicants be polled to determine if the date was agreeable.

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Page 375, January 11, 1994, (Tape 1), Scheduled case of:

9:00 A.M. REQUEST FOR DATE AND TIME FOR JODY C. BENNETT APPEAL, (DEF. FROM 12/14 FOR TRANSCRIPT, PLAT, DEVELOPMENT CONDITIONS, AND ANY OTHER DOCUMENTS ON WHICH STAFF BASED ITS INTERPRETATION TO BE SUBMITTED TO BZA)

9:00 A.M. GOLF PARK, INC., SPA 91-C-070 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for commercial recreation use (golf driving range) to permit amendment of conditions. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23 and 26; and 18-4 ((8)) A, 1A, 2, 3, 4 and 5. (DEF. FROM 12/20 TO ALLOW THE BZA TO VISIT THE SITE AND FOR ADDITIONAL INFORMATION.)

9:00 A.M. S. & D. REJALI AND C. & H. AZIMIPOUR, VC 93-P-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed lot 3 having lot width of 25 ft. (150 ft. min. lot width req. by Sect. 3-107). Located at 2644 Oak Valley Dr. on approx. 4.01 ac. of land zoned R-1. Providence District. Tax Map 38-3 ((1)) 19.

The applicants in the above-referenced cases did not object to the meeting being rescheduled to January 26, 1994.

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Page 375, January 11, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT A. FELDMAN AND DEBORAH J. DANKER, SP 93-M-067 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition (porch) to remain 8.7 ft. from side lot line (15 min. side yard req. by Sect. 3-207). Located at 3404 Grass Hill Terrace on approx. 28,575 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 688. (Concurrent with VC 93-M-127).

9:00 A.M. ROBERT A. FELDMAN AND DEBORAH J. DANKER, VC 93-M-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 3404 Grass Hill Terrace on approx. 28,575 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 688. (Concurrent with SP 93-M-067).

The applicant's agent, Carl E. Neuberg, AIA, President of General Architects, 8294-B Old Courthouse Road, Vienna, Virginia, said unfortunately the applicants would be in Europe attending a World Bank meeting on that date. Since the applicants would like to be present for the public hearing, Mr. Neuberg requested another date.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested February 2, 1994, at 9:00 a.m. Mr. Neuberg agreed.

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Page 375, January 11, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT M. FETSUGA, SP 93-L-056 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow accessory structure to remain 3.4 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 6739 Harrison Ln. on approx. 11,077 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((14)) 25A. (Concurrent with VC 93-L-124).

9:00 A.M. ROBERT FETSUGA, VC 93-L-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 21.4 ft. from street line of a corner lot (29 ft. min. front yard req. by Sects. 3-207 and 2-412). Located at 6739 Harrison Ln. on approx. 11,077 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((14)) 25A. (Concurrent with SP 93-L-056).

9:00 A.M. HAROLD GERRICK, VC 93-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit storage structure of 264.04 sq. ft. in size (200 sq. ft. max. allowed by Sect. 10-102). Located at 6107 Tonto Ct. on approx. 33,201 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((3)) (T) 38 and D1. (Concurrent with SP 93-M-065).

9:00 A.M. HAROLD GERRICK, SP 93-M-065 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.9 ft. from side lot line and 0.6 ft. from rear lot line and storage structure to remain 0.9 ft. from side lot line (12 ft. min. side yard req. by Sects. 3-307 and 9 ft. min. rear yard req. by Sect. 10-104). Located at 6107 Tonto Ct. on approx. 33,201 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((3)) (T) 38 and D1. (Concurrent with VC 93-M-128).

9:30 A.M. CAROL A. ROSS, VC 93-P-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6 ft. high fence to remain in the front yard (4 ft. max. height permitted by Sect. 10-104). Located at 3010 Cedar Hill Rd. on approx. 12,039 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((19)) (3) 2.

The above-referenced applicants did not object to the meeting being rescheduled to January 26, 1994.

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Page 376, January 11, 1994, (Tape 1), Scheduled case of:

9:30 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. DEF. FROM 4/6/93 FOR BOS TO REVIEW SHARED PARKING REQUEST. TO BE READVERTISED. DEFERRED FROM 9/21/93 FOR DECISION ONLY. INTENT TO DEFER ISSUED ON 10/26/93. DEF. FROM 11/3/93 AT REQ. OF APPLICANT.)

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that the applicant's agent, Ms. Touchton, had requested that the case be scheduled for the next BZA meeting, January 18, 1994, since it was a decision only case. Hearing no objection, Chairman DiGiulian so ordered and said SPA 82-D-083-4 and SPR 82-D-083-2 would be heard at the end of the agenda on January 18, 1994, at 8:00 p.m.

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Page 376, January 11, 1994, (Tape 1), Scheduled case of:

10:00 A.M. STEVEN AND GAIL ORDUN, SP 93-P-055 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow carport to remain 5.4 ft. from side lot line and accessory structure to remain 0.1 ft. from side lot line (15 ft. min. side yard req. for carport and 20 ft. min. side yard req. for accessory structure by Sects. 3-107, 2-412 and 10-104). Located at 8603 Locust Dr. on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((6)) 21.

10:00 A.M. GEORGE L. LANE, APPEAL 93-V-028 Appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that components of appellants proposed individual sewage disposal system would be located off-site and therefore the installation of such system would not satisfy the requirement of Sect. 2-503 of the Zoning Ordinance that the system be located on the same lot as the principal use. Located at 7600 Bayview Dr. on approx. 51,508 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 118-1 ((2)) 99.

The above-referenced applicants did not object to the meeting being rescheduled to January 26, 1994.

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Mr. Hammack questioned how the applicants scheduled for 9:30 a.m. and 10:00 a.m. would be informed of the cancellation. Barbara Byron, Director, Zoning Evaluation Division, said signs would be posted outside the Board Auditorium explaining the situation and that staff would also remain.

The motion to defer the public hearing to the dates cited above carried by a vote of 6-0. Mrs. Harris was not present for the vote.

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As there was no other business to come before the Board, the meeting was adjourned at 9:18 a.m.

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

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: February 8, 1994

APPROVED: February 15, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 25, 1994. 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 the first order of business was to elect the Chairman, Vice Chairmen and Clerk to the Board of Zoning Appeals for 1994.

Mr. Hammack nominated John DiGiulian to serve as Chairman for 1994. Mrs. Harris seconded the nomination. There were no other nominations and Chairman DiGiulian was re-elected unanimously.

Mrs. Thonen nominated Paul Hammack and John Ribble for Vice Chairmen, and Betsy Hurtt for Clerk for 1994. Mr. Pammel seconded the nomination and the foregoing were elected unanimously.

There were no other Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 377, January 25, 1994, (Tape 1), Scheduled case of:

9:00 A.M. C.J. LESSARD ARCHITECTS, INC., VC 93-D-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 17-A having lot width of 20 ft. (200 ft. min. lot width req. by Sect. 3-E06). Located at 11328 Fairfax Dr. on approx. 6.77 ac. of land zoned R-E. Dranesville District. Tax Map 6-4 ((2)) 17. (DEF. FROM 12/7/93 AT APPLICANT'S REQUEST.)

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that a letter had been received on January 21, requesting that the application be deferred. In addition, the notices were not done, precluding the case from being heard on that basis.

Mrs. Thonen moved to defer the case to March 8, 1994 at 9:30 a.m. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 377, January 25, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WALLACE L. AND SHARON B. BENNETT, VC 93-V-126 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of stoop 24.7 ft. from front lot line and additions 17.0 ft. from rear lot line (30 ft. min. front yard and 25 ft. min. rear yard req. by Sect. 3-407). Located at 6210 Foxcroft Rd. on approx. 10,738 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((24)) 1. (MOVED FROM 1/11 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. Wallace Bennett, 6210 Foxcroft Road, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is surrounded on four sides by other single family detached dwellings also zoned R-4.

Mr. Bennett presented the statement of justification, previously submitted in writing and incorporated into the record. He stated that remedial repairs had been done in the past to reinforce the foundation and they had now reached a point where major repairs were necessary to stabilize the walls and foundation.

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

Mr. Kelley moved to grant VC 93-V-126 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated January 18, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-126 by WALLACE L. AND SHARON B. BENNETT, under Section 18-401 of the Zoning Ordinance to permit construction of stoop 24.7 ft. from front lot line and additions 17.0 ft. from rear lot line, on property located at 6210 Foxcroft Road, Tax Map Reference 83-3((24))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 January 25, 1994; 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 approximately 10,738 square feet.
4. The lot has an exceptional shape and exceptional topography.
5. The applicants have dealt with the problem of marine clay and implemented a well-thought-out professionally designed plan that will benefit not only the applicant but the neighborhood, as 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 and the specified screen porch, arbor and stoop shown on the plat prepared by Kephart & Company, dated April 8, 1992, and recertified by Michael M. Raphael, Architect, on October 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 screen porch, arbor and stoop 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. Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JULES AMBROSE, SR., VC 93-V-132 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 0.3 ft. from side lot line (5 ft. min. side yard req. by Sect(s). 3-407 and 2-412). Located at 6718 Anthony St. on approx. 9,202 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-1 ((33)) 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. Jules Ambrose, Sr., 6718 Anthony Street, Alexandria, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which was prepared by Susan Langdon, Staff Coordinator. Ms. Kelsey advised that surrounding lots are also zoned R-4 and developed with single family detached dwellings. The requested distance of the carport from the lot line was changed from 0.3 feet to 1.0 feet. A revised plat was distributed to the Board.

Mr. Ambrose presented the statement of justification, previously submitted in writing and incorporated into the record. A discussion ensued.

Mrs. Thonen said she wanted the record to show that the Board had several letters in support and a letter in opposition from the adjoining property owners.

Mr. Pammel wished to note for the record that there actually were two letters in opposition: the adjoining property owner and the property owner across the street.

Mr. Hammack moved to deny VC 93-V-132 for the reasons set forth in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-132 by JULES AMBROSE, SR., under Section 18-401 of the Zoning Ordinance to permit construction of carport 1.0 ft. from side lot line, on property located at 6718 Anthony Street, Tax Map Reference 93-1((33))20, 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 25, 1994; 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 approximately 9,202 square feet.
4. It is obvious that the applicant had put much thought into his application and understood the Zoning Ordinance; he was very candid in stating that he could erect a single car carport by right but it would not be cost-effective.
5. The structure is too long to be reasonable under the Ordinance.
6. The issue of an existing easement presents an accessibility problem and the BZA has not granted variances over easements in recent memory. Even though the slab of concrete was there before the easement, the belief was that it would be improper to now allow improvements over the easement because, if there was ever a need to access the easement, it would be much more difficult to have to tear down a roof in addition to breaking up the slab.
7. There is nothing unusual about the lot to support granting a variance.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

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 1, 1994.

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Page 380, January 25, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CARL RICHARD & MARJORIE A. BOEHLERT AND J. FRANCIS & ROLAND A. JONES, VC 93-D-135 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 4 lots with proposed lots 1 and 2 having a lot width of 20 ft. (70 ft. min. lot width req. by Sect. 3-406). Located at 6807, 6809 and 6815 Woodland Dr. on approx. 1.21 ac. of land zoned R-4. Dranesville District. Tax Map 40-4 ((1)) 16 and 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. Carl Richard Boehlert, 6718 Marbo Court, Falls Church, Virginia, said that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is developed with three single family detached dwellings, one of which is located on Lot 16 and two on Lot 19 in the Woodland Glen Subdivision. The property is surrounded by other properties zoned R-4, with the I-66 right-of-way on the north and the Mt. Daniel Elementary School on the west.

Mr. Boehlert presented the statement of justification, previously submitted in writing and incorporated into the record. He recited a history of the development of the area with a variance granted in 1981, which is also contained in the staff report.

Mr. Pammel asked Mr. Boehlert about the affidavit which indicated Mr. Boehlert's address as 6718 Marbo Court, which is not either one of the dwellings on Lot 19. Mr. Boehlert said the dwellings on Lot 19 were being rented.

Mrs. Harris asked Mr. Boehlert if he ever owned more lots than Lots 16 and 19, which were subdivided into Marbo Court and he replied that he had. Mrs. Harris asked Mr. Boehlert in what year he had subdivided the property and he said it was 1981 when he applied for the variances and he built the dwellings in 1986. Mrs. Harris asked why, when he had control over the lots in question, he did not develop the remaining lots in the same vein. Mr. Boehlert said that the houses on Lot 19 are historic houses, going back to 1915 or beyond, and they wanted to preserve the houses, but the County was raising a density question. Mrs. Harris asked if Mr. Boehlert could have subdivided the property to fit within the required density at the time of subdivision without requiring a variance. Mrs. Harris attempted to clarify her question by further asking, if Mr. Boehlert had control over the entire area, could he have subdivided it without taking down the historic houses without disturbing the density requirement and he said, "yes." He said they would have had to abandon the additional lot, but that Mrs. Harris was correct. Mrs. Harris said that the configuration Mr. Boehlert was left with was one that he determined. Mr. Boehlert said that, when they obtained the variances in 1981, they thought they met all the density requirements. They went ahead on that basis in the interest of money and split it off. Mrs. Harris asked Mr. Boehlert if the existing configuration was one which he determined and he said it was one that he had determined while working with County staff to see that they would get the maximum

frontage as far as the present Lots 1 through 7 on Marbo Court were concerned, and that Mrs. Harris was right in that context. Mrs. Thonen asked if that fell under the definition of "a self-imposed hardship," and Mrs. Harris said she believed it did. Mrs. Thonen said she agreed.

Roland Jones, co-applicant, also spoke in support of the request.

Michael Moriarity spoke in support of the application, stating that he lives in a house marked "Richards" on the map, having purchased the property the previous year. He stated that the applicant's two tenants currently gain access to the property through an easement over his driveway and, if this request is granted, access would still be over his driveway. Mr. Moriarity favored this request over the consideration by the applicant of building apartments on the property. He said the applicant's plan to build an expensive house also would enhance the value of his property.

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

Mr. Pammel moved to deny VC 93-D-135 for the reasons set forth 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-135 by CARL RICHARD & MARJORIE A. BOEHLERT AND J. FRANCIS & ROLAND A. JONES, under Section 18-401 of the Zoning Ordinance to permit subdivision of 2 lots into 4 lots with proposed Lots 1 and 2 having a lot width of 20 ft., on property located at 6807, 6809 and 6815 Woodland Drive, Tax Map Reference 40-4((1))16 and 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 January 25, 1994; 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 approximately 1.21 acres.
4. The applicants have not met the criteria established by the Zoning Ordinance and the hardship, which is self-imposed, could have been resolved at the time of the original development of the subdivision in the mid-1980s.

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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 1, 1994.

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Page 382, January 25, 1994, (Tape 1), Scheduled case of:

9:30 A.M. VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, SP 93-Y-057, SP 93-Y-059, SP 93-Y-062 Appls. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements on Tax Map 53-4 ((5)) (2) to permit: (DEF. FROM 1/4/94 - TO ALLOW APPLICANT TO REVISE APPLS., PROVIDE NEW NOTICES AND READVERTISEMENT)

Lot 17 16.9 ft. and 13.7 ft. side yards. Located at 6113 Oakengate Way on approx. 14,625 sq. ft. of land;

Lot 61 30.1 ft. and 26.8 ft. front yards and 18.9 ft. side yard. Located at 6112 Ridge Haven Ct. on approx. 16,446 sq. ft. of land; and

Lot 72 16.5 ft. and 15.9 ft. side yards. Located at 15076 Stillfield Pl. on approx. 13,064 sq. ft. of land.

(40 ft. min. front and 20 ft. min. side yards req. by Sect. 3-C07). Zoned R-C and WS. Sully District.

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 of the law firm of Walsh, Colucci, Stackhouse, et al., 2200 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff reports prepared by Lori Greenlief, Staff Coordinator, stating that the applications had been deferred from January 4, 1994 because changes made to the applications necessitated re-advertising and re-notification. She said that staff had published an addendum to the staff reports on the three applications, delivered to the Board the previous week.

Mr. Martin presented the statements of justification, previously submitted in writing and incorporated into the record. He requested that the eight-day limitation be waived because the dwellings were completely constructed and ready for inspection and final issuance of Residential Use Permits under the R-2 Cluster yard requirements which were in effect under a Consent Decree agreed to in 1982 and which remained in effect until December 31, 1993.

Mrs. Harris asked Mr. Martin if, when the dwellings were purchased, the purchasers were aware of the variances which had been granted on their property. Mr. Martin said they were; in fact, they had to postpone closing with one of the purchasers because it had been scheduled to coincide with the January 4 meeting.

Mrs. Harris moved to grant SP 93-Y-057, SP 93-Y-059 and SP 93-Y-062 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the addendum dated January 18, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-057 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 3-C03 and 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit 16.9 ft. and 13.7 ft. side yards, on property located at 6113 Oakengate Way, Tax Map Reference 53-4((5))(2)17, Ms. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 25, 1994; 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 approximately 14,625 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.

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 side yards 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 December 28, 1993, submitted with this application and not transferable to other land.

3. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved special permit plat.

4. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

5. A composite on a Grading Plan may vary from the approved Special Permit Plan provided it does not exceed the composite on the approved Special Permit Plat.

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 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.

Mrs. Harris moved to waive the eight-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1994. 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 Application SP 93-Y-059 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 3-C03 and 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit 30.1 ft. and 26.8 ft. front yards and 18.9 ft. side yard, on property located at 6112 Ridge Haven Court, Tax Map Reference 53-4((5))(2)61, 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 25, 1994; 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 approximately 16,446 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.

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 front and side yards 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 December 28, 1993, submitted with this application and not transferable to other land.

3. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved special permit plat.

4. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

5. A composite on a Grading Plan may vary from the approved Special Permit Plan provided it does not exceed the composite on the approved Special Permit Plat.

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 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.

Mrs. Harris moved to waive the eight-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1994. 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 Application SP 93-Y-062 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 3-C03 and 8-913 of the Zoning Ordinance to allow modification to minimum yard

requirements for an R-C lot to permit 16.5 ft. and 15.9 ft. side yards, on property located at 15076 Stillfield Place, Tax Map Reference 53-4((5))(2)72, 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 25, 1994; 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 approximately 13,064 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.

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 side yards 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 December 28, 1993, submitted with this application and not transferable to other land.

3. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved special permit plat.

4. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

5. A composite on a Grading Plan may vary from the approved Special Permit Plan provided it does not exceed the composite on the approved Special Permit Plat.

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 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.

Mrs. Harris moved to waive the eight-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on January 25, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 386, January 25, 1994, (Tape 1), SCHEDULED CASE OF:

9:30 A.M. LAWRENCE P. TROXELL, APPEAL 93-D-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator determination that a deck was constructed at the rear of appellant's house without Zoning Administrator approval of a Building Permit, in violation of Sect. 18-601 of the Zoning Ordinance. Located at 2123 Maleady Dr. on approx. 9,306 sq. ft. of land zoned R-3. Dranesville District. Tax Map 16-1 ((8)) 335.

Chairman DiGiulian said it was his understanding that the notices were not in order.

William E. Shoup, Deputy Zoning Administrator, advised that the notices were not sent out and distributed a letter from the appellant to the Board. He said the appeal involved a Notice of Violation for not having a Building Permit for an existing older deck. Mr. Shoup said that the appellant has now obtained the Building Permit; however, there were problems with the inspections by the Department of Environmental Management (DEM). The appellant was, therefore, requesting additional time to work out whatever the problems are with DEM. Mr. Shoup said the appellant had satisfied the zoning requirement and has obtained the Building Permit.

A discussion ensued during which Chairman DiGiulian wondered if the appellant knew that he should have appeared before the BZA on that day because he now was in compliance.

Mr. Shoup said he believed the appellant was still concerned that the Building Permit had been required and he had been trying to get through the inspections to resolve the situation. He said he did not believe the appellant wished to withdraw the appeal at this point. In answer to a question from Mrs. Harris, Mr. Shoup said he believed a one-month deferral would allow sufficient time.

At Chairman DiGiulian's suggestion, Mrs. Thonen moved to have the appellant informed that, if the appellant failed to send out the notices and failed to appear at the next scheduled hearing on March 8, 1994, at 9:30 a.m., the BZA would dismiss the appeal for lack of interest. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 386, January 25, 1994, (Tape 1), Scheduled case of:

9:30 A.M. PHILLIP H. WESTON, APPEAL 93-P-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator determination that the appellant is maintaining a junk yard and storage yard on residential property in violation of Par. 5 of Sect. 2-302 and is keeping a garbage truck on the property in violation of Par. 16A of Sect. 10-102 of the Zoning Ordinance. Located at 9827 Five Oaks Rd. on approx. 37,540 sq. ft. of land zoned R-3. Providence District. Tax Map 48-3 ((1)) 9D.

William E. Shoup, Deputy Zoning Administrator, advised the Board that the appellant's attorney was present. Dennis Burke, 5329 Black Oak Drive, Fairfax, Virginia, came forward to represent the appellant, stating that, due to the illness of the appellant and himself, they were unable to get the notices out. He said he also had been unable to collect the affidavits establishing a previous continuous use on Mr. Weston's part. Mr. Burke said that the issue may well become moot. Mr. Weston had suffered a small stroke and intends to get out of the trash business and a deferral could result in action which would make the issue moot. Mr. Burke said March 8 was a suitable time.

Mrs. Thonen moved to defer the appeal to March 8, 1994 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

In response to a statement from Mrs. Thonen, Mr. Burke said he understood that, if the notices were not in order by the time of the next meeting, the Board would dismiss the appeal.

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Page 386, January 25, 1994, (Tape 1), Scheduled case of:

9:30 A.M. DONALD H. AND LINDA L. FRAZIER, APPEAL 93-D-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal the Zoning Administrator's determination that the construction of stairs to within approx. 22 ft. of the front lot line does not comply with the minimum front yard requirement for the R-2 District and the appellants are therefore in violation of Par. 1 Sect. 2-307 of the Zoning Ordinance. Located at 7318 Westerly Lane on approx. 18,827 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-3 ((13)) 6. (DEFERRED FROM 11/9/93 AT APPLICANT'S REQUEST. DEF. FROM 12/20 TO ALLOW THE BZA TO FURTHER RESEARCH THE DEDICATION ISSUE.)

Chairman DiGiulian advised that the Board was in receipt of a letter from William H. Hansbarger, Esquire, 301 Park Avenue, Falls Church, Virginia, requesting a deferral. Mr. Hansbarger asked the Board to defer the appeal until he received a reply from the County Attorney regarding the issues the Board previously had raised. Also, during the period of

deferral, the appellant would file for a special permit for a building located in error. Chairman DiGiulian asked about a memo to the Board from Mark Taylor, Assistant County Attorney, and questioned why the appellant had not been given a copy of the memo. William E. Shoup, Deputy Zoning Administrator, said that Mr. Taylor was present and could respond to the question. Mr. Taylor advised that the policy of his office is that it is the privilege of the BZA to release and/or disseminate advice received by them from the County Attorney's Office. The County Attorney's Office considers them to be privileged attorney/client communication which they would not presume to disseminate.

The Board Members agreed by consensus that the appellant should have a copy of the County Attorney's opinion.

Chairman DiGiulian asked Jane C. Kelsey, Chief, Special Permit and Variance Branch, to make a copy of the memo available to Mr. Hansbarger.

Mr. Pammel complimented Mr. Shoup and staff for their work in clarifying whether the property was a two-lot subdivision or a larger subdivision; he now knew that it was Section 1 and 2 of a larger subdivision; therefore the argument that Mr. Hansbarger presented to the Board, that it was a two-lot subdivision and did not need to comply with the other standards of the subdivision code, was not applicable.

A discussion ensued about how long a deferral might be required.

Chairman DiGiulian said he would guess that six months might be required to go through the process; in addition to that, if the BZA was mistaken on the position they had taken, they would go to the Board of Supervisors and ask them to vacate the street that never had been used.

Mrs. Thonen suggested that the appeal be deferred for a shorter time and then could be deferred again, if necessary.

Mrs. Thonen moved to defer the appeal to May 24, 1994, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 387, January 25, 1994, (Tape 1), Scheduled case of:

10:00 A.M. SUSAN RAINOFF, APPEAL 93-M-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator determination that the appellant is keeping three dogs on a 7,800 sq. ft. lot in violation of Par. 2A of Sect. 2-512 of the Zoning Ordinance. Located at 6900 Westcott Rd. on approx. 7,800 sq. ft. of land zoned R-4. Mason District. Tax Map 50-4 ((17)) 14. (NOTICES NEEDED)

Mrs. Thonen objected to the delay being caused by the applicant while in violation.

Chairman DiGiulian asked staff how long it would require for the applicant to send out the notices.

William E. Shoup, Deputy Zoning Administrator, advised that March 8, 1994 was the earliest hearing date for which the notification requirements could be satisfied. He further advised that staff originally had scheduled the appeal about one month further out in time because the 90-day time frame fell right around the time Ms. Rainoff was due to deliver a baby. As a result, the matter had been pending for some time and Mr. Shoup expressed concern that the appellant was attempting to unduly delay the proceedings.

Mrs. Harris asked if the appellant knew what her responsibilities were and chose not to send out the notices. Mr. Shoup said that staff had been in contact with the appellant several times and had even discussed with her the possibility of filing for a special permit to get permission from the BZA to keep more dogs than normally allowed on that size lot. Mr. Shoup said he believed the appellant was fully aware of what the requirements were; she did not wish to file for a special permit; and she believed she was not in violation of the Ordinance.

Mr. Pammel said he believed the County has sufficiently explained the situation to the appellant and she knew what her responsibilities were, but she simply had failed to proceed as required. He therefore moved that the appeal be dismissed.

Mrs. Harris said she agreed with Mr. Pammel but that the BZA had a longstanding history of giving people the benefit of the doubt and a second chance. She recommended a short deferral to the earliest possible date and a warning that this would be the last deferral.

Mr.Pammel withdrew the motion to dismiss with the understanding that it was the belief of the Board that the situation should not be tolerated and that the appellant would be given due notice that, if she did not comply by sending out the notices and appearing at the next hearing, the motion would be dismissed.

The hearing date of March 28, 1994 was set and the motion was seconded by Mrs. Thonen. The motion carried by a vote of 7-0.

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Page 388, January 25, 1994, (Tape 1), ACTION ITEM:

Approval of Resolutions from January 4, 1994 Hearing

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

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Page 388, January 25, 1994, (Tape 1), Action Item:

Request for Acceptance of Appeal
Jan C. Latney Appeal
Clerk suggested March 22, 1994

Mr. Pammel moved to schedule for the morning of March 22, 1994. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 388, January 25, 1994, (Tape 1), Action Item:

Request for Acceptance of Appeal
Michael Conlon Shurgard Storage Centers
Clerk suggested March 8, 1994

Mr. Pammel moved to schedule for the morning of March 8, 1994. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 388, January 25, 1994, (Tape 1), Action Item:

Approval of Minutes from December 1, 1993 Hearing

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 388, January 25, 1994, (Tape 1), Action Item:

Request for Approval of New Hearing Dates
for the Balance of 1994

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that there was a question about one of the hearing dates on which staff had not yet received a response from the Government Center Management Office and asked the BZA to defer their decision until the next Tuesday meeting.

Chairman DiGiulian said he had a problem with the first Wednesdays of the month of which he said there appeared to be 3 or 4.

Mr. Hammack said the schedule did not show the January 26th meeting. Ms. Kelsey said the schedule was only for the last portion of the year. Regarding the Wednesday meetings, Ms. Kelsey said that, in the past, the Board had expressed a desire to meet on Wednesday when Monday was a holiday. Chairman DiGiulian said he could not make first Wednesday meetings. Mrs. Thonen asked why they could not change the meetings to Thursday instead of Wednesday after a holiday. Ms. Kelsey said she would check with the Government Center Management Office and advise the Board. Mrs. Thonen asked that all the Wednesdays be checked to see if they could be moved to Thursdays. Ms. Kelsey said that the first half of the year had already been set and approved, up through August 2nd; however, staff could still check on the dates. Chairman DiGiulian said the Board would work with the schedule that had been approved for the first half of the year.

Mr. Hammack brought to Ms. Kelsey's attention the fact that the meeting date listed as December 23, 1994 was probably intended to be 1993 and she said she would correct that.

Mr. Pammel referenced Tuesday, December 20 and Tuesday, December 22 and said he believed it had been intended to read Thursday, December 22 and Ms. Kelsey said that was true.

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Page 388, January 25, 1994, (Tape 1), Action Item:

Request for Intent-to-Defer
Barbara Radvanyi, VC 93-D-117

Mrs. Harris so moved. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 389, January 25, 1994, (Tape 1), ACTION ITEM:

Request for Out-of-Turn Hearing
J. M. Hassig, VC 93-P-160

Mrs. Thonen made a motion to deny. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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Page 389, January 25, 1994, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Afghan Academy, SP 94-L-001 and VC 94-L-001

Mrs. Thonen moved to deny because of the high impact nature of the applications. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 389, January 25, 1994, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Halmar, Inc., VC 93-S-152

Mr. Hammack moved to deny. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:40 a.m.

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

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

SUBMITTED: March 15, 1994

APPROVED: March 22, 1994

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The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on January 26, 1994. 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 9:25 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters and Chairman DiGiulian called for the first scheduled case.

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Page 391, January 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. REQUEST FOR DATE AND TIME FOR JODY C. BENNETT APPEAL, (DEF. ACCEPTANCE FROM 12/14 FOR TRANSCRIPT, PLAT, DEVELOPMENT CONDITIONS, AND ANY OTHER DOCUMENTS ON WHICH STAFF BASED ITS INTERPRETATION TO BE SUBMITTED TO BZA) (DEF. FROM 1/11/94)

Chairman DiGiulian said it was requested that the BZA defer action until February 15, 1994. Marilyn Anderson, Acting Branch Chief, suggested 8:00 p.m. The BZA questioned the reason for a deferral. Barbara Byron, Director, Zoning Evaluation Division, explained that action had originally been scheduled for the January 11th meeting, which was cancelled due to a room scheduling conflict. She said following that meeting the appellant talked with staff and requested that the BZA schedule its consideration for a night meeting and staff had no objection.

Mrs. Harris made a motion that the BZA defer to the date and time suggested by staff. Mrs. Thonen seconded the motion.

Mr. Kelley said it was his understanding that the BZA wished to hear the appeal on the same date as the special permit amendment for Golf Park, Inc., since they related to the same site. Chairman DiGiulian said he did not believe it was necessary to defer the Golf Park, Inc. application. Mrs. Thonen asked if the BZA's action relating to the special permit amendment would negate the appeal. Ms. Byron said the cases involved two separate issues.

The motion to defer to February 15, 1994, at 8:00 p.m. carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 391, January 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. S. & D. REJALI AND C. & H. AZIMIPOUR, VC 93-P-122 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed lot 3 having lot width of 25 ft. (150 ft. min. lot width req. by Sect. 3-107). Located at 2644 Oak Valley Dr. on approx. 4.01 ac. of land zoned R-1. Providence District. Tax Map 38-3 ((1)) 19. (DEF. FROM 1/11/94)

Mr. Pammel disclosed that he and his wife were joint owners with another couple of property located within 500 feet of the subject property on Oak Valley Drive.

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, James H. Payne, Jr., P.E., with Payne & Merchant, P.C., P. O. Box 638, Haymarket, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. The application property consists of 4.01 acres and is located at 2644 Oak Valley Drive north of Route 123, between Oakton and Vienna. The applicant was requesting a variance to the minimum lot width requirement to allow subdivision of one lot into three lots, with proposed Lot 3 having a width of 25 feet. The Zoning Ordinance requires a minimum lot width of 150 feet in the R-1 Zoning District; therefore, the applicant was requesting a variance of 125 feet to the minimum lot width requirement. The property is currently developed with a single family detached dwelling and is planned for residential use at 1 to 2 dwelling units per acre. The immediate area is characterized by single family detached dwellings on lots which are generally regular in shape and front on Oak Valley Drive or obtain access via public roads. It was staff's opinion that five of the nine Required Standards for Variances had not been met as outlined in the staff report.

Mr. Payne said the property is a four acre tract located on Oak Valley Drive, and one of the last tracts on that drive to be developed. He said most of the other lots in the area are much smaller and the subject property could also be developed with smaller lots; however, the property has a substantial floodplain across it and a very wide Environmental Quality Corridor (EQC). Mr. Payne said the applicants have tried to come up with a plan to allow a reasonable development of the site into three homes and still comply with the intent of the Comprehensive Plan. The access road will be a common driveway for all three lots and will be located as near as possible to Dale Ridge Court. He said the applicants intend to leave the floodplain undisturbed, leave the site as wooded as possible, and carve out sites for the new homes along the common driveway. Mr. Payne said initially all three lots did not access a common driveway, but at staff's recommendation the plan was modified. He agreed with the development conditions and said the applicant's engineer, Zia Hassan, was also present.

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In response to a question from Mrs. Harris, Mr. Payne said Dr. Azimipour owned Lot 20 and was in the process of building a house on the lot.

Zia Hassan, with Design Management Group, 8206 Leesburg Pike, Suite 302, Vienna, Virginia, said he first recommended rezoning the property in order to get a larger number of lots, but the applicants did not wish to do so. He disagreed with staff that the development would adversely impact the neighborhood since the surrounding lots are smaller than those proposed by the applicants. Mr. Hassan said if the request is denied the applicants will then be forced to rezone the property, which is something they would rather not do.

Following a discussion between Mrs. Harris and the speaker with regard to developing the site within the floodplain, Mrs. Harris asked if the applicants had considered constructing a cul-de-sac. Mr. Hassan explained that two of the proposed lots have frontage on Oak Valley Drive and can access that street, but the third would require a different access. Mrs. Harris said the cul-de-sac would eliminate the need for the driveways on Oak Valley Drive. Mr. Hassan said that would be very expensive.

In response to a question from Mr. Pammel, Mr. Hassan said the applicants purchased the property in September 1993.

Mrs. Thonen asked if the applicants had been aware of the building restrictions when they purchased the property. Mr. Hassan said the applicants were not developers; therefore, they were not fully aware of the floodplain restrictions.

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

Mr. Pammel made motion to deny VC 93-P-122 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-P-122 by S. & D. REJALI AND C. & H. AZIMIPOUR, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lot 3 having lot width of 25 feet, on property located at 2644 Oak Valley Drive, Tax Map Reference 38-3((1))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 January 26, 1994; 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 4.01 acres.
4. At one point in time the entire side of Oak Valley stretching almost from Route 123 up to the subdivision that is immediately adjacent to the subject property on the northwest was all under contract to be developed as a coordinated development, but over the years some of the contracts fell apart. The subject property is the last remaining parcel, other than Lot 20, where the owner is seeking to develop the property. At this stage, of course, in order to get the type of development that is suggested by the Comprehensive Plan, which is 1 to 2 dwelling units per acre, the applicant needs a variance. When the property was acquired, the applicant should have been aware of the restrictions that applied to the development of the subject property. Reasonably, the property could yield two lots, such as is the case with Lot 20. This is a self-imposed hardship.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

Mrs. Thonen seconded the motion 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, 1994.

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Page 393, January 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT M. FETSUGA, SP 93-L-056 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow accessory structure to remain 3.4 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 6739 Harrison Ln. on approx. 11,077 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((14)) 25A. (Concurrent with VC 93-L-124). (DEF. FROM 1/11/94)

9:00 A.M. ROBERT FETSUGA, VC 93-L-124 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 21.4 ft. from street line of a corner lot (29 ft. min. front yard req. by Sects. 3-207 and 2-412). Located at 6739 Harrison Ln. on approx. 11,077 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((14)) 25A. (Concurrent with SP 93-L-056). (DEF. FROM 1/11/94)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Robert Fetsuga, 6739 Harrison Lane, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The subject property is 11,077 square feet in size, is located on Harrison Lane south of South Kings Highway, and is surrounded by lots in the Kings Highway Subdivision zoned R-2 and developed with single family detached dwellings. 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 accessory structure to remain 3.4 feet from a side lot line. A minimum side yard of 15 feet is required by the Zoning Ordinance on a lot zoned R-2.

The request for variance resulted from the applicant's proposal to construct a deck to be located 21.4 feet from the street line of a corner lot. A minimum front yard of 35 feet is required for a lot zoned R-2 and Sect. 2-412 allows a deck to extend 6 feet into the required front yard. Therefore, the applicant was requesting a variance of 7.6 feet from the minimum front yard requirement for the proposed deck.

Mr. Fetsuga said he was unaware of the building restrictions until he applied for a building permit approximately one year ago. He said the house predates the current Zoning Ordinance, thereby creating a hardship because it prohibits him from developing the property. Mr. Fetsuga said the deck would only be 20 inches off the ground, it would not be obtrusive, and would not adversely impact the neighborhood. He said the shed was on the lot when he purchased the property and that he was not aware of the non-compliance until he tried to obtain a building permit.

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

In response to a question from Mrs. Thonen regarding the width of the adjoining street, Mr. Fetsuga said Groveton Street is a double lane street with room for parking on either side.

Mr. Hammack made a motion to grant SP 93-L-056 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 4, 1994. He amended Condition 3 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-L-056 by ROBERT M. FETSUGA, 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 to remain 3.4 feet from side lot line, on property located at 6739 Harrison Lane, Tax Map Reference 92-2((14))25A, 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 26, 1994; 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 Rice Associates, dated July 16, 1991, revised June 7, 1993, submitted with this application, as qualified by these development conditions.

3. The applicant shall obtain a building permit for the structure.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1994. 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 93-L-124 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 4, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-124 by ROBERT FETSUGA, under Section 18-401 of the Zoning Ordinance to permit construction of deck 21.4 feet from street line of a corner lot, on property located at 6739 Harrison Lane, Tax Map Reference 92-2((14))25A, 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 26, 1994; 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 11,077 square feet.
4. There is no room to the rear of the house where the deck could be constructed nor to the other side of the house.
5. It is really in effect a side yard, since the property has double front yards.
6. It sets well back from the street and does not impair sight lines.
7. The proposed location is the only practical location to put the deck.

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

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

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

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

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 Rice Associates, dated July 16, 1991, revised June 7, 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 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 6-1 with Mrs. Thonen voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 396, January 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. GOLF PARK, INC., SPA 91-C-070 Appl. under Sect(s). 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for commercial recreation use (golf driving range) to permit amendment of conditions. Located at 1627 Hunter Mill Rd. on approx. 46.57 ac. of land zoned R-E. Hunter Mill District. Tax Map 18-4 ((1)) 23 and 26; and 18-4 ((8)) A, 1A, 2, 3, 4 and 5. (DEF. FROM 12/20 TO ALLOW THE BZA TO VISIT THE SITE AND FOR ADDITIONAL INFORMATION. DEF. FROM 1/11/94)

Chairman DiGiulian noted staff had indicated that the ownership of the property had been questioned. Barbara Byron, Director, Zoning Evaluation Division, said it had come to staff's attention that the ownership of Lot 4 needed to be clarified.

The applicant, John Thoburn, 1630 Hunter Mill Road, Vienna, Virginia, reaffirmed the affidavit with one modification. He noted that Thoburn Limited Partnership is also the title owner of 18-4((8))4, which was inadvertently omitted from the first page of the affidavit and pointed out that it had been correctly listed on the last page.

Chairman DiGiulian said the application had been deferred from December 20th in order for the BZA members to view the berms and for any additional written information. Ms. Byron called the BZA's attention to a draft set of minutes from the December 20, 1993 public hearing that staff had submitted to them.

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

Mr. Kelley made a motion to grant SPA 91-C-070 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 4, 1993.

Mrs. Harris said she would not support the motion because the berms were constructed differently than those discussed at the special permit public hearing, albeit under an agricultural grading plan. She expressed concern that if the applicant had come to the BZA prior to constructing the berms, how the BZA might have viewed the change in the berms. Mrs. Harris did not believe the berm height was in keeping with the residential character of the neighborhood. Although she believed the applicant would do a good job with the landscaping, she was concerned that the applicant proceeded to construct the berms and then come to the BZA for approval.

Mrs. Thonen said she had visited the site and was pleasantly surprised to discover there were no signs of erosion. She believed it would be a terrible disruption if the applicant was required to remove the berms and that she would support the motion.

Mr. Ribble said he would support the motion although he was concerned that the berms were constructed differently than approved under the special permit, but he did not believe the applicant had intentionally constructed the berms in error. He commended staff for their job on analyzing the application and pointed out that staff was recommending approval.

Mr. Hammack believed the berms are too high; therefore, he would not support the motion although the staff did do a good job in their analysis. He referenced a letter dated January 10, 1994 from an adjoining neighbor and explained to the audience that the BZA could only address the issue before them.

Mrs. Harris added that she was concerned about the precedent that could be set. She said the BZA held a public hearing and everyone left that public hearing with an understanding of the development conditions imposed with the special permit. The applicant chose to obtain an agricultural grading plan and proceeded to construct the berms under that plan and then come back to the BZA for an amendment to the special permit. Mrs. Harris said the citizens in the area have come before the BZA saying that the use is not harmonious with what was approved under the special permit.

Mr. Kelley said he did not believe the entire community was opposed to the berms nor that approving the special permit amendment would be precedent setting.

Chairman DiGiulian said he also did not believe that it would be precedent setting since the BZA hears numerous requests to amend special permits and added the only difference in this particular case is that the berms have already been constructed. He said he believed the berms were very well constructed and there is no evidence whatsoever of collapse or erosion. Chairman DiGiulian said he believed the berms were an asset to the community and that he would support the motion. He added that it was unrealistic to believe that a project of this type could be built from a special permit plat, which is somewhat a conceptual plan, without some modification.

There was no further discussion and Chairman DiGiulian closed the public hearing. The motion passed by a vote of 4-2 with Mrs. Harris and Mr. Hammack voting nay. Mr. Pammel was not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 91-C-070 by GOLF PARK, INC., under Section 3-E03 of the Zoning Ordinance to amend SP 91-C-070 for commercial recreation use (golf driving range) to permit amendment of conditions, on property located at 1627 Hunter Mill Road, Tax Map Reference 18-4{{1}}23 and 26; 18-4{{8}}A, 1A, 2, 3, 4 and 5, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on January 26, 1994; and

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

1. The applicant is the lessee of the property.
2. The present zoning is R-E.
3. The area of the lot is 46.57 acres.
4. The applicant constructed the berms to provide transition between the dwellings on Crowell Road and the driving range.
5. The extensive landscaping that is to be provided will soften the impact of the berms.
6. Agree with staff that raising the berms to the proposed height does not affect the use's conformance with the Comprehensive Plan.
7. The applicant meets the Special Permit Standards for Group 6 uses and additional Standards for golf driving ranges.
8. The berms do not impose an adverse impact on adjoining properties.

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

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

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. Prior to the issuance of any Non-Residential Use Permit, right and left turn lanes shall be provided into the proposed site entrance on Hunter Mill Road. These turn lanes shall be constructed to a standard as required by VDOT.

6. A pro-rata contribution toward the installation of a traffic signal at the intersection of Sunset Hills Road and Hunter Mill Road as determined by DEM shall be provided if determined to be warranted by VDOT and DEM at the time of site plan review.

7. A maximum of 75 parking spaces shall be provided. All parking for patrons, employees, owners, and other persons entering the property shall be located on-site in designated parking spaces.

8. There shall be no lighting of the parking area, and of the exterior of the clubhouse unless, required by DEM at the time of site plan review in which case such lighting shall be the minimum required.

9. There shall be no lighting of the driving range.

10. The hours of operation for the driving range shall not exceed 8:00 a.m. until sunset seven days a week year around. The hours of operation for the clubhouse facilities shall not exceed 8:00 a.m. until one half hour after sunset, seven days a week year around. Activities on the site, including, but not limited to, maintenance of vehicles and equipment, ball collection, mowing operations, and deliveries shall begin no earlier than the beginning of the above stated hours of operation and all activities shall cease one half hour after sunset year around seven days a week.

11. The vegetation shown on the plat along the northern and southern lot lines shall be deemed to fulfill the requirement for Transitional Screening 2 as may be deemed appropriate by the Urban Forestry Branch, DEM. Along the eastern lot line, the vegetation shown on the special permit plat shall be supplemented to the equivalent of Transitional Screening 2. Species of trees used to fulfill this requirement shall be as determined by the Urban Forestry Branch at the time of site plan review.

    Along the western lot line, between the parking area and Hunter Mill Road, the berm shown on the special permit plat shall be provided. The western lot line shall be planted with the number of species of plantings equivalent to that required in accordance with Transitional Screening 2 as determined feasible by the Urban Forestry Branch at the time of site plan review.

    In the area of the site where the special permit property abuts the 2 acre residential lot located at the intersection of Crowell Road and Hunter Mill Road, the existing vegetation shall be supplemented to a level equivalent to the requirement for Transitional Screening 2 as determined feasible by the Urban Forestry Branch at the time of site plan review.

    For the purposes of implementing this condition, trees labeled on the plat or referred to as large deciduous trees shall have a caliper of at least 3 1/2 inches at planting, trees labeled or referred to as large evergreen trees shall have a minimum planted height of eight (8) feet, trees labeled or referred to as medium evergreen trees shall have a minimum planted height of four (4) feet as may be acceptable to the Urban Forestry Branch. All species of trees shall be subject to approval by the Urban Forestry Branch.

    In keeping with sound horticultural practices, as may be determined necessary by the Urban Forestry Branch, the installation of evergreen trees may be delayed until the appropriate planting season. However such delay in planting required evergreen trees shall not exceed four (4) months from the issuance of a Non -Residential Use Permit as may be deemed appropriate by the Urban Forestry Branch. Any delayed plantings shall be bonded prior to the issuance of a Non-Residential Use Permit.

12. The barrier requirement shall be waived.

13. A tree preservation/tree replacement plan shall be reviewed and approved by the Urban Forestry Branch prior to site plan approval. This plan shall emphasize the preserving of the existing vegetation in the northwestern and southeastern corners of the site. If it is determined by the Urban Forestry Branch to be necessary to remove any trees previously designated to be preserved in order to located utility lines, or trails that cannot be located elsewhere, then an area of additional tree save of equivalent value as determined by the Urban Forestry Branch may be substituted at an alternate location on the site. If a suitable alternate location cannot be identified on the site by the Urban Forestry Branch, then the applicant may elect to replace such trees according to the directions of the Urban Forestry Branch pursuant to (Part 4 of Sect. 12-0403.7) of the Public Facilities Manual (PFM).

14. The three (3) structural detention ponds generally shown on the special permit plat shall be constructed as BMP's to WSPOD standards as determined by DEM at site plan review.

15. An integrated fertilizer, herbicide, and pesticide management program and turf maintenance plan for limiting excessive chemicals and protecting water quality in the Difficult Run watershed shall be implemented for this use. This program and plan shall provide for periodic monitoring and adjustment that demonstrates an intent to reduce the amount of nutrient, phosphate, and pesticide applied to the property over time. The design of this program and all monitored parameters shall be reviewed and approved by the Northern Virginia Soil & Water Conservation District of the Department of Extension and Continuing Education, the State Water Quality Control Board, the Environmental and Heritage Resources Branch, OCP and DEM prior to site plan approval. Following site plan review, a copy of the approved pesticide management program shall be kept on site at all times. Records of all applications of pesticides and herbicides shall be kept, shall be made available to county staff on demand, and shall be reviewed annually by the Environmental and Heritage Resources Branch, OCP. To provide added protection for the Difficult Run Watershed, the structural detention ponds required by Development Condition Number 14 shall be designed and engineered to provide a length of detention and type of filtration necessary to remove pollutants which may be generated by turfgrass management, as determined by DEM at the time of site plan review.

16. 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:

    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.

17. All signs shall comply with Article 12, Signs. To preserve the residential character of the area, no backlighted signs, no illuminated signs, and no roof signs shall be installed.

18. The clubhouse shall not exceed 2,500 square feet within the area shown on the special permit plat for the clubhouse. In addition, architectural elevations of the clubhouse, including building materials, shall be compatible with the character of the residential neighborhood architecture. Said clubhouse may be established in a temporary structure provided that the temporary structure is located within 50 feet of the building footprint of the permanent structure and is not any closer to the front lot line than the permanent structure shown on the special permit plat, and further provided that any temporary structure shall not exceed 2,500 square feet in size, shall not exceed one story in height and shall be limited to a period of five years from the time of the issuance of the Non-Residential Use Permit.

19. Pursuant to the agreement outlined in the letter from the owner of the property known on Tax Map 18-4((1))22, dated February 12, 1992, a covenant shall be placed on the 2.0 acre property known as Tax Map 18-4((1))22 which is located at the intersection of Crowell Road and Hunter Mill Road. This covenant shall stipulate that so long as the 46 acre parcel located at Tax Map 18-4((1))23, 26; 18-4((8))A, 1A, 2, 3, 4, and 5 is operated as golf driving range in accordance with the terms and conditions of the approval, no land use application shall be filed relating only to this 2.0 acre parcel. This covenant shall run to Fairfax County and shall be recorded in the Land Records of Fairfax County prior to the issuance of a Non-Residential Use Permit in a form approved by the County Attorney. Nothing in this covenant shall preclude the future inclusion of the subject 2.0 acres into SP 91-C-070. The covenant shall become null and void, and the land released thereof at the time of any such inclusion with SP 91-C-070.

20. Notwithstanding any notes on the approved plat, the proposed use shall be served only by public water located in a 24-inch water main in Hunter Mill Road and not by private well.

21. The applicant shall complete all trails indicated on the property in the adopted Comprehensive Plan.

22. There shall be no use of loudspeakers on the property.

23. Notwithstanding any notes on the approved plat, the accessory activities and operations in the clubhouse/maintenance facility shall be limited to the following: child care center as qualified by Condition 25, golf equipment rental, administrative office use, maintenance of equipment directly related to the driving range facility, the sale of vending machine and snack bar concessions, and the sale of golf-related accessories that are directly related to the driving range. There shall be no food preparation on the site. Food sales shall be limited to vending machines and snack bar concessions.

24. There shall be no arcade games, video games, juke boxes operating or present on the property.

25. Any child care center operating as an accessory use on the site shall only be used by patrons of the driving range.

26. Notwithstanding any notes on the special permit plat, the berms along Crowell Road may be no higher than those existing as of the date of approval of this special permit amendment. There are ten (10) high points, with approximate maximum elevations from west to east of 352', 352', 352', 354', 354', 354', 356', 360', 362', and 358'.

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* of the Special Permit unless the activity authorized has been established, or unless construction has started and is diligently pursued. 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 4-2 with Mrs. Harris and Mr. Hammack voting nay. Mr. Pammel was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 400, January 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. HAROLD GERRICK, VC 93-M-128 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit storage structure of 264.04 sq. ft. in size (200 sq. ft. max. allowed by Sect. 10-102). Located at 6107 Tonto Ct. on approx. 33,201 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((3)) (T) 38 and D1. (Concurrent with SP 93-M-065). (DEF. FROM 1/11/94)

9:00 A.M. HAROLD GERRICK, SP 93-M-065 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.9 ft. from side lot line and 0.6 ft. from rear lot line and storage structure to remain 0.9 ft. from side lot line (12 ft. min. side yard req. by Sects. 3-307 and 9 ft. min. rear yard req. by Sect. 10-104). Located at 6107 Tonto Ct. on approx. 33,201 sq. ft. of land zoned R-3. Mason District. Tax Map 72-2 ((3)) (T) 38 and D1. (Concurrent with VC 93-M-128). (DEF. FROM 1/11/94)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Harold Gerrick, 6107 Tonto Court, Alexandria, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. The subject property is 33,201 square feet in size and is located on Tonto Court east of Lincolnia Road and west of the Fairfax County Line which borders the City of Alexandria. The subject property and surrounding lots in the Parklawn Subdivision are zoned R-3 and are developed with single family detached dwellings. The request involved concurrent special permit and variance applications. The request for a special permit resulted from an error in building location and was for a reduction to the minimum yard requirements to allow a shed to remain 2.9 feet from a side lot line and 0.6 feet from the rear lot line and an accessory storage structure to remain 0.9 feet from a side lot line. A side yard of 12 feet and a rear yard of 25 feet are required on a lot zoned R-3.

The request for variance resulted from the applicant's request to permit a storage structure of 264.04 square feet in size to remain. Under Sect. 10-102 of the Zoning Ordinance, accessory storage structures are restricted to a maximum of 200.0 square feet in size.

Mr. Gerrick said he had only replaced a shed that was on the property when he purchased the property with a smaller shed. He said when the shed was 99 percent complete it was discovered that a special permit was needed.

In response to a question from Mrs. Harris, Mr. Gerrick said the previous shed sat on cement blocks. He said the shed was used for a horticultural shop.

Mr. Hammack asked how far the dwelling on Lot 39 sits from the shed and Mr. Gerrick replied approximately 40 feet. He added that since he was only replacing an existing shed he did not believe a building permit was needed.

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

Mr. Hammack asked if the shed could be moved and Mr. Gerrick said it would be difficult because of the number of trees.

Mrs. Harris made a motion to grant SP 93-M-065 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 4, 1994, with Condition 3 amended as reflected in the Resolution.

Mrs. Thonen pointed out the close proximity of the shed to the lot line. Mrs. Harris said only one corner of the shed was 0.6 feet from the shared lot line and added that the applicant had only replaced a shed that existed on the property at the time of purchase. Mr. Ribble said it was the only practical location for the shed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-065 by HAROLD GERRICK, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 2.9 feet from side lot line and 0.6 feet from rear lot line and storage structure to remain 0.9 feet from side lot line, on property located at 6107 Tonto Court, Tax Map Reference 72-2((3))(T)38 and D1, 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 26, 1994; 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. In this case, the applicant replaced an existing shed, made it smaller than the previous shed, and placed in the same location.

I. It is reasonable, although it was not correct, that the applicant believed he had the authority to replace the existing shed

J. The shed is being constructed correctly.

K. There are unusual topographic conditions on the property as there is a stream running through the back portion that would make it difficult to move the shed into a different location.

L. The shed will be harmonious community.

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 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 Walter L. Phillips, Inc. dated April 19, 1993 submitted with this application, as qualified by these development conditions.

3. The applicant shall obtain a building permit for the shed.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Ribble seconded the motion which carried by a vote of 5-2 with 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, 1994. 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 grant VC 93-M-128 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 4, 1994.

Mrs. Thonen said she believed the storage structure was too close to the lot line and would be difficult to maintain; therefore, she could not support the motion.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-128 by HAROLD GERRICK, under Section 18-401 of the Zoning Ordinance to permit storage structure of 264.04 square feet in size, on property located at 6107 Tonto Court, Tax Map Reference 72-2((3))(T)38 and D1, 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 26, 1994; 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 33,201 square feet.
4. The subject property is an unusual shaped lot that has many topographical constraints.

5. There is an easement going through the rear section of the property.
6. There is water runoff along the back section of the property which would make the placement of the shed in its present location a logical one.
7. It is not a condition reoccurring in the vicinity and the strict application of the Ordinance would produce undue hardship.
8. The authorization of the variance will not be of substantial detriment to adjacent properties.

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

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

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

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

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

1. This variance is approved for the location and the specified 264.4 square foot accessory storage structure shown on the plat prepared by Walter L. Phillips, Inc., dated April 19, 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 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 5-2 with 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, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 403, January 26, 1994, (Tape 1), Scheduled case of:

9:30 A.M. CAROL A. ROSS, VC 93-P-129 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 6 ft. high fence to remain in the front yard (4 ft. max. height permitted by Sect. 10-104). Located at 3010 Cedar Hill Rd. on approx. 12,039 sq. ft. of land zoned R-4. Providence District. Tax Map 50-3 ((19)) (3) 2. (DEF. FROM 1/11)

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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. The applicant's attorney, Bud Testerman, 3905 Railroad Avenue, Fairfax, Virginia, replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, presented the staff report prepared by Lori Greenlief, Staff Coordinator. She said the property is located at the corner of Woodberry Lane and Cedar Hill Road in the Pine Spring subdivision, is zoned R-4, and is developed with a single family detached dwelling. The surrounding properties are zoned R-4 and also developed with single family detached dwellings. The applicant was requesting approval of a variance to allow a 6 foot high fence to remain in the front yard. The Zoning Ordinance allows a maximum of 4 feet in height for a fence in the front yard; therefore, a variance of 2 feet was requested. (Ms. Anderson called the BZA's attention to the viewgraph.)

In response to a question from Chairman DiGiulian about an encroachment into the front yard, Ms. Anderson explained that the variance was only for the height of the fence.

The BZA and Ms. Anderson discussed why part of the fence was not considered a part of the building since it was attached. Ms. Anderson said it was her understanding that "attached" referenced structures that are attached by a building wall, and a fence is not classed as a building wall.

Mr. Testerman submitted a petition signed by adjacent neighbors in support of the request. He said the bulk of the fence is within an area of the lot where the applicant could have built a house and to say that a fence was not allowed seemed illogical. Mr. Testerman said he realized that the technical definition of a front yard on a corner lot is such that the structure, which was put there as a screen, is classed as a fence and does technically require a variance since it exceeds the 4 foot height limitation.

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

Mr. Ribble made a motion to grant VC 93-P-129 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 4, 1994.

Mr. Pammel said the house was built in the '40s or '50s with a floor to ceiling picture window facing the street and the applicant erected the fence to allow them some privacy.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-129 by CAROL A. ROSS, under Section 18-401 of the Zoning Ordinance to permit 6 foot high fence to remain in the front yard, on property located at 3010 Cedar Hill Road, Tax Map Reference 50-3((19))(3)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 26, 1994; 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 12,039 square feet.
4. The applicant has met the nine required standards for the granting of a variance, in particular there is an extraordinary situation with Woodberry Lane going a short distance causing the subject property to have a double front.
5. The fence may not be the most beautiful fence, but this is a strict technicality and the BZA is here to grant relief from such technicalities.
6. The house was built in the '40s or '50s and the side where the fence is located has a floor to ceiling picture window; therefore, the fence allows the applicant to have more privacy by providing screening.
7. The fence does not create a sight line problem.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would 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 fence shown on the plat prepared by Cervantes and Associates, P.C., dated July 28, 1993, submitted with this application and is not transferable to other land.

Mr. Kelley 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 February 3, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 405, January 26, 1994, (Tape 1), Scheduled case of:

10:00 A.M. STEVEN AND GAIL ORDUN, SP 93-P-055 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow carport to remain 5.4 ft. from side lot line and accessory structure to remain 0.1 ft. from side lot line (15 ft. min. side yard req. for carport and 20 ft. min. side yard req. for accessory structure by Sects. 3-107, 2-412 and 10-104). Located at 8603 Locust Dr. on approx. 21,780 sq. ft. of land zoned R-1. Providence District. Tax Map 39-3 ((6)) 21. (DEF. FROM 1/11)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant, Steven Ordun, 8603 Locust Drive, Vienna, Virginia replied that it was.

Don Heine, Staff Coordinator, presented the staff report. The 21,780 square foot subject property is a corner lot located at the intersection of Locust Drive and Addison Street within the Oak Ridge Subdivision. The subject property and the surrounding lots are zoned R-1 and developed with single family dwellings. The applicants were requesting approval of a special permit for two error in building locations. The first error in building location was to allow an existing carport to remain 5.4 feet from a side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, an error in building location for 9.6 feet was requested. The second error in building location was to allow an existing accessory structure consisting of a pool house to remain 0.1 feet from the side lot line. The Zoning Ordinance requires a 20 foot minimum side yard; therefore, an error in building location for 19.9 feet was requested.

In response to questions from Mr. Hammack, Mr. Ordun said both structures were on the lot when they purchased the property in June 1987. He said the neighbors have indicated that the structures have been on the property for approximately 20 years.

Mr. Ordun said when they were in the process of remodeling the kitchen the errors were discovered. He said they bought the house for $230,000 in 1987 and have now discovered that the property was not legal when they purchased it. Mr. Ordun said they use the carport every day and because the lot is a corner lot there is no other feasible location for such a structure.

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

Mr. Hammack made a motion to grant SP 93-P-055 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 4, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-P-055 by STEVEN AND GAIL ORDUN, 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 5.4 feet from side lot line and accessory structure to remain 0.1 feet from side lot line, on property located at 8603 Locust Drive, Tax Map Reference 39-3((6))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 January 26, 1994; 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. They bought the property with the structures already constructed and it appears the structures were on the property quite some time before they purchased the property.

I. The applicants were not aware that the structures were in non-compliance until they sought a building permit to do home improvements.

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 locations and the specified carport addition and accessory 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 use(s) indicated on the special permit plat, entitled House Location, prepared by Cook and Miller, Ltd. and recertified by Arthur Cohen, Architect, dated April 6, 1984, revised July 29, 1993 through October 18, 1993, submitted with this application, as qualified by these development conditions.

3. The applicants shall obtain a building permit, if required, for the carport and the accessory structure.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards. The applicant shall be responsible for obtaining the required 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 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 407, January 26, 1994, (Tape 1), Scheduled case of:

10:00 A.M. GEORGE L. LANE, APPEAL 93-V-028 Appl. under Sect. 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that components of appellants proposed individual sewage disposal system would be located off-site and therefore the installation of such system would not satisfy the requirement of Sect. 2-503 of the Zoning Ordinance that the system be located on the same lot as the principal use. Located at 7600 Bayview Dr. on approx. 51,508 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 118-1 ((2)) 99. (DEF. FROM 1/11/94)

Mr. Kelley made a motion to defer A 93-V-028 to March 8, 1994, at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 407, January 26, 1994, (Tape 1), Information Item:

Request from McLean Children's Academy
To Schedule the application on February 8 or February 15, 1994

Mr. Pammel made a motion to schedule McLean Children's Academy to February 8, 1994, at the applicant's request. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 407, January 26, 1994, (Tape 1), Information Item:

Request to do Intent to Defer for
Dolley Child Care Center, SP 93-L-072

Mr. Pammel asked why the applicant was requesting a deferral. Don Heine, Staff Coordinator, explained that the applicant's agent was talking to the applicant about reducing the intensity of the request. Mr. Pammel said he was concerned about applicants scheduling a public hearing and at the last minute requesting a deferral to try and resolve an issue.

Chairman DiGiulian asked for staff comments. Mr. Heine said the notices were not in order. The Chairman said the BZA could convey to the applicant its intent to dismiss the case if the notice requirement is not met for the February 8th public hearing. Mr. Hammack said it appeared from the date on the letter from the applicant's agent that they had ample time to resolve any outstanding issue.

Following further discussion, Mr. Pammel made a motion to defer the application for one month with the stipulation that the BZA would consider dismissing the case at that time. Ms. Anderson suggested March 8, 1994, at 9:30 a.m. Mr. Pammel so moved. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Request to do Intent to Defer for
Ourisman Dodge Appeal

Mrs. Thonen said it was her understanding that the appellant was waiting for the Virginia Department of Transportation (VDOT) to make a decision; therefore, she would make a motion to defer the appeal to March 22, 1994, at 9:30 a.m. Mrs. Harris seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: February 15, 1994

APPROVED: February 23, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 2, 1994. 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 9:20 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 409, February 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT A. FELDMAN AND DEBORAH J. DANKER, SP 93-M-067 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition (porch) to remain 8.7 ft. from side lot line (15 min. side yard req. by Sect. 3-207). Located at 3404 Grass Hill Terrace on approx. 28,575 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 688. (Concurrent with VC 93-M-127). (DEF. FROM 1/11/94)

9:00 A.M. ROBERT A. FELDMAN AND DEBORAH J. DANKER, VC 93-M-127 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.7 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 3404 Grass Hill Terrace on approx. 28,575 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 688. (Concurrent with SP 93-M-067). (DEF. FROM 1/11/94)

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

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Susan Langdon, Staff Coordinator, who could not be present for the case. She stated that the applicants were requesting a special permit to allow an existing screened porch to remain 8.7 feet from the side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicants were requesting a special permit of 6.3 feet to the minimum side yard requirement.

Ms. Kelsey stated that the applicants were also requesting a variance to allow construction of an addition 8.7 feet from the side lot line. The Zoning Ordinance requires a minimum 15 foot side yard; therefore, the applicants were requesting a variance of 6.3 feet to the minimum side yard.

The applicants' agent, Carl E. Neuberg, CEN Architects, 8294-B Old Courthouse Road, Vienna, Virginia, addressed the BZA. He concurred with the staff report and asked the BZA to grant the request.

Chairman DiGiulian asked how the porch came to be in violation. Mr. Neuberg stated that in 1959, the original contractor had built the porch too close to the lot line. He explained that when the applicants, who had purchased the property in the 1980's, decided to enclose the porch they were informed a variance would be needed.

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

Mr. Pammel made a motion to grant SP 93-M-067 subject to the development conditions contained in the staff report dated January 4, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-067 by ROBERT A. FELDMAN AND DEBORAH J. DANKER, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow addition (porch) to remain 8.7 feet from side lot line, on property located at 3404 Grass Hill Terrace, Tax Map Reference 61-1(11)688, 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, 1994; 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;

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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 Alexandria Surveys, Inc., dated April 17, 1985, revised by Carl E. Neuberg, Architect, through June 18, 1993, submitted with this application, as qualified by these development conditions.

3. The applicant shall obtain administrative approval for the error in building location for the existing carport.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) 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 with Mrs. Harris and Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1994. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel made a motion to grant VC 93-M-127 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 4, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-127 by ROBERT A. FELDMAN AND DEBORAH J. DANKER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.7 feet from side lot line, on property located at 3404 Grass Hill Terrace, Tax Map Reference 61-1((11))688, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 2, 1994; 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 28,575 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The topography, as well as the odd, irregular size and shape of the lot, precludes the addition being placed elsewhere on the property.

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

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

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

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

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

1. This variance is approved for the location and the specified structures and additions shown on the plat prepared by Alexandria Surveys, Inc., dated July 17, 1985, revised by Carl E. Neuberg, Architect, through June 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 412, February 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MARVIN AND GLORIA CETRON, VC 93-M-136 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 28.1 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located at 3612 Boat Dock Dr. on approx. 15,010 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-4 ((1)) 164C.

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. Pleasants replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to allow construction of a dwelling 28.1 feet from the front lot line. The Zoning Ordinance requires a minimum 35 foot front yard; therefore, the applicants were requesting a variance of 6.9 feet to the minimum front yard requirement.

The applicants' agent, Richard H. Pleasants, Pleasants & Associates, Inc., 6404 G Seven Corners Place, Falls Church, Virginia, addressed the BZA. He said the applicants would like to build a house on the narrow lot which has an unusually steep topography. He used the viewgraph to show that, although the lot meets the minimum lot requirements, it is one of the smallest lots in the area. Mr. Pleasants explained that the drainage easement on the north, and the sanitary sewer easements on both the south and west precluded any relief along the northern, southern, and western lot lines. He also noted that during the original subdivision, a 28 foot setback requirement was imposed along the southern lot line. In summary, Mr. Pleasants said that the request was for a minimal variance and noted that just a small triangular portion of the structure would require the variance. He asked the BZA to grant the request.

In response to Mr. Ribble's question regarding the structure's design, Mr. Pleasants explained that location of the two car garage was restricted by the topographical conditions of the lot.

Mr. Ribble asked if the current Zoning Ordinance had reduced the setback requirement from 50 to 35 feet. Mr. Heine stated that he did not know.

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

Mr. Pammel made a motion to grant VC 93-M-136 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-136 by MARVIN AND GLORIA CETRON, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 28.1 feet from front lot line, on property located at 3612 Boat Dock Drive, Tax Map Reference 61-4((1))164C, 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, 1994; and

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

1. The applicant are the owners of the land.
2. The present zoning is R-2 and HC.
3. The area of the lot is 15,010 square feet.
4. The lot is most unusual with many restrictions. There is a sanitary sewer to the rear and a storm water easement to the north which reduces the building envelope.
5. The cul-de-sac creates an additional problem with respect to the setback because it's determined to be a front yard setback.
6. A hardship does exist and the requested variance is very minimal.

7. The application meets the necessary standards for the granting of a variance.
8. The lot has an unusual shape and topography.
9. There are many constraints with respect to being able to build 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 dwelling shown on the plat prepared by Coldwell, Sikes, and Almirall, revised November 12, 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 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 with Mrs. Harris and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. RAFAT MAHMOOD, VC 93-Y-143 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.3 ft. from side lot line such that side yards total 15.2 ft. (8 ft. min. side yard and 24 ft. min. total side yards req. by Sect. 3-207). Located at 9333 Mount Vernon Circle on approx. 18,000 sq. ft. of land zoned R-2 (Cluster). Mt. Vernon District. Tax Map 110-3 ((11)) 115.

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

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Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to allow construction of a garage addition 3.3 feet from the side lot line such that side yards total 15.2 feet. The Zoning Ordinance requires a minimum 8 foot side yard and a minimum 24 foot total side yards; therefore, the applicants were requesting variances of 4.7 feet to the minimum side yard requirement and 8.8 feet to the minimum total side yards requirement, respectively.

The applicant, Rafat Mahmood, 9333 Mount Vernon Circle, Alexandria, Virginia, addressed the BZA. He stated that he would like to build a garage on an existing slab. Mr. Mahmood explained that there would be no adverse drainage or environmental impact on the neighborhood. He noted that the proposed location was the only logical place to build the garage.

In response to questions from the BZA, Mr. Mahmood stated that because of its location, it is difficult to access the existing garage. He explained that the existing garage would be converted into a playroom for the children. Mr. Mahood noted that the proposed one story garage addition would be easier to access.

Mr. Ribble made a motion to deny VC 93-V-143 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 93-V-143 by RAFAT MAHMOOD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.3 feet from side lot line such that side yards total 15.2 feet, on property located at 9333 Mount Vernon Circle, Tax Map Reference 110-3{{11}}115, 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, 1994; 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 18,000 square feet.
4. The application does not meet the necessary standards for the granting of a variance.
5. The applicant already has a garage which would be converted into a living area.
6. The request is a clear case of convenience under 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.

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

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

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

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1994.

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Page 415, February 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS G. & BARBARA A. MENKE, VC 93-S-139 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.8 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 7908 Jansen Ct. on approx. 13,692 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (4) 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. Ms. Menke replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to allow construction of a garage addition 9.8 feet from the side lot line. The Zoning Ordinance requires a minimum 12 foot side yard; therefore, the applicants were requesting a variance of 2.2 feet to the minimum side yard requirement.

The applicant, Barbara A. Menke, 7908 Jansen Court, Springfield, Virginia, addressed the BZA. She stated that she would like to convert an existing carport into a one-car garage. Ms. Menke explained that without the variance there would not be adequate space in which to open the car doors. She said that the exceptionally narrow, shallow lot had caused the need for the variance. In conclusion, Ms. Menke stated that the addition would be aesthetically pleasing and would be in harmony with the neighborhood. She noted the neighbors' support and asked the BZA to grant the request.

In response to Mr. Ribble's question regarding the characteristics of the lot, Ms. Menke said the lot was pie shaped with lot lines which converged from 20 to 12 feet.

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

Mr. Kelley made a motion to grant VC 93-S-139 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-139 by THOMAS G. AND BARBARA A. MENKE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.8 feet from side lot line, on property located at 7908 Jansen Court, Tax Map Reference 89-2((4))(4)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 February 2, 1994; and

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

1. The applicant are the owners of the land.
2. The present zoning is R-3.
3. The area of the lot is 13,692 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The exceptional shape of the lot has caused the need for the variance.
6. The addition will be no closer to the lot line than the existing structure.

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

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

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

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

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

1. This variance is approved for the location and the specified garage addition shown on the plat prepared by Kenneth W. White, Land Surveyor, dated October 4, 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. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. HAROLD E. GAY, VC 93-M-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 4.2 ft. from side lot line and 3.2 ft. from rear lot line (10 ft. min. side yard req. and 8.5 ft. min. rear yard req. by Sects. 10-103 and 10-104) and to allow excess coverage of min. req. rear yard (30% max. coverage permitted by Sect. 10-103). Located at 3285 Annandale Rd. on approx. 10,010 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((10)) 9.

Page 417, February 2, 1994, (Tape 1), HAROLD E. GAY, VC 93-M-141, continued from Page 416)

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. Gay replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to allow an 8.5 foot high aluminum carport/vehicle shelter to remain 4.2 feet from the side lot line and 3.2 feet from the rear lot line. The Zoning Ordinance requires a minimum 10 foot side yard and a minimum 8.5 foot rear yard; therefore, the applicants were requesting a variance of 5.8 feet to the minimum side yard requirement and 5.3 feet to the minimum rear yard requirement, respectively.

Mr. Hunter stated that the applicant was also requesting a variance to allow uses and accessory structures to cover more than 30 percent of the area of the minimum required rear yard. The three metal sheds and the carport/vehicle shelter cover 41.2 percent of the rear yard.

Mr. Pammel noted that the applicant had indicated that adjustments had been made to lower the height of the of carport/vehicle shelter to 8.5 feet so that it currently meets the Zoning Ordinance requirement. Mr. Hunter said that the Zoning Administrator had determined the structure to be a garage or carport.

The BZA had a brief discussion regarding the definition of the structure. It noted that there was some confusion as to which section of the Zoning Ordinance the request falls under.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that staff believed the structure was defined as an accessory use. She said that the Zoning Ordinance has different provisions for storage structures and noted that there is no definition for just a vehicle shelter. Ms. Kelsey stated there is a definition for a carport which stipulates that it must be attached to the principle structure of the house. She noted that one of the provisions for a free standing accessory storage structure says that "an accessory storage structure which does not exceed 8 1/2 feet in height, may be located in any part of any side or rear yard." However, since the structure looked like and was used as a carport, staff had problems with the definition.

Mr. Pammel expressed his belief that the request should fall under the accessory structure provision of the Zoning Ordinance. He noted that if the structure is 8 1/2 feet or less, a variance would not be needed.

Ms. Kelsey stated that if the BZA had questions regarding the Zoning Ordinance's definition of the structure, staff could further research the issue.

The applicant, Harold E. Gay, 3285 Annandale Road, Falls Church, Virginia, addressed the BZA. He explained that when he had contacted Fairfax County regarding the structure, he was told that if the structure did not exceed 8 1/2 feet in height, it could be placed anywhere in the yard. Mr. Gay said the problem arose when the supplier sent the wrong size structure. He noted that the problem has been resolved and the structure now meets the 8 1/2 foot height requirement. Mr. Gay said that when he applied for a building permit, staff had a problem in defining the structure.

Mr. Gay said without the variance, the structure would have to be relocated and additional grading, which could disturb the natural drainage of the lot, would be required. He stated that when warmer weather arrives, he intends to remove one of the existing sheds. In conclusion, Mr. Gay noted that there is no visual impact on the neighborhood and asked the BZA to grant the request.

Ms. Kelsey said that under Par. 11, Sect. 10-104 of the Zoning Ordinance it states, "No accessory structure or use which exceeds seven (7) feet in height shall be located in any location in any minimum required side yard, nor a distance equal to its height to the rear lot line." She noted that staff considered the structure to be an accessory structure and further noted that the approved building permit referred to the structure as a detached garage, open on both sides and back.

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

Mrs. Thonen made a motion to defer VC 93-M-141 to February 15, 1994 at 8:00 p.m. She instructed staff to provide written testimony from Jane W. Gwinn, Zoning Administrator, regarding a definition of the structure.
Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Hammack absent from the meeting.

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Page 417, February 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ROGER & DIANE DOWNEY, VC 93-M-140 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures (sheds, decks and pool) in a front yard on a lot containing less than 36,000 sq. ft. (prohibited by Sect. 10-104), construction of 7.0 ft. high fence in front yard (4.0 ft. max. height permitted by Sect. 10-104), construction of decks 11.5 ft. and 10.0 ft. from front lot line (24 ft. min. front yard req. by Sects. 3-307 and 2-412), sheds 11.5 ft. and 25.0 ft. from front lot line and pool 16.0 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-307). Located at 3908 Wheat Ct. on approx. 20,027 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((14)) (11) 66.

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

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicants were requesting multiple variances to allow accessory structures, including three storage sheds, two decks and an above-ground pool to remain in a front yard of a lot containing less than 36,000 square feet. The variances requested were for a 4 foot high deck 11.5 feet from a front lot line, a 4 foot high deck 10 feet from a front lot line, a 4 foot high shed 11.5 feet from a front lot line, a 6 foot high shed 25 feet from a front lot line, a 3.8 high above-ground pool 16 feet from a front lot line, and a 7 foot high fence to be located in a front yard. The Zoning Ordinance requires a minimum 30 foot front yard except that decks 4 feet in height or less may extend 6 feet into the minimum front yard; therefore, the applicants were also requesting a 12.5 foot variance for a 4 foot high deck, a 14 foot variance for another 4 foot high deck, an 18.5 foot variance for a shed, a 5 foot variance for the other shed, a 14 foot variance for the above-ground pool, and a 3 foot variance for the 7 foot high fence.

Ms. Langdon noted that Condition 1 should be modified to reflect a plat date of July 22, 1992, revised through January 10, 1994.

The applicant, Roger Downey, 3908 Wheat Court, Alexandria, Virginia, addressed the BZA. He stated that when he purchased the property, he did not realize it had two front yards. Mr. Downey said that after he had applied for the permits, an inspector visited the site and found no problems. He explained that the contractor started the project without the proper permits on the basis of the inspector's verbal approval. Mr. Downey stated that he had expressed concerns, but the contractor noted there were other similarly situated pools in the area and had convinced him that everything would be okay.

In response to Mrs. Thonen's question as to whether the other pools in the area were located in the front yard, Mr. Downey said they were. He said that the two front yards, as well as the topographical condition of the lot, restricted the use of the property.

Mr. Downey stated that Lacy Boulevard is heavily traveled and the 7 foot fence would provide not only privacy for his family, but would screen the pool from the neighbors. He noted that if the variance is granted, he planned to add decks to the pool and to landscape the area.

Mrs. Thonen referred to the letters in opposition and asked if the platform and deck around the pool would be 4 feet high. Mr. Downey said they would. She then noted that under the Code, the railings for the deck and platform must be 3 feet in height; therefore, the total height would be 7 feet. Mr. Downey said she was correct.

In summary, Mr. Downey asked that if the BZA were to deny the pool portion of the request, it deny the entire variance so that he could attempt to get some financial restitution from the contractor. He expressed his belief that the project would be beneficial to the area and noted that he had not intended to circumvent the County regulations.

In response to Mr. Ribble's questions regarding the permits, Mr. Downey said he had submitted copies of the permits and the pool contract when he applied for the variance.

Chairman DiGiulian noted that the County had denied the building permit. Mr. Downey explained that construction began after the inspector had visited the site and verbally okayed the project. He further explained that the pool contractor indicated the building permit was just a formality.

Ms. Kelsey asked if Mr. Downey knew if the inspector had been a Zoning Inspector or a Building Inspector. Chairman DiGiulian said that Mr. Downey had testified that the contractor had met with the inspector. Chairman DiGiulian asked Mr. Downey if he had any knowledge as to whether the inspector was from the Department of Environmental Management or Zoning. Mr. Downey said he believed the inspector was from the Engineering Branch as he inspected the site for drainage. He explained that the site had also been inspected to see if it would be suitable for a pool.

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

Arthur Simpson, 3901 Wheat Court, Alexandria, Virginia, addressed the BZA. He stated that he would be opposed to a 7 foot fence as it would present a fortress like appearance and could lower property values. Mr. Simpson noted that the only wood fence in the area is a 40 foot section of a 6 foot stockade fence that is in a wooded section of Lacy Boulevard.

In response to Chairman DiGiulian's question as to whether he had any objection to the pool, Mr. Simpson said he did not.

Terry Kester, 3911 Wheat Court, Alexandria, Virginia, addressed the BZA. He presented a letter of opposition signed by the Simpsons and the Meads. He expressed his concern regarding the fence. He said that he would support a 7 foot fence along Lacy Boulevard, but would strongly oppose a fence in the front yard along Wheat Court.

In response to Chairman DiGiulian's question as to whether he would support a 7 foot wood fence along the side lot line, Mr. Kester said the neighbors would prefer that any fence along the side lot lines be limited to 4 feet in height.

Mrs. Thonen noted that the BZA had received two letters of opposition which would be made part of the record.

Chairman DiGiulian called for rebuttal.

Mr. Downey stated that he had no intention of creating a fortress like atmosphere and had no intention of constructing a fence in the front yard along Wheat Court. Again, he said that he intended to build the fence along the front lot line along Lacy Boulevard. Mr. Downey noted that he could construct a 7 foot fence along the side lot lines without a variance. He explained that he needed the fence for security reasons in order to protect a half million dollars worth of television electronic equipment in his home.

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

Mrs. Thonen made a motion to grant VC 93-M-140 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 25, 1994. She stated that her motion would restrict the construction of the 7 foot fence to the front lot line along Lacy Boulevard and would restrict the height of the fences along all other lot lines to 4 feet.

Mr. Kelley seconded the motion.

In an attempt to clarify the motion, Mr. Kelley asked if a 7 foot fence could be constructed along the side lot lines. Mrs. Thonen said that the motion stated that the applicant could not construct a 7 foot fence along the side lot line.

Mr. Pammel stated that he could not support the motion which would restrict the fence height along the side lot line.

Mr. Kelley withdrew his second.

Mr. Kelley made a motion to grant VC 93-M-140 subject to the development conditions contained in the staff report dated January 25, 1994. Mr. Kelley said that the motion would restrict the building of a 7 foot fence in the front yard along Wheat Court.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-140 by ROGER AND DIANE DOWNEY, under Section 18-401 of the Zoning Ordinance to permit accessory structures (sheds, decks and pool) in a front yard on a lot containing less than 36,000 square feet, construction of 7.0 foot high fence in front yard, **(ALONG LACY BOULEVARD ONLY)** construction of decks 11.5 feet and 10.0 feet from front lot line, sheds 11.5 feet and 25.0 feet from front lot line and pool 16.0 feet from front lot line, on property located at 3908 Wheat Court, Tax Map Reference 61-4{{14)}{11)66, 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, 1994; 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 20,027 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 shown on the plat prepared by Rice Associates, dated July 22, 1992, revised through January 10, 1994, 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. All required permits and inspections shall be obtained for the hot tub shown on the plat.

4. 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. Pammel seconded the motion which carried by a vote of 4-1 with Mrs. Thonen 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 February 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 420, February 2, 1994, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. NICHOLAS T. & MARCIA I. LAPPAS, VC 93-H-138 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 13121 Greg Roy Ln. on approx. 42,153 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 16-3 ((3)) 21.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Lappas 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 an addition 15.0 feet from the side lot line. The Zoning Ordinance requires a minimum 20 foot side yard; therefore, the applicants were requesting a variance of 5 feet to the minimum side yard requirement.

The applicant, Nicholas Lappas, 13121 Greg Roy Lane, Herndon, Virginia, addressed the BZA. He stated that he would like to construct an addition which would incorporate the existing carport. Mr. Lappas said the addition would include a living room, a study, and a bath. He

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noted that the developer had placed the structure in an unusual position and explained that, although the lot is large, the house was wedged in the northeast corner of the property. Mr. Lappas said the floor plan of the house precluded placing the addition anywhere else on the lot and noted that only a small area of the addition would require a variance. He said that the property is well screened, there would be no detrimental visual impact on the neighbors, the adjoining neighbor supported the request, and asked the BZA to grant the request.

Mr. Ribble noted that the addition would be almost as large as the existing structure. Mr. Lappas said that the structure, which was built in 1955, needed extensive renovation.

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

Mr. Ribble made a motion to grant VC 93-H-138 for the reasons reflected in the Resolution and subject to the staff report dated January 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-H-138 by NICHOLAS T. AND MARCIA I. LAPPAS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.0 feet from side lot line, on property located at 13121 Greg Roy Lane, Tax Map Reference 16-3((3))21, 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, 1994; 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 42,153 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The location of the existing dwelling precludes placing the addition elsewhere on the lot.
6. The request is for a minimal variance with just one corner of the addition needing 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 Andrew P. Dunn, revised by Arthur P. Murphy, B.A., through December 20, 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. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Harris and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 422, February 2, 1994, (Tape 2), Scheduled case of:

9:00 A.M. ROBERT M. & DARLENE K. BOWE, VC 93-Y-142 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.3 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-207). Located at 13591 Brewerton Ct. on approx. 14,901 sq. ft. of land zoned PDH-2. Sully District. Tax Map 55-1 ((15)) 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. Mr. Bowe 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 screened porch addition 5.3 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicants were requesting a variance of 19.7 feet to the minimum side yard requirement.

The applicant, Robert Bowe, 13591 Brewerton Court, Chantilly, Virginia, addressed the BZA. He used the viewgraph to show the water flood control area which is approximately 25 feet from the rear of the structure. Mr. Bowe said that the water provided a breeding ground for mosquitoes which made it very uncomfortable to use the backyard during the summer months. He explained that the screened porch, which would be directly off the family room, would allow the family the opportunity to enjoy the backyard. In summary, Mr. Bowe stated that the addition would extend no further into the back yard than the existing house; because of the layout of the house, the proposed location is the only logical place to build the enclosed deck; and, the builder would have been allowed to build the addition, by right. He expressed his belief that the addition would be beneficial to the neighborhood 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 93-Y-142 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated January 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-142 by ROBERT M. AND DARLENE K. BOWE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.3 feet from rear lot line, on property located at 13591 Brewerton Court, Tax Map Reference 55-1((15))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 February 2, 1994; 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 14,901 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The addition could have been built by-right when the house was built since it is a planned development housing district. However, the applicants opted not to build it at that time, only to find out that a variance is required.
6. The pipestem lot has an irregular shape.
7. The addition will be placed adjacent to the open space property owned by 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 and the specified addition shown on the plat prepared by Dewberry & Davis, dated October 11, 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 5-0 with Mrs. Harris and Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 424, February 2, 1993, (Tape 2), Action Item:

Approval of Resolutions for January 25, and January 26, 1994 Hearings

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

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Page 424, February 2, 1993, (Tape 2), Action Item:

Request for Date and Time
Aaron and Caroline Thompson Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of March 29, 1994. Mr. Kelley seconded the motion.

Mr. Kelley asked staff if the appellant had indicated that they might file for a variance or a special permit. Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that she did not know.

The motion carried by a vote of 5-0 with Mrs. Harris and Mr. Hammack absent from the meeting.

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Page 424, February 2, 1993, (Tape 2), Action Item:

Scheduled Board of Zoning Appeal Public Hearing Dates
September through December 1994

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA). She stated that, per the BZA's request, she had contacted the Government Center Management Office and was informed that Thursday, September 8, 1994, and Thursday, November 10, 1994, would be available for the BZA's public hearings.

Mr. Pammel made a motion to accept the scheduled BZA public hearing dates as submitted by staff. Mrs. Thonen seconded the motion which carried by a vote of 5-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:55 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

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

SUBMITTED: March 8, 1994

APPROVED: March 15, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 8, 1994. The following Board Members were present: Chairman John DiGiulian; Martha Harris; Mary Thonen; Paul Hammack; and James Pammel. Robert Kelley and John Ribble 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 425, February 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS K. BLASBERG, SP 93-Y-071 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition (chimney) 5.0 ft. from side lot line (17 ft. min. side yard req. by Sects. 2-412 and 3-C07). Located at 15215 Philip Lee Rd. on approx. 15,338 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 280.

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 K. Blasberg, 15215 Philip Lee Road, Chantilly, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located in the Pleasant Valley Subdivision; surrounding lots are also zoned R-C and developed with single family detached dwellings. He said that staff recommended approval of SP 93-Y-071, subject to the Proposed Development Conditions contained in the staff report.

Mr. Blasberg said that Mr. Hunter's presentation covered 2 of the points he had planned to make. He said that, although he needed a special permit now, prior to July 26, 1982, a chimney was permissible without a special permit; he said he believed that was why staff had recommended approval of the application. Mr. Blasberg's statement of justification was previously submitted in writing and incorporated into the record.

Mr. Blasberg requested that the BZA waive the eight-day waiting period.

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

Mr. Hammack moved to grant SP 93-Y-071 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 2, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-071 by THOMAS K. BLASBERG, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition (chimney) 5.0 ft. from side lot line, on property located at 15215 Philip Lee Road, Tax Map Reference 33-4((2))280, 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 8, 1994; 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 approximately 15,338 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.

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 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 Paciulli Simmons and Associates, LTD., dated November 13, 1984, revised by Thomas K. Blasberg, November 16, 1993, 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 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.

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

Mr. Pammel made a motion to waive the eight-day waiting period. Mrs. Harris seconded the motion, which carried by a vote of 4-0. Mr. Pammel was not present for the vote. Mr. Kelley and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 8, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 426, February 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. DAVE & DONNA MORGAN, VC 93-Y-145 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line such that both sides total 36.0 ft. (12 ft. min. side yard req., 40 ft. min. side yard total req. by Sect. 3-107). Located at 11907 Saint Helena Dr. on approx. 20,288 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 36-3 ((11)) 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. Dave Morgan, 11907 Saint Helena Drive, Oakton, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Oakton Vale Subdivision are also zoned R-1 and developed with single family detached dwellings. He said that the addition was for a sunroom and deck.

Mr. Morgan presented the statement of justification, previously submitted in writing and incorporated into the record.

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

Mr. Pammel moved to grant VC 93-Y-145 for the reasons set forth in the Resolutions, subject to the Proposed Development Conditions contained in the staff report dated February 2, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-145 by DAVE & DONNA MORGAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from side lot line such that both sides total 36.0 ft., on property located at 11907 Saint Helena Drive, Tax Map Reference 36-3((11))4, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 8, 1994; 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 approximately 20,288 square feet.
4. The lot has an irregular shape.
5. The location of the dwelling on the lot is unusual and makes it impossible for additions to be located in any other area than that proposed by the applicant.

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

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

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

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

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

1. This variance is approved for the location of the sunroom and deck additions shown on the Plat for Variance prepared by Kenneth W. White, dated October, 4 1993, revised October 19, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 16, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 428, February 8, 1994, (Tape 1), SCHEDULED CASE OF:

9:00 A.M. MCLEAN BIBLE CHURCH, SPA 73-D-151-4 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 73-D-151 for church and related facilities to amend development conditions. Located at 850 Balls Hill Rd. on approx. 5.75 ac. of land zoned R-1. Dranesville District. Tax Map 21-3 ((1)) 56A. (DEF. FROM 11/16/93 TO ALLOW APPLICANT TO OBTAIN A SHARED PARKING AGREEMENT.)

Chairman DiGiulian advised that the Board was in receipt of a letter from William H. Hansbarger, 301 Park Avenue, Falls Church, Virginia, requesting deferral. He asked if staff could give any indication of when the Department of Environmental Management (DEM) might have the parking study completed.

Susan Langdon, Staff Coordinator, said that the application had been submitted to DEM on January 5. At that point, DEM indicated it would take them a minimum of 3 more weeks to complete their review, after which a Board date would be set.

Mrs. Thonen moved to defer the application to April 19, 1994, at 8:00 p.m.

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

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Page 428, February 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. EUGENE P. REEDER, VC 93-B-144 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 4604 Holborn Ave. on approx. 12,259 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-1 ((11)) 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. Eugene P. Reeder, 4604 Holborn Avenue, Annandale, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the surrounding lots are also zoned R-3 and developed with single family detached dwellings. She said the applicant proposed to construct a garage by enclosing an existing carport located 8.0 feet from a side lot line. Ms. Langdon said that the dwelling on adjacent Lot 5 to the north is located approximately 7.8 feet from the shared side lot line.

Mr. Reeder said he stood behind the statement of justification previously submitted in writing and incorporated into the record.

In answer to a question from Chairman DiGiulian, Mr. Reeder said he intended just to enclose the existing carport and not infringe any closer to the shared property line.

In answer to a question from Mrs. Thonen, Mr. Reeder said the addition would exactly match the existing dwelling.

Mrs. Harris asked if the applicant would use the same roof structure, observing that the carport was already enclosed at the back; she asked whether he would put doors on the front. Mr. Reeder said he would construct a side door entrance and two automatic doors on the front.

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

Mrs. Harris moved to grant VC 93-B-144, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 2, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-144 by EUGENE P. REEDER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.0 ft. from side lot line, on property located at 4604 Holborn Avenue, Tax Map Reference 70-1((11))6, 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 8, 1994; 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 approximately 12,259 square feet.
4. The carports on the lots in the area were built in such a way that they were 8 feet from the side lot line.
5. The foundation and the majority of the features necessary for the conversion of the carport into a garage already exist. The applicant only wishes to enclose it on one side and put garage doors on the front.
6. The applicant's request will allow reasonable use of the property.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by McLaughlin Ghent Associates, dated May 30, 1973, 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 4-0. Mr.Pammel was not present for the vote. Mr. Kelley and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 16, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JOEL A. & BRENDA S. HARGETT, VC 93-S-137 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.3 ft. from rear lot line and deck 3.4 ft. from rear lot line (25 ft. min. rear yard req. for addition and 5 ft. min. rear yard req. for deck by Sects. 3-207 and 2-412). Located at 8288 Armetale Ln. on approx. 21,832 sq. ft. of land zoned PDH-2. Springfield District. Tax Map 97-4 ((12)) 109. (MOVED FROM 2/2 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. Joel A. Hargett, 8288 Armetale Lane, Fairfax Station, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Silverbrook Forest Subdivision are also zoned PDH-2 and developed with single family detached dwellings.

Mr. Hargett presented the statement of justification, previously submitted in writing and incorporated into the record. He said he wished to point out that the proposed addition would not come any closer to the rear property line than the existing house.

In answer to a question from Mrs. Harris, the applicant advised that the developer had built the house with the option of adding a deck where french doors had been installed. Mrs. Harris made the observation that developers frequently installed doors leading nowhere, which required a variance to add a deck.

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

Mr. Hammack moved to grant VC 93-S-137, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 2, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-137 by JOEL A. & BRENDA S. HARGETT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.3 ft. from rear lot line and deck 3.4 ft. from rear lot line, on property located at 8288 Armetale Lane, Tax Map Reference 97-4((12))109, 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 8, 1994; 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 approximately 21,832 square feet.
4. The applicants have a uniquely shaped lot.
5. The location of the dwelling is to the rear of the lot.
6. The room addition would be no closer to the rear lot line than the original structure.
7. The deck addition requires a minimal variance of 1.6 feet for only a corner of the deck.
8. The deck backs up to swim and racquet club property and the nearest neighbor is 100 feet away, which precludes impacting adjoining property owners.

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

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

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

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

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

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

1. This variance is approved for the location and the specified deck shown on the plat prepared by Lawrence H. Spimman, III, Land Surveyor, dated October 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.

Pursuant to Sect. 18-407 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 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 16, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 431, February 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. THE FISCHER GROUP, SPA 88-L-042-2 Appl. under Sect(s). 8-912 of the Zoning Ordinance to amend SP 88-L-042 for Additional Sign Area in a shopping center to permit redistribution and additional sign area. Located on Franconia Rd., Frontier Dr., Spring Mall Rd. and Loisdale Rd. on approx. 79.01 ac. of land zoned C-7, HC and SC. Lee District. Tax Map 90-2 ((13)) 1, 2, 3, 4A1, 5A1 and 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. Gregory Riegle, 8280 Greensboro Drive, McLean, Virginia, the applicant's agent, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that to the north of the site the lots are zoned R-4 and developed with single family detached dwellings; to the south, the lots are zoned R-1 and C-8 and are developed with a car dealership or are vacant; to the east, the lots are zoned R-1 and C-3 and developed with single family detached dwellings, an elementary school and a vacant lot; to the west, the properties are zoned C-7 and C-3 and are developed commercially. Staff recommended approval of the application, subject to the Proposed Development Conditions contained in the staff report.

Mr. Riegle said he did not have much to add to Ms. Langdon's very thorough presentation. The statement of justification had previously been submitted in writing and incorporated into the record.

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

Mr. Pammel moved to grant SP 88-L-042-2 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 2, 1994. Mr. Pammel noted that the applicant had remained below the maximum allowable sign limit permitted by the Zoning Ordinance.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 88-L-042-2 by THE FISCHER GROUP, under Section 8-912 of the Zoning Ordinance to amend SP 88-L-042 for Additional Sign Area in a shopping center to permit redistribution and additional sign area, on property located at Franconia Road, Frontier Drive, Spring Mall Road and Loisdale Road, Tax Map Reference 90-2((13))1, 2, 3, 4A1, 5A1 and 6, 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 8, 1994; 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-7, HC and SC.
3. The area of the lot is approximately 79.01 acres.
4. The applicant is still below the maximum allowable sign limit permitted by the Zoning Ordinance.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903, 8-912 and 12-304 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by LBA Limited, dated November 1990, revised through September 24, 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 granted for the replacement and new signage indicated by the location and size on the special permit plat submitted with this application, as qualified by these conditions. This condition shall not preclude the maintenance of existing signs nor the approval of additional sign permits in accordance with Article 12 for signs which would be allowed by-right at Springfield Mall.

5. The change in existing signage and the installation of new signage shall be coordinated such that at no point in time shall the total amount of signage at Springfield Mall exceed 6875.4 square feet.

6. Sign permits shall be obtained for all signs.

7. Illumination of the signs shall be in conformance with the performance standards for glare as set forth in Part 9 of Article 14 of the Zoning Ordinance.

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

Page 433, February 8, 1994, (Tape 1), THE FISCHER GROUP, SPA 88-L-042-2, continued from Page 432)

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 signs have been installed. 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 seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 16, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 433, February 8, 1994, (Tape 1), Scheduled case of:

9:30 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. DEF. FROM 4/6/93 FOR BOS TO REVIEW SHARED PARKING REQUEST. TO BE READVERTISED. DEFERRED FROM 9/21/93 FOR DECISION ONLY. INTENT TO DEFER ISSUED ON 10/26/93. DEF. FROM 11/3/93 AT REQ. OF APPLICANT.) (DEF. FROM 1/11/94. MOVED TO 2/8/94 ON 1/26/94 AT APP.'S REQUEST)

Barbara A. Byron, Director, Zoning Evaluation Division, advised Chairman DiGiulian that she believed Barbara Touchton, 6900 Elm Street, McLean, Virginia, the applicant's agent, would like to address the Board.

Ms. Touchton came forward to request a deferral because she believed it was within her right to have a full Board present to hear her application. A discussion ensued during which several of the Board Members advised Ms. Touchton that they could never be sure of full Board participation and, if the case were deferred, there might be fewer members present on the date to which the case would be deferred.

Chairman DiGiulian stated that he did not believe the case should be deferred again, and that there never could be any assurance that 7 members of the Board would be present. Ms. Thonen said it was her recollection that the last deferral was granted to allow the applicant time to work out the parking issue; she said she understood that the issue had been resolved. Ms. Touchton said she and staff believed it had been worked out; however, with five members present, Ms. Touchton feared insufficient Board support to carry a motion to grant.

Mrs. Harris asked if SPA 82-D-083-4 was being deferred at this time and only the renewal would be heard; Ms. Touchton replied that was correct. Ms. Thonen recollected that the reason for deferral was to allow the applicant to go before the Board of Supervisors (BOS) to get permission for off-site parking; it was her understanding that Ms. Byron had worked out the parking issue.

Ms. Touchton asked for a few minutes to confer with her engineer who had just arrived.

It was the consensus of the Board to pass over this case until later in the meeting.

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Chairman DiGiulian said the previous 3 cases would be discussed in the interim.

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Page 433, February 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. AUDREY V. DOILEY & ADONNA MCNEIL, SP 93-L-072 Appl. under Sect(s). 3-2003 of the Zoning Ordinance to permit a child care center. Located at 3705 Buckman Rd. on approx. 8,404 sq. ft. of land zoned R-20 and HC. Lee District. Tax Map 101-2 ((5)) (1) 7A.

Chairman DiGiulian advised that an Intent-to-Defer had been issued on January 26, 1994.

In answer to a question from Mrs. Harris, Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that the applicants had not done their notices; however, staff had recommended denial of the application and there were some issues which the applicants believed they could resolve, one of which was to try to acquire additional land area by purchasing the property next door. Ms. Kelsey said the applicants presently were in the process of looking into that possibility.

Ms. Kelsey said the motion on January 26, 1994 actually was to defer to March 8, 1994 at 9:.30 a.m. and the Clerk had already sent out the notices.

Chairman DiGiulian requested that the applicant be advised that the deferral be far enough into the future so that the applicant would be ready to have the case heard. Mr. Pammel made the observation that the application would be changed if additional land was acquired, which would require re-noticing and re-advertising.

Mr. Pammel moved to defer SP 93-L-072 to March 8, 1994 at 9:30 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 434, February 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. BARBARA RADVANYI, VC 93-D-117 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of stoop and steps 33 ft. from front lot line (40 ft. min. front yard req. by Sect. 3-107). Located at 720 Lawton St. on approx. 23,945 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-2 ((3)) 98R. (DEF. FROM 12/21 TO ALLOW APPLICANT TO BE PRESENT.)

It was noted that an Intent-to-Defer had been issued on January 25, 1994.

Mr. Hammack moved to defer the hearing until February 23, 1994 at 9:00 a.m. Mrs. Harris seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

Mr. Pammel moved to advise the applicant that the Board would not be receptive to an additional deferral and that the applicant or her representative would have to be present on February 23, 1994 at 9:00 a.m. Mrs. Thonen seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 434, February 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. OURISMAN DODGE, INC., APPEAL 93-V-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator determination that appellant has not satisfied all of the conditions imposed by the Board of Supervisors in the approval SE 87-V-106 and is therefore in violation of Par. 2 of Sect. 9-004 of the Zoning Ordinance. Located at 5900 Richmond Hwy. on approx. 230,842 sq. ft. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 83-2 ((1)) 2C. (DEF. FROM 12/7 AT APP'S. REQUEST)

It was noted that an Intent-to-Defer was issued on January 26, 1994 to March 22, 1994 at 9:30 a.m.

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

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Page 434, February 8, 1994, (Tape 1), Scheduled case of:

9:30 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. DEF. FROM 4/6/93 FOR BOS TO REVIEW SHARED PARKING REQUEST. TO BE READVERTISED. DEFERRED FROM 9/21/93 FOR DECISION ONLY. INTENT TO DEFER ISSUED ON 10/26/93. DEF. FROM 11/3/93 AT REQ. OF APPLICANT.) (DEF. FROM 1/11/94. MOVED TO 2/8/94 ON 1/26/94 AT APP.'S REQUEST)

Chairman DiGiulian called Ms. Touchton to the podium to continue discussion on this case.

Ms. Touchton asked, if the special permit renewal was denied, could she return to have the special permit amendment heard. Ms. Byron advised that, if the Board denied the renewal, it would mean that Ms. Touchton would not have an valid special permit and she would need to file a new special permit, although it might be possible to amend the special permit amendment, creating a special permit with a new number.

In answer to a question from Ms. Touchton, Ms. Byron said that, if she were to file a special permit the next day, the County's policy had been not to enforce any type of violation, so long as prompt action was taken to remedy the situation.

Chairman DiGiulian suggested to Ms. Touchton that she might not have as much to worry about as she believed and he recommended that they proceed to hear the case.

Ms. Byron advised that Lori Greenlief, the Staff Coordinator who had prepared the staff report was on jury duty, and she was here in her stead to present the staff report.

Ms. Byron said that Paragraph 5, Section 8-013 of the Zoning Ordinance, allows the Board of Zoning Appeals, only in the instance of a renewal of a special permit, to approve an application that does not meet all the current regulations of the Ordinance and to impose conditions on the renewal, provided that the use will be harmonious with and not adversely affect the use or development of the neighboring properties. Ms. Byron said that the issue in this case is parking; the school had been operating with an enrollment of 60 children for awhile, with the same parking arrangement. Ms. Byron said that the Board could approve the application with the current parking arrangement; however, it was Ms. Byron's understanding that Ms. Touchton had gone a step further and had agreed to a condition being imposed to allow 3 additional parking spaces to be constructed on the site, which would not be PFM legal geometric parking spaces, but would add to the available parking. Ms. Byron said that, in addition, Ms. Touchton was requesting that the Board approve her application without term. Ms. Byron submitted the applicant's revised plat showing the 3 additional parking spaces and advised the Board that there were no letters of opposition received after the last public hearing of the application.

Ms. Touchton came forward and requested that the Board grant the renewal, based upon the findings stated by Ms. Byron.

Mrs. Harris said she had reread all the information and transcripts and would like to know how many teachers' cars were parked on site per day and where they were parked. Ms. Touchton said that there typically would be 3 teachers' cars parked on site, unless they carpool. In the future they would be using spaces 2, 3 and 4; however, the spaces are longer than the cars and 3 cars can fit into 2 spaces. She said this would leave the other spaces for parents if they needed to stop; however, they usually do not stop but pull in with cars running; the children are then placed in the cars which back around and leave. There is the extra space #6 which could be used for turnarounds, etc. Ms. Touchton said that the drop-off and pickup of this small group of children is almost split into two sessions. She gave examples of possible case scenarios which presented the picture of a staggered presence of cars on the premises.

Mrs. Thonen asked Ms. Byron, if the Board disposed of the renewal, what would they do about the amendment. Ms. Byron said she expected that Ms. Touchton would withdraw the application.

Mr. Hammack asked Ms. Touchton if she had read the Revised Proposed Development Conditions dated January 4, 1994, and if she was in agreement with them, to which Ms. Touchton replied that she had read them and was in agreement with them.

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

Mrs. Thonen moved to grant SPR 82-D-083-2 for the reasons set forth in the Resolution, subject to the revised Proposed Development Conditions dated January 4, 1994. She said the Board was convinced that the applicant was operating under the previously imposed conditions and that the outstanding parking issue had been resolved in compliance with Paragraph 5, Section 8-013, as previously outlined by Ms. Byron.

Mrs. Thonen noted that the applicant had requested deferral of the special permit amendment application, SPA 82-D-083-4, pending the outcome of the hearing of the renewal application.

Chairman DiGiulian advised that Mrs. Harris had noted that the plat before the Board was different from what was shown on the viewgraph. Ms. Byron said the reason was that the case under consideration was a renewal and Condition 7 used the old plat but imposed the Condition for 3 additional parking spaces, numbered 4, 5 and 6.

Mrs. Harris referenced notes on the plat stating, "gravel drive**" and "**to be paved." She said she was not sure what that meant and did not want to force the applicant to come back before the Board. A discussion ensued to provide a way to clarify the intent, either by modifying the note on the plat or modifying Condition 7. Chairman DiGiulian asked if the applicant would be required to submit a site plan or a request for a site plan waiver and it was decided to amend the motion to state that the Board recommended approval of a site plan waiver.

Mr. Hammack asked the maker of the motion to consider adding another condition that would put a term of 10 years on the special permit. A discussion ensued and the Board voted on the motion with a 10-year term, which failed. The motion which carried approved the special permit without term.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 82-D-083-2 by MCLEAN CHILDREN'S ACADEMY, INC., under Sections 3-303 and 8-013 of the Zoning Ordinance to renew SP 82-D-083 for nursery

school and child care center, on property located at 6900 Elm Street, Tax Map Reference 30-2((5))3, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 8, 1994; 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 approximately 10,390 square feet.
4. The school has been operating under the conditions previously imposed.
5. Parking was the only issue on which the deferral was based.
6. Under Sect. 8-013, the BZA has the authority to legally approve a renewal application, even though the minimum number of parking spaces required by the Zoning Ordinance are not provided, if the BZA believes that the use is in harmony with and will not adversely affect the use or development of the neighboring parties. Section 8-013 pertains only to the renewal 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 8-303 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 Runyon, Dudley, Anderson, Associates, Inc., dated May 11, 1990, revised February 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. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by DEM; however, the BZA recommends that a site plan waiver be approved. Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Plat and these development conditions.

5. The maximum number of employees on site at any one time shall be four (4).

6. The 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 not be used for parking, but shall be reserved to provide adequate turning movements in the vicinity of the turnaround area as determined by the Director, Department of Environmental Management (DEM).

7. Three parking spaces shall be provided on the east side of the building, irrespective of the note on the special permit plat. The spaces and the driveway to the east of the school building shall be constructed as a porous pavement utilizing grass-crete or similar pervious pavement designs which allow infiltration of water into the ground as determined by the Director, Department of Environmental Management (DEM) or the applicant shall seek a waiver of the dustless surface requirement through DEM.

8. The maximum daily enrollment shall be limited to sixty (60) children with thirty (30) on site at any one time. There shall be an adequate break between the morning and afternoon sessions to facilitate the pick-up of the children enrolled in the morning session before the time for the delivery of the afternoon session.

9. The hours of operation shall be limited to 8:00 a.m. to 6:00 p.m., Monday through Friday. If additional time is needed to facilitate the staggering of the sessions to meet No. 7 above, the hours may be extended to 7:30 a.m. to 6:30 p.m.

10. The applicant shall actively encourage the use of carpools and arrival times shall be staggered so that the arrival and departure times of the children will be evenly spaced between 8:00 a.m. and 9:00 a.m. and between 5:00 p.m. and 6:00 p.m. The applicant shall also require carpooling by employees.

11. The transitional screening and barrier requirements shall be modified to allow existing vegetation and fencing as shown on the special permit plat to satisfy the requirement.

12. In order to achieve a maximum exterior noise level of 65 dBA Ldn in the play area, the existing fencing along the eastern lot line shall be reenforced with boards so that no gaps occur between the boards of the fence or a new acoustically solid fence shall be installed.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, six (6) months after the date* of approval unless a new Non-Residential Use Permit has been issued. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 16, 1994. This date shall be deemed to be the final approval date of this special permit.

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The Board took a short recess at this time.

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Page 437, February 8, 1994, (Tape 1&2), Scheduled case of:

10:00 A.M. MCDANIEL CONSTRUCTION CO., INC. BY MICHAEL A. MCDANIEL, APPEAL 93-P-013 Appl. under Sect. 18-301 of the Zoning Ordinance to appeal the determination of the Zoning Administrator that the appellant is operating a construction materials yard that is not associated with an active construction project on property located in an R-2 District, and is therefore in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 2402/2404 Luckett Ave. on approx. 25,300 sq. ft. of land zoned R-2. Providence District. Tax Map 39-3 ((38)) 11. (DEFERRED FROM 11/3/93 FOR NOTICES. DEF. FROM 12/14 FOR NOTICES AND WILL BE DISMISSED IF NOTICES ARE NOT IN ORDER ON 2/8/94.)

William E. Shoup, Deputy Zoning Administrator, came forward to present the staff report, stating that the appellant was appealing the determination that he was operating a construction materials yard that was not associated with an active construction project on property located in a R-2 District and, therefore, was in violation of Par. 5 of Sect. 2-302.

Mr. Shoup referenced the staff report dated February 1, 1994, and summarized some of the key points: In December 1978, the appellant obtained approvals to create the Wedderburn Station Subdivision, Sections 1 and 2, representing a total of 11 lots, and began constructing new dwellings within the subdivision in 1979. He built about one house a year. New homes were completed on Lots 1 through 10 between 1979 and April of 1989. In the early stages, the appellant used Lot 11, the subject property, to store the materials and equipment used to construct the dwellings. In June 1982, the appellant obtained approval for a Temporary Special Permit (TSP) to permit the use of the lot as a contractor's office. There was a time limit on the TSP of 20 days after the completion of the last building to be constructed in the project. The approved preliminary plat indicated that there were two existing old dwellings on the lot in question and that new dwellings were proposed for construction on the other 10 lots. In addition, there was a grading plan submitted for Section 2 as part of the subdivision plan process, indicating that the existing houses on Lot 11 were to remain. There never have been any attempts to obtain approval to construct a new dwelling on Lot 11. The last building permit in Wedderburn Station was issued almost 7 years ago, in May 1987, and the last Residential Use Permit was issued in Wedderburn Station almost 5 years ago in April 1989.

Mr. Shoup said that, considering the circumstances, it was staff's position that there is no active construction in the Wedderburn Station Subdivision and all the homes which the

appellant represented that he would construct have long been constructed. Based on the language in Par. 1, Sect. 8-806, which requires that the TSP terminate 20 days after completion of the last building, it was staff's position that TSP 044-82 is no longer valid and that the appellant's use of the property to store construction materials and equipment constitutes a construction materials yard that is not associated with an active project and, therefore, is not a use permitted in the R-2 District.

Mr. Shoup further advised the Board members that their packages contained several letters from neighbors of the property supporting staff's position and, after the packages had been sent, he had received a petition signed by several neighbors in support of the appellant, which he then distributed to the Board members.

Michael A. McDaniel came forward and stated that the two houses shown on the plat on Lot 11 did not truly indicate the future plans for the lot. He said that Lot 11 should have shown the same symbol for the future construction of a dwelling as the other lots. Mr. McDaniel said he had once received a Notice of Violation and then received a letter stating that, since there were lots still to be developed, the case was closed. Mr. McDaniel spoke at great length about the different stages of development and various events in an attempt to convince the Board that he always intended to build on the property in question.

Chairman DiGiulian asked the appellant when he last performed construction work on the project, to which he replied that it was the last part of 1989 when he had gone back to the last house constructed to put in a driveway. In answer to a question from Chairman DiGiulian, Mr. McDaniel said that, since that time, he had not taken any material to, or taken any material from, the lot in question, except to take some equipment off the lot to have it repaired, move some snow, and use it for another job that lasted only a couple of weeks.

Chairman DiGiulian referred the appellant to a letter from a neighbor who said they had sent a potential home purchaser to Mr. McDaniel who would not give them a proposal or price to build a house for them on Lot 11. Mr. McDaniel said he had not seen the letter and Chairman DiGiulian provided him with a copy.

While the appellant was reviewing the letter, Mrs. Harris asked Mr. Shoup if she was correct in believing that, if all of the material and equipment had remained unused on the property in question since 1989 or had been moved on and off the property during that period, it would not be an allowed use. Mr. Shoup said that was correct if it was not associated with an active construction project in that subdivision and no diligent pursuit to construct. He said that, also, there had been no representation to the contrary, as notes on the plan showed that the existing houses on the lot were to remain; staff found no indication of an intent to construct and found every indication that the last house had been constructed.

Mr. McDaniel submitted that the two letters he had from tenants of the two houses, with six-month leases, indicated that the tenancy was contingent upon the appellant negotiating a purchase contract, requiring the tenants to vacate if he had to construct on the lot. Mr. Hammack noted that the leases were dated 1985, which was a long time ago. Mr. McDaniel said that there was no requirement as to the order in which the lots would be developed; however, the only inquiry he had received about the lot was from someone who considered the lot to be overpriced. He believed this was the person referred to in a letter from a neighbor who said he had sent a potential home purchaser to Mr. McDaniel.

In answer to questions from the Board, Mr. McDaniel said he was actively pursuing construction but could not get financing because he did not have a contract on the property.

In answer to a question from Mrs. Harris, Mr. Shoup said that the equipment and materials on the subject lot could be left on the lot if it was being used for active construction. Mr. McDaniel said he had recent plans drawn by Paciulli Simmons, et al., for the development of the lot. He stated that he had not built any homes since 1989 and all his equipment and materials were on Lot 11.

Mr. McDaniels submitted correspondence by Paciulli Simmons, et al., regarding a waiver relative to the Chesapeake Bay Act.

There were no speakers and Chairman DiGiulian asked Mr. Shoup if he had anything more to say.

Mr. Shoup said staff did not believe that the appellant had a perpetual right to a TSP approval just because there is a lot that potentially could be developed within the subdivision. He noted that on the Section 2 Grading Plan a note said that the houses on Lot 11 would remain, which the appellant said was just something that the engineer put on there; yet, also on the Plan, on one of the other lots there was a note indicating an existing house was "to be removed," leading him to believe that some thought went into making the notes.

Regarding the appellant's statement that Zoning had said in a letter dated 1985 that there was not a violation, Mr. Shoup stated that the circumstances had changed. In 1985, there were a few more lots that potentially could be developed, which was no longer true. He said the subdivision was completed, bonds were released subsequent to that date, and what was said in 1985 did not have any bearing on what was being said now. He said he would also like to raise the point that the appellant indicated that, not only are the equipment and materials on Lot 11 not being used now, they were not used on the past three houses that were built

there, which further raised the question about the actual use of the lot. Mr. Shoup said he believed it was clear from the appellant's statements that the lot was being used as a convenience to store equipment and materials and there is an impact associated with a storage yard or contractor's office that some of the citizens have had to endure for much too long. Mr. Shoup reiterated that the TSP is no longer valid and the appellant was in violation.

Mr. McDaniel referenced Lot 10 and the house which had been noted to be removed, stating that the Health Department had already condemned it at that time and it had been boarded up because it was unsafe. He stated it had never been his intent to keep the two houses on Lot 11.

Having previously asked for speakers and hearing no response, Chairman DiGiulian closed the public hearing.

Mrs. Harris made a motion to uphold the Zoning Administrator's determination, stating that the issue was clear cut, only allowing construction materials yards accessory to a active construction project and contractor's offices and equipment sheds to include trailer accessories adjacent to an active construction project. She said it had been well-documented that there had been no activity on the site since 1989 and, at that time, there seemed to be no clear cut activity within the subdivision that would warrant continued storage on site. Ms. Harris said, as it stood, she believed the Zoning Administrator's determination was correct. She referenced the applicant's statement that the last three houses built in the subdivision did not require the use of any equipment or materials from the site. Mrs. Harris said this was obviously not an active construction project and it might be another 5 years before a dwelling is built on Lot 11 and one cannot assume that there is an active construction site simply because there is one lot left undeveloped.

Mrs. Thonen seconded the motion and said she did so because she agreed that the site had been used strictly for storage.

Mr. Pammel referenced the 1972 TSP and said the language of Item 1 said the permit was valid for a period beginning no earlier than 30 days prior to the commencement of construction and ending no later than 20 days after completion of the last building to be constructed in the project. He said that a key point on which he based his determination and his vote was the fact that the plat clearly listed two residences on Lot 11 to remain; therefore, according to the record, construction had been completed.

Mrs. Harris noted that the new plat indicated that the two houses were to be removed and, if the appellant diligently pursued that, the construction trailers or whatever is used for construction of a house on the property could remain; however, the plat on which the letter was based had no active construction on the site.

Mr. Hammack noted that the last lot to have had any active construction was Lot 7 on which the appellant had added a driveway in 1987.

Chairman DiGiulian called for a vote and the motion carried by a vote of 5-0 to uphold the Zoning Administrator's determination. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 439, February 8, 1994, (Tape 2), Action Item:

Approval of Resolutions from February 2, 1994

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

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Page 439, February 8, 1994, (Tape 2), Action Item:

Approval of Minutes from December 20 and 21, 1993 Hearings

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

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Page 439, February 8, 1994, (Tape 2), Action Item:

Request for Date and Time
Appeal Application
Reston North Point Village Limited Partnership
Clerk suggested March 22, 1994

Grayson Hanes with the law firm of Hazel & Thomas, P.C., 3110 Fairview Park Drive, Falls Church, Virginia, came forward to represent the appellant. Mr. Hanes said that the sign company received word that the second sign had been denied but the word never reached his

client who moved ahead to meet with the citizens and the homeowners association and made very in-depth plans which were approved and supported by the community. As a result, 2 signs were constructed and, in December 1993, a letter was received by his client citing various sections of the sign ordinance which the second sign violated. Mr. Hanes said he appealed that on January 10, 1994, on behalf of his client, within 30 days of the written Notice of Violation. He said he appealed the entire letter and the provisions of the sign ordinance that Zoning Enforcement contended had been violated. Mr. Hanes said that, on January 19, 1994, they filed a comprehensive sign plan with the County, to be heard by the Planning Commission. Mr. Hanes said the Planning Commission had the right to grant the additional sign if it was part of a comprehensive sign application (sic). He said they expected the application to be heard within 90 to 120 days; it is supported by the Supervisor from that district and the citizens; they did not anticipate any problems with the application. Mr. Hanes said that, if the appeal was continued for approximately 120 days, it probably would be moot and withdrawn.

Mr. Hanes said that it was Mr. Shoup's determination that failure to appeal the verbal denial of the second sign to the sign contractor back in November precluded the appellant from appealing the letter dated December 13, 1993, citing the various sections of the Zoning Ordinance, which they had appealed within 30 days. He said he believed that determination to be wrong. Mr. Hanes said, while the County Code does not so stipulate, the Virginia Code was amended in 1993 to require violations to be noticed in writing, which he said takes precedence over the Fairfax County Code. Mr. Hanes provided a copy of the pertinent Virginia Code and a copy of the pertinent County Code, which were in conflict.

Mr. Pammel said he would accept Mr. Hanes' explanation and moved to schedule the appeal for 8:00 p.m. on June 21, 1994.

In answer to a question from Mrs. Thonen, Mr. Shoup said that the sign contractor was verbally notified at the end of October, but was then given a written copy of the denied sign permit application on November 3, 1993. He said that staff did adhere to the State Code language in cases of Notices of Violation.

Mr. Hammack asked Mr. Shoup if he considered denial of a sign permit an order of the Zoning Administrator. Mr. Shoup said staff did not view the language that way. He believed that the denial of a sign permit is an adminstrative action. He said an order was a declaration requiring
some action to be taken, as in a Notice of Violation.

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

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As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

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

SUBMITTED: March 22, 1994

APPROVED: March 29, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 15, 1994. 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.

Chairman DiGiulian called the meeting to order at 8:01 p.m. and Mrs. Thonen gave the invocation. The Chairman called for Board Matters.

Mr. Ribble said it was Mrs. Harris' last meeting of a distinguished term on the Board of Zoning Appeals. He said she had been a breath of fresh air and this Board had enjoyed serving with her and she has benefited, not only this Board, but the citizens of Fairfax County. Mr. Ribble added that she is much admired by staff and the other members and wished her the very best in all of her future endeavors. Chairman DiGiulian agreed with Mr. Ribble's comments and said the Board would miss Mrs. Harris.

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Page 441, February 15, 1994, (Tape 1), Scheduled case of:

8:00 P.M. HAROLD E. GAY, VC 93-M-141 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 4.2 ft.from side lot line and 3.2 ft. from rear lot line (10 ft. min. side yard req. and 8.5 ft. min. rear yard req. by Sects. 10-103 and 10-104) and to allow excess coverage of min. req. rear yard (30% max. coverage permitted by Sect. 10-103). Located at 3285 Annandale Rd. on approx. 10,010 sq. ft. of land zoned R-4. Mason District. Tax Map 60-1 ((10)) 9. (DEF. FROM 2/2/94 FOR DECISION ONLY AND ADDITIONAL WRITTEN INFORMATION FROM ZONING ADMINISTRATOR)

Chairman DiGiulian said the case had been deferred from February 2nd for decision only and for additional written information from the Zoning Administrator.

David Hunter, Staff Coordinator, said the Zoning Administrator had determined that the structure in question is a garage and therefore was not a carport. He said staff had used the term "vehicle shelter" but garage was the more appropriate term. Mr. Hunter called the BZA's attention to the Zoning Administrator's memorandum dated February 15, 1994, which stated that garages are allowed under Paragraph 8 of Section 10-102 and accessory structures are treated as a separate entity. Therefore, it was the Zoning Administrator's determination that variances were required as the structure is located 4.2 feet from the side lot line and 3.2 feet from the rear lot line.

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

In response to a comment from Mr. Ribble as to how the interpretation was determined, Mr. Hunter said the Zoning Administrator had determined that the correct term was "garage" and cannot be a carport since it is not attached to the structure. He added that the structure cannot be an accessory storage structure because a garage and an accessory storage structure are two different entities in the Zoning Ordinance; therefore, variances are required for both the side and rear yards.

Mrs. Thonen made a motion to deny VC 93-M-141 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-M-141 by HAROLD E. GAY, under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain 4.2 feet from side lot line and 3.2 feet from rear lot line, and to allow excess coverage of minimum required rear yard, on property located at 3285 Annandale, Tax Map Reference 60-1((10))9, 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 2, 1994; 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 10,010 square feet.
4. There were too many variances needed on the piece of property.
5. The accessory structure covers too much of the area, it is much too large, and it exceeds the amount that is allowed to be covered with an accessory structure.
7. The structure also exceeds the 7 foot height limitation since it is 8 1/2 feet high.
8. The structure is too close to the side and rear lot lines.
9. All the sheds are located too close to the lot lines.

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

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

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

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

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

Mr. Ribble seconded the motion which carried by a vote of 4-0-1 with Mrs. Harris abstaining; Mr. Pammel 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 February 23, 1994.

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The BZA recessed at 8:13 p.m. and reconvened at 8:14 p.m.

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Page 442, February 15, 1994, (Tape 1), Scheduled case of:

8:00 P.M. REQUEST FOR DATE AND TIME FOR JODY C. BENNETT APPEAL, (DEF.ACCEPTANCE FROM 12/14 FOR TRANSCRIPT, PLAT, DEVELOPMENT CONDITIONS, AND ANY OTHER DOCUMENTS ON WHICH STAFF BASED ITS INTERPRETATION TO BE SUBMITTED TO BZA) (DEF. FROM 1/11/94 AND 1/26/94)

Chairman DiGiulian asked if staff had anything else to add other than what had been was submitted to the BZA. Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning, replied that staff had no additional information.

Mr. Kelley said he had given a great deal of thought to the appeal, but he had not changed his mind since the original hearing on accepting the appeal and that he totally agreed with the County Attorney that there were three distinct reasons for not accepting the appeal. He said those reasons were: the appellant was trying to appeal a decision which basically did not take place; that the appellant does not have standing; and, that the appellants chose to file an appeal with the Board of Supervisors and cannot now take a different route. Mr. Kelley said he would make three distinct motions that would be voted on separately.

A discussion took place among the BZA members as to the reasoning behind three separate motions. Mr. Kelley said he did not believe it would be wise to do one motion as he expected the BZA's action to be appealed and that he believed all three reasons could stand on its own merit.

Mr. Kelley made a motion that the BZA not accept the appeal because the appellant is seeking to appeal a decision that the County Executive had not made and had failed to appeal the decision rendered by Barbara Byron, Director, Zoning Evaluation Division, Office of Comprehensive Planning. (He read an excerpt from page 3 of the Zoning Administrator's memorandum into the record.) Mr. Ribble seconded the motion.

Mrs. Harris said legally she agreed with Ms. Gwinn's comments; but, that she believed there were many things that could have been done better and with more of a paper trail so that other interested parties could have appealed the decision at that time rather than waiting for a final decision.

The motion passed by a vote of 5-0-1 with Mr. Pammel abstaining since he had just arrived in the Board Auditorium. Mr. Hammack was absent from the meeting.

Mr. Kelley made a motion that the BZA not accept the appeal since the issue had already been heard by the Board of Supervisors and the appellant cannot bring the same issue to the BZA. Mrs. Thonen seconded the motion.

Mrs. Harris said she would support the motion, but that she was not convinced that the citizens were given the same attention and direction that perhaps the appellant was given.

Mr. Kelley said he did not see any evidence that staff had been uncooperative and that it appeared it had been just the opposite. He said staff was very much aware of the controversy involved in the case and had bent over backwards to make sure the proper thing was done. Mrs. Harris said it appeared from reading the memorandum that the appellant was only given four hours to prepare before making a presentation to the Board of Supervisors. Mr. Kelley said that was not an issue before the BZA. The motion passed by a vote of 5-0-1 with Mr. Pammel abstaining. Mr. Hammack was absent from the meeting.

Mr. Kelley said he did not believe the appellant was an aggrieved person since a review of the County's tax records revealed that the appellant's property is neither adjacent to or in close proximity to the subject property nor to any of the trails which was the subject of the County Executive's decision. He noted that the appellant's access to her property is from Hunter Mill Road and the trail along Hunter Mill Road was not waived. Mrs. Thonen seconded the motion. The motion passed by a vote of 4-1-1 with Mrs. Harris voting nay and Mr. Pammel abstaining. Mr. Hammack was absent from the meeting.

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Page 443, February 15, 1994, (Tape 1), Scheduled case of:

8:00 P.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. (DEF. FROM 7/13/93. DEF. FROM 9/28/93. DEF. FROM 1/4/94.)

Chairman DiGiulian noted that the appellant had submitted a letter requesting a withdrawal of the appeal. Mr. Pammel made a motion to grant the appellant's request. Mrs. Thonen seconded the motion. The motion passed by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 443, February 15, 1994, (Tape 1), Scheduled case of:

8:00 P.M. VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, SP 93-Y-074 through SP 93-Y-113 and SP 93-Y-115 Appls. under Sect(s). 8-913 of the Zoning Ordinance to permit modifications to minimum yard requirements on Tax Map 53-4 ((5)) (2) to permit:

Lot 10 8.0 ft. side yard. Located at 6102 Oakengate Way on approx. 14,075 sq. ft. of land;

Lot 11 16.0 ft. and 8.0 ft. side yards. Located at 6100 Oakengate Way on approx. 15,758 sq. ft. of land;

Lot 12 8.0 ft. and 16. ft. side yards. Located at 6101 Oakengate Way on approx. 13,335 sq. ft. of land;

Lot 15 25.0 ft. front yard, 16.0 ft. and 8.0 ft. side yards. Located at 9109 Oakengate Way on approx. 13,637 sq. ft. of land;

Lot 18 25 ft. front yard and two 12.0 ft. side yards. Located at 6115 Oakengate Way on approx. 13,394 sq. ft. of land;

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Lot 22 26.0 ft. front yard and two 12 ft. side yards. Located at 15045 Stillfield Pl. on approx. 13,094 sq. ft. of land;

Lot 23 25.0 ft. front yard and two 12.0 ft. side yards. Located at 15047 Stillfield Pl. on approx. 14,959 sq. ft. of land;

Lot 24 16.0 ft. and 8.0 ft. side yards. Located at 15049 Stillfield Pl. on approx. 14,894 sq. ft. of land;

Lot 26 25.0 ft. front yard and 14.0 ft. and 10.0 ft. side yards. Located at 15053 Stillfield Pl. on approx. 13,158 sq. ft. of land;

Lot 27 25.0 ft. front yard and 14.0 ft. and 10.0 ft. side yards. Located at 15055 Stillfield Pl. on approx. 13,768 sq. ft. of land;

Lot 30 two 12.0 ft. side yards. Located at 15061 Stillfield Pl. on approx. 13,051 sq. ft. of land;

Lot 32 16.0 ft. and 8.0 ft. side yards. Located at 15065 Stillfield Pl. on approx. 13,243 sq. ft. of land;

Lot 33 two 12.0 ft. side yards. Located at 15067 Stillfield Pl. on approx. 13,014 sq. ft. of land;

Lot 34 two 12.0 ft. side yards. Located at 15069 Stillfield Pl. on approx. 13,082 sq. ft. of land;

Lot 37 25.0 ft. front yard and 15.0 ft. and 9.0 ft. side yards. Located at 15075 Stillfield Pl. on approx. 13,007 sq. ft. of land;

Lot 48 25.0 ft. front yard and 12.0 ft. side yard. Located at 6339 Hidden Canyon Rd. on approx. 13,225 sq. ft. of land;

Lot 49 two 25.0 front yards, 12.0 ft. side yard and 12 ft. rear yard. Located at 6111 Ridge Haven Ct. on approx. 13,829 sq. ft. of land;

Lot 55 14.0 ft. and 10.0 ft. side yards. Located at 6100 Ridge Haven Ct. on approx. 13,013 sq. ft. of land;

Lot 63 25.0 ft. front yard and 10.0 ft. and 14.0 ft. side yards. Located at 15046 Stillfield Pl. on approx. 13,134 sq. ft. of land;

Lot 64 25.0 ft. front yard and two 12.0 ft. side yards. Located at 15050 Stillfield Pl. on approx. 13,051 sq. ft. of land;

Lot 65 25.0 ft. front yard and two 12.0 ft. side yards. Located at 15052 Stillfield Pl. on approx. 13,113 sq. ft. of land;

Lot 66 25.0 ft. front yard and 10.0 ft. and 14.0 ft. side yards. Located at 15054 Stillfield Pl. on approx. 13,113 sq. ft. of land;

Lot 67 25.0 ft. front yard and 10.0 ft. and 14.0 ft. side yards. Located at 15056 Stillfield Pl. on approx. 13,113 sq. ft. of land;

Lot 73 25.0 ft. front yard and 9.0 ft. and 15.0 ft. side yards. Located at 15078 Stillfield Pl. on approx. 13,064 sq. ft. of land;

Lot 74 25.0 ft. front yard and 8.0 ft. side yard. Located at 15080 Stillfield Pl. on approx. 13,855 sq. ft. of land;

Lot 77 25.0 ft. front yard and 14.0 ft. and 10.0 ft. side yards. Located at 15086 Stillfield Pl. on approx. 14,417 sq. ft. of land;

Lot 78 25.0 ft. front yard and two 12.0 ft. side yards. Located at 15088 Stillfield Pl. on approx. 14,076 sq. ft. of land;

Lot 79 25.0 ft. front yard and 8.0 ft. side yard. Located at 15090 Stillfield Pl. on approx. 13,458 sq. ft. of land;

Lot 80 8.0 ft. and 16.0 ft. side yards. Located at 15092 Stillfield Pl. on approx. 13,767 sq. ft. of land;

Lot 81 two 12.0 ft. side yards. Located at 15094 Stillfield Pl. on approx. 13,940 sq. ft. of land;

Lot 82 two 25.0 ft. front yards and 8.0 ft. side yard. Located at 15096 Stillfield Pl. on approx. 13,058 sq. ft. of land;

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Lot 83 two 25.0 ft. front yards, 8.0 ft. side yard and 16.0 ft. rear yard. Located at 15098 Stillfield Pl. on approx. 13,050 sq. ft. of land;

Lot 84 25.0 ft. front yard and two 12.0 ft. side yards. Located at 6340 Hidden Canyon Rd. on approx. 13,056 sq. ft. of land;

Lot 86 25.0 ft. front yard and two 12.0 ft. side yards. Located at 6336 Hidden Canyon Rd. on approx. 13,056 sq. ft. of land;

Lot 89 25.0 ft. front yard and 8.0 ft. and 16.0 ft. side yards. Located at 6330 Hidden Canyon Rd. on approx. 13,056 sq. ft. of land;

Lot 90 25.0 ft. front yard and two 12.0 ft. side yards. Located at 6328 Hidden Canyon Rd. on approx. 13,122 sq. ft. of land;

Lot 9 one 8.0 ft. side yard. Located at 6104 Oakengate Way on approx. 13,833 sq. ft. of land;

Lot 21 two 25.0 ft. front yards, 12.0 ft. side yard and 12.0 ft. rear yard. Located at 15043 Stillfield Pl. on approx. 13,310 sq. ft. of land;

Lot 19 27.0 ft. and 26.0 ft. front yards, 15.0 ft. rear yard and 9.0 ft. side yard. Located at 6117 Oakengate Way on approx. 13,004 sq. ft. of land;

Lot 14 39.0 ft. front yard and 10.0 ft. and 8.0 ft. side yards. Located at 6107 Oakengate Way on approx. 13,844 sq. ft. of land;

Lot 87 25.0 ft. front yard and two 12.0 ft. side yards. Located at 6334 Hidden Canyon Rd. on approx. 13,056 sq. ft. of land;

(40 ft. min. front and 20 ft. min. side yards req. by Sect. 3-C07). Zoned R-C and WS. Sully District.

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 Martin, replied that it was.

Lori Greenlief, Staff Coordinator, presented the combined staff report and said the properties are located in the Pleasant Hills subdivision. They are zoned R-C and are in the Water Supply Overlay Protection District. The applications were special permits for modifications to the minimum front and side yard requirements to construct dwellings shown on the respective plats. She said the details of each request were contained in the staff report dated February 8, 1994 with a separate Appendix for each application noting the Proposed Development Conditions. Ms. Greenlief said staff had distributed to the BZA just prior to the public hearing Revised Development Conditions for seven of the applications. She noted that Condition Number 2 had been revised to reflect the date on the plat, since staff had received new plats after the staff report had been published. Ms. Greenlief said the requested modifications for the seven applications had not changed, just the shape of the proposed dwellings. She noted that the date on the Revised Development Conditions was February 15, 1994.

Keith C. Martin, attorney with the firm of Walsh, Colucci, Stackhouse, Emrich, Lubeley, PC, 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, came forward and said the applicant was requesting modifications of yard requirements for forty-one lots within the Virginia Run subdivision, which were currently zoned R-C. He said approval of the special permits would allow the units to be occupied and/or constructed under the R-2 Cluster yard requirements, which were in effect under a Consent Decree agreed to in 1982 and which remained in effect until December 31, 1993. Mr. Martin said the proposed yard requirements are harmonious with the surrounding lots in the subdivision and adjacent subdivisions, all of which were downzoned to the R-C District and subject to the Consent Decree. He agreed to the development conditions contained in the staff report with the exception of Condition Number 7 on SP 93-Y-113 as he believed the restriction might cause the Department of Environmental Management some concern during the site plan process. Mr. Martin asked that the eight day waiting period be waived on eleven of the applications.

Mrs. Harris expressed concern with the size of the proposed footprints on many of the lots, in particular Lot 14. Mr. Martin said the applicant was fairly comfortable that the house on Lot 14 can be located in a way that would allow a considerable distance between the back edge of the house and the back composite line, which would allow a deck. Mrs. Thonen was also concerned that the builder was proposing to construct French doors on the houses that do not lead anywhere which could present a safety hazard. She added that she did not like being put in a position of having to grant variances at a later date if a homeowner opted to construct a deck after purchasing the property.

Mr. Martin assured the BZA that each homeowner would receive a copy of the special permit with the sales documents.

There were no speakers in support of the request and Chairman DiGiulian called for speakers in opposition.

Garrett Ritter, a homeowner in the adjoining Westport subdivision, asked how the dwelling on Lot 79 could be listed as proposed when the dwelling already exists. He pointed out that if decks are added to the houses on Lots 83 and 84 there will be absolutely no rear yard and asked where the children would play if there is only an 8 foot rear yard.

In response to questions from the BZA, Mr. Ritter said he does not have a deck but he does have a 40 foot rear yard and believed that six of the houses will be much too close to his lot line.

Steve Olson, owner of Lot 91, believed the proposed dwelling on Lot 90 would impact his property since it would only be 12 feet from the shared lot line and noted the enormous size of the proposed house.

In rebuttal, Mr. Martin explained that the house on Lot 79 referenced by Mr. Ritter was a model and as such did not receive a final occupancy permit until it was ready to be occupied; therefore, it had to be shown as proposed. He pointed out that until New Year's Day any of the houses could have been developed by right within the setbacks without a public hearing.

A discussion took place between the BZA and Mr. Martin regarding the setbacks on Lots 83 and 84. They said they did expect several of the homeowners would be coming before the BZA requesting variances.

Mr. Pammel asked the floor area for the proposed dwelling on Lot 83. Mr. Martin said it would be approximately 2,700 to 3,200 square feet.

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

Mrs. Harris made a motion to approve SP 93-Y-074 through SP 93-Y-113 and SP 93-Y-115 with the Proposed Development Conditions contained in the staff report dated February 8, 1994. She noted that applications SP 93-Y-089, SP 93-Y-090, SP 93-Y-104, SP 93-Y-105, SP 93-Y-110, SP 93-Y-111, and SP 93-Y-112 would be subject to the Proposed Development Conditions contained in the staff report dated February 15, 1994.

She made a motion to waive the eight day waiting period on Lots 10, 15, 18, 26, 30, 33, 64, 67, 73, 74, and 86.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-074 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit an 8.0 foot side yard, on property located at 6102 Oakengate Way, Tax Map Reference 53-4((5))(2)10, 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 15, 1994; 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 14,075 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.

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 side yard 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-075 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 16.0 foot and 8.0 foot side yards, on property located at 6100 Oakengate Way, Tax Map Reference 53-4((5))(2)11, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 15,758 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.

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

THAT the applicant has presented testimony indicating compliance with 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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-076 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 8.0 foot and 16.0 foot side yards, on property located at 6101 Oakengate Way, Tax Map Reference 53-4{(5)}(2)12, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,335 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-077 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 16.0 foot and 8.0 foot side yards, on property located at 9109 Oakengate Way, Tax Map Reference 53-4((5))(2)15, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,637 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-078 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25 foot front yard and two 12.0 foot side yards, on property located at 6115 Oakengate Way, Tax Map Reference 53-4((5))(2)18, 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 15, 1994; 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 13,394 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-079 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 26.0 foot front yard and two 12 foot side yards, on property located at 15045 Stillfield Place, Tax Map Reference 53-4((5))(2)22, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,094 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-080 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and two 12.0 foot side yards, on property located at 15047 Stillfield Place, Tax Map Reference 53-4{{5}}{2}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 February 15, 1994; 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 14,959 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.

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 front and side yards 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 November 8, 1993, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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.

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Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-081 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 16.0 foot and 8.0 foot side yards, on property located at 15049 Stillfield Place, Tax Map Reference 53-4((5))(2)24, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 14,894 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-082 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and 14.0 foot and 10.0 foot side yards, on property located at 15053 Stillfield Place, Tax Map Reference 53-4((5))(2)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 February 15, 1994; 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 13,158 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.

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 front and side yards 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 November 8, 1993, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-083 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and 14.0 foot and 10.0 foot side yards, on property located at 15055 Stillfield Place, Tax Map Reference 53-4((5))(2)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 February 15, 1994; 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 13,768 square foot.
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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-084 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit two 12.0 foot side yards, on property located at 15061 Stillfield Place, Tax Map Reference 53-4((5))(2)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 February 15, 1994; 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 13,051 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-085 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 16.0 foot and 8.0 foot side yards, on property located at 15065 Stillfield Place, Tax Map Reference 53-4((5))(2)32, 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 15, 1994; 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 13,243 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-086 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit two 12.0 foot side yards, on property located at 15067 Stillfield Place, Tax Map Reference 53-4((5))(2)33, 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 15, 1994; 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 13,014 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.

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 side yards 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 November 19, 1993, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-087 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit two 12.0 foot side yards, on property located at 15069 Stillfield Place, Tax Map Reference 53-4((5))(2)34, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,082 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-088 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 15.0 foot and 9.0 foot side yards, on property located at 15075 Stillfield Place, Tax Map Reference 53-4((5))(2)37, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,007 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-089 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 12.0 foot side yard, on property located at 6339 Hidden Canyon Road, Tax Map Reference 53-4((5))(2)48, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,225 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.

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 front and side yards 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 February 1, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-090 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit two 25.0 front yards, 12.0 foot side yard, and 12.0 foot rear yard, on property located at 6111 Ridge Haven Court, Tax Map Reference 53-4((5))(2)49, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,829 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.

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 front, side and rear yards 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 February 1, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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.

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Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-091 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 14.0 foot and 10.0 foot side yards, on property located at 6100 Ridge Haven Court, Tax Map Reference 53-4((5))(2)55, 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 15, 1994; 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 13,013 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-092 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 10.0 foot and 14.0 foot side yards, on property located at 15046 Stillfield Place, Tax Map Reference 53-4((5))(2)63, 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 15, 1994; 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 13,134 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-093 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and two 12.0 foot side yards, on property located at 15050 Stillfield Place, Tax Map Reference 53-4{{5}}{2}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 February 15, 1994; 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 13,051 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-094 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and two 12.0 foot side yards, on property located at 15052 Stillfield Place, Tax Map Reference 53-4((5))(2)65, 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 15, 1994; 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 13,113 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-095 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 10.0 foot and 14.0 foot side yards, on property located at 15054 Stillfield Place, Tax Map Reference 53-4((5))(2)66, 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 15, 1994; 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 13,113 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.

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

THAT the applicant has presented testimony indicating compliance with 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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-096 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 10.0 foot and 14.0 foot side yards, on property located at 15056 Stillfield Place, Tax Map Reference 53-4((5))(2)67, 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 15, 1994; 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 13,113 square feet.
4. The property was the subject of final plat approval prior to July 26, 1982.

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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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-097 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 9.0 foot and 15.0 foot side yards, on property located at 15078 Stillfield Place, Tax Map Reference 53-4((5))(2)73, 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 15, 1994; 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 13,064 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-098 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and 8.0 foot side yard, on property located at 15080 Stillfield Place, Tax Map Reference 53-4((5))(2)74, 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 15, 1994; 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 13,855 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.

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 front and side yards 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 November 8, 1993, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-099 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 14.0 foot and 10.0 foot side yards, on property located at 15086 Stillfield Place, Tax Map Reference 53-4((5))(2)77, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 14,417 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-100 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and two 12.0 foot side yards, on property located at 15088 Stillfield Place, Tax Map Reference 53-4((5))(2)78, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 14,076 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-101 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and 8.0 foot side yard, on property located at 15090 Stillfield Place, Tax Map Reference 53-4((5))(2)79, 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 15, 1994; 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 13,458 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.

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 front and side yards 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 November 19, 1993, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-102 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 8.0 foot and 16.0 foot side yards, on property located at 15092 Stillfield Place, Tax Map Reference 53-4((5))(2)80, 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 15, 1994; 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 13,767 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Mr. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-103 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit two 12.0 foot side yards, on property located at 15094 Stillfield Place, Tax Map Reference 53-4((5))(2)81, 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 15, 1994; 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 13,940 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.

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 side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-104 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit two 25.0 foot front yards and 8.0 foot side yard, on property located at 15096 Stillfield Place, Tax Map Reference 53-4((5))(2)82, 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 15, 1994; 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 13,058 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.

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.

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

1. This special permit is approved for the front and side yards 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 February 1, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-105 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit two 25.0 foot front yards, 8.0 foot side yard, and 16.0 foot rear yard, on property located at 15098 Stillfield Place, Tax Map Reference 53-4((5))(2)83, 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 15, 1994; 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 13,050 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.

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 front, side and rear yards 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 February 1, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-106 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and two 12.0 foot side yards, on property located at 6340 Hidden Canyon Road, Tax Map Reference 53-4((5))(2)84, 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 15, 1994; 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 13,056 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-107 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and two 12.0 foot side yards, on property located at 6336 Hidden Canyon Road, Tax Map Reference 53-4((5))(2)86, 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 15, 1994; 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 13,056 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 15, 1994. 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 Application SP 93-Y-108 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard, 8.0 foot and 16.0 foot side yards, on property located at 6330 Hidden Canyon Road, Tax Map Reference 53-4((5))(2)89, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,056 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-109 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for

an R-C lot to permit 25.0 foot front yard and two 12.0 foot side yards, on property located at 6328 Hidden Canyon Road, Tax Map Reference 53-4((5))(2)90, 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 15, 1994; 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 13,122 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-110 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit one 8.0 foot side yard, on property located at 6104 Oakengate Way, Tax Map Reference 53-4((5))(2)9, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,833 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.

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 side yard 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 February 1, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-111 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit two 25.0 foot front yards, 12.0 foot side yard and 12.0 foot rear yard, on property located at 15043 Stillfield Place, Tax Map Reference 53-4{{5}}{2}21, 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 15, 1994; 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 13,310 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.

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 front, side and rear yards 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 February 1, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-112 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 27.0 foot and 26.0 foot front yards, 15.0 foot rear yard and 9.0 foot side yard, on property located at 6117 Oakengate Way, Tax Map Reference 53-4((5))(2)19, Mrs. Harris moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 15, 1994; 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 13,004 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.

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 front, side and rear yards 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 February 1, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-113 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 39.0 foot front yard, 10.0 foot and 8.0 foot side yards, on property located at 6107 Oakengate Way, Tax Map Reference 53-4((5))(2)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 February 15, 1994; 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 13,844 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.

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 front and side yards 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 28, 1994, submitted with this application and not transferable to other land. However, the footprint of the dwelling shall be shifted so as to allow the construction of a deck on the rear of the dwelling without the need for a variance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

7. The dwelling shall be located on the lot so as not to require a variance in order to add a reasonably sized deck to the rear 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 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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. 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 Application SP 93-Y-115 by VIRGINIA RUN ESTATES LIMITED PARTNERSHIP, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements for an R-C lot to permit 25.0 foot front yard and two 12.0 foot side yards, on property located at 6334 Hidden Canyon Road, Tax Map Reference 53-4((5))(2)87, 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 15, 1994; 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 13,056 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.

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 front and side rear yards 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 28, 1994, submitted with this application and not transferable to other land. Any additions proposed after the issuance of the Residential Use Permit shall comply with the regulations of the R-C Zoning District unless a special permit is obtained pursuant to Sect. 8-913 of the Zoning Ordinance.

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

4. The Grading Plan shall be drawn at a scale of 1" = 30' to conform to the same scale as the approved Special Permit plat.

5. The Grading Plan shall show each house type within the composite to ensure the house types that can be constructed within the composite.

6. A composite on a Grading Plan may vary from the approved Special Permit Plat provided it does not exceed the composite on the approved Special Permit Plat.

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 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. Hammack was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on February 23, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 491, February 15, 1994, (Tape 1), Action Item:

Approval of Resolutions from February 8, 1994

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Pammel seconded the motion which passed by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 491, February 15, 1994, (Tape 1), Action Item:

Request for date and time for
Samuel A. & Suzanne H. Scooggin.

Mr. Pammel made a motion to accept the appeal and schedule it for public hearing on the morning of March 22, 1994. Mrs. Thonen seconded the motion which passed by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Page 491, February 15, 1994, (Tape 1), Action Item:

Request for Approval of Minutes for
December 14, 1993 and January 11, 1994

Mrs. Thonen made a motion to approve the Minutes as submitted. Mr. Pammel seconded the motion which passed by a vote of 6-0. Mr. Hammack was absent from the meeting.

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Deferral of George L. Lane Appeal, A 93-V-028

Mrs. Thonen made a motion to defer the appeal to the morning of March 15, 1994. Jane Kelsey, Chief, Special Permit and Variance Branch, suggested that the case be deferred to April 5, 1994. Mr. Pammel so moved. Mrs. Thonen seconded the motion which passed by a vote of 5-0. Mrs. Harris was not present for the vote and Mr. Hammack was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 9:05 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: March 29, 1994

APPROVED: April 5, 1994