The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on February 23, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Paul Hammack was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:05 a.m. and Mrs. Thonen gave the invocation.

Chairman DiGiulian called for Board Matters. Mr. Ribble introduced Mr. Dively who was welcomed as a new member of the Board of Zoning Appeals

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Page 1, February 23, 1994, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN C. & JEAN B. BOTTS, VC 93-S-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 30.0 ft. from front lot line (40 ft. min. front yard req. by Sect. 3-C07). Located at 6800 Newman Rd. on approx. 1.09 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-4 ((1)) 18.

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

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Lori Greenlief, Staff Coordinator, who was on jury duty She stated that the applicant was requesting approval of a variance to the minimum front yard requirement to allow an addition to be located 30 feet from the front lot line. The Zoning Ordinance requires a 40 foot minimum front yard; therefore, the applicants were requesting a 10 foot variance to the minimum front yard requirement.

Mr. Ribble expressed concerns regarding the plat. He explained that the surveyor had a notation which suggested, "...a total boundary survey be performed in order to more accurately ascertain the boundaries of this lot." Mr. Ribble expressed his belief that the BZA should not hear a case on a lot where the boundary lines are not defined. Ms. Kelsey stated the boundary and area of the property, which is on the plat, was taken from existing records which usually means the information was taken from another plat.

The BZA members agreed that the plat did not seem to be acceptable and Chairman DiGiulian asked the applicant for clarification. The applicant, Steven C. Botts, 6800 Newman Road, Clifton, Virginia, addressed the BZA and stated that in 1987 the plat was used to secure a Building Permit for an addition. Mr. Botts noted the County accepted the plat and expressed his belief that the plat defined the lot lines.

After a brief discussion regarding the plat, it was the consensus of the BZA to hold the matter over until the end of the scheduled agenda so that staff could contact the surveyor or engineer to clarify the issue.

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Page 1, February 23, 1994, (Tape 1), Scheduled case of:

9:00 A.M. DANIEL RAYMOND & MARIANNE EILEEN MCLAUGHLIN, VC 93-Y-147 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.2 ft. from side lot line such that side yards total 18.9 ft. (20 ft. total min. side yards req. by Sect. 3-307). Located at 2904 Pleasant Glen Dr. on approx. 8,742 sq. ft. of land zoned R-3 (Cluster). Sully District. Tax Map 25-3 ((9)) 310.

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

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to allow a sunroom addition to be located 8.2 feet from a side lot line with side yards totalling 18.9 feet. The Zoning Ordinance requires side yards to total a minimum of 20.0 feet in this district; therefore, the applicants were requesting a 1.1 foot variance to the minimum total side yards requirement.

The applicants' agent, William Reames, Patio Enclosures, Inc. 6826 Hill Park Drive, Lorton, Virginia, addressed the BZA. He stated the lot was situated in such a way that the house sits slightly askew in each corner with the opposite corners exceptionally close to the property line. Mr. Reames explained that the proposed addition would not extend beyond the plane of the house. He further explained that there was only one entrance to the back of the structure and the proposed location would allow the applicants to gain access into the house. In summary, Mr. Reames stated that the addition would benefit the medical condition of the applicants' son 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-147 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 15, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-147 by DANIEL RAYMOND AND MARIANNE EILEEN MCLAUGHLIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.2 feet from side lot line such that side yards total 18.9 feet, on property located at 2904 Pleasant Glen Drive, Tax Map Reference 25-3{(9)}310, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 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 (Cluster).
3. The area of the lot is 8,742 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The dwelling is located on the property in such a manner that a variance would be necessary for any addition.
6. The unusual configuration of the dwelling on the lot has caused the need for the variance.
7. The shape of the lot is not unusual, but the way the house was placed on the property is unusual.
8. There is no other location on the property on which to place the addition.
9. The request for a 1.1 foot variance is a minimal request which is within the limits of a reasonable 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 (sunroom) addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 26, 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 (sunroom) addition shall be architecturally compatible with the existing dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 3, February 23, 1994, (Tape 1), Scheduled case of:

9:00 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. DEF. FROM 2/8 AT APPLICANT'S REQUEST.)

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

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to construct a stoop and steps 30 feet from the front lot line. The Zoning Ordinance requires a 40 foot minimum front yard; therefore, the applicant was requesting a 7 foot variance to the minimum front yard requirement.

The applicant, Barbara Radvanyi, 720 Lawton Street, McLean, Virginia, addressed the BZA. She stated that she would like to enlarge the narrow entrance to the house. Ms. Radvanyi said the easements to the rear of the lot precluded placing the addition elsewhere on the property and asked the BZA to grant the request.

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

Mrs. Thonen made a motion to grant VC 93-D-117 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-D-117 by BARBARA RADVANYI, under Section 18-401 of the Zoning Ordinance to permit construction of stoop and steps 33 feet from front lot line, on property located at 720 Lawton Street, Tax Map Reference 21-2((3))98R, 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 23, 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-1.
3. The area of the lot is 23,945 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The property was acquired in good faith.
6. The placement of the house on the property, as well as the cul-de-sac, restricts the ability to build the addition.
7. The construction on the lot has restricted the buildable area.

8. The variance is for the lot only and will not warrant a general regulation or amendment to the Zoning Ordinance.
9. To restrict the applicant's ability to build the addition on the property would be an undue hardship.
10. There would be no detrimental impact on the neighborhood.
11. The variance would be in harmony with the intended spirit 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 addition (stoop and steps) shown on the variance plat entitled Site Plan prepared by Bradford A. Docos, Architect, dated 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. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. KATHY AND CHET MOSAL, VC 93-D-151 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.25 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located at 7007 Hollyrood Dr. on approx. 21,086 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-4 ((17)) 22.

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

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow a two story, two car garage addition 26.25 feet from the front lot line. The Zoning Ordinance requires a minimum 35 foot front yard; therefore, the applicants were requesting an 8.75 foot variance to the front yard requirement.

The applicants' architect, Laird Ueberroth, 1900 Foxhall Road, McLean, Virginia, addressed the BZA. He stated that the statement of justification adequately addressed the required standards as well as the unique nature of the hardship and the necessity for seeking relief. Mr. Ueberroth explained that the addition would allow the applicants to provide permanent care for aging parents within the confines of their house. He said the applicants' lot is unusually narrow and noted that the previous owner had been required to obtain a side yard variance in order to build a 10 foot wide addition on the side of the structure.

Mr. Ueberroth stated the circumstance of having a half acre lot with virtually no room to expand on either side was extraordinary. He explained that the unusual pattern of improvements, which included ornate brick walkways, a raised redwood deck, a concrete fish pond, concrete patios, and a large four-season greenhouse sunroom, restricted expansion to the rear yard. Mr. Ueberroth said that expansion to the rear yard would not only be uneconomical, but would alter the applicants' lifestyle and deny the main living area of the house light and air from the southern exposure. He noted that expansion to the front of the structure would allow easy access to the road, the addition would be aesthetically pleasing, and would be architecturally compatible with the neighborhood.

Mr. Ueberroth stated that the ten foot buffer strip, which extends across the front of the property, between the property line and the curb effectively increased the minimum front yard by ten feet. He noted that the stand of mature, dense spruce trees along the western property line further mitigate any detrimental impact on the community. In summary, Mr. Ueberroth said that the addition would be beneficial to the neighborhood, the neighbors supported the request, and asked the BZA to grant the variance. He also requested the BZA waive the eight day waiting period.

Mr. Ribble asked Mr. Ueberroth to comment about the statement of justification which indicated that without the variance, the applicants would have to relocate in order to meet their family obligations. Mr. Ueberroth explained that the need to provide extended or permanent care for their elderly parents was the mitigating factor for the addition. He further explained that without the variance, the applicants would have to relocate in order to provide the necessary accommodations for their elderly parents.

In response to Chairman DiGiulian's question as to when the applicants purchased the property, Mr. Ueberroth stated that the property was purchased approximately eleven years ago. Chairman DiGiulian referred to the statement of justification which stated, "The extent and configuration of the improvement to the property made by the Owners has created the extraordinary situation ...." and asked if the applicants had made the improvements. Mr. Ueberroth stated that, although the previous owner had made many improvements, the applicants had made the improvements to the back yard. He explained that they had not foreseen the present situation of having to provide care for their elderly parents, nor that the improvements made over the years would restrict their ability to build in the rear yard.

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

Mr. Ribble made a motion to deny VC 93-D-151 for the reasons reflected in the Resolution.

Mrs. Thonen seconded the motion and stated she believed the request was more a convenience and the requested addition was too large. She noted that the petition and letters submitted to the BZA would be made part of the record.

Mr. Kelley stated he believed the request was for an oversized two-car garage and the project could be redesigned so that a lesser variance would be required. He expressed his willingness to support a waiver of the twelve-month waiting period for the refiling of a new variance.

Mr. Dively expressed his belief that there was no other location to place the addition.

Mr. Ribble stated that it was his belief the requested variance was too large and the addition could be redesigned so that a lesser variance would be needed.

Chairman DiGiulian supported the motion and noted that the applicants' statement of justification indicated the hardship was of their own making. He noted that a side yard variance had already been granted on the property.

Mr. Pammel stated that there was nothing unusual about the configuration of the lot, nor an unusual circumstance which would justify the granting of the variance.

Mrs. Thonen noted that the BZA was required to grant a minimum variance to eliminate a hardship and expressed her belief that the request was for a convenience, rather than a hardship.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-151 by KATHY AND CHET NOSAL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 26.25 feet from front lot line, on property located at 7007 Hollyrood Drive, Tax Map Reference 21-4((17))22, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 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 21,086 square feet.
4. The testimony and the statement of justification in the staff report indicated that the hardship was self-created.
5. There are other narrow lots in the area.
6. The owner created some of the problems which restrict placing the addition in the rear yard.
7. The applicant could redesign the plans and build the addition by-right.

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

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

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

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

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

Mrs. Thonen seconded the motion which carried by a vote of 5-1 with Mr. Dively voting nay. Mr. Hammack was absent from the meeting.

Mr. Kelley made a motion to waive the twelve month waiting period for the refiling of an application. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1994.

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Page 77, February 23, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS P. & JUDITH MYERS, VC 93-B-150 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.0 ft. from side lot line and 29.1 ft. from front lot line (12 ft. min. side yard req. and 30.0 ft. min. front yard req. by Sect. 3-307). Located at 4929 Bexley Ln. on approx. 9,542 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((13)) 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. and Mrs. Myers replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a variance to construct a two car garage addition 7 feet from a side lot line and 29.1 feet from the front lot line. The Zoning Ordinance requires a 12 foot minimum side yard and a 30 foot minimum front yard; therefore, the applicants were requesting variances of 0.9 feet to the minimum front yard requirements and 5.0 feet to the rear yard requirements, respectively.

The applicants, Thomas and Judith Myers, 4929 Bexley Lane, Fairfax, Virginia, addressed the BZA and used the viewgraph to show the many trees on the property. Mr. Myers stated they were requesting a variance to construct a two story garage on the lot which they purchased in 1977. He expressed his belief that the addition would be architecturally pleasing and compatible with the neighborhood, and noted that most of the houses in the area have two-car garages. He explained that, although they were the original owners, financial considerations had prohibited their purchasing the garage option from the contractor while the house was being built. Mr. Myers said the property was well screened, the neighbors supported the request, the lot has an unusual shape, the addition could not be placed elsewhere on the lot without removing mature trees, and asked the BZA to grant the request.

In response to Mr. Ribble's question as to where the location of the garage would have been had it been built during the original construction, Mr. Myers said it would have been constructed on the same site as the proposed addition.

Mrs. Thonen asked if the reason for the variance was to save the existing tree, Mr. Myers said it was. He also said that architectural consideration had also influenced the placement of the addition. Mrs. Thonen noted that the size of the garage was compatible with other garages in the area and said that the letter of support received by the BZA would be made part of the record.

Mr. Kelley made a motion to grant VC 93-B-150 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 15, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-B-150 by THOMAS P. AND JUDITH MYERS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.0 feet from side lot line and 29.1 feet from front lot line, on property located at 4929 Bexley Lane, Tax Map Reference 69-4((13))93, 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 23, 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 9,542 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The lot has an exceptional shape and only a small corner of the addition requires a variance.
6. Although the BZA is reluctant to grant front yard variances, the request is only for a 10 or 11 inch variance.
7. If the addition were pushed further back on the property, a larger side yard variance would be needed.
8. The granting of the variance would not create a precedent since the applicant has testified that the neighbors already have garages.

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

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

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

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

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

1. This variance is approved for the location and the specified addition (two-car garage) shown on the plat entitled Plat of 4929 Bexley Lane, prepared by Thomas P. Myers, Professional Engineer, undated, received by the Office of Comprehensive Planning on December 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 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. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

Page 9, February 23, 1994, (Tape 1), THOMAS P. & JUDITH MYERS, VC 93-B-150, continued from Page 8)

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 9, February 23, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JACKIE A. & SANDRA N. ROBINSON, VC 93-L-146 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.1 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-507). Located at 4018 Blue Slate Dr. on approx. 7,137 sq. ft. of land zoned R-5. Lee District. Tax Map 92-2 ((30)) 385.

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.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a variance to construct a sunroom addition 12.1 feet from a rear lot line. The Zoning Ordinance requires a 25.0 foot minimum rear yard; therefore, the applicants were requesting a variance of 12.9 feet to the minimum rear yard requirement.

The applicants' agent, Scott Weeks, Patio Enclosure, 6826 Hill Park Drive, Lorton, Virginia, addressed the BZA. He stated that the excessive shallowness of the lot has caused the need for the variance. Mr. Weeks explained that the applicants' daughter is allergic to bee stings and she, as well as the other members of the family, would greatly benefit from the addition. In summary, Mr. Weeks said that the addition would be harmonious with the neighborhood, the neighbors supported the request, and asked the BZA to grant the variance.

In response to Mr. Ribble's question as to whether topographical problems existed on the property, Mr. Weeks confirmed that because of the steep slope of the lot, the proposed location was the feasible place to build the addition. He also noted that the location of the addition was further governed by the one existing back entrance to the house.

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

Mr. Pammel made a motion to grant VC 93-L-146 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 15, 1994.

Chairman DiGiulian called for discussion.

Mrs. Thonen noted that there was no place on the lot to build the addition without a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-146 by JACKIE A. AND SANDRA N. ROBINSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.1 feet from rear lot line, on property located at 4018 Blue Slate Drive, Tax Map Reference 92-2((30))385, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on February 23, 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-5.
3. The area of the lot is 7,137 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The unusual shallowness of the lot, which is less than 100 feet deep, has caused the need for the variance.
6. The topographical conditions in the rear yard restricts the placement of the addition to the location 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 and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated October 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 10, February 23, 1994, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN C. & JEAN B. BOTTS, VC 93-S-149

Chairman DiGiulian called for staff comments regarding the case which had been held over earlier in the public hearing.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that staff had been unable to contact the surveyor at NOVA Associates. She explained that after conferring with the applicant, who had indicated the architect had drawn the addition on the plat but had failed to certify to it, staff recommended the case be deferred until the matter could be rectified.

Chairman DiGiulian stated that the BZA could not act on the case until an acceptable plat was submitted and requested a deferral date from staff. Ms. Kelsey suggested March 8, 1994, at 10:00 a.m.

Mrs. Thonen made a motion to defer VC 93-S-149 to the suggested date and time. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 11, February 23, 1994, (Tape 1), Scheduled case of:

9:30 A.M. PATRICK J. & AMELIA J. FREEMAN, SP 93-V-114 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 deck to remain 13.2 ft., addition 11.9 ft. and accessory structure 6.9 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 4324 Jackson Pl. on approx. 20,546 sq. ft. of land zoned R-2 and HC. Mt. Vernon District. Tax Map 101-3 ((8)) (C) 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. Freeman replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit for an error in building location to allow a deck to remain 13.2 feet, an addition to remain 11.9 feet, and an existing accessory structure to remain 6.9 feet from a side lot line. The Zoning Ordinance requires a 15 foot minimum side yard; therefore, the applicant was requesting special permits of 1.8 foot, 3.1 foot, and 8.1 foot to the minimum side lot line, respectively.

The applicant, Patrick J. Freeman, #2 Grouse Run Road, Lexington, Virginia, addressed the BZA and stated that he had owned the subject property from 1970 to December 30, 1993. He explained that approximately 15 years ago he had screened the carport in order to provide an eating area for the family. Mr. Freeman further explained that in 1972, a storage shed was constructed deep in the back yard and close to a wooded area, and during the summer of 1987, a two-tiered deck, which used the rear brick work of the carport as an anchor, was also added to the rear of the house.

Mr. Freeman said that the photographs depicted that the structures were harmonious with the neighborhood. He stated there was no detrimental impact on the community, the neighbors supported the request, and it did not create an unsafe condition to other properties or public streets. Mr. Freeman said that he did not realize a building permit had been required for the screened porch or the shed, but realized a building permit was required for the deck. He admitted he had made a serious mistake and noted that he had no excuse for not obtaining the building permit for the deck.

Mr. Freeman said he subsequently decided to rectify the mistake and when he attempted to obtain a building permit for the deck, he was informed that the deck, the shed, and the porch were in violation. He stated that in the interim, he had sold his house, but was pursuing the request so that the new owner would have clear title to the property.

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

Mrs. Thonen made a motion to grant SP 93-V-114 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated February 15, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-V-114 by PATRICK J. AND AMELIA J. FREEMAN, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow deck to remain 13.2 feet, addition 11.9 feet and accessory structure 6.9 feet from side lot line, on property located at 4324 Jackson Place, Tax Map Reference 101-3((8))(C)29, 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 23, 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. The application meets the necessary standards for the granting of a special permit.

I. There would be not detrimental impact on the neighbors.

J. The neighbors support the request.

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 Absolute Surveys, Inc., dated May 14, 1976, revised September 27, 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.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 12, February 23, 1994, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT R. POWELL, APPEAL 94-B-001 Appl. under Sect(s). 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that the appellant is keeping 4 dogs on a lot containing 10,795 sq. ft. in violation of Par. 2A of Sect. 2-512 of the Zoning Ordinance. Located at 9113 Bramble Pl. on approx. 10,795 sq. ft. of land zoned R-3 (Cluster). Braddock District. Tax Map 69-4 ((8)) 597.

Chairman DiGiulian stated that the applicant had requested withdrawal of the appeal.

Mrs. Thonen made a motion to allow the withdrawal of Appeal Application, A 94-B-001. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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9:30 A.M. DIOCESAN MISSIONARY SOCIETY OF VIRGINIA, (ST. PETERS IN THE WOODS) SP 93-S-044 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit church and related facilities. Located at 5909A Fairview Woods Dr. on approx. 7.17 ac. of land zoned R-C and WS. Springfield District. Tax Map 77-1 ((1)) 67C. (MOVED FROM 1/25/94 AT APP.'S REQUEST.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Hanes presented the BZA with a revised affidavit and noted one change that indicated that William Donnelly had left the firm of Hazel and Thomas, P.C., to accept the position of County Attorney for Spotsylvania County. The other change was the name of the applicant's architectural firm. Mr. Hanes reaffirmed the revised affidavit.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the 7.17 acre site which is located between Route 123 or Ox Road and Fairview Woods Drive, southwest of the intersection of Route 123 and Burke Center Parkway, is zoned R-C and WSPOD. Ms. Langdon noted that to the north and west are single family detached dwellings, part of the Fairview Woods Subdivision, and the Fairview Fire Station which is zoned R-C and WSPOD. To the south is homeowner association open space which is part of the Fairfax Station Subdivision, zoned R-C and WSPOD, and to the east, across Route 123, is the Fairview Elementary School, zoned R-1. She said that the site, which is currently vacant, was completely wooded with a mature upland hardwood forest and contains slopes in excess of fifteen percent.

Ms. Langdon stated that the applicant, Diocesan Missionary Society of Virginia, was requesting approval of a special permit for a church and related facilities. She noted the Diocesan Missionary Society, the current owner of the property, intended to convey the property to a church known as St. Peter's in the Woods.

Ms. Langdon said that the applicant was requesting a special permit to allow construction of a one-story church, with a maximum height of 45 feet, which would ultimately consist of 30,745 square feet with an FAR of 0.098. An additional 20,154 square feet of cellar space would be excluded from the FAR. The proposed church will be constructed in phases.

Continuing, Ms. Langdon explained that Phase I would consist of 250 seats and 109 parking spaces; Phase II proposed an additional 150 seats and 44 parking spaces, for a total after Phase I and II of 400 seats and 153 parking spaces. She said that Phase III proposed an additional 200 seats and 30 parking spaces, for a total of 600 seats and 183 parking spaces. She noted that the applicant proposed to access the property with a right turn in, right turn out entrance along Route 123 and an entrance/exit along Fairview Woods Drive. A waiver of the barrier requirement along the north, south, and west lot lines has also been requested.

Ms. Langdon stated that while staff supported a church use on the site, it had several concerns regarding outstanding issues related to the application as submitted. She explained that the applicant requested approval for a 600 seat church on 7.14 acres at a Floor Area Ratio (FAR) of 0.098, which is almost the maximum allowed, 0.10 FAR, for a non-residential use in the R-C District. She noted that staff believed a church use on the site could be compatible with the surrounding residential area; however, the scale and intensity of the use, as proposed, was much higher than the equivalent planned density of .1 to .2 dwelling units per acre which would permit one residential dwelling on the seven acre property. Additionally, the number of parking spaces needed to serve a 600 seat church, along with its driveways and travel aisles, would contribute to the total amount of impervious surface on site and would increase intensity of the proposed development. Ms. Langdon said the church and parking lot would replace a significant portion of the upland hardwood forest on the property and reduce the natural infiltration currently provided. She noted that most of the site would drain south into a channel which is in a headwater area of a tributary of Popes Head Creek. The steeper slopes, in excess of fifteen percent, and upper ridges on the site have well drained but severely erodible soils.

Ms. Langdon said that the applicant had reduced the extent of the grading from the original plan by deleting 19 parking spaces along the entrance driveway from Fairview Woods Drive; however, staff does not believe this would fully achieve the protection of water quality in the Occoquan Reservior. She noted that staff suggested the church building should be concentrated in the portion of the site which contained less steep slopes to eliminate the need for extensive grading on erodible slopes. Due to the desire to use changes in topography to accommodate cellar space, the applicant declined to relocate or redesign the structure. Furthermore, due to the access constraints on Route 123, a secondary access must be provided from within the Fairview Woods Subdivision, adding traffic through the residential development. Ms. Langdon stated that the surrounding subdivisions to the north, west, and south were developed under the R-1, Cluster provisions of the Zoning Ordinance, and the property abuts a fire station to the north. She noted that as such it could be argued that the surrounding area was not developed at the density typically envisioned under R-C zoning, but rather that the site should be evaluated within the context of an area developed in the R-1 District. Even under R-1 zoning though, the proposed FAR of 0.098, combined with the other site features, would be more intense than what would be envisioned to be developed at a density of one dwelling unit, particularly since much of the site contains steep slopes and highly erodible soils.

Ms. Langdon stated that it was staff's belief that if the development was restricted to the first two phases, the amount of impervious surface and FAR would be reduced to a level which would be harmonious with the residential character of both the current zoning district and the density at which the adjacent properties are developed. She explained that limiting the use to Phases I and II would also reduce the traffic impact on adjacent residences.

In conclusion, Ms. Langdon noted that construction of Phase I and II of the proposed church would provide a 400 seat sanctuary with 153 parking spaces. She said that if the development were limited to these phases, it would reduce the amount of clearing and grading required and preserve the majority of the steep slopes on site, require fewer parking spaces; and, therefore, provide a less intense development which would be more in character with the zoning district and the surrounding subdivisions. As such, staff recommended that only the Phase I and Phase II portion of the proposed application should be approved subject to the revised proposed development conditions dated February 18, 1994. She noted that the revised development conditions, with the change in the plat date, had been distributed to the BZA. Ms. Langdon stated that staff also recommended approval of a waiver of the barrier requirement along the southern and western lot lines and a portion of the northern lot line.

Ms. Langdon informed the BZA that Angela Rodeheaver from the Office of Transportation (OT) would be available to answer questions concerning transportation issues.

In response to Mr. Dively's question as to whether staff believed a 400 seat church, not a 600 seat church, should be approved, Ms. Langdon said yes.

The applicant's attorney, Grayson Hanes, with the law firm of Hazel and Thomas, P.C., 3110 Fairview Park, Suite 1400, P.O. Box 12001, Falls Church, Virginia, addressed the BZA. He stated that in addition to Peggy Keyes, Planner with Hazel and Thomas, P.C., a large number of consultants were present to answer any questions the BZA might have. Mr. Hanes also stated that the church pastor, Patrick Ward, as well as a large number of parishioners, were present.

Mr. Hanes stated that the application met the necessary standard as evident in the planning report submitted to the BZA. In addressing the citizens' concern regarding property values, he stated that Thomas E. Reed, an expert real estate appraiser, had been engaged by the applicant and had concluded that there would be no detrimental impact on the property values in the community.

Mr. Hanes said that, although staff would like to limit the project to Phase I and Phase II, the church members have spent five years of planning and would like to proceed with the enterprise. He also explained that the church would have difficulty soliciting funds for a project which would not meet the needs of the congregation. Mr. Hanes expressed his belief that the request should be granted and noted that the application before the BZA was for the complete project and the applicant would not return to the BZA requesting further development.

Mr. Hanes submitted revised proposed development conditions to the BZA and said that they basically related to Phase III of the project and noted that planning and transportation issues had been addressed. He expressed his belief that staff was ignoring the history of the development of the area. Mr. Hanes noted that although the Comprehensive Plan called for five to ten acre lots with a .10 FAR, the area was developed under the R-1 district with a .15 FAR; the church would meet R-C requirements. He said staff had erroneously indicated that the surrounding area consisted of five to ten acre lots. Mr. Hanes referred to the "Occoquan Down Zoning", a growth control measure implemented by the Board of Supervisors, and stated that in every case that challenged the measure, the landowners won. He explained that in addition to the court cases, the County had also allowed the developers to proceed with their original plans. Mr. Hanes noted that the applicant's property fell under the second category and stressed that the property had been originally planned as a one acre, cluster, parcel. He said that the original plan had developed the property with seven lots. Mr. Hanes said in 1983, as a result of a lawsuit filed by the property owners, the County had entered into a "Consent Decree" whereby the property was deemed to be vested in the R-1 zoning district. He explained that the owner subsequently decided that, in keeping with their commitments to the community and their philosophy in all of their developments, they would attempt to set aside a site for a church. Mr. Hanes again noted that although the staff report indicated the surrounding lots were developed with five to ten acre parcels, they had been developed with less than one acre parcels. In referring to the area north of the subject property, he expressed his belief that because the lands to the west and south of the subject property had been developed under the R-1 Cluster, provision, the church property could also be developed under the R-1 Cluster, provisions. Mr. Hanes said that the property abutted Route 123, a four lane divided highway, and noted that a fire station, Fairview Elementary School, LaPetite Academy, and commercial uses surrounded the area. Again, he disagreed with staff analysis and said that it was a fallacy to believe a single residence should be constructed on a seven acre parcel fronting Route 123 with the fire station, the commercial uses, and the rather intense single family development. Mr. Hanes noted that in the 1980's, Fairfax County had approved a preliminary plan for one acre cluster development and deemed the plan to be in conformance with the Comprehensive Plan.

In addressing the environmental concerns, Mr. Hanes stated that the applicant had made concessions and noted that, although there was no Zoning Ordinance requirement, forty-two percent of the property would be designated as open space. He expressed his belief that the

real issue of the Occoquan Downzoning was the water quality and stated that the applicant would construct storm water management ponds with more than fifty percent phosphorous removal. He said that the site had been designed with an entrance, an exit, and parking along Route 123.

In summary, Mr. Hanes stated that the applicant would continue to consult with the concerned citizens, as well as with staff, to insure the use would be compatible with the neighborhood.

In response to Mr. Pammel's question regarding Phase III as depicted on the plat, Ms. Keyes presented exhibits which delineated the three Phases. She explained that Phase III would allow the extension of the parish hall and the sanctuary.

In response to Mrs. Thonen's question as to where the parishioners lived, Mr. Hanes stated that most lived in Fairfax Station or in the general area of the church. He explained that in order to limit any adverse impact on the adjoining homeowners, most of the parking would be situated between the church building and Route 123. Mrs. Thonen expressed her concerns regarding the removal of mature trees and the applicant's landscaping plans. Mr. Hanes stated that forty-two percent of the property would not be disturbed and noted the applicant has engaged a landscape architect who would ensure that the site would be aesthetically pleasing.

Mr. Dively asked what the undue hardship would be if the BZA approved a 400 seat church and not a 600 seat church. Mr. Hanes said the church project had been in the planning stages for five years. He explained that the applicant did not want to build piecemeal, but did want to attract a congregation with a well planned project. Again, he noted that the applicant would not have to return to the BZA for approval of additional projects; and the County, the citizens, and the congregation would all be cognizant of the complete project.

In response to Mr. Kelley's question as to where the congregation attended services, Mr. Hanes stated that the congregation of approximately 150 members met at Bonnie Brae Elementary School.

Mrs. Thonen quoted the information provided by the Transportation Engineer, Virginia Department of Transportation (VDOT), and asked if the applicant planned on using the church during peak hours. Mr. Hanes said yes, but noted that most of the use would be during non-peak hours and no school or child care center was planned.

Chairman DiGiulian called for speakers in support and approximately fifty citizens stood to show their support, but indicated they did not wish to speak to the request.

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

Allison Bendus, 5906 Fairview Woods Drive, Fairfax Station, Virginia; Elaine Quellette, 5912 Fairview Woods Drive, Fairfax Station, Virginia; Dale McPherson, 5926 Fairview Woods Drive, Fairfax Station, Virginia; Lt. Colonel Robin Squatrito, 5810 Hannora Lane, Fairfax Station, Virginia; Dr. Tommy Augustsson, 5907 Fairview Woods Drive, Fairfax Station, Virginia; addressed the BZA. They stated that the proposed entrance on Fairview Woods Drive would have a detrimental impact on the covenant and character of the community, and noted that every resident in the community had signed a petition against the entrance to the church from Fairview Woods Drive. They expressed their belief that the church would be the functional equivalent of a 24 hour store, and said that the estimated traffic flow on the residential street would create a safety hazard. The citizens noted the Fairfax County Parkway would effectively reduce the traffic on Ox Road; therefore, the total access should be from Ox Road. The explained that an entrance into their neighborhood would also provide a cut-through for commuters who wished to avoid the traffic on Route 123. In addressing the seven year construction plan, they expressed concerns regarding the heavy equipment which would be present in the neighborhood. The citizens stated that the proposed size was too large for the residential community and asked the BZA to reduce the seating capacity, square footage, and parking requirements. The citizens also expressed environmental concerns and noted the staff report had indicated that wetlands may be involved. In conclusion, the citizens stated that Mr. Hanes had indicated the church would cooperate with the residents and had also assured them that the church neither needed, nor desired an entrance or exit onto Fairview Woods Drive.

During the course of the citizens' testimony, Chairman DiGiulian noted that a petition with approximately fifty signatures in opposition to an entrance on Fairview View Woods Drive was received by the BZA. He polled the audience for citizens in opposition and approximately fifty citizens raised their hands.

During her testimony, Mr. Kelley asked Ms. Quellette when she became aware of the planned church. Ms. Quellette stated, although she had been aware of the plan to build the church when she purchased the property approximately two years ago, she had been informed that the only entrance or exit would be from West Ox Road. Ms. Quellette also read a letter of opposition from Myra Williams, 5917 Fairview Woods Drive, Fairfax Station, Virginia.

For clarification purposes, Ms. Langdon stated that while staff was not suggesting limiting the project to 400 seats, staff believed the configuration of the proposed 400 seat church building would best address staff's concerns regarding the application and the site. She

explained that staff had conferred with OT and VDOT regarding the entrances and was informed that VDOT was resolute in their position that they would allow an entrance onto Route 123 in addition, not in lieu of, an entrance onto Fairview Woods Drive. Ms. Langdon noted that the memorandum dated February 14, 1994 outlined OT's transportation position.

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

In rebuttal, Mr. Hanes expressed his belief that the intensity would not be a problem. He stated that in an attempt to cooperate with the neighbors, the applicant had worked hard on the project and had made many concessions. He explained that the applicant's consultants had met with VDOT to resolve the citizens' concerns regarding an entrance onto Fairview Woods Drive and was told that it would be a VDOT requirement. Mr. Hanes stated that in an attempt to resolve the transportation issue, the applicant would actively try to funnel as much traffic as possible onto Route 123 and would restrict entrances to right turns and left turns. He said that VDOT had imposed the requirement because of the potential for "U" turns on Route 123. In conclusion, Mr. Hanes stated that the applicant had fully cooperated with staff and the community, the wetland issue would be addressed at the time of site planning, and asked the BZA to grant the request.

Chairman DiGiulian closed the public hearing.

Mr. Pammel stated that he was familiar with the history of the area. He said that with regards to the community's concerns regarding commercial traffic using the residential street, a church is a normal community service and the traffic would be generated by the area residents. He expressed his belief that VDOT has correctly assessed the traffic situation, and because of safety issues had required a primary entrance and exit on Fairview Woods Drive.

Mr. Pammel made a motion to grant Phase I and Phase II of SP 93-S-044 subject to the revised development conditions dated February 18, 1994 with modifications to Conditions 1, 2, 11, and 13. He stated that the applicant could return to the BZA to seek approval of Phase III. He explained that, although he did not agree with staff's concerns regarding the intensity of development or the FAR, he would like to reassess the application after Phases I and II are completed.

The motion died for a lack of a second.

Mr. Kelley made a motion to grant SP 93-S-044 subject to the revised development conditions dated February 22, 1994 as submitted by the applicant.

Mrs. Thonen seconded the motion. She explained that if Phases I, II, and III are approved, the community would be aware of the complete project. Mrs. Thonen stated that the applicant should work with the neighbors so that there would be no detrimental impact on the area.

Mr. Kelley stated that if the BZA did not approve the complete plans, it would be unfair to the congregation. He noted that the members of the community were well aware that the site was designated for a church and if the citizens had researched the plans, they would have been informed of the proposed entrance. Mr. Kelley expressed his hope that the church and the citizens would work together to mitigate any adverse impact on the community. He also noted that the BZA has the ability to hold a revocation hearing.

Mr. Ribble stated that although staff did a good job on the application, Mr. Hanes had addressed staff's concerns. He explained that the site is appropriate for a church, and the parking and intensity would not have a serious detrimental impact on the neighborhood.

Chairman DiGiulian stated that he would support the motion. He said that it was refreshing to have an applicant who submitted the complete future plans for a church. He noted that the structure would be 90 feet from any lot line, there would be adequate buffering, and the density requirement would be met.

Mr. Pammel stated that he had no problems with the intensity of use, the site, or the size; but, expressed his belief that staff's concerns regarding the environment, water quality, grading, and disruption of the site should be addressed. He explained that if the applicant had to return to the BZA to obtain permission to complete Phase III, the concerns could be addressed in greater details. Chairman DiGiulian expressed his belief that the concerns mentioned by Mr. Pammel would be adequately addressed at the site plan level. Mrs. Thonen noted that the development conditions called for Best Management Practices (BMP) at the site.

In an attempt to clarify the motion, Barbara Byron, Director, Zoning Evaluation Division, OCP, asked the maker of the motion if the BZA had intended to include staff's or the applicant's Development Condition 10 in the motion. Mr. Kelley stated that the applicants Development Condition was adopted.

(NOTE: When the BZA approved the Resolution on March 1, 1994, prior to its decision becoming final, it reconsidered its decision with regards to the development conditions and adopted staff's Development Condition 10 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-044 by DIOCESAN MISSIONARY SOCIETY OF VIRGINIA, under Section 3-C03 of the Zoning Ordinance to permit church and related facilities, on property located at 5909A Fairview Woods Drive, Tax Map Reference 77-1((1))67C, 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 23, 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 7.17 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 7-800 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 and its successor, St. Peters in the Woods Episcopal Church, Trustees, and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Walter L. Phillips, dated July 2, 1993, revised through February 15, 1994 and approved with this application, as qualified by these development conditions. The building shall be in substantial conformance with the attached plans prepared by Robson - Barkley Pierce Newman Joint Venture. The general character and style of the building materials incorporated in the rear and front elevations of the building will be comparable to each other.

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, unless waived 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. Phase I shall consist of approximately 250 seats in the main area of worship and 109 parking spaces; Phase II shall consist of approximately 150 additional seats and 44 additional parking spaces; Phase III shall consist of approximately 200 additional seats and up to an additional 30 parking spaces. At the completion of Phase III, the maximum number of seats in the main area of worship shall be 600 and between 153 and 183 parking spaces shall be provided within the parking areas as shown on the special permit plat. All parking shall be on site.

6. Limits of clearing and grading shall be as shown on the special permit plat. The limits of clearing and grading and slope preservation shall be subject to review and approval by the Urban Forestry Branch and the Site Review Branch of DEM. Because of the sensitivity of the natural drainageway located along the southern boundary of this parcel, all tree preservation areas within the limits of clearing and grading along the southern boundary shall be specifically identified on the site plan as tree preservation areas to connect to and extend the Popes Head Creek Environmental Quality Corridor. Best efforts shall be used to design the SWM/BMP Facility #1 so as to minimize its size and to preserve to the maximum extent tree save area in addition to that shown by the limits of clearing and grading on the plat.

7. Existing vegetation along the western and southern property lines shall be preserved and shall satisfy the requirements of Transitional Screening 1. Existing vegetation along the northern property line shall be supplemented to provide additional screening to the residences on Lots 71, 72 and 75. Evergreen trees compatible with the natural forests in the area shall be used in this transitional screening yard.

Supplemental landscaping to partially screen and soften the visual impact of the structure shall also be provided along the eastern property line between the parking lot and Route 123. Species, size and number of all plantings shall be determined by the Urban Forestry Branch at time of site plan review.

8. Interior and peripheral parking lot landscaping shall be provided in accordance with the provisions of Sects. 13-201 and 13-202 of the Zoning Ordinance.

9. Foundation plantings shall be provided around the church to soften the visual impact of the structure. The species, size and location shall be determined by the Urban Forestry Branch at the time of site plan review.

10. The barrier requirement shall be waived along the western and southern lot lines and a portion of the northern lot line. A six foot high solid brick or wood fence shall be provided to screen the residences on Lots 71, 72 and 75. The barrier shall be placed to provide the maximum screening benefit to the residences as determined by the Urban Forestry Branch; however no additional existing vegetation shall be removed to install the barrier.

11. Stormwater Management (SWM/Best Management Practices (BMPs) shall be provided as shown on the approved plat and shall be designed to meet the phosphorus removal efficiency measures required by the County's Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District unless waived by the Department of Environmental Management (DEM). SWM/BMP Facilities #1 and #2 shall be located as generally shown on the special permit plat. Stormwater management and water quality requirements are expected to be satisfied with the incorporation of dry ponds. Location and size of the ponds are subject to final engineering considerations.

12. In order to prevent increased erosion and sedimentation of soils within the sensitive headwater area of Popes Head Creek and on the steep slopes adjacent to the headwater area, strict erosion and sediment control measures shall be provided during all grading and construction activities. Design of the erosion and sediment control measures shall be substantially 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 and approved by DEM.

13. Both accesses to the site shall be constructed coincident with the Phase I development. The applicant shall encourage use of the Fairview Woods Drive entrance for left in/right out only movements and use of the Ox Road entrance as a means of ingress for parishioners arriving from the north and as a means of egress for parishioners exiting to the south by making announcements in the church bulletins, and during services and by posting signage on the site to encourage such entrances and exits.

14. The geometrics of the entrance to the site from Fairview Woods Drive shall be subject to the review and approval of the Virginia Department of Transportation (VDOT).

15. Coincident with the Phase 1 development of the site, the applicant shall construct a third lane southbound on Route 123 to access the proposed entrance from Route 123. This lane shall include curb and gutter along the property's entire frontage on Route 123 and shall be designed and constructed in accordance with all Virginia Department of Transportation (VDOT) standards.

16. Parking lot lighting shall conform to the following specifications:

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

    The lights shall be a low-intensity design and shall focus the light directly on the subject property.

    If necessary, shields shall be installed, to prevent the light from projecting beyond the 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 construction has commenced and been diligently prosecuted. Establishment of Phase I shall establish the use as approved pursuant to this special permit. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Attachments: Phased Development Layouts

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 19, February 23, 1993, (Tape 2), Action Item:

Approval of Resolutions for February 15, 1994 Hearings

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 19, February 23, 1993, (Tape 2), Action Item:

Request for Additional Time
Chamin Puri, SPA 87-S-012-1

Mr. Pammel made a motion to grant the additional time. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting. The new expiration date will be February 6, 1995.

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Page 19, February 23, 1993, (Tape 2), Action Item:

Request for Additional Time
Northern Virginia Primitive Baptist Church, SP 88-P-088

Mr. Pammel made a motion to grant the additional time. He noted that several additional time requests had been granted and expressed his belief that the applicant should be given more time than requested so that this might be the last time additional time would be necessary. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting. The new expiration date will be June 4, 1994.

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Page 19, February 23, 1993, (Tape 2), Action Item:

Approval of Minutes from January 26, 1994

Mr. Pammel made a motion to approve the minutes as submitted. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 19, February 23, 1993, (Tape 2), Action Item:

Approval of Revised Plat and Resolutions
Hrair J. Kazanjian, VC 93-L-063
Heard and Approved on January 4, 1994

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals and stated that the County Attorney's Office and the applicant had both informed staff that the deed has not been recorded.

Mrs. Thonen made a motion to defer action until the deed has been recorded. The Chair so moved.

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Page 19, February 23, 1993, (Tape 2), Action Item:

Request for Date and Time
Earl Donald and Dermecia Proffit Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of April 12, 1994. He noted that William Shoup, Deputy Zoning Administrator, did not believe the appeal was timely filed and explained that because of oversights on the part of the County, he believed it was.

Mr. Kelley asked Mr. Shoup for comments.

Mr. Shoup stated that he believed the scope of the appeal should be limited. He explained that staff agreed that the appellant had the right to appeal the December 27, 1993 letter, which made a determination regarding the non-conforming use. He further explained that in August 1992, the applicant had been issued the original "Notice of Violation" which addressed the grading and paving business operating on residential property. Mr. Shoup said that staff believed the appeal should be limited to the December 27, 1993 letter. Mr. Pammel stated that the appellant has been in business since 1941 and if the appellant proves that it is a non-conforming use, he would be allowed to continue the operation. Mr. Shoup stated that if the BZA upheld the Zoning Administrator, then the appellant could possibly raise the issue as to whether the activities constitute a type of operation that is impermissible.

Chairman DiGiulian asked if the BZA found the appellant to be a legal non-conforming use, would the violation be moot. Mr. Shoup replied that it was his belief it would be moot. He explained that one of the primary questions is the extent of the expansion.

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

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Page 20, February 23, 1993, (Tape 2), Action Item:

Out of Turn Hearing Request
Thomas and Helen Crichton, VCA 75-D-101 and SP 94-D-006

Mrs. Thonen made a motion to deny the request. She stated that the case was currently scheduled for April 12, 1994. The Chair so moved.

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Page 20, February 23, 1993, (Tape 2), Action Item:

Out of Turn Hearing Request
Mt. Vernon Unitarian Church, SPA 82-V-069

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and stated staff had been asked to advise the BZA that Supervisor of the Mount Vernon District, Gerald Hyland, requested the BZA approve the out-of-turn hearing.

Mrs. Thonen asked why the applicant could not obtain a temporary permit. Ms. Kelsey explained that a temporary permit could only be issued for a specific period of time and that the request would exceed that time limitation.

Mrs. Thonen made a motion to grant and schedule the public hearing date for April 5, 1994. The Chair so moved.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

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

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

SUBMITTED: March 29, 1994

APPROVED: April 5, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 1, 1994. The following Board Members were present: Vice Chairman John Ribble, Mary Thonen, Robert Dively, 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 21, March 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. HALMAR, INC., VC 93-S-152 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 166 ft. from railroad tracks (200 ft. min. yard req. by Sect. 2-414). Located at 5806 Fairview Woods Dr. on approx. 48,538 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 77-1 ((20)) 6A.

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. Edward R. Addicott, with the firm of Paciulli, Simmons, et al., 1821 Michael Faraday Drive, Reston, Virginia, the applicant's agent, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots are also vacant and Fairview Woods Drive north of Burke Center Parkway has yet to be constructed. He noted that on June 4, 1991, the same request was approved by the BZA under VC 91-S-152 to allow the construction of a dwelling 166 feet from the railroad tracks on the subject property. Because construction did not commence within 24 months of the approval date, the variance expired; therefore, the applicant was submitting a new request for a variance to be approved.

Mr. Addicott presented the statement of justification, previously submitted in writing and incorporated into the record.

Mr. Hammack asked Mr. Addicott if he had read the Proposed Development Conditions and if he concurred with them, to which he replied in the affirmative.

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

Mr. Hammack moved to grant VC 93-S-152 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 23, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-152 by HALMAR, INC., under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 166 ft. from railroad tracks, on property located at 5806 Fairview Woods Drive, Tax Map Reference 77-1((20))6A, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 1, 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 48,538 square feet.
4. The lot has an unusual configuration.
5. There is a pre-existing condition of Burke Center Parkway coming through.
6. The request was granted two years ago and inadvertently was allowed by the applicant to expire.
7. The Proposed Development Conditions provide for the acoustical treatment of the 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 construction of a dwelling 166 feet from railroad tracks as shown on the variance plat prepared by Paciulli, Simmons & Associates, Ltd. dated October 17, 1989, revised December 2, 1993, submitted with this application and is not transferable to other land.

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

3. Prior to the approval of a Building Permit, a tree preservation plan showing final limits of clearing and grading shall be approved by the Urban Forestry Branch, Department of Environmental Management (DEM). This tree preservation plan shall preserve as much of the existing tree canopy on the steep slopes as determined by the Urban Forestry Branch, DEM, and shall meet the tree cover requirements of the Zoning Ordinance.

4. In order to achieve a maximum interior noise level of 45 dBA Ldn, the following attenuation measures shall be provided:

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

   b. Doors and windows shall have a laboratory STC rating of at least 28. If windows constitute more than 20% of any facade, they shall have the same laboratory STC rating as walls.

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

5. In order to achieve a maximum exterior noise level of 65 dBA Ldn, noise attenuation structures such as acoustical fencing, walls, earthern berms or combinations thereof shall be provided for those outdoor recreation areas including rear yards that are unshielded by topography or built structures. If acoustical fencing or walls are used, they shall be architecturally solid from the ground up with no gaps or openings. The structure employed must be of sufficient height to adequately shield the impacted area from the source of the noise.

6. The possibility of noise impacts exceeding 45 dBA Ldn inside the dwelling and 65 dBA Ldn outside the dwelling when trains pass shall be disclosed to all prospective purchasers of the subject property.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and is diligently pursued or unless a request for additional time is approved by the BZA because of the occurrence of conditions unforeseen at the time of the approval. 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 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 9, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 23, March 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. GERALD F. WHITE, VC 93-S-153 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.2 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-307). Located at 6557 Gladeview Ct. on approx. 14,968 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 427.

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. Gerald F. White, 6557 Gladeview Court, Burke, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Cherry Run Subdivision are also developed with single family detached dwellings. He said the applicant proposed to construct a screened porch addition and was requesting a variance of 3.8 feet from the minimum rear yard requirement.

Mr. White presented the statement of justification, previously submitted in writing and incorporated into the record.

Mr. Pammel moved to grant VC 93-S-153 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 23, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-153 by GERALD F. WHITE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 21.2 ft. from rear lot line, on property located at 6557 Gladeview Court, Tax Map Reference 88-1((7))427, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 1, 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 14,968 square feet.
4. The lot has an irregular shape.
5. The location of the dwelling on the lot is unusual, precluding the expansion of the residence in any other location than that proposed by the applicant.
6. The variance requested is minimal (3.8 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 Larry N. Scartz, Certified Land Surveyor, dated January 2, 1992, revised through 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 establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 9, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 24, March 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. NANCY GALE, VC 93-D-154 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of decks 10.1 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 1926 Massachusetts Ave. on approx. 24,189 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((13)) (4) 6 and 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. Nancy Gale, 1926 Massachusetts Avenue, McLean, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is surrounded by single family detached dwellings also zoned R-2.

Vice Chairman Ribble advised that the Board had just been handed a letter of opposition from Della Fling and provided a copy to the applicant.

Ms. Gale presented the statement of justification, previously submitted in writing and incorporated into the record. She said she was surprised by the letter from Mrs. Fling, an elderly woman living next door, who had recently been taken from her home because of illness and was residing with her daughter. Ms. Gale said that Mrs. Fling lived on the side opposite from where the deck would be constructed and she was confused about the statement that the deck would be infringing on Mrs. Fling's property line. Ms. Gale said she had recently constructed a driveway on the side of the property which borders Mrs. Fling's property. She said she had worked with Mrs. Fling to be sure that she was happy with the way the driveway was installed, particularly because of a drainage problem. Ms. Gale said she incurred additional expense to ensure drainage under the driveway and installed pipes between the two properties to avoid water draining onto Mrs. Fling's lot.

Mrs. Thonen said she noted that Ms. Gale had a large back yard and wondered if there was anywhere else in the back yard where the deck could be accommodated without a variance. Ms. Gale said the deck was designed to be off the dining room and kitchen, so that it could be used primarily for outside dining. She said there is no other access to the back yard from the main floor of the house with the exception of the bedroom, which would not be suitable for the purpose of outside dining.

Mr. Hammack said the photographs showed two existing decks and asked if they would be removed. Ms. Gale said the lower one would be removed and the upper one would be reinforced to remain.

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

Mrs. Thonen moved to grant VC 93-D-154 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 23, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-154 by NANCY GALE, under Section 18-401 of the Zoning Ordinance to permit construction of decks 10.1 ft. from side lot line, on property located at 1926 Massachusetts Avenue, Tax Map Reference 41-1((13))(4)6, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 1, 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 approximately 24,189 square feet.
4. The existing doors leading onto a small, high deck, with no steps, present a hardship.
5. The topography, shape of the lot, and position of the dwelling on the lot, all typify a true hardship.

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

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

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

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

difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

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

1. This variance is approved for the location and the specified decks shown on the plat prepared by Scott Surveys, dated November 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.

Pursuant to Sect. 18-407 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 March 9, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 26, March 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM R. DEAN, JR., VC 93-S-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 12.0 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 5941 Fairview Woods Dr. on approx. 28,165 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((11)) 52.

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 R. Dean, Jr., 5941 Fairview Woods Drive, Fairfax Station, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is surrounded by single family detached dwellings also zoned R-C. The applicant proposed to build a deck 8.9 feet high and was requesting a variance of 8.0 feet.

Mr. Dean presented the statement of justification, previously submitted in writing and incorporated into the record.

In answer to a question from Mr. Kelley, Marilyn Anderson, Senior Staff Coordinator, stated that the deck could have been constructed by right at the time the house was built under the cluster provision.

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

Mr. Kelley moved to grant VC 93-S-155 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 23, 1994.

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The applicant requested a waiver of the eight-day waiting period later in the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-155 by WILLIAM R. DEAN, JR., under Section 18-401 of the Zoning Ordinance to permit construction of deck 12.0 ft. from side lot line, on property located at 5941 Fairview Woods Drive, Tax Map Reference 76-2((11))52, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 1, 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 28,165 square feet.
4. The proposed deck could have been built by right when the dwelling was constructed by the builder.
5. The lot has an exceptional pie shape.

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

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

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

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

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

1. This variance is approved for the location and the specified deck shown on the plat prepared by The BC Consultants, dated June 7, 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. An administrative variance shall be obtained for the location of the dwelling to remain 11.8 feet from a side lot line.

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

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

Mr. Kelley moved to waive the eight-day waiting period. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 1, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JONATHAN C. DEAN, VC 93-P-156 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit 7.5 ft. and 8.4 ft. high fences to remain in front yard of a corner lot and 7.7 ft. high fence to remain in side yard (4 ft. max. height in front yard, 7 ft. max. height in side yard permitted by Sect. 10-104). Located at 7714 Lee Hwy. on approx. 26,436 sq. ft. of land zoned C-8, R-3 and HC. Providence District. Tax Map 49-2 ((1)) 96C.

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 S. Bracken, Greenberg Bracken & Tran, 709 Prince Street, Alexandria, Virginia, attorney and agent for the applicant, replied that it was.

Mr. Bracken stated that Mr. Dean could not be present because of the death of a very close friend.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is developed with a vehicle/light service establishment; to the east and west are properties zoned C-8 and HC and developed commercially; to the north is property zoned R-20 and HC and developed with single family attached dwellings; to the south, across Lee Highway, is property zoned R-20 and HC and developed with multi-family residential dwellings.

The variance request is a result of special exception and rezoning applications approved by the Board of Supervisors (BOS) in July 1993, to establish the vehicle/light service establishment. Proffer 3 accepted by the BOS in conjunction with the approval of the rezoning states:

> The applicant will make application for a variance for the maximum fence height variance for the fences along Emma Street and the easterly property line within six (6) months of the approval of this rezoning and special exception application. If the requested variance is not granted by the Board of Zoning Appeals, the applicant shall bring the said fences into compliance with the said Zoning Ordinance requirements.

Mr. Bracken came forward to present the statement of justification, previously submitted in writing and incorporated into the record. He said that, in 1990, the Deans removed the tanks from below the ground because of possible environmental impact and just operated as a vehicle/light service establishment. In 1992, the applicant was found to be in violation because of having taken out the tanks; he was told that a special exception was required. Mr. Bracken said the Deans made application for a special exception and rezoning to commercial for a small portion of the property in the back, approved by the BOS in July 1993. At that time, the County noted that two fences exceeded allowable height. In proffers to the Board, the applicant was committed to go before the Board of Zoning Appeals to resolve the situation. Mr. Bracken contended that the fences were advantageous to the neighbors and passers by because they shielded unsightly use at the establishment, which is known as the Car Doctor.

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

Mr. Hammack moved to grant VC 93-P-156 for the reason set forth in the Resolution, subject to the Proposed 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-156 by JONATHAN C. DEAN, under Section 18-401 of the Zoning Ordinance to permit 7.5 ft. & 8.4 ft. high fences to remain in front yard of a corner lot and 7.7 ft. high fence to remain in side yard, on property located at 7714 Lee Highway, Tax Map Reference 49-2((1))96C, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 1, 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, R-3 and HC.
3. The area of the lot is approximately 26,436 square feet.
4. Allowing the fences to remain is desirable because they provide protection for the townhouse and residential neighborhood to the rear of the property.
5. The property is on a heavy traffic corridor which is somewhat of a mixed use district with commercial and residential side-by-side.
6. The existing fences have created no problem for anyone since they have been there.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 fences 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 variance plat prepared by Alexandria Surveys, Inc., dated November 19, 1993, submitted with this application, as qualified by these development conditions.

3. The wooden stockade fence shall be kept in good repair.

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 variance shall not be legally established until this has been accomplished.

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 March 9, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 29, March 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM R. DEAN, JR., VC 93-S-155 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 12.0 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 5941 Fairview Woods Dr. on approx. 28,165 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 76-2 ((11)) 52.

At this time, William R. Dean, Jr., who was heard and granted earlier in the meeting requested a waiver of the eight-day limitation. Mr. Kelley so moved. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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9:30 A.M. STEVEN C. BISHOP, SP 93-Y-116 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 10.0 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-C07). Located at 15113 Philip Lee Rd. on approx. 15,320 sq. ft. of land zoned R-C, AN and WS. Sully District. Tax Map 33-4 ((2)) 371.

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. Steven C. Bishop, 15113 Philip Lee Road, Chantilly, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is surrounded on four sides by single family detached dwellings, also zoned R-C. Pleasant Valley Road is located west of the property. The applicant proposed to construct a garage addition with a variance of 10 feet.

In answer to a question from Mr. Pammel about the property having been developed under the R-2 District requirements, Mr. Heine said that the previous zoning under the cluster provisions required a minimum side yard of 8 feet and total minimum side yards of 24 feet.

Mr. Bishop presented the statement of justification, previously submitted in writing and incorporated into the record.

Mr. Hammack noted that the applicant's plat showed relocation of a portion of the driveway. Regarding that portion of the driveway that would not be relocated, he asked the applicant if he planned to have the asphalt removed and the area re-sodded, and the applicant replied that he did plan to do so.

James R. Wenberg, the property owner at 15115 Philip Lee Road, spoke in opposition to the application. He said the side yard where the applicant proposed to build the garage was Mr. Wenberg's front yard due to the layout of the property. He submitted a photograph for the Board's review. Mr. Wenberg said the structure would be very large and the only thing visible from his front door or his front porch. He said Mr. Bishop's garage would be about 25% larger than his own garage which came with the house. Mr. Wenberg noted that Mr. Bishop's house also had been built with a garage. Mr. Wenberg said that the proposed garage would take up about 40% of the existing frontage and would significantly lengthen the house. Mr. Wenberg said that Mr. Bishop also had a couple of storage sheds in the back. He had submitted a Deed of Restricted Covenants to the Clerk, recorded by the developer in 1983, which only allowed one shed. Mr. Wenberg said that Mr. Bishop was the only property owner in the neighborhood with different colored siding on his addition from that on the existing dwelling. In answer to a question from Mr. Kelley, Mr. Wenberg pointed out the location of the former garage which had come with the house, which he said was the smallest model in the neighborhood.

Mr. Hammack asked staff if the proposed garage could be constructed without a variance if it were moved to the rear. While staff was checking the Ordinance, Mr. Ribble noted that the Board had received a copy of the covenants; however, he said enforcement of the covenants was not a concern of the BZA.

Mr. Heine finished checking the Ordinance and advised that Mr. Bishop could construct the garage in the back by right as the minimum back yard requirement was 25 feet and the minimum side yard requirement was 20 feet in the R-C District.

Vice Chairman Ribble noted receipt of a letter of opposition from Dr. Earl V. Carl and asked staff to provide the applicant with a copy.

Mr. Bishop said that Mr. Wenberg's property was located at significantly higher elevation and, with the setback of the proposed garage, he did not believe it would significantly impact his view. Mr. Bishop said Mr. Wenberg's front yard had a significant slope, making it practically unusable.

Referring to the previous addition, Mr. Bishop said it was true that the siding did not match the dwelling; however, he had already signed a contract to have the house covered with siding matching that on the addition, and the proposed garage would have matching siding.
Mr. Bishop said, concerning the sheds, that he had no basement as Mr. Wenberg did; therefore, he needed the sheds for storage. He said that, when he converted the former one-car garage to living space, he had no space to store lawn equipment. Mr. Bishop said that, if he did build a two-car garage, he would have storage space and would remove one of the sheds. He said the larger shed was there when he purchased the property and he had converted it to a workshop.

Mr. Kelley asked Mr. Bishop if he had construction going on in the back and Mr. Bishop said yes, he was adding living space consisting of a den, a screened porch and a very small deck, which would be completed any day. He said he had shown it on his plat.

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

Mr. Pammel said he did not believe property owners should be deprived of rights which they had under former zoning which was in effect when the house was originally built and this fell within those constraints. He said he believed Mr. Bishop had also indicated that by being allowed to construct the proposed garage, one of the sheds which created opposition would be eliminated. He referenced the letter of opposition from Dr. Carl.

Mr. Pammel made a motion to grant for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated February 23, 1994. Mr. Hammack seconded the motion.

Mr. Kelley said, if there was any hardship, it was self-imposed. He said he believed the applicant was engaging in a comprehensive remodeling of his residence and could have somehow turned the garage around and proceeded differently with better planning, requiring little, if any, variance. Mr. Kelley said that he would favor allowing the applicant to file another variance application in less than a year, with another plan.

Mr. Pammel submitted that the hardship was thrust upon the applicant by the County. He said that, if the downzoning had never occurred, the applicant would have been permitted by right to do what he was now proposing and could have built more because his required minimum yard would only have been 8 feet. Mr. Pammel said that both he and Mr. Hammack agreed that the addition would be oversized; however, the applicant would be removing a shed which was objectionable to the adjoining property owners.

Mrs. Thonen said she still believed that the proposed garage was larger than the Board usually granted and would impact upon the neighbors who objected; plus which, the applicant had constructed an additional shed, the removal of which should have nothing to do with the decision of the Board. She said she would vote against the motion to grant.

Mr. Pammel asked the applicant if he could live with a smaller structure of 22 by 24 feet, and the applicant said he could.

Mr. Dively asked the applicant when he had purchased the property and he said 1982. Mr. Dively noted that the current zoning was in effect when the applicant purchased the property.

Vice Chairman Ribble called for the question and the motion to grant failed by a vote of 2-4.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-116 by STEVEN C. BISHOP, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements to permit construction of addition 10.0 ft. from side lot line, on property located at 15113 Philip Lee Road, Tax Map Reference 33-4{(2)}371, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 1, 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, AN and WS.
3. The area of the lot is approximately 15,320 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.

Mr. Hammack seconded the motion which failed by a vote of 2-4. Vice Chairman Ribble, Mrs. Thonen, Mr. Dively, and Mr. Kelley voted nay. Chairman DiGiulian was absent from the meeting.

THEREFORE, IT IS RESOLVED that the subject application is **DENIED** for lack of four affirmative votes required to approve the application.

Mr. Pammel moved to waive the twelve-month waiting period for refiling. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 9, 1994. This date shall be deemed to be the final approval date of this special permit.

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Mr. Pammel then made another motion to grant-in-part as described in the Resolution. Mr. Hammack seconded the motion.

Mr. Kelley said he was opposed to this motion for the same reason he was opposed to the previous motion. He said that Mr. Dively's question brought out the proper information required to make a decision. The applicant should not be able to take advantage of a downzoning which occurred prior to his purchase of the property. Mrs. Thonen agreed.

The motion to grant-in-part failed by a vote of 2-4.

Mr. Kelley said that, if the applicant wished to return with a reconfiguration and a lesser variance, he would be happy to consider it. Mrs. Thonen and Mr. Dively expressed concurrence.

Vice Chairman Ribble asked the applicant if he wished to request a waiver of the twelve-month limitation on refiling and he said he did. The Board acted to grant the waiver.

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MOTION TO GRANT-IN-PART FAILED

COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-Y-116 by STEVEN C. BISHOP, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements to permit construction of addition **(22 ft. by 24 ft.) 12.0 ft.** (APPLICANT REQUESTED 10.0 FT.) from side lot line, on property located at 15113 Philip Lee Road, Tax Map Reference 33-4((2))371, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 1, 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, AN and WS.
3. The area of the lot is approximately 15,320 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.

Mr. Hammack seconded the motion which failed by a vote of 2-4. Vice Chairman Ribble, Mrs. Thonen, Mr. Dively, and Mr. Kelley voted nay. Chairman DiGiulian was absent from the meeting.

THEREFORE, IT IS RESOLVED that the subject application is **DENIED** for lack of four affirmative votes required to approve the application.

Mr. Pammel moved to waive the twelve-month waiting period for refiling. Mr. Hammack seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 9, 1994. This date shall be deemed to be the final approval date of this special permit.

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9:45 A.M. BRUCE L. HECOX, Appeal 94-L-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that appellant's use of property at 5520 Franconia Rd. as a towing service is in violation of Par. 5 of Sect. 2-302 and Sect. 18-701 of the Zoning Ordinance. Located at 5520 Franconia Rd. on approx. 19,194 sq. ft. of land zoned C-6. Lee District. Tax Map 81-4 ((1)) 70.

Vice Chairman Ribble called the applicant to the podium to identify himself and Bruce L. Hecox, 5520 Franconia Road, Alexandria, Virginia, did so.

William E. Shoup, Deputy Zoning Administrator, presented the staff report, stating that the property is developed with a one-story service station building with three bays. He said staff's position on the appeal was set forth in the memorandum dated February 22, 1994, and he briefly summarized key points: The appeal was of a determination that the appellant's use of the property for the operation of a towing service business was in violation of Par. 5, of Sect. 2-302 and Sect. 18-701 of the Zoning Ordinance. The property was originally developed with a service station in the late 1950s, pursuant to BZA approval of a special use permit. The appellant obtained Non-Residential Use Permit approval in 1962 to begin operating the service station. There was evidence to suggest that at least as early as 1974 the appellant operated a towing business from the property in conjunction with the service station use. It had long been staff's position that a towing service is permitted as an accessory use to a service station. In 1990, the appellant ceased the operation of the service station use. Petroleum contamination had been discovered on the site and excavation and remediation efforts commenced. Remediation work had been discontinued without final resolution and there still was no service station use occurring on the property; however, the appellant was operating a towing service business from the site by maintaining an office in the service station building and keeping the tow trucks on the site. A towing service is allowed as an accessory use, but the Zoning Ordinance provides that accessory uses are permitted only when they are in connection with, incidental to, and on the same lot with the principal use. With the elimination of the service station principal use, the towing service no longer is incidental to a permitted use on the property; thus, it was staff's position that the towing service was no longer an accessory use, but had become the principal use of the property and, as such, it was staff's position that the use constituted a heavy equipment and specialized vehicle sell, rental and service establishment which is only permitted in the I-5 and I-6 Zoning Districts. It was staff's position that the appellant's towing service use on the C-6 property was in violation of Zoning Ordinance provisions.

Mr. Kelley asked Mr. Shoup what would be necessary for the appellant to start pumping gas again. Mr. Shoup said the appellant would require the approval of the State Water Control Board (SWCB) in connection with the contamination issue. Assuming that could be worked out, another problem was that the service station use had been discontinued for a continuous period of more than two years, which invalidated the special permit approval granted by the BZA in the 1950s. The appellant would now be required to obtain special exception approval because, under today's Zoning Ordinance, a special exception from the Board of Supervisors (BOS) must be obtained for a service station use.

Vice Chairman Ribble asked Mr. Shoup if there was another gas crunch and the appellant was unable to get gas to operate his pumps, would that invalidate a special use permit. Mr. Shoup said that was difficult to answer because the Ordinance says, "... for any reason...." He said that dispensing fuel was only one of the functions of a service station, others being repair, etc. He said the circumstances would need to be reviewed in an unusual situation such as that posed by Vice Chairman Ribble.

Mr. Kelley referenced the statement that the towing situation was incidental to the gas station and asked if Mr. Shoup could think of any situation where that is reversed; Mr. Shoup said he could not think of any. Mr. Shoup said there are instances where the primary use of an establishment is repair and there is very little dispensing of motor fuel; he recalled one such case in the Butts Corner area of the County where they just closed down the pumps and were only repairing vehicles. In that case, they were required to re-establish the dispensing of motor fuel.

Mr. Hammack noted that they did not know exactly when the appellant discontinued operation of the gas station, except that the staff report said that in 1990 the report to the Water Control Board indicated there was not an active service station operation on site. He asked staff, if a businessman tried to comply with environmental ordinances, etc., was there not any provision in the statute to cover the period when the operator of the establishment was trying to remedy the contamination and commence his former activity as a safe use. He asked if the appellant could have continued operating the station while he was involved in remedial activities. Mr. Shoup was not sure of the answer to that; he knew of other instances where service stations had pulled their tanks out of the ground and have continued some of their operations on site and the activity had not taken very long to complete, so that they never ran into the question of discontinuing for two years. Mr. Hammack asked Mr. Shoup if the appellant was required to discontinue his service station operation. Mr. Shoup said the County did not require him to do so; however, he did not know if the Water Control Board had anything to say about that. Mr. Hammack referenced the Pickett Road Tank Farm situation which, while remediating with 250,000 gallons of gas, continued a full-fledged operation in Fairfax City. Mr. Hammack said, if the appellant had been required to do something and had problems, and the Water Control Board would not sign off, he might look at the situation differently, even though the two-year limitation had elapsed.

Vice Chairman Ribble suggested that Mr. Hecox come forward because he might be able to answer some of the Board's questions.

Mrs. Thonen noted that it had been confirmed that the pumping activities had ceased in March 1990.

Mr. Hecox came forward and asked to correct discrepancies in his letter: In the second paragraph of the attachment to his letter, where it says October 1989 to March 1990, it should be October 1990 to March 1991.

Mr. Hecox said when contamination was first discovered, he complained that it was caused by another adjoining service station, and was told it was not caused by that station. He said he knew it was not his problem because he inventoried all the tanks daily or every other day and meter readings from the pumps showed no losses. About that time, in 1985, when Franconia Road was being widened, the size of the storm drains was being increased in front of the station and 13 feet of property was taken from his station. Exxon was next door, to the east side of the property at that time and, approximately 50 to 75 feet from the southeastern corner of the property, they were digging up the storm drain. Every time the backhoe went in to enlarge the ditch a flashback fire occurred. He said the construction crews thought nothing of it and laughed about it. Mr. Hecox called the Fire Department about it and they said it was not within their jurisdiction; however, one fireman did come and watch for awhile. While he was there, there was one flashback in the ditch. Mr. Hecox said he made several phone calls around the County and no one seemed to be able to tell him who he should contact about the problem, so he just dropped it. He said that his tanks were only four years old at the time; he had them checked out and found they were not leaking. In July 1990, his father who was also his partner, passed away and, to get his estate straightened out, they decided to sell the property. Mobil Oil put a contract on the station in September of 1990 and close to November they came in and drilled 6 wells. On the southeast corner of the property, the 2 wells were found to be "quite hot." Mr. Hecox said the product in the wells could actually be burned. By that time, his gas supply was down very low; he said one 10,000-gallon diesel tank was half full and that was used to supply his trucks. He said they decided to have the tanks pressurized and checked them out, finding they were not losing any pressure. Mr. Hecox said Mobil Oil turned the report in to the State Water Control Board. He called the County again and tried to find out what he could do about the contamination; no one seemed to know anything about it. The Mobil Oil representatives told him to call the State, which he did, and they said they would handle it from there. The State reviewed the reports and in about March 1991 they told him to shut the operation down and do exploratory checking to find out where the contamination was located. They excavated 40 by 20 feet, down to 16 feet, to the south side where the tanks went down only 12 feet, and exposed the tanks, watched the growndwater run in, and they could not find any contamination. They uncovered all the pipes from the tanks to the pumps and everything was dry. They could not get the State to come up and examine the excavation. Mr. Hecox said that the contractor who did the excavation was going through the Chapter 11 Bankruptcy process and was doing the job as a favor. He still had the bays open in the station and was still doing repair work, even though the pumps were not accessible because of the excavation. They had one diesel pump close to Franklin Road which they used for their own trucks.

Mr. Hecox said he was anxious to get the mess cleaned up and was going to Woodbridge to the local office of the State Water Control Board at least twice a week to talk to SWCB but, for a variety of reasons, could never get to talk to anyone and his calls were never returned. He finally contacted Senator Joe Gartlan, his former attorney, and they went together to Richmond, to see Mr. Burton, the head of the State Water Control Board; he sent Mr. James, his assistant up here, to meet at the station with Joe Gartlan, Gladys Keating and some people from the Woodbridge office of the State Water Control Board, in July 1991. The State had already told them that the Superfund would help pay for any cleanup and they had already submitted the paperwork describing the work required and the cost. When Mr. James and Senator Gartlan met at the property, they asked the man from Woodbridge if he had the papers with him to approve the project. The man is no longer at Woodbridge and Mr. Hecox could not remember his name; however, he did not have the necessary papers with him. Mr. Hecox told him that he had original copies of the paperwork in his briefcase and asked the man to sign the papers. At that time, they dug down six feet and found no contamination; they found that the pipes were only two feet below the concrete and there were no leaks.

Mr. Hecox said they went through a company in Maryland to do the digging, who in turn were to haul the dirt to Ashland, process it, and haul it back. Since the truckers failed to do this, the hole in the ground grew larger with no dirt to fill it back in.

Vice Chairman Ribble reminded Mr. Hecox that the red light was on and asked him to sum up.

Mr. Hecox said the geologist working on the job created the problem because they thought he had taken care of the paperwork for his father's estate; however, in January 1992, the job was completed but the State continually requested more tests and more paperwork, even though they were told everything was finished and the tests showed the soil to be clean. He said that, in February 1992, he asked the State to pay him from the Superfund and learned that he was expected to have been paying the bills and then submitting them to the State for reimbursement. Mr. Hecox said it was impossible for him to borrow $1 million from a bank to pay his bills so he could then submit them to the State for reimbursement. He said he had been misled throughout the process. Mr. Hecox said that one of his contractors, who himself had subcontractors, found a bank who would lend him $1 million for 30 days at $24,000 interest. He said he paid the bills and the State reimbursed the bank; none of the money went through his hands.

Mrs. Thonen said it appeared to be a fact that the contaminants on the subject property were gone but, she asked, where was the report? Mr. Hecox said that one of his contractors owed $23,000 so they refused to give the final paperwork to the State. He said he was taken to court in an effort to elicit payment from him for the $23,000 and the court kicked the case out this past fall. Mrs. Thonen said the Board had been down to look at the property several times, finding it to be congested and untidy, which was the reason for some of the complaints. Mr. Hecox said he had to give up his storage facility on Vine Street because the rent went up to $3,000 per month. He said he was running out of money and had not had a paycheck in two years; all the money that came in from the towing was paying the mortgage on his house; they were living off his wife's small salary. Mrs. Thonen said she was attempting to find a way to give the appellant some relief but, according to the Ordinance, he was in violation; however, she found it difficult to deprive him of his only source of revenue. The matter fell under the special exception which was no longer valid and that made it difficult for her to decide what action to take. Mrs. Thonen asked Mr. Hecox if he could put the pumps back in and start pumping gas. He said that, as soon as the State gave him a closure letter, the bank said they would give him some money. He said he had been to every bank in Northern Virginia but, as soon as they found out the property had been contaminated, they turned him down. Burke and Herbert had told him that, if he got the closure letter from the State, they would give him all the money he wanted to put the station back together, get the special exception for remodeling, and whatever else he needed to do. Mr. Hecox said the matter hinged on what his contractor owed the geologist. He said he hired another geologist who put together a report to the State in an effort to get a clearance; when the State looked at it, he said, they just threw it in the trash. He hired his own people to dig three wells and sent the reports to the State, plus the report he had obtained on the Crown Station up the street. He said he was told by Cynthia Sells that he should hear from them sometime during the week of the hearing. He said she asked him, if the State gave him a closure letter, could he put his operation back together and he said he definitely could.

Mr. Hecox said he had been to the Hallmark Bank in Springfield a couple of weeks ago and they were very encouraging. He showed them his paperwork and there is a possibility, if he could obtain an estimate for putting the driveway and the pumps in, that they might go ahead and give him the loan without the State's closure letter.

Mr. Hammack asked, when this was reported by the State Water Control Board, did they give him some kind of a cease and desist order telling him to stop operating, or what legal authority was imposed upon him to do all the excavation, et cetera. Mr. Hecox said it came from the Federal Government. He said they told him to check and the only way to do that was to tear up the driveway and, once the driveway was torn up, leaving ditches across the property, there was no way for cars to get to the pumps. Mr Hecox said the pumps remained until the very last and were sitting inside the building at this time, but he would not put them back; instead, he would use new pumps. Mrs. Thonen asked, if the appeal was deferred for two months, would that be enough time to get his finances in order and he said that would be a good possibility. Mrs. Thonen asked Mr. Hecox take some action to avoid complaints on the appearance of the station; she asked that he clear some of the stuff out. He said they had been working on that; 42 windows were out on the property due to vandalism and he had already replaced 40 of them. They also planned to haul some of the stuff away.

Regarding Mrs. Thonen previously having alluded to a two-month deferral, Mr. Dively said he believed that might not be enough time because banks needed more time for such a complex financing situation.

Vice Chairman Ribble asked if there was anyone in the room who wished to address this appeal and received no response.

Mrs. Thonen moved to defer appeal A 94-L-002 for 90 days, knowing that she might receive some opposition from the neighbors in the area because of the length of time this had gone on. She said she would count on Mr. Hecox to get the area cleaned up and come forth with his financing in 90 days. At that time, they would again review his progress. Mr. Hammack seconded the motion to defer to June 1, 1994 at 9:30 a.m., which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 35, March 1, 1994, (Tape 2), Scheduled case of:

9:45 A.M. DENTON CONSTRUCTION CORPORATION, Appeal 94-N-003 Appl. under Sect(s). 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that appellant's use of residential property at 4803 Valley St. for a construction business office and or the storage of construction equipment and materials is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 4803 Valley St. on approx. 24,728 sq. ft. of land zoned R-2. Mason District. Tax Map 72-1 ((10)) 30 and 30A.

Vice Chairman Ribble noted that a request for withdrawal had been received.

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

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The Board took a short recess at this time.

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Request for Reconsideration
Diocesan Missionary Society of Virginia (St. Peters in the Woods), SP 93-S-044
Heard and Granted 2/23/94

Vice Chairman Ribble advised that there had been a request for reconsideration from Elaine Ouellette, 5912 Fairview Woods Drive, Fairfax Station, Virginia.

Susan Langdon, Staff Coordinator, said staff had submitted to the Board two letters which came in from residents of Fairview Woods Subdivision, requesting reconsideration based on their contention that they had not received a copy of the Development Conditions submitted by the applicant and approved by the Board; therefore, they believed they had not been in a position to address the new conditions as submitted.

Mr. Kelley said he had reviewed the request and, whereas he previously had considered the northern lines of the property to be densely wooded, he now found that apparently was not so. Under those circumstances, he said he would be willing to reimpose the original Condition 10 as recommended by staff. This is the only portion of the special permit which was open to reconsideration for the clarification of Condition 10.

10. The barrier requirement shall be waived along the western and southern lot lines and a portion of the northern lot line. A six foot high solid brick or wood fence shall be provided to screen the residences on Lots 71, 72 and 75. The barrier shall be placed to provide the maximum screening benefit to the residences as determined by the Urban Forestry Branch; however no additional existing vegetation shall be removed to install the barrier.

Mr. Kelley so moved. Mr. Dively seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Mr. Kelley said that there were other concerns raised in the letters addressed to the Board; however, he believed they would be taken care of at the time of site plan approval, as was stated at the original hearing.

Vice Chairman Ribble said that anyone could have asked to see a copy of the new conditions at any time during the original hearing. Mrs. Thonen said Grayson Haynes, the applicant's agent, was on record as agreeing to follow Best Management Practices.

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Request for Reconsideration
Kathy and Chet Mosal, VC 93-D-151
Heard and Denied 2/23/94

Mr. Kelley asked staff if the Board had waived the twelve-month limitation on refiling and staff replied that it had.

Mr. Kelley moved to deny the Request for Reconsideration and emphasized that the Board had waived the twelve-month limitation on refiling so that the applicant could refile in short order.

Mr. Dively seconded the motion, which carried by a vote of 5-1. Mr. Hammack abstained. Chairman DiGiulian was absent from the meeting.

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Approval of Resolutions from February 23, 1994 Hearing

Mrs. Thonen so moved with the changes noted above. Mr. Dively seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Approval of Additional Time
Mehdi & Akhtar Mirshahi, VC 89-M-151

Mr. Pammel so moved, with a new expiration date of February 21, 1995. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

Page 37, March 1, 1994, (Tape 2), MEHDI & AKHTAR MIRSHAHI, VC 89-M-151, continued from Page)

Mr. Kelley pointed out that this was the second extension. Mr. Pammel said the applicants had been having difficulties which were mentioned in the letter.

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Page 37, March 1, 1994, (Tape 2), Action Item:

Request for Date and Time
William A. Stewart, III, Appeal
Clerk suggested April 26, 1994

Mrs. Thonen moved that the appeal was timely filed and scheduled the appeal to be heard the morning of April 26, 1994. Mr. Pammel seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 37, March 1, 1994, (Tape 2), Action Item:

Request for Intent-to-Defer
Jan C. Latney Appeal, A 94-L-005
Now scheduled for March 22, 1994
Clerk suggested July 26, 1994

Mr. Pammel moved to defer to the morning of July 26, 1994. Mrs. Thonen seconded the motion, which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 11:20 a.m.

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

John Ribble
John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: April 5, 1994

APPROVED: April 12, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 8, 1994. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Mary Thonen; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 39, March 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. EDMUND J. AVERMAN, III, VC 93-M-157 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain 0.0 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 6640 Locust Way on approx. 23,000 sq. ft. of land zoned R-2. Mason District. Tax Map 71-2 ((10)) 36.

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

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow a detached garage to remain 0.0 feet from a side lot line. The Zoning Ordinance requires a 15.0 foot minimum side yard; therefore, the applicant was requesting a variance of 15.0 feet to the minimum side yard requirement.

Mr. Pammel noted that on Appendix 2 of the staff report, the first page of the affidavit erroneously stated William Barnes Lawson, Jr. name as William Barnes, Jr.

The applicant's attorney, William Barnes Lawson, Jr., with the law firm of Lawson and Frank, P.C., 4141 N. Henderson Road, Plaza Suite 5, Arlington, Virginia, addressed the BZA. He stated that the request resulted from a situation which arose because of the definition of the word "lot" as contained in the Zoning Ordinance. Mr. Lawson explained that in 1975, Mr. Loving had owned Lots 35 and 36 and when he applied for the building permit to construct a garage on Lot 36, he included both lots in the application. Mr. Lawson further explained that in 1978, Mr. Loving built a house on Lot 35, and in 1981 he sold Lot 36 to Mr. Averman. He stated it was the act of Mr. Loving building the house on Lot 35 and selling Lot 36 that rendered the garage to be in non-compliance with the Zoning Ordinance.

In addressing the good faith requirement, Mr. Lawson said that when the applicant purchased the property, he had not been advised of the problem. He noted that it was the subsequent events that had rendered the garage, which had been built in conformance with the Zoning Ordinance, illegal. Mr. Lawson stated that there would be no detrimental impact on the neighbors, removal would cause an enormous financial impact on the applicant, the garage has been in existence for 16 years, there is ample open space between the garage and the structures on the adjoining property, and the neighbors supported the request. In conclusion, he stated that the property had previously been zoned RE-0.5 with a minimum 4 foot side yard requirement, and had the garage been fireproof, a minimum 2 foot side yard would have been required. Also, he noted Fairfax County was remiss in not determining that Lot 35 was not buildable.

In response to Mrs. Thonen's request, Mr. Lawson submitted a copy of the two letters of support from the neighbors.

Mr. Pammel asked if it would be feasible for the applicant to purchase a part of Lot 35. Mr. Lawson said that the applicant's engineer had determined that it would not be a viable option.

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

Mr. Hammack made a motion to grant VC 93-M-157 for the reasons reflected in the Resolution, subject to the development conditions contained in the staff report dated March 1, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-M-157 by EDMUND J. AVERMAN, III, under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain 0.0 feet from side lot line, on property located at 6640 Locust Way, Tax Map Reference 71-2((10))36, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 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-2.
3. The area of the lot is 23,000 square feet.
4. The applicant has satisfied the required standards for the granting of a variance.
5. An extraordinary situation or condition exists in the use and development of the property on Lots 35 and 36 as described by Mr. Lawson.
6. The structure has been in existence for fifteen years, the building permits were issued properly, and the construction was done in good faith.
7. The structure does not detract from the neighborhood or impact detrimentally on the community.

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

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

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

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

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

1. This variance is approved for the location and the specified detached garage shown on the plat prepared by Alexandria Surveys Inc., dated August 25, 1992, revised October 28, 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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 16, 1994. This date shall be deemed to be the final approval date of this variance.

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Mrs. Thonen introduced Anita Umphlepp, President, and Joe Fuber, Executive Director, of the Southeast Fairfax Development Corporation, to the Board of Zoning Appeals. She noted that they would probably be involved in future cases.

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9:00 A.M. KARL R. METTER, VC 93-V-158 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 29.9 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located at 8000 Washington Ave. on approx. 13,483 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((12)) 42.

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. Metter replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow an addition 29.9 feet from a front lot line. The Zoning Ordinance requires a 35.0 foot minimum front yard; therefore; the applicant was requesting a 5.1 foot variance from the minimum front yard requirement.

Karl R. Metter, 8000 Washington Avenue, Alexandria, Virginia, addressed the BZA. He stated that he would like to extend and enclose the existing carport. Mr. Metter said that when he purchased the property in 1987, he was unaware the original structure had been constructed with a 5 foot front yard variance granted in 1947. He noted that he had also been unaware of the 1982 variance which allowed the construction of the carport. Mr. Metter stated that the unusual shape and shallowness of the property had caused the need for the variances, and the proposed site was the only practical location for the addition. In conclusion, he said that the neighbors supported the request, the proposed single story addition would be aesthetically and architecturally pleasing, and the existing roof line would merely be extended. He asked the BZA to delete Development Condition 4 which would require that an administrative variance be obtained.

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

Mr. Pammel made a motion to grant VC 94-V-158 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 1, 1994.

Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Ribble stated that the addition would be in character with the neighborhood and noted that it was one of the oldest subdivisions in Fairfax County and many variances had been granted to allow for renovations. Mr. Ribble also noted that, previously, an electric railway had serviced the community.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-158 by KARL R. METTER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 29.9 feet from front lot line, on property located at 8000 Washington Avenue, Tax Map Reference 102-2((12))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 March 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-2.
3. The area of the lot is 13,483 square feet.
4. The applicant has met with the necessary standards for the granting of a variance.
5. The lot has exceptional shallowness, size, and shape.
6. The addition would be no closer to the front lot line than the existing structure, it's simply an extension of that line.
7. The variance is to allow a front yard of 29.9 feet as shown on the survey.

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated December 4, 1993, submitted with this application and is not transferable to other land.

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

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

4. The applicant shall obtain administrative approval of a reduction to the minimum yard requirements from the Zoning Administrator to allow the dwelling to be located 29.9 feet from the front lot line on Washington Avenue. If such approval is not granted, the dwelling shall be brought into conformity with the Zoning Ordinance.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 16, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 42, March 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. BOK S. RICKARD, VC 93-L-161 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 6.9 ft. in height to remain in front yard (4 ft. max. height permitted by Sect. 10-104). Located at 6716 Lenclair St. on approx. 15,316 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((16)) 13. (Concurrent with SP 93-L-118).

9:00 A.M. BOK S. RICKARD, SP 93-L-118 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 12.0 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 6716 Lenclair St. on approx. 15,316 sq. ft. of land zoned R-2. Lee District. Tax Map 92-2 ((16)) 13. (Concurrent with VC 93-L-161).

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. Rickard replied that it was.

Donald Heine, Staff Coordinator, presented the staff report and said the 15,316 square foot subject property is located on the south side of Lenclair Street within the Groveton Heights Subdivision. The subject property is surrounded on three sides by single family detached dwellings in the R-2 District and on the north by Lenclair Park, which is also in the R-2 District. The applicant was requesting approval of concurrent special permit and variance applications.

Mr. Heine stated that the special permit request was for an error in building location to allow an existing garage addition, which was formerly a carport, to remain 12.0 feet from the side lot line. The Zoning Ordinance requires a minimum 15.0 foot side yard; therefore, an error in building location for 3.0 feet was requested.

Mr. Heine said the variance application was to allow a 6.9 foot high fence to remain in the front yard. The Zoning Ordinance limits fences in a front yard to be a maximum of 4.0 feet in height; therefore, the applicant was requesting a 2.9 foot variance.

The applicant, Bok S. Rickard, 6716 Lenclair Street, Alexandria, Virginia, addressed the BZA. She referred to the automobile accidents which had taken place in front of her house and explained it was because of these accidents that she built the fence to protect her property. Ms. Rickard also noted that car headlights were very annoying. She explained that she was from Korea and did not realize the fence or the addition would be in violation.

Mrs. Thonen noted that, since the dangerous road curve in front of Ms. Rickard's house had been corrected, there have been no accidents.

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

John Rodagard, 6716 Lenclair Street, Alexandria, Virginia, addressed the BZA. He stated that when the addition and fence were built, he had not realized they would be in violation of the Zoning Ordinance. He explained that as soon as they were informed of the violation, they took measures to rectify the situation. Mr. Rodagard expressed his belief that there is no detrimental impact on the neighbors, the removal of the garage would cause an unreasonable hardship, and asked the BZA to grant the request. With regards to the fence he noted that, although there has been a road improvement, a danger still exists and said the fence provided a sound, light, and safety barrier. He expressed his belief that the fence was compatible with the neighborhood and asked the BZA to grant the fence variance.

In response to Mrs. Thonen's question as to whether a building permit had been obtained for the garage, Mr. Rodagard said no. He explained that they did not know a building permit would be required because they simply enclosed an existing carport.

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

Mary Tueting, 6714 Lenclair Street, Alexandria, Virginia, the adjoining neighbor, addressed the BZA. She stated the fence imposed a detrimental impact on the neighborhood and said there was no justifications, whether it be vehicle lights or noise, to allow a 6.9 foot high fence in the front yard. Mrs. Tueting said that the fence was not compatible with the neighborhood, and both the neighbors and Groveton Civic Association opposed the fence. She explained that she was in opposition to the garage because it was used for storage and vehicle repair. Mrs. Tueting noted that electricity, which had been installed in the addition without the proper permits or inspections, posed a safety hazard to the neighbors' structure. In conclusion, Mrs. Tueting said the addition and fence did not conform to the Zoning Ordinance and asked the BZA to deny the request.

In response to Mr. Dively's question as to how many residents belong to the Groveton Civic Association, Ms. Tueting said that it is a very large organization, but she did not know the exact number of members.

William Tueting, 6714 Lenclair Street, Alexandria, Virginia, addressed the BZA. He expressed his belief that the fence and addition were built with the full understanding that they were in violation of the County Zoning Ordinance. Mr. Tueting explained that the applicant's son worked in construction and would have been cognizant of the regulations. He said the addition was not used for the owner's cars, but was used as a storage facility and repair shop. In conclusion, he stated the addition and fence created a visual detrimental impact on his property, and the electrical installation presented a safety hazard. He asked the BZA to impose a condition which would reduce the front and side fence to approximately 4 feet in height and that the reduction be completed within the next ten days. Mr. Tueting said, while the fence located in the front yard might protect the applicant's property, it created a safety hazard for vehicles.

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

Ms. Bok said there has been no electricity installed in the garage. She explained that the fence was installed to protect her house and said she was sorry if it had a detrimental impact on the neighbors.

Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny VC 93-L-161 for the reasons reflected in the Resolution.

Mr. Kelley seconded the motion. He stated the road conditions which had contributed to the accidents had been corrected; therefore, the fence was not necessary.

Mr. Pammel said the fence did not conform with the neighborhood.

Mrs. Thonen noted that all correspondence would be made part of the record.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-L-161 by BOK S. RICKARD, under Section 18-401 of the Zoning Ordinance to permit fence 6.9 feet in height to remain in front yard, on property located at 6716 Lenclair Street, Tax Map Reference 92-2((16))13, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 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-2.
3. The area of the lot is 15,316 square feet.
4. It was the BZA determination that if the fence were allowed to stay it would create a safety problem.
5. The fence creates a visual barrier and cars entering the road cannot be seen.
6. The neighborhood is one of the quietest neighborhoods in the County.
7. If the car lights presented a problem, a four foot high fence, which would be in conformance with the Zoning Ordinance, could be built.
8. The applicant has not presented justification for a 6.9 foot fence.
9. The application does not meet 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. Kelley seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 16, 1994.

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Mrs. Thonen made a motion to grant SP 93-L-118 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 1, 1994 with the modifications as reflected in the Resolution.

In response to Mrs. Thonen's question as to whether the applicant would be willing to install evergreen trees between the garage and the fence, Mr. Rodegard said, although there was a flower bed and shrubs in the yard, the applicant would install additional evergreen trees, if required.

Mr. Hammack seconded the motion.

In response to a question from the audience, Chairman DiGiulian asked the speaker to come to the podium. Mr. Tueting asked the BZA if they intend that the 6.9 foot high fence be allowed to remain in the side yard. The BZA explained that the variance for the fence in the front yard had been denied, but since the fence in the side yard was in conformance with the Zoning Ordinance, the BZA did not have the authority to instruct the applicant to remove it. Mr. Tueting noted that the BZA had the authority to impose conditions and asked it to impose a condition which would reduce the fence to 4 feet in height. The BZA explained that it did not believe it was within its realm of authority.

Mr. Pammel noted that carports can encroach 5 feet into side yards. He said the carport had been constructed within the Zoning Ordinance requirements and it was only after it was converted into a garage that it became in violation.

Mr. Hammack noted that only a corner of the garage addition required the special permit. He expressed his belief that, had the applicant applied for a variance prior to the enclosure of the carport, he would have supported the request. Mr. Hammack stated that all building permits and inspections should be obtained and the structure should be brought into compliance with the current building code.

In an attempt to clarify the issues, Mr. Kelley said the existing 6.9 foot high front yard fence would have to be removed or reduced to a height of 4 feet. He noted that four 7 feet high evergreen trees are to be installed between the garage addition and the lot line.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-L-118 by BOK S. RICKARD, 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 12.0 feet from side lot line, on property located at 6716 Lanclair Street, Tax Map Reference 92-2((16))13, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 8, 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. The carport was converted into a garage without a building permit and the safety of the electrical wiring is unknown and could create a hazard.

I. The garage addition is no closer to the property line than the carport.

J. The applicant should obtain a building permit and the structure and electrical wiring should be inspected and brought up to the current standards.

K. Landscaping will be provided.

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 Plat, Showing the Improvements on Lot 13 Section 5, Groveton Heights, prepared by Alexandria Surveys, Inc., dated November 18, 1993, submitted with this application, as qualified by these development conditions.

3. The applicant must obtain a Building Permit and final inspections for the addition and it shall be brought up to current standards.

4. Four 7 foot high evergreen trees are to be planted along the lot line between the garage and the fence as approved by the Urban Forestry Branch.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 16, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 46, March 8, 1994, (Tape 1), Scheduled case of:

9:30 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. (MOVED FROM 10/19 and 12/7 AT APPL.'S REQUEST AND DEF. FROM 1/25/94. NOTICES NEEDED.)

Chairman DiGiulian noted that a deferral had been requested.

Mr. Pammel expressed concern regarding the opposition to the application and the applicant's delay tactics. He noted that the application had been scheduled for October 1993, December 7, 1993, January 25, 1994, and March 8, 1994. Mr. Pammel stated that the Board of Zoning Appeals (BZA) had no guarantee that, if rescheduled, the applicant would go forward with the case. He recommended the BZA dismiss the application.

Jonathan B. Eisen, with C. J. Lessard Architects, Inc., 8220 Boone Boulevard, Suite 640, Vienna, Virginia, addressed the BZA. He stated it was the growth of the firm, which had doubled its workload, that had caused the delays. He explained that Mr. Lessard's, a

nationally renown architect, schedule is so full that it has caused the difficulties in preparing a presentable case for the BZA. Mr. Eisen asked the BZA to grant the deferral and guaranteed that the applicant would be prepared to present the case.

Mrs. Thonen stated that the BZA had a heavy caseload and could not continually defer cases. She explained that another applicant could have been scheduled on today's agenda. Mr. Eisen said that in an attempt to mitigate any impact on the schedule, he had informed staff, by letter, in a timely manner.

Chairman DiGiulian stated that if the BZA agreed to a deferral, Mr. Eisen should be made to realize that if the case is not prosecuted at the next hearing, the BZA will dismiss the application for lack of interest.

Chairman DiGiulian polled the audience for speakers to the deferral. Richard Peters, President of the Great Falls Citizens' Association, who was in the audience indicated that he had no objection to the deferral.

Mr. Ribble made a motion to defer VC 93-D-079 to May 10, 1994 at 9:00 a.m. He stated that no further deferrals would be granted and if the applicant did not complete the necessary requirements, the case would be dismissed for lack of interest.

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

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Page 47, March 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. DEMETRIOS AND GEORGE NICHOLAKOS, SP 93-L-117 Appl. under Sect(s). 12-304 of the Zoning Ordinance to permit relocation of building mounted signs in shopping center. Located at 8626-8652 Richmond Hwy. on approx. 13.73 ac. of land zoned C-8, R-2 and HC. Lee District. Tax Map 101-3 ((1)) 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. The applicant's attorney, Mr. Fox, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located at 8626/8652 Richmond Highway and is 13.73 acres in size, is zoned C-8 and R-2, and is located within the Highway Corridor Overlay District. Surrounding properties are zoned C-8 and R-2 and the Dogue Creek borders the property to the north and west.

Mr. Hunter said the applicants were requesting a special permit to allow the relocation of building mounted signs in the Engleside shopping center. Four stores have store fronts which are not visible from Route 1. He explained that the applicants were proposing to display four signs on an existing arcade/sign tower instead of building mounted signs.

Continuing, Mr. Hunter said the existing arcade tower would contain signs for 8640, (Pizza Hut Carry Out), 8640-A, (Olan Mills Studio), 8642 (Unique Hairstylist), and 8644 (currently vacant) Richmond Highway. He stated that the maximum allowable square footage for signs for the four (4) arcade shops in the shopping center is 190.5 square feet and the proposed square footage requested for the arcade signs was 124 square feet.

Mr. Hunter noted that the existing arcade/sign tower previously contained a sign stating "Theatres". This sign advertised movies shown in Unit #8644. He said that, while the applicant had indicated that a total of 1,509 square feet of sign area was allowed for signage at Engleside Plaza, in order to comply with Par. 3 of Sect. 12-304 of the Zoning Ordinance, the total combined sign area at Engleside Plaza should not exceed 1,257.5 square feet. Because the shopping center was undergoing renovations, only 310 square feet of signage currently exists.

In conclusion, Mr. Hunter stated that it was staff's belief the application met the necessary standards and would be in conformance with the Comprehensive Plan; therefore, staff recommended approval subject to the development conditions contained in the staff report dated March 1, 1994. He noted that site plan approval would not be required.

Stephen K. Fox, 11350 Random Hills Road, Suite 500, Fairfax, Virginia, addressed the BZA and presented photographs which showed the progress of the renovations. He explained that the four shops are blocked from the view of the parking lot and the street. Mr. Fox said the sign arcade was the old movie theater marquee which was being redone as part of the renovation. He stated that the application would not exceed the allowable limits of signage; but, would allow it to be placed on the sign arcade. Mr. Fox expressed his belief that the application would be beneficial to the merchants and asked the BZA to grant the request. He said that the applicant Demetrios Nicholakos, along with Sharon Williams, part-owner of Unique Hairstylist, was present to answer any questions the BZA may have.

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

Sharon William, part-owner of Unique Hairstylist, 8642 Richmond Highway, Alexandria, Virginia, addressed the BZA. She stated that she has been in business approximately twenty years and the signage would provide an opportunity to be exposed. Ms. Williams said that without the signage, the public will not be aware of the four shops and asked the BZA to grant the request.

In response to Mr. Ribble's question as to whether she has cut President Clinton's hair, Ms. Williams said she tried. Mr. Ribble said he saw her picture in the newspaper.

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

Mr. Ribble made a motion to grant SP 93-L-117 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 1, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-L-117 by DEMETRIOS AND GEORGE NICHOLAKOS, under Section 12-304 of the Zoning Ordinance to permit relocation of building mounted signs in shopping center, on property located at 8626-8652 Richmond Highway, Tax Map Reference 101-3((1))71, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 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 C-8, R-2, and HC.
3. The area of the lot is 13.73 acres.
4. The signage would not exceed what is already there and the shop could not attract any attention without the signs.
5. The professional staff has done a good job with the application have and has recommended approval.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the 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 Donald F. Mori, Inc., dated November, 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 of 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 Engleside Plaza.

5. The sign area on the arcade/tower shall not exceed 124 square feet as shown on page two of the Special Permit Plat. At no point in time shall the total combined sign area at Engleside Plaza exceed 1,257.5 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.

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 16, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 49, March 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. (DEF. FROM 2/8/94 FOR NOTICES.)

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

Donald Heine, Staff Coordinator, presented the staff report. He said the applicants were seeking approval of a special permit to allow a child care center for a maximum of twenty children within the existing structure. He said three of the required parking spaces would be on site and three would be provided off-site in a parking lot located at the Rolling Knolls Apartment complex.

Mr. Heine said the applicants were also requesting a waiver of the Transitional Screening 1 requirement and were proposing a ten foot wide planting strip adjacent to the eastern and western lot lines. He noted that, while five feet of the proposed strip would be on-site, five feet would be located off-site.

In conclusion, Mr. Heine stated that because of the lack of screening, lack of adequate parking spaces on-site, and intensity of uses on-site, it was staff's belief that the application would not meet the Zoning Ordinance standards, nor would it be in harmony with the Comprehensive Plan; therefore, staff recommended denial.

William Robson, President of Robson Group Architects, Inc., 4500 Daly Drive, Suite 400, Chantilly, Virginia, addressed the BZA and stated that, along with letters of support, he had submitted an outline of his testimony. He stated that although staff had suggested the applicants purchase additional property, it would not be financially feasible. Mr. Robson explained that financial advisement was not one of staff's strengths and said the $140,000 cost precluded the applicants from purchasing the additional land.

Mr. Robson said that the applicant had reduced the proposed enrollment from 40 to 30 children and noted that the Health Department, the State Licensing Child Care, and a Fairfax County building official had all been willing to approve the applicants' child care center for a maximum of 70 children. He noted that the reduction in the number of children would mean a very limited profit and expressed his belief that the applicant had made an honest effort to meet the intent of the Zoning Ordinance.

Mr. Robson said that the child care center would be beneficial to the community and would provide a much needed service to the low to middle income area. He stated that although staff could not address a community's need, the BZA could. He noted that the application does not meet some of the general standards, but expressed his belief that the application would be in harmony with the Comprehensive Plan. In particular, he noted that the adjacent area was planned for townhouse style offices, for retail establishments up to a .25 FAR, or to serve as a mix of residential unit and a local-serving compatibly designed commercial use. Mr. Robson said that the subject property met all these criteria and noted that, although it was on the other side of the Comprehensive Plan's dividing line, it was a part of the area. He stated that the general purpose of the R-20 District was to provide for a plan mixture of residential dwellings and to allow other selected uses which are compatible with the residential character of the neighborhood. He said the child care center would be compatible with the district. Mr. Robson expressed his belief that the applicants' property,

along with the adjacent property, are islands in a sea of apartments. He said it was interesting that "compatibility" was not defined in the Zoning Ordinance and expressed his doubts as to whether the BZA could decide for a community what is, and what is not, compatible. Mr. Robson stated that the community should be relied upon to decide what is compatible and noted the four letters and petition of support from the members of the community. He said that over the course of the neighborhood's development and evolution, it had gone from being a 1950's-1960's suburban residential area to being a high density residential area. He noted it is currently composed of apartment and condominiums and, although the applicants are asking for modifications, the proposal would be in accordance with the zoning district and Zoning Ordinance.

Mr. Robson said the proposed screening and parking would not only be safe, but would be adequate. He stated that the Zoning Ordinance was forcing some of the issues and noted that only one of the three neighbors wants transitional screening. Mr. Robson said that the structure would not be modified and the child care center would be in keeping with the residential character of the area. In addressing the safety issue, Mr. Robson stated that although the applicant had requested a guideline to substantiate the determination on the safety issues, staff did not provide one. He explained that while many things in our daily life are not safe, there is no clear safety issue involved in the application. Mr. Robson said the intent of the Zoning Ordinance would be met. He said that the landscaping would provide a visual barrier and noted that a wooden fence would be installed. With regards to the parking requirements, Mr. Robson said that it would be met with a shared parking agreement with the Rolling Hills' apartment complex which would be heard by the Board of Supervisors.

In conclusion, Mr. Robson said the application met the intent of the Zoning Ordinance, the community supported the request, and the parking was adequate. He noted that the service was needed in the community and asked that if approved, the BZA delete Development Conditions 9 and 10. He also asked that if denied, the twelve month waiting period for the filing of a new application be waived.

In response to Mr. Kelley's question as to why the twelve month waiting period waiver would be needed, Mr. Robson said that the waiver would provide the applicants the opportunity to conduct financial negotiations with the owners of the Rolling Hills apartment complex. He explained that, because of financial considerations, the applicants could not acquire additional property.

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

Mrs. Thonen made a motion to deny SP 93-1-072 for the reasons reflected in the Resolution.

Mr. Ribble seconded the motion and Chairman DiGiulian called for discussion.

Mr. Pammel stated that a substantial amount of Mr. Robson's presentation was directed at faults of the staff in the analysis of the application. He said staff had done an excellent analysis and had used the proper criteria and standards in evaluating the application. Mr. Pammel also expressed his belief that staff had done a very commendable job.

Mr. Ribble stated that although child care centers are needed, they must coincide with the Zoning Ordinance. He noted that the use would be too intense for the property.

Mr. Hammack said that the staff's analysis was accurate and asked Mrs. Thonen to incorporate the reasons given by staff in the motion for denial. He too expressed his belief that the use would be too intense.

Mrs. Thonen and Mr. Ribble accepted Mr. Hammack's amendment.

The motion carried by a vote of 7-0.

Mrs. Thonen made a motion to grant a waiver of the twelve-month waiting period for the filing of a new application. The motion died for the lack of a second.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-L-072 by AUDREY V. DOILEY AND ADONNA MCNEIL, under Section 3-2003 of the Zoning Ordinance to permit a child care center, on property located at 3705 Buckman Road, Tax Map Reference 101-2((5))(1)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 March 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-20 and HC.
3. The area of the lot is 8,404 square feet.
4. The application is one of the worst prepared child care center plans to be presented to the BZA.
5. Although the applicant had attempted to use the District of Columbia's standards as justification for approval, Fairfax County Zoning Ordinance should not be adapted to the District's standards.
6. Staff had informed the applicant of the Fairfax County Zoning Ordinance requirement because they are the standards that applicants who are granted special permits in Fairfax County must meet.
7. The BZA does not have the authority to consider financial consideration.
8. Because the applicant has attempted to care for too many children on the property, the situation would not be good and would not work.
9. The proposed parking is not adequate and if the parents have to park on the road, the ingress and egress would not be acceptable.
10. The use would be too intense.
11. With regards to safety, Buckman Road is one of the worst travelled roads in Lee District and to back out onto Buckman Road with children in a car would be too dangerous.
12. The BZA could not authorize a special permit and require that the landscaping be place on property not owned by the applicant.
13. The application does not meet the necessary standards for the granting of a special permit.
14. The BZA agrees with staff's conclusions as stated in the staff report: "The application is not in harmony with the Comprehensive Plan. The application does not meet several of the special permit standards for this use, such as compatibility with the single family detached dwellings located to the east, adequate on-site parking, access, internal circulation, or screening."

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

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 16, 1994.

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Page 51, March 8, 1994, (Tape 1), Scheduled case of:

9:30 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 1/26/94 AT APP.'S REQUEST. NOTICES NEEDED.)

Chairman DiGiulian noted that on February 15, 1994, the Board of Zoning Appeals had issued an intent to defer A 93-V-028 to April 5, 1994. The Chair so moved.

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Page 51, March 8, 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 on 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. (DEF. FROM 1/25/94. NOTICES NEEDED.)

William Shoup, Deputy Zoning Administrative, stated that the appellant had submitted a letter requesting withdrawal.

Mr. Pammel made a motion to allow the withdrawal of A 93-D-022. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 52, March 8, 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. (DEF. FROM 1/25/94. NOTICES NEEDED.)

Chairman DiGiulian noted that the notification requirements had not been met.

William E. Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and stated that the appellant's attorney was present.

The appellant's attorney, Dennis E. Burke, 5329 Black Oak Drive, Fairfax, Virginia, addressed the BZA and requested withdrawal of the appeal.

Mr. Hammack made a motion to allow the withdrawal of A 93-P-030. The Chair so moved.

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Page 52, March 8, 1994, (Tape 1), Scheduled case of:

9:30 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. (DEF. FROM 1/25/94. NOTICES NEEDED.)

Mr. Pammel made a motion to allow the withdrawal of A 93-M-025. He noted that a letter requesting withdrawal had been submitted by the appellant. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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The Board of Zoning Appeals recessed at 10:35 and reconvened at 10:50.

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Page 52, March 8, 1994, (Tape 2), Scheduled case of:

9:30 A.M. MICHAEL CONLON, SHURGARD STORAGE CENTERS, APPEAL 94-Y-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of rental vehicles and new vehicles at 11334 Lee Highway without site plan approval and a Non-Residential Use Permit is in violation of Zoning Ordinance provisions. Located at 11334 Lee Hwy. on approx. 231,587 sq. ft. of land zoned I-5. Sully District. Tax Map 56-2 ((1)) 37A.

William E. Shoup, Deputy Zoning Administrator, addressed the BZA and said the subject property is located at 11334/11342 Lee Highway, is identified as Tax Map Reference 56-2((1))37A, is zoned I-5, contains 231,587 square feet, and is developed with three one-story, self-storage mini-warehouse buildings and one two-story mini-warehouse building which also contains a small office.

Mr. Shoup stated that the appeal was based on the Zoning Administrator's determination that the storage of rental vehicles and new vehicles on the subject property without site plan approval and a Non-Residential Use Permit (Non-RUP) is in violation of Zoning Ordinance provisions. He noted that staff's position was set forth in the memorandum dated February 28, 1994. Mr. Shoup noted that in the early 1980's, the property had been developed as a mini-warehouse establishment under site plan approval and the appellant had received Non-RUP approval in 1986. He explained that in 1987 site plan waivers were approved for the northeastern rear portion of the lot to be used for the storage of new cars for Ted Britt Ford Dealership, and also for the storage of five rental trucks. Mr. Shoup said that, although the waivers expired on February 6, 1989, the appellant continued the use on the property. After a complaint was received, Zoning Enforcement investigated and verbally informed management that the use was in violation because they had not obtained site plan approval. Mr. Shoup stated that in April of 1993, the appellant submitted site plan waiver requests which were denied in June 1993. He noted the activities continued and a "Notice of Violation" was issued by Zoning Enforcement.

Mr. Shoup said the mini-warehouse use was permitted by-right in the I-5 district, but the storage of the new vehicles and the storage of the rental truck are subject to the approval of a site plan or a site plan waiver. He explained that the site plan waiver was denied by the Department of Environmental Management (DEM) because the appellant had not provided for the required dustless surface, and also because of storm water management concerns.

In addressing the appellants position that the site plan waiver request should have been approved, Mr. Shoup stated that although there are specific provisions for appealing site plan waiver denials, the appellant did not exercise the appeal rights. He explained that it was staff's position that the issue regarding the denial of the site plan waiver should not be addressed by the Board of Zoning Appeals (BZA). He noted that the site plan waiver was

denied in June 1993 and the appeal application was not filed until December of 1993; therefore, an appeal of the site plan waiver denial was not timely filed.

The appellant, Michael Conlon, District Manager, Shurgard Storage Center, 8321 Old Courthouse Road, Suite 360, Vienna, Virginia, addressed the BZA. He stated that he did not become involved with the issue until November 1993. Mr. Conlon said that the basis of the appeal was twofold. He explained that the contents of the November 22, 1993 letter stated that in order to comply, he would have to cease operation of the storage of new vehicles and of rental trucks, which would have caused an unbearable financial impact. Mr. Conlon said that he would like to work with staff to resolve the outstanding issues, but did not want to cease operations until the process could be completed. He further explained that he had been informed that the dustless surface requirement may be waived by the Design Review Branch, DEM, and expressed his desire to work with DEM to obtain approval. He noted that the site plan waiver public hearing for the truck rental would be heard on March 21, 1994.

In response to Mrs. Thonen's question as to when the appeal was filed, Mr. Conlon said it was filed on December 22, 1993. He said that he had retained the service of a civil engineer to address the storm water management issues. Mr. Conlon also explained that in an attempt to resolve the truck rental issue, a 2,000 square foot pad of pavement would be installed.

Chairman DiGiulian asked Mr. Conlon when the civil engineer had been hired. Mr. Conlon said the engineer had first been consulted in December 1993 and recently had been retained to correct and upgrade the front storm water management issue.

In response to Mr. Dively's question as to how long it would take to complete the necessary improvements, Mr. Conlon said he had been advised that it was just a matter of measuring the amount of water flow; therefore, it was just a matter of days.

Chairman DiGiulian stated that there was criteria which must be used in the design of storm water management systems as set forth in the Public Facilities Manual, and asked when the plan would be submitted. Mr. Conlon said that in order to receive the site plan waiver on March 21, 1994, certification from the civil engineer would be required.

In response to Mr. Hammack's request for clarification of the issue, Mr. Shoup said that, although the appellant had addressed the truck rental operation, nothing has been submitted regarding the new car storage operation which will need site plan or site plan waiver approval. He explained that the Zoning Ordinance had been amended to provide the authority to the Director, DEM, to waive the dustless surface requirement. Mr. Shoup said that DEM had indicated they would work with the appellant to arrange for a temporary waiver.

Mrs. Thonen expressed concerns regarding the issuance of temporary waivers. She expressed her belief that the majority of businesses do not obtain site plan approval, but over the years do continue to request waivers. Mr. Pammel stated that Mr. Britt may find another site on which to store his cars.

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

Mr. Dively made a motion to continue the appeal until April 12, 1994 at 9:30 a.m. Additional testimony is to be limited to five minutes for each side and the appellant was advised that the swift prosecution of the site plan or site plan waiver would be required.

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Page 53, March 8, 1994, (Tape 2), Scheduled case of:

10:00 A.M. STEPHEN C. & JEAN B. BOTTS, VC 93-S-149 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 30.0 ft. from front lot line (40 ft. min. front yard req. by Sect. 3-C07). Located at 6800 Newman Rd. on approx. 1.09 ac. of land zoned R-C and WS. Springfield District. Tax Map 75-4 ((1)) 18. (DEF. FROM 2/23 FOR CLARIFICATION OF PLAT)

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. Botts replied that it was.

Chairman DiGiulian noted that the case had been deferred for clarification of the notations on the plat.

The applicant, Stephen C. Botts, 6800 Newman Road, Clifton, Virginia, said that the addition was needed in order to accommodate the needs of his growing family. He noted that he had not made a presentation at the previous public hearing.

Chairman DiGiulian said that the notation on the plat indicated the individual who had prepared the house location plat did not know where the property lines were located. He asked Mr. Botts if the plat had gone back to the surveyor or had the architect merely removed the notes. Mr. Botts said, that based on his presentation to the architect that the earlier plat had no caveats or conditions, the architect removed the notes.

Chairman DiGiulian asked if staff had contacted the architect. Lori Greenlief, Staff Coordinator, stated that she had contacted the architect and was informed that the architect believed he could remove the note because he had a plat which showed the exact meets and bounds. She noted the architect's seal and signature was on the plat. Ms. Greenlief stated that she was unable to contact the surveyor and believed NOVA Associates were no longer in business.

Mr. Botts stated that the addition was critically needed and the request was for a minimal variance. He said that the house was built in 1910 prior to the Zoning Ordinance requirements, the house was purchased in good faith, the proposed site is the only practical location for the addition, and the proposed addition would be architecturally compatible with the area. Mr. Botts said that a 25 foot easement precluded placing the addition on the north side of the house. He noted that if the addition were to be placed on the front or rear of the existing structure, it would not only be architecturally incompatible, but would destroy the deck and block the view from the existing windows. Mr. Botts also noted that because of the large trees, the picket fence, and the privit hedge there would be no visual impact on the neighbors. In conclusion, Mr. Botts asked the BZA to grant the request.

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

Mr. Kelley made a motion to grant VC 93-S-149 for the reasons reflected in the Resolution and subject to the revised development conditions dated February 15, 1994 with the modification to Condition 1 as reflected in the Resolution.

Mr. Dively seconded the motion.

Chairman DiGiulian asked the maker of the motion if he would be willing to add a condition requiring the applicant to provide a plat, certified by a licensed engineer or surveyor, which would show the setback of the addition from Newman Road. The plat should not have any caveats on it. Chairman DiGiulian stated that he had legal concerns regarding the plat which the architect had amended. He explained that the BZA should not grant a variance without knowing the exact location of the front lot line.

Mr. Kelley asked for Mr. Botts' comments. Mr. Botts stated that the new plat and the original surveyor's plat without caveats were the same. Chairman DiGiulian said it was his understanding that the architect had merely removed the notes from the new plat. Mr. Botts stated that the Chairman was correct. He submitted the original plat which he received when he purchased the property. After comparing the two plats, it was the consensus of the BZA that a new survey should be conducted. The maker of the motion and the seconder accepted the amendment.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-S-149 by STEPHEN C. AND JEAN B. BOTTS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 30.0 feet from front lot line, on property located at 6800 Newman Road, Tax Map Reference 75-4((1))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 March 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 1.09 acre.
4. The application meets the necessary requirements for the granting of a variance.
5. The placement of the house on the property in 1910 has caused the need for the variance.
6. The proposed site is the only practical location for the addition.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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, and revised by James J. Hricko, Architect, dated June 23, 1978, and revised April 7, 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. The addition shall be architecturally compatible with the existing dwelling.

4. The applicant shall provide a plat by a licensed engineer or surveyor which shows the distance of the addition from the front lot line on Newman Road.

Pursuant to Sect. 18-407 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. Dively seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 19, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 55, March 8, 1994, (Tape 2), Action item:

Approval of Resolutions from March 1, 1994

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

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Page 55, March 8, 1994, (Tape 2), ACTION ITEM:

Request for Date and Time
Swanee A. Busic, Lena Gentry, Pine Ridge Civic Association Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of May 10, 1994. Mrs. Thonen seconded the motion which carried by a vote of 7-0. Mr. Kelley asked staff to place the appeal at the end of the scheduled agenda.

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Page 56, March 8, 1994, (Tape 2), Action Item:

Request for Approval of Minutes from January 4, 1994

Mr. Pammel made a motion to approve the minutes with minor corrections. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 56, March 8, 1994, (Tape 2), Action Item:

Request from Harold E. Gay, VC 93-M-141
Waiver of 12 Month Limitation on Refiling an Application

Mrs. Thonen made a motion to deny request. She stated that she could not support a waiver for the application which was heard and denied on February 15, 1994. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 56, March 8, 1994, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Messiah Presbyterian Church, SP 94-S-009

Mr. Kelley asked when the case would normally be heard. Marilyn Anderson, Senior Staff Coordinator, stated that the case would be scheduled for May 24, 1994.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated staff had recently received the application, but had concerns regarding the applicant's ability to meet parking requirements. She explained the initial review indicated that a shared parking agreement from the Board of Supervisors would be required. Ms. Kelsey said that although staff had met with the applicant, staff had some concerns regarding the application.

Mr. Ribble made a motion to deny the request. Mr. Hammack seconded the motion which carried by a vote of 6-0 with Mr. Kelley voting nay.

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Page 56, March 8, 1994, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Jeffrey F. and Evelyne M. Willis, VC 94-M-015

Mrs. Thonen made a motion to grant the request and schedule the case for May 10, 1994 at 9:00 a.m. The Chair so moved.

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Page 56, March 8, 1994, (Tape 2), Action Item:

Approval of Plats for Hrair H. Kazanjian, VC 93-L-063
Heard and Approved on January 4, 1993

Mr. Ribble made a motion to approve the plats as submitted. He noted that the applicant had submitted a copy of the agreement for "Deed of Vacation" and further noted that staff had worked with the applicant to resolve the issue. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 56, March 8, 1994, (Tape 2), Adjournment:

As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

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

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

SUBMITTED: April 5, 1994

APPROVED: April 12, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on March 15, 1994. The following Board Members were present: Vice Chairman Paul Hammack; Robert Dively; Robert Kelley; and, James Pammel. Chairman John DiGiulian, Mary Thonen, and John Ribble were absent from the meeting.

Vice Chairman Hammack called the meeting to order at 8:30 p.m. and waived the invocation.

With respect to Board Matters, Mr. Kelley commended Lori Greenlief, Staff Coordinator, for her excellent job in preparing the report on billiard parlor development conditions which the Board had requested. He asked that staff incorporate the proposed development conditions into any future billiard parlor applications. Mr. Kelley also asked staff to submit a copy of Ms. Greenlief's report to the Board at the time any future applications are scheduled to be heard. Jane Kelsey, Chief, Special Permit and Variance, agreed to do so.

Vice Chairman Hammack informed the applicants that only four Board members were present and noted that four affirmative votes were needed to approve an application. He asked if any applicant had reservations about proceeding and there was no response from the audience.

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Page 57, March 15, 1994, (Tape 1), Scheduled case of:

8:00 P.M. JAMES E. KELLER, VC 93-Y-133 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.1 ft. from side lot line and 24.8 ft. total side yards (12 ft. min. side yard and 40 ft. min. total side yards req. by Sect. 3-107). Located at 3231 Betsy Ln. on approx. 20,001 sq. ft. of land zoned R-1 (Cluster). Sully District. Tax Map 35-4 ((7)) 7. (MOVED FROM 1/18/94 DUE TO CANCELLATION OF HEARING. NOTICES NEEDED.)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James E. Keller, 3231 Betsy Lane, Herndon, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report on behalf of the Staff Coordinator, Don Heine. Ms. Kelsey said the 20,001 square foot property is located on the southeastern corner of the intersection of Betsy Lane and Bennett Road within the Garnchayne Subdivision. The subject property is surrounded on three sides by single family detached dwellings in the R-1 District developed under the Cluster Provisions of the Zoning Ordinance and on the north by single family detached dwellings in the R-1 District developed under the conventional zoning regulations. The applicant was requesting a variance to allow an addition to be located 10.1 feet from a side lot line, such that side yards total 24.8 feet wherein the Zoning Ordinance requires a 12.0 foot minimum side yard with total minimum side yards of 40.0 feet. Therefore, a variance was requested for 1.9 feet from the minimum side yard requirement and 15.2 from the total minimum side yards requirement. Ms. Kelsey added that the lot is a corner lot and used the viewgraph to show the location of the rear lot line.

Mr. Keller said originally the lot was larger than the others in the neighborhood and the builder decided to subdivide into two lots, thereby making the two lots smaller than the others in the neighborhood. He said because of the septic field and the required 40 foot offset from the public street, the builder was forced to locate the house in the east corner of the lot.

Mr. Kelley asked if the owners of Lot 6 accessed their lot via pipestem and Mr. Keller said that was correct.

Mr. Keller continued by saying that his house is a colonial design and there is only one place to put the addition, the existing landscaping will remain, the addition will not be visible from the road, and there are no objections from the neighbors.

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

Mr. Pammel made a motion to approve VC 93-Y-133 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 11, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-Y-133 by JAMES E. KELLER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.1 feet from side lot line and 24.8 feet total side yards, on property located at 3231 Betsy Lane, Tax Map Reference 35-4((7))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 March 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-1 (Cluster).
3. The area of the lot is 20,001 square feet.
4. The applicant complies with the standards as forth in the Zoning Ordinance, specifically the unusual configuration of the lot and the fact because of the drainfield there is no other location in which to put the addition that is much needed by the 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 and the specified addition shown on the plat prepared by Matthews, Wheatley, and Allison, dated July 8, 1993, revised October 19, 1993, submitted with this application and is not transferable to other land.

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

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

Pursuant to Sect. 18-407 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. Dively seconded the motion which carried by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 23, 1994. This date shall be deemed to be the final approval date of this variance.

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8:00 P.M. LOSTON AND ARAMINTIA V. HARRIS, SP 93-P-066 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit shed to remain 7.0 ft. from rear lot line and 2.3 ft. from side lot line. Located at 8726 Arlington Blvd. on approx. 8,690 sq. ft. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 159. (Concurrent with VC 93-P-130). (MOVED FROM 1/18/94 DUE TO CANCELLATION OF HEARING. NOTICES NEEDED.)

8:00 P.M. LOSTON AND ARAMINTIA V. HARRIS, VC 93-P-130 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of carport 8.0 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 8726 Arlington Blvd. on approx. 8,690 ac. of land zoned R-1. Providence District. Tax Map 49-3 ((6)) 159. (Concurrent with SP 93-P-066). (MOVED FROM 1/18/94 DUE TO CANCELLATION OF HEARING. NOTICES NEEDED.)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Loston Harris, 8726 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the 8,690 square foot property is located on Arlington Boulevard in an area west of the intersection of Prosperity Avenue and Arlington Boulevard in the Fairhill on the Boulevard Subdivision. The subject property and the surrounding lots are zoned R-1 and are developed with single family detached dwellings and to the south, across Arlington Boulevard, is the Fairfax Circle Baptist Church.

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 10.7 foot high storage shed (accessory structure) to remain 7.0 from the rear lot line and 2.3 feet from a side lot line. A minimum rear yard of 10.7 feet and a minimum side yard of 20.0 feet is required by the Zoning Ordinance on an R-1 Lot.

The request for variance resulted from the applicants' proposal to construct a carport addition to be located 8.0 feet from a side lot line. A minimum side yard of 15.0 feet is required. Accordingly, the applicants were requesting a variance of 7.0 feet to the minimum side yard requirement for the carport.

In regard to surrounding uses, the dwelling on adjacent Lot 158 to the east is located approximately 26.6 feet from the shared side lot line.

Mr. Kelley asked if a complaint had been filed with regard to the shed. Ms. Langdon said it was her understanding that when the applicants filed for a building permit for the carport the location of the shed was questioned.

Mr. Harris said the shed location was discovered at the time of the survey for the carport. He said their lot is only 50 feet wide as compared to the other lots in the neighborhood which are 100 feet, offstreet parking is an increasing problem, and there are no objections from the neighbors.

In response to a question from Mr. Kelley as to how long the shed has been on the property, Mr. Harris said he constructed the shed in 1983.

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

Mr. Kelley made a motion to approve SP 93-P-066 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 11, 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-066 by LOSTON AND ARAMINTIA V. HARRIS, 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 7.0 feet from rear lot line and 2.3 feet from side lot line, on property located at 8726 Arlington Boulevard, Tax Map Reference 49-3((6))159, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 15, 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 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 Alexandria Surveys, Inc., dated July 27, 1993, submitted with this application, as qualified by these development conditions.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 23, 1994. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley made a motion to approve VC 93-P-130 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated January 11, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-130 by LOSTON AND ARAMINTIA V. HARRIS, under Section 18-401 of the Zoning Ordinance to permit construction of carport 8.0 feet from side lot line, on property located at 8726 Arlington Boulevard, Tax Map Reference 49-3((6))159, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 15, 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 8,690 square feet.
4. The applicants meet the standards for the granting of a variance, in particular the exceptional narrowness of the lot.

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

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

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

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

NOW, THEREFORE, BE IT RESOLVED that the subject application is **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 27, 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 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble were absent from the meeting.

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Page 61, March 15, 1994, (Tape 1), Scheduled case of:

8:00 P.M. WAT YARNNA RANGSEE FOUNDATION, SP 93-S-070 Appl. under Sect(s). 3-103 of the Zoning Ordinance to permit a place of worship and related facilities. Located at 8608 Pohick Rd. on approx. 1.90 ac. of land zoned R-1. Springfield District. Tax Map 98-1 ((1)) 22. (MOVED FROM 1/18/94 DUE TO CANCELLATION OF HEARING. NOTICES NEEDED.)

Vice Chairman Hammack noted that a letter had been received from the applicant's attorney requesting that the application be withdrawn. Mr. Pammel made a motion to allow the withdrawal. Mr. Dively seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble were absent from the meeting.

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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. (DEF. FROM 11/16/93 FOR NOTICES. (MOVED FROM 1/18/94 DUE TO CANCELLATION OF HEARING. NOTICES NEEDED.)

Vice Chairman Hammack called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicants' attorney, Gorham S. (Rory) Clark, Foust & Clark, P.C., 1921 Gallows Road, Suite 730, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the 35,967 square foot property is located at 4816 Montgomery Street in an area northeast of the intersection of Braddock Road and Backlick Road in the Braddock Hills Subdivision. The subject property and surrounding lots are zoned R-2 and developed with single family detached dwellings. The site is currently developed with a 1 1/2-story single family residence, a steel shed, brick patio, and a gravel driveway.

The applicant was requesting approval of a special permit to allow an accessory dwelling unit within a single family detached dwelling and to allow a reduction of the minimum yard requirement based on an error in building location to permit a carport to remain 8.0 feet from a side lot line.

The proposed accessory dwelling unit will contain one bedroom and be approximately 1,000 square feet in size. A total of four parking spaces will be provided for the main dwelling and accessory dwelling unit within an existing 23 foot by 115 foot gravel driveway and the carport.

The request for an error in building location is to allow an existing carport to remain 8.0 feet from a side lot. A minimum side yard of 10.0 feet is required for the carport by the Zoning Ordinance on an R-2 Lot.

Staff concluded that, with the implementation of the Proposed Development Conditions, the proposed accessory dwelling unit would be in harmony with the recommendations of the Comprehensive Plan, and would satisfy all the General Standards and the Standards for all Group 9 Uses. For these reasons, staff recommended approval of SP 93-M-047 subject to the adoption of the Proposed Development Conditions, dated November 9, 1993. Ms. Langdon noted that the staff report was published in November of 1993, prior to the Board's request that staff delete the condition requiring certification by an engineer or architect for a building constructed without an approved Building Permit; therefore, the Board might wish to delete Condition #9.

Mr. Clark said both the staff and his office have had a number of inquiries regarding the application, but to his knowledge neither were aware of any objections. He believed the applicants met all the requirements for the applications and said they purchased the property with the conditions on the property and were given every assurance that the property was in "top notch" zoning shape. The carport was constructed by the previous owner under a building permit and the setback violation was only discovered during the course of these applications.

With respect to the accessory dwelling unit, Mr. Clark said the applicants do qualify as elderly under the Zoning Ordinance requirements and having the unit to rent allows them to remain in their house. He asked the eight day waiting period be waived on both applications.

In response to a question from Mr. Kelley, Mr. Clark said to his knowledge there were no other legal accessory dwelling units on the applicants' street.

Jane Kelsey, Chief, Special Permit and Variance Branch, said staff was not aware of any other accessory dwelling units in the neighborhood.

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

Mr. Pammel made a motion to approve the accessory dwelling unit under SP 93-M-047 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 9, 1993.

Jane Kelsey, Chief, Special Permit and Variance Branch, asked if the maker of the motion would like to delete the second line of Condition Number 1 which referenced the carport. Mr. Pammel agreed.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-047 by BALWANT S. GARCHA, under Section 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 feet from side lot line,

on property located at 4816 Montgomery Street, Tax Map Reference 71-4((10))85, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 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-2.
3. The area of the lot is 35,967 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-918, 8-903, and 8-914 of the Zoning Ordinance.

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

1. This approval for an accessory dwelling unit is granted to the applicant only and is not transferable without further action of this Board.

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 Price Consulting Engineers, dated June 18, 1993, revised through August 18, 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 accessory dwelling unit shall contain no more than one bedroom.

5. The occupant(s) of the principal dwelling and the accessory dwelling unit shall be in accordance with Par. 5 of Sect. 8-918 of the Zoning Ordinance.

6. Provisions shall be made for the inspection of the property by County personnel during reasonable hours upon prior notice and the accessory dwelling unit shall meet the applicable regulations for building, safety, health and sanitation.

7. The accessory dwelling unit shall be approved for a period of five (5) years from its final approval date and may be extended for five (5) year periods with prior approval of the Zoning Administrator in accordance with Section 8-012 of the Zoning Ordinance.

8. There shall be parking spaces provided on site as shown on the special permit plat.

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

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required 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 for an accessory dwelling unit shall automatically expire, without notice, twelve (12) months after the date of approval* unless the use has been established. The Board of Zoning Appeals may grant additional time to establish the use if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 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 approve the carport under SP 93-M-047 for the reason noted in the Resolution and subject to the Development Conditions contained in the staff report dated November 9, 1993, with Condition Number 9 deleted.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-047 by BALWANT S. GARCHA, under Section 8-914 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 feet from side lot line, on property located at 4816 Montgomery Street, Tax Map Reference 71-4((10))85, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 15, 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 approval is for the location and specified carport 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 Price Consulting Engineers, dated June 18, 1993, revised through August 18, 1993 and approved with this application, as qualified by these development conditions.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 15, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 65, March 15, 1994, (Tape 1), BALWANT S. GARCHA, SP 93-M-047, continued from Page 64)

Mr. Pammel made a motion to waive the eight day waiting period on both Resolutions. Mr. Kelley seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble were absent from the meeting.

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Page 65, March 15, 1994, (Tape 1), Action Item:

Approval of Resolutions from March 8, 1994

Mr. Pammel made a motion to approve the Resolutions as submitted. Mr. Kelley seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble were absent from the meeting.

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Page 65, March 15, 1994, (Tape 1), Action Item:

Approval of Minutes from February 2, 1994

Mr. Pammel made a motion to approve the Minutes as submitted. Mr. Dively seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble were absent from the meeting.

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Page 65, March 15, 1994, (Tape 1), Action Item:

Request for Out of Turn Hearing for D. L. Ricketts, VC 94-H-017

Mr. Dively made a motion to approve the applicant's request for an out of turn hearing. Mr. Pammel seconded the motion which passed by a vote of 4-0. Chairman DiGiulian, Mrs. Thonen, and Mr. Ribble were absent from the meeting. The new public hearing date is April 26, 1994.

Jane Kelsey, Chief, Special Permit and Variance, said staff concurred with the request since the building is badly in need of repair, which did constitute a hardship.

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Page 65, March 15, 1994, (Tape 1), Action Item:

Revised Hearing Dates for 1994

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that the dates for 1994 had already been approved and the revisions were in response to issues raised by the BZA.

A discussion took place between the BZA and Ms. Kelsey as to why a meeting was scheduled for Thursday, September 8th. Ms. Kelsey explained that was the only date available based on the earlier discussion.

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Page 65, March 15, 1994, (Tape 1), Action Item:

Request to do Intent to Defer for Ourisman Dodge, Inc. Appeal
Scheduled for March 22, 1994

Mr. Kelley made a motion to defer the appeal to the morning of September 27, 1994, to allow the appellant an opportunity to file a special exception amendment before the Board of Supervisors which if granted, would render the appeal moot.

Jane Kelsey, Chief Special Permit and Variance Branch, noted that the appellant had requested an indefinite deferral, but because the appellant is operating under a Notice of Violation staff could not support the request.

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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
Betsy S. Hurtt, Clerk
Board of Zoning Appeals

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

SUBMITTED: April 5, 1994

APPROVED: April 12, 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 March 22, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; 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 67, March 22, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MASTER ROOFING AND SIDING, INC., VC 93-V-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit lot widths of 164.4 ft., 114.7 ft. and 30.0 ft. and parking 4.0 ft. from front lot line (200 ft. min. lot width req. by Sect. 4-806 and 10 ft. parking setback req. by Sect. 11-102). Located at 8457 Richmond Hwy. on approx. 1.17 ac. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 101-3 ((1)) 30C.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that neither the applicant nor the applicant's agent were present yet. Chairman DiGiulian advised that this case would be passed over until the rest of the 9:00 a.m. scheduled cases were heard.

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Page 67, March 22, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CHERRY AND PETER BAUMBUSCH, VC 94-D-004 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line and 21.3 ft. from rear lot line (15 ft. min. side yard and 25 ft. min. rear yard req. by Sect. 3-207). Located at 1436 Highwood Dr. on approx. 15,835 sq. ft. of land zoned R-2. Dranesville District. Tax Map 31-2 ((10)) 41.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Baumbusch, 1436 Highwood Drive, McLean, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that surrounding properties are also zoned R-2 and developed with single family detached dwellings. She said the applicant was requesting a variance of 4.5 feet to the minimum side yard requirement and 3.7 feet to the minimum rear yard requirement. Ms. Greenlief advised that 7 letters of support had been received, including letters from the owners of the lots most affected by the construction.

Mrs. Thonen asked the applicant what the addition would be used for and he said it would be used to accommodate an eating area next to the kitchen.

Mr. Baumbusch 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. Hammack moved to grant VC 94-D-004 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 15, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-004 by CHERRY AND PETER BAUMBUSCH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.5 ft. from side lot line and 21.3 ft. from rear lot line, on property located at 1436 Highwood Drive, Tax Map Reference 31-2((10))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 March 22, 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 approximately 15,835 square feet.
4. The applicants' lot is narrow.
5. The house is sited centrally, but it is wide and is close to the side lot line and rear lot line in the corner.

6. The variances are both minimal and are required to enlarge an eating area adjacent to the kitchen, thus could not be located anywhere else.
7. The residence on Lot 42 is 36 feet from the shared lot line so there is plenty of room for light and air.
8. The basic requirements have been satisfied.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Associated, LTD., dated November 12, 1993, submitted with this application and not transferable to other land.

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

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

Pursuant to Sect. 18-407 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 March 30, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. JEAN-MARC H. HASSIG, VC 93-P-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.9 ft. from rear and 9.3 ft. from side lot lines and deck 10.4 ft. from rear and 8.6 ft. from side lot lines (25 ft. min. rear yard and 12 ft. min. side yard req. by Sect. 3-107 for addition and 13 ft. min. rear and 12 ft. min. side yards req. by Sects. 2-412 and 3-107 for deck). Located at 10506 Marbury Rd. on approx. 20,001 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-2 ((16)) 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. Jean-Marc H. Hassig, 10506 Marbury Road, Oakton, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the surrounding lots were also zoned R-1 (Cluster) and developed with single family detached dwellings. She said the applicant proposed to construct an addition and a deck over the addition. The dwelling on adjacent Lot 26 to the north is located approximately 65 feet from the shared side lot line and the dwelling on adjacent Lot 27 to the east is located approximately 55 feet from the shared lot line.

Mr. Hassig presented the statement of justification, previously submitted in writing and incorporated into the record. He stressed that the proposed addition would replace an existing aging deck, encroaching no further.

Mr. Pammel moved to grant VC 93-P-160 for all variances requested, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 15, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-P-160 by JEAN-MARC H. HASSIG, under Section 18-401 of the Zoning Ordinance to permit construction of addition 11.9 ft. from rear and 9.3 ft. from side lot lines and deck 10.4 ft. from rear and 8.6 ft. from side lot lines, on property located at 10506 Marbury Road, Tax Map Reference 47-2((16))29, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 22, 1994; and

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

1. The applicant is the owner of the lot.
2. The present zoning is R-1 (Cluster).
3. The area of the lot is approximately 20,001 square feet.
4. The lot has a very irregular shape.
5. The location of the house on the lot leaves no other location for the addition to be built.
6. The addition is being built at a location where there is an existing deck and will not encroach any further into the yards.
7. Any addition to the west would be constrained by the existing septic field.

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

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
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 addition shown on the plat prepared by Furstenau Surveying, dated November 29, 1993, revised through December 21, 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. Dively seconded the motion which carried by a vote of 7-0.

Mr. Ribble made a motion to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 22, 1994. This date shall be deemed to be the final approval date of this variance.

Mr. Hassig returned to the podium later in the meeting to request a waiver of the eight-day waiting period.

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Page 70, March 22, 1994, (Tape 1), Scheduled case of:

9:00 A.M. GARY AND RENEE WARREN, VC 94-P-003 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.9 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 9101 Santayana Dr. on approx. 20,224 sq. ft. of land zoned R-2. Providence District. Tax Map 58-2 ((9)) 143.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Gary Warren, 9101 Santayana Drive, Fairfax, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Mantua Hills Subdivision; the subject property and surrounding lots are zoned R-2 and developed with single family detached dwellings. She said that the applicant proposed construction of a garage with a variance of 1.1 feet to the minimum side yard requirement. The dwelling on adjacent Lot 142 to the west is located approximately 36 feet from the shared side lot line.

Mr. Warren presented the statement of justification, previously submitted in writing and incorporated into the record. He said that immediate neighbors indicated they would rather see the garage than exposed cars, children's toys, and other miscellaneous belongings.

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

Mr. Ribble moved to grant VC 94-P-003 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 15, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-003 by GARY AND RENEE WARREN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.9 ft. from side lot line, on property located at 9101 Santayana Drive, Tax Map Reference 58-2((9))143, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 22, 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 approximately 20,224 square feet.
4. The property has converging lot lines at the front.
5. The lot is oddly-shaped.
6. The variance requested is minimal, with only one corner requiring 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 Alexandria Surveys, Inc., dated December 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 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 March 30, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 71, March 22, 1994, (Tape 1), Scheduled case of:

9:00 A.M. EARL J. & KATHRYN L. RILEY, VC 94-H-002 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.2 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-107). Located at 11003 Burywood Ln. on approx. 26,289 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 12-3 ((7)) (2) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Kathryn Riley, 11003 Burywood Lane, Reston, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the surrounding lots in the Ascot Subdivision are also zoned R-1 and developed with single family detached dwellings. Parcel 19A to the south is zoned PDH-2 and is currently vacant. The applicant proposed construction of a room addition 12.2 feet from the rear lot line, requesting a variance of 12.8 feet.

Ms. Riley said that everything had been covered in the statement of justification, previously submitted in writing and incorporated into the record. They proposed construction of a family room and breakfast area in place of an existing dining area and kitchen. The existing family room would be used to accommodate an ill parent.

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

Mr. Kelley moved to grant VC 94-H-002 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 15, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-H-002 by EARL J. & KATHRYN L. RILEY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.2 ft. from rear lot line, on property located at 11003 Burywood Lane, Tax Map Reference 12-3((7))(2)23, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 22, 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 approximately 26,289 square feet.
4. The lot has an extremely exceptional shape.
5. The addition cannot be placed out front.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Kenneth W. White, Alexandria Surveys, Inc., dated December 7, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on March 30, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 73, March 22, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MASTER ROOFING AND SIDING, INC., VC 93-V-159 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit lot widths of 164.4 ft., 114.7 ft. and 30.0 ft. and parking 4.0 ft. from front lot line (200 ft. min. lot width req. by Sect. 4-806 and 10 ft. parking setback req. by Sect. 11-102). Located at 8457 Richmond Hwy. on approx. 1.17 ac. of land zoned C-8 and HC. Mt. Vernon District. Tax Map 101-3 ((1)) 30C.

This case was passed over earlier in the meeting because neither the applicant nor his agent were present.

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 W. Dove, President, Dove and Associates, 11350 Random Hills Road, Fairfax, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the applicant proposed construction of a contractor's office on the property; however, the property became an outlot as the result of a 1986 subdivision approval. She said that a note on the subdivision plat indicated that a building permit could not be issued on the property because

it does not meet the provisions of the Zoning Ordinance; it is not a buildable lot. Ms. Greenlief said that the applicant was requesting approval of a lot width variance in three places on the property in order to create a buildable lot. The minimum lot width requirement in this district is 200 feet. The lot has 164.4 feet along Old Pole Road, 114.7 feet along the frontage of the bulk of the property, and 30.0 feet along the frontage closest to Route 1.

Ms. Greenlief stated further that the applicant was requesting a variance from the requirement to have 10 feet between a parking space and the front lot line, to allow the parking lot to be 4 feet from the front lot line. As presented in the staff report, the Comprehensive Plan recommends residential use for this property and surrounding properties and staff believed, for that reason, that the application, which would permit a commercial use for the property, is not in harmony with the Plan. Ms. Greenlief said that the Plan further calls for a connector road between Forest Place and Route 1. The connector road will coincide with the southern front lot line of the subject property. On the plan presented to the Board, the right-of-way for the road will cut off a corner of the proposed building. Another transportation concern was that the applicant must obtain concurrence from the owners of Lot 31B, the lot over which the proposed easements run, to alter the ingress/egress easements as shown on the plat. It was noted that the owners of Lot 31B had submitted a letter in opposition to the request. Ms. Greenlief said that staff wished to point out that the applicant must demonstrate to the Board that the property was acquired in good faith and that the approval of the variances which would allow a commercial development of the property is in harmony with the Comprehensive Plan and, hence, would be in the public interest, as well as meeting the rest of the standards set forth in Sect. 18-404. Ms. Greenlief said that the Proposed Development Conditions addressed staff's concerns regarding transportation and stormwater management, should the Board see fit to approve the application. She noted that a letter in opposition had been received from the attorney of the owners of Lot 31B and 30B, which are the adjacent lots.

Mrs. Thonen asked staff about Old Pole Road, stating that she never knew there was such a road. Ms. Greenlief said that, in that area, Old Pole Road is just a paper street shown by a dotted line, but it does not exist; the connector road is shown on the Comprehensive Plan four lots to the west of the subject property, winding down along Old Pole Road, to the rear of the subject property and then going up through Lot 29C, which is to the east of the subject property. Mrs. Thonen asked what the purpose of the road was. She said it appeared to her that it would be a mistake for the road to be used to open up commercial development into a residential area. She said she had spoken with property owners behind the subject property who were in favor of the applicant's proposal for drainage amelioration, but they were not in favor of the road construction. Mrs. Thonen asked what chance there was of having the connector road deleted from the plan. Ms. Kelsey referred Mrs. Thonen to the Comprehensive Plan and Mrs. Thonen said she was familiar with the what appeared in the Plan; however, she could find no purpose for the road. Ms. Greenlief said that, from her conversations with representatives of the Office of Transporation, she believed the purpose of the road was to pull the traffic from Route 1 by not having individual entrances onto Route 1 and have those properties between Route 1 and the connector road actually access onto the connector road to create a common entry onto Route 1. Mrs. Thonen said she could understand the need for a connector road but could not envision this proposed location as being practical.

Ralph Davenport, President and founder of Master Roofing & Siding, Inc., 8457 Richmond Highway, Alexandria, Virginia, came forward to present the statement of justification, previously submitted in writing and incorporated into the record. He gave a chronological history of the ownership and subdivision of the property. The property was acquired in 1979 by Ralph Davenport and Nelson Smith, with a 30,000 square foot building and a 3,000 square foot garage. Mr. Smith owned Smitty's Lumberteria and Mr. Davenport owned Master Roofing & Siding, Inc. In 1984 they elected to dissolve the partnership by mutual agreement, with Smith retaining the building and 5 acres of land and Davenport retaining 5 acres of land. In the resubdivision in 1986, Master Roofing received Lot 29C and Outlots A , B, and C, with Master Roofing leasing facilities from Smith. Mr. Davenport said that Lot 29C and Outlots B and C were sold by Master Roofing to neighboring property owners; they were unable to sell Outlot A. He said he believed Outlot A was acquired in good faith. When the partnership was dissolved, Mr. Davenport said he signed a 10-year lease and expected to sign another 10-year lease when that one expired on October 31, 1994; however, it was Mr. Davenport's understanding that Mr. Smith needed the leased space to make improvements to his own operation. Since he will not be renewing his lease, he was proposing construction of new facilities on Outlot A, including a 50-foot showroom, accommodations for the handicapped, and a ladies rest room; the facilities would consist of 3,800 feet of office space and a 2,400-foot warehouse.

Mr. Dively asked Mr. Davenport if he had reviewed the Proposed Development Conditions and if he would be willing to live with them, to which Mr. Davenport replied in the affirmative, alluding to drainage problems which he believed could not be addressed until construction was underway. Mr. Davenport said, insofar as the 50-foot right-of-way for Pole Road was concerned, there was no way they could do that for a road that would never be built. Mr. Dively requested an explanation of the photographs submitted, which Mr. Dove covered.

Mrs. Thonen asked to whom the trucks and materials belonged that were in the back of the property. Mr. Davenport said he did not know to whom they belonged, only that none if them were on Outlot A. Mrs. Thonen said she believed they might be contributing to the drainage problem and their ownership should be established.

Mrs. Thonen said that, coming up the road toward Smitty's, there were approximately 50 cars parked along the road, and asked to whom they belonged. Mr. Davenport said they probably belonged to employees of Smitty's and did not belong to his employees.

Speaking in support of the applicant was Christopher Fry, 8549 Greenlief Street, in the mobile home park right behind the subject property. He said he had never heard of Pole Road since he had been there, since 1975. Mr. Fry said he believed Mr. Davenport's development of the property would be an asset because rubbish was now being dumped in the area, causing a rodent problem for him and other residents of the mobile home park.

In opposition, Hugh C. Cregger, 7010 Little River Turnpike, Annandale, Virginia, said he was an attorney representing the Smiths, who are the owners of the property in front of the subject property. Mr. Cregger said the property had many problems: storm drainage, traffic, etc. Mr. Cregger referenced his letter to the Board, stating that Outlot A was unbuildable, as were thousands of others in the County that had come about in the same way as this one had; i.e., the property was subdivided in a manner that ended up with a lot which did not meet building specifications. He said the plat stated on its face that the lot was unbuildable. Mr. Cregger said Outlot A became unbuildable when Mr. Davenport sold Outlot B; the two lots together would have been buildable. He said his client objected to the potential traffic and did not believe the storm drainage problem could be solved; the proposal also was an intrusion into a residential district.

Mrs. Thonen referenced Mr. Cregger's complaint about the traffic and said she had never seen so many trucks parked right out front, towards Route 1, hauling and piling lumber, as she did at Smitty's Lumberteria. She said she was looking at this request very carefully because of the way Smitty's property had become unmanageable. She said an attempt had been made to speak with Smitty to get him to do some improvements and they have gotten nowhere. Mrs. Thonen said that she recognized this situation as being a personal disagreement, judging by the fact that they hired a lawyer to come to the hearing.

N. Patrick Smith, 8457 Richmond Highway, came forward to take over from Mr. Cregger, stating that his parents were the owners of Smitty's. He said they do the best they can and he would like to speak with Mrs. Thonen, personally, about their operation at some other time, possibly that afternoon, because the situation upset him. He went into a description of their operation. Mrs. Thonen said she just wanted to find out if people were using the area for a park-and-ride facility, to which he responded that was not so. Mr. Smith said he wanted to renew Mr. Davenport's lease and had written him as far back as August 1993 to tell him so. He said he wanted to take part of the 5 acres Mr. Davenport was leasing and use it to hold the cars and trucks associated with Smitty's operation, plant trees in front of the building, and generally clean up the area.

In answer to a question from Mrs. Thonen as to why he did not move the cars and trucks on to the piece of property Smitty's was on, Mr. Smith said that, after they each took 5 acres of the total 10, the Smiths leased 3 acres of their 5 to Mr. Davenport and used the balance for their operation, which was not sufficient to accommodate the cars and trucks in a neat and orderly fashion, away from the front. He said he was forced to continually move lumber from one place to another because of a lack of space.

Mr. Pammel and Mrs. Thonen asked for clarification of the setup with Master Roofing on the Smith property. Mr. Smith said Master Roofing rents about 2,500 square feet of office space, some shop space, all the parking and all the storage for the shingles and trucks; they rent about 3 acres of land on Lot 308, the northern part of the property.

Mrs. Thonen asked Mr. Smith, if Mr. Davenport vacated his property and had this variance granted, could Mr. Smith then move his trucks to the vacated space, and he said that he could. He said he could do that even if the variance were not approved. He said the main issue was the stormwater problem and 70 vehicles (20 trucks and 50 employee cars).

Mrs. Thonen said she had received phone calls the previous evening from citizens who appeared to be in favor of Mr. Davenport's proposal if the drainage problem could be ameliorated.

Mr. Davenport was allowed two minutes for rebuttal. He said that Outlot C was sold to Mr. Smith for additional frontage which he badly needed at that time. Mr. Davenport believed that Outlot A was acquired in good faith. He said that the drainage problem was created by the paving done by Mr. Smith without providing adequate drainage.

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

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Mrs. Thonen asked if the Board could recess at this time, 10:05 a.m. The Board reconvened at 10:10 a.m.

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Mrs. Thonen moved to grant VC 93-V-159, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated March 15, 1994, as amended by deleting Conditions 4 and 7 and renumbering the remaining conditions.

Mr. Hammack said he would oppose the motion because he believed the hardship was self-imposed. He said it was clear that the applicant was involved in land transactions from which he had profitted by selling pieces, developing property and retaining the outlot which had been non-buildable for years; in addition, he did not have the required easement, he had not met transportation requirements and staff was right in their analysis. Mr. Hammack said that, while he was not unsympathetic to seeing the property developed in some fashion, the proposed development is not in conformance with the Comprehensive Plan.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-V-159 by MASTER ROOFING AND SIDING, INC., under Section 18-401 of the Zoning Ordinance to permit lot widths of 164.4 ft., 114.7 ft. and 30.0 ft. and parking 4.0 ft. from front lot line, on property located at 8457 Richmond Highway, Tax Map Reference 101-3((1))30C, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 22, 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 HC.
3. The area of the lot is approximately 1.17 acres.
4. There exists an unusual condition in that the applicant and a former co-owner originally bought ten acres together, which was later divided between them.
5. This is the only way the applicant can develop the property.
6. The poor design of the subdivision is not deemed to be anyone's fault.
7. The applicant is considered to meet all the standards and does fulfill the hardship requirement.

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

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

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

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

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

1. This variance is approved for the lot widths and the parking space location shown on the plat prepared by Dove & Associates, dated September 10, 1993, revised March 7, 1994 submitted with this application and is not transferable to other land.

2. A replat for the subdivision which shows the subject property as a buildable lot shall be reviewed and approved by the Department of Environment Management and recorded among the land records of Fairfax County prior to the issuance of a building permit.

3. There shall be no storage of outdoor materials which are classified as hazardous or toxic such as oil, gas, or other hydrocarbon-based products.

4. Best Management Practices (BMPs) for the control of stormwater runoff shall be provided as determined necessary by the Director, Department of Environmental Management (DEM) to meet the requirement of the Chesapeake Bay Preservation Ordinance.

5. At the time of site plan review, it shall be demonstrated to the satisfaction of the Director, DEM, that the applicant has right to vacate and establish the proposed ingress/egress easements on Lot 31B.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to 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. Dively seconded the motion which carried by a vote of 5-2. 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 March 30, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 77, March 22, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JEAN-MARC H. HASSIG, VC 93-P-160 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 11.9 ft. from rear and 9.3 ft. from side lot lines and deck 10.4 ft. from rear and 8.6 ft. from side lot lines (25 ft. min. rear yard and 12 ft. min. side yard req. by Sect. 3-107 for addition and 13 ft. min. rear and 12 ft. min. side yards req. by Sects. 2-412 and 3-107 for deck). Located at 10506 Marbury Rd. on approx. 20,001 sq. ft. of land zoned R-1 (Cluster). Providence District. Tax Map 47-2 ((16)) 29.

This case was heard and granted earlier in the meeting. The applicant now returned to the podium to request a waiver of the eight-day waiting period.

Mr. Ribble moved to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 77, March 22, 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 AND 2/8 AT APP'S. REQUEST.)

Chairman DiGiulian advised that a request had been made for an indefinite deferral. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said she believed the Board had issued an Intent-to-Defer until the morning of September 27, 1994. Mr. Dively asked when the Board of Supervisors (BOS) was due to hear the special exception. William E. Shoup, Deputy Zoning Administrator, advised that an application had not yet been filed because the appellant had just recently decided on major improvements and expansion on the site. In answer to Mr. Dively's question, Mr. Shoup said he did not believe the special exception will have been heard by the BOS by 9/27/94; however, that will allow the appellant time to further consider what they wished to do and at least get an application filed, after which the BZA can review the status, rather than allow the situation to go on without any action whatsoever.

A discussion ensued regarding the congestion of cars on the lot and the travel lanes. Mrs. Thonen said she was not pleased with the lack of progress in landscaping and clearing up the congestion.

Chairman DiGiulian said he agreed with Mrs. Thonen in her displeasure at the lack of progress in the landscaping and clearing up of the congestion. He said he believed six months was adequate, at which time they could review the situation and defer again if necessary. Mr. Dively said he would second the motion as described.

Mr. Kelley asked for clarification of the motion and Mrs. Thonen said the motion was to defer the appeal with the conditions that the appellant take care of the two outstanding conditions previously imposed: (1) reduce the number of cars on the site and (2) landscaping.

Mr. Kelley said he would vote for the deferral but would not vote for the conditions to be imposed.

A discussion ensued wherein Mr. Ribble asked for clarification that the deceleration lane issue would not be included in the conditions and there was some disagreement about conditioning the deferral at all.

Chairman DiGiulian advised that, in the special exception, the appellant had agreed to the landscaping and to moving the cars off the public street, as well as to building the deceleration lane.

Mr. Kelley said he did not disagree with asking the appellant to move the cars off the public street, but asking them to reduce the number of cars they have on the property was not acceptable to him. Chairman DiGiulian said if they keep the cars off the public street and travel lanes, that's all they can ask them to do. He said the Wilson Bridge Study could affect the deceleration lane but would not affect the other two items to which they had agreed a long time ago when they were granted the special exception.

Mr. Kelley questioned whether the Board could impose conditions on an appellant when granting a deferral and said he did not think they could.

Mr. Hammack said he had the same reservations Mr. Kelley had and did not believe the Board had jurisdiction or scope of authority to impose the conditions, even though the action was well-motivated.

Chairman DiGiulian said that, while the motion need not say so, if the appellant did not comply with the conditions previously imposed, he would not vote for another deferral when they come before the BZA again. Mrs. Thonen agreed with Chairman DiGiulian.

Mr. Dively asked what the motion on the table was. Mrs. Thonen said the motion was to grant a deferral to the morning of September 27, 1994, unconditionally. Mr. Hammack seconded the motion. Chairman DiGiulian said that it was not uncommon for members of the Board to state their opinions on motions and deferrals and how they viewed the action or inaction of the appellant. The motion carried by a vote of 7-0.

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Page 78, March 22, 1994, (Tape 1), Scheduled case of:

9:30 A.M. JAN CHERYL LATNEY, APPEAL 94-L-005 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has constructed an accessory storage structure without Zoning Administrator approval of a Building Permit and in violation of the size limitations and location regulations set forth in Article 10 of the Zoning Ordinance. Located at 5811 Ash Dr. on approx. 9,992 sq. ft. of land zoned R-4. Lee District. Tax Map 80-1 ((6)) (2B) 43.

Mr. Pammel asked if there was anyone present to represent the appellant and, if not, he would let the letter requesting deferral stand on its face. He moved that the appeal be deferred to the morning of July 26, 1994, to allow time for the appellant to file variance and special permit applications to be submitted to the Board of Zoning Appeals (BZA) and for the BZA to conduct public hearings. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 78, March 22, 1994, (Tape 1&2), Scheduled case of:

9:30 A.M. SAMUEL A. AND SUZANNE H. SCOGGIN, APPEAL 94-H-008 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has constructed a detached garage within the front yard in violation of Par. 11C of Sect. 10-104 of the Zoning Ordinance. Located at 10815 Cross School Rd. on approx. 21,368 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-1 ((3)) (1) 8.

Samuel A. Scoggin and Suzanne H. Scoggin, 10815 Cross School Road, Reston, Virginia, came to the podium to announce their presence.

William E. Shoup, Deputy Zoning Administrator, highlighted key issues contained in the staff report dated March 15, 1994, stating that the property is developed with a single family detached dwelling and a partially constructed detached garage which is the subject of the appeal. At issue was the location of the garage in the appellants' front yard. Under current Zoning Ordinance provisions, detached garages are not permitted in front yards on lots the size of the appellants' lot; however, in June 1979, a grading plan was approved for the construction of the dwelling and a detached garage to be located in the front yard of the property; that location was indicated as being 16 feet from the front lot line and approximately 28 feet from the northern side lot line. At that time, detached garages were permitted under Zoning Ordinance provisions in a front yard, providing they met the minimum front yard requirement. The house was constructed back then, but the garage was not. In December of 1979, a grading plan was approved, showing the location of the garage to be approximately 12 feet from the northern side lot line; that grading plan was approved after an October 1979 Zoning Ordinance Amendment that precluded garages in front yards on lots of that size. It had previously been determined that the December 1979 grading plan was erroneously approved; the owners at the time actually rescinded that approval and that grading plan. In 1985, the previous owners, named King, obtained building permit approval to construct a garage in the location approved in the June 1979 grading plan; it was determined that that location was grandfathered; however, the foundation, the parking pad and the garage were constructed in a location closer to the northern side lot line, approximately 12 feet, which was more consistent with the erroneous December 1979 approval. In 1985, a Notice of Violation was issued to the Kings, who attempted to get approval for a variance in 1987 for that garage location; the BZA denied that application. The garage was subsequently removed, but the pad remained. The appellants purchased the property and, in September 1993, obtained a building permit to construct a garage; the permit approval was based on the June 1979 location, approximately 28 feet from the northern side lot line; however, the garage was constructed on the existing pad that remained from the previous owners' attempt to build a garage and, based on a plat the appellants had submitted, the garage is located 12.4 feet from the northern side lot line. The appellants indicated that a note had been placed on the building permit requiring construction on the existing pad. There was some discussion in the staff report about the circumstances surrounding the note; the note originated with DEM, not Zoning; staff did not know what had transpired between DEM and the applicant regarding that notation; staff did know that the technician had put the note on the permit so that the appellants could avoid some of the requirements of the Chesapeake Bay Ordinance. The only plats submitted with the building plan did not show the location as 12 feet from the side lot line; it showed a location consistent with the June 1979 grading plan approval. Mr. Shoup said it was staff's position that the only approved location was that which was given in the June 1979 grading plan; any proposal in another location could not be approved and would not be permitted under the Zoning Ordinance. Since the appellants built in a location other than what was approved, he said it was staff's position that they were in violation of the Zoning Ordinance. Mr. Shoup noted that the position staff was taking in this appeal was consistent with the position they maintained at the time of the 1987 filing of a variance by the previous owners in their attempt to construct a garage.

Mr. Dively said, from reading the submissions, it was his impression that the Scoggins were of the opinion that they had some sort of informal permission to build in the chosen location and asked staff to respond.

Mr. Shoup said it appeared that their belief was based on two things: Prior to purchasing the property, the Scoggins requested an interpretation from the County to assure them that they could build the garage and there were discussions with County staff; the position taken by staff at that time was that the garage could be built, but only in the location approved on the June 1979 grading plan. The second thing was that a notation was put on the building permit the appellants obtained, which confused the issue; the notation by DEM states that the garage was to be built on the existing pad, yet there is some question about whether DEM even knew the location of the pad. Regardless, any decision by DEM on that issue could not supercede Zoning approval for the garage to be built in one specific location.

Mr. Scoggin submitted letters of support from neighbors and advised that, since the sign was placed on their property about their plan, neighbors had also stopped by to offer support.

Mr. Scoggin asked the Board to temper staff's decision since they had just finished building their garage. He said he believed the spirit of the Ordinance was met. Out of the 120 homes in the neighborhood, his was the only house without a garage; three of the homes had detached garages. He said it was difficult to determine how near or far from the lot line a garage was built because there were no fences or boundary markers to designate property lines in Reston. Mr. Scoggin said that, to move the garage to the specified 25 feet from the northern lot line, they would have to destroy the look of their mature wooded lot; the site would also have to be regraded, which would be destructive to the natural environment. He said that their interpretation of the Ordinance was that, since they are in a PRC District, the only restriction is that the garage must be 15 feet away from the front yard lot line, which they believe they have met.

Mr. Dively asked Mr. Scoggin to address the issue that he believed he received some kind of sanction or permission from the County staff. Mr. Scoggin said that, before they purchased the home, they inserted a contingency clause in the contract, hinging on permission from the County to enclose the existing slab. He said he took the current plat (at that time) which showed the slab on the right, without the dimensions of the garage, and also gave them the

June 1979 grading plan. He said he spoke to a couple of people and Mavis Manfield (sic) said it was okay to enclose the existing slab with a garage, after which they proceeded to purchase the home, obtain a building permit, and felt assured that they could build a garage.

Mr. Dively asked the appellant who he had spoken with. Mr. Scoggin said, "...I went to the front desk and gave them my two plats and plans and they said that there could be a problem with this and so I went upstairs to the 8th floor and I forget who I spoke to, but she referred me to speak to Mavis Manfield (sic) and she was the one that eventually said it was okay...." Mr. Dively asked if there was any other contact beyond that and the appellant said no. Mr. Dively asked if that was the time he had the plat with something written on it and the appellant said they had never done anything to the plats, they had always remained the way they were. In answer to a question from Mr. Dively, Mr. Scoggin said the slab was there when he purchased the property.

Mr. Shoup said that he had spoken with Ms. Stanfield who was out on medical leave and could not be present. She had assured Mr. Shoup that she had advised Mr. Scoggin that the garage could be built, but only in the location on the June 1979 approved plat. Mr. Shoup said that other staff had also told Mr. Scoggin the same thing. He also noted that the reasons expressed by the appellant for allowing the garage to remain in its present location probably would better be addressed through filing a variance application rather than an appeal.

No one else wished to address the appeal and Chairman DiGiulian closed the public hearing.

Mr. Pammel said he believed Mr. Shoup was correct in his recommendation that the issue be addressed through a variance application in lieu of an appeal. He said he believed there was a clear-cut hardship and he would favor a variance for the appellant.

Mr. Pammel moved to uphold the Zoning Administrator's determination with respect to appeal A 94-H-008.

Mr. Ribble seconded the motion.

Mr. Dively asked if there would be an enforcement action by the Zoning Administrator and Mr. Pammel said there would not be as long as there is an application filed, everything would be stayed until the variance request is resolved. Mr. Kelley asked if staff concurred with that statement. Mr. Shoup said they did, as long as the applicant quickly filed the variance. Mr. Shoup was asked what was meant by "quickly" and he said the appellants probably could get a variance application together within 30 days, because they already appeared to have a plat and, as long as they intended to file the variance, staff was not anticipating court action.

Chairman DiGiulian reminded the Board that there was a motion on the floor to uphold the Zoning Administrator's decision, moved and seconded.

The motion carried by a vote of 7-0.

Mr. Pammel made a motion that the applicant promptly file a variance application which would be processed expeditiously and presented to the Board as soon as possible.

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

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Page 80, March 22, 1994, (Tape 2), Action Item:

Approval of Resolutions from March 15, 1994 Hearing

Mr. Pammel so moved. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 80, March 22, 1994, (Tape 2), Action Item:

David Gladstone Appeal
Request for Acceptance

Mr. Pammel said he had read the memo from William E. Shoup, Deputy Zoning Administrator and concurred that the appeal was not timely filed due to a misunderstanding. Mr. Pammel moved to deny acceptance of the appeal. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 80, March 22, 1994, (Tape 2), Action Item:

Approval of Minutes from January 25, 1994 Hearing

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Request for Out-of-Turn Hearing
Helen J. Hester, VC 94-L-025

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that the applicant's agent, Ron Elliott, Architect, indicated in his letter that, due to the pressing increased need for physical care for the applicant, she was requesting an out-of-turn hearing to build a large addition to accommodate her children, who will take care of her.

Mrs. Thonen asked Ms. Kelsey if she could recommend an early date because this was really a case of extreme hardship and Ms. Kelsey first said that the earliest date was May 10, 1994; however, Mrs. Thonen said that was not soon enough and asked what the earliest date was that would satisfy advertising requirements. Ms. Kelsey responded that the draft ads for May 3, 1994, had already been done, but staff could revise the draft ads if necessary; the application had been received in its completed form the previous day.

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:47 a.m.

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

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

SUBMITTED: April 19, 1994

APPROVED: April 26, 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 March 29, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; 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 83, March 29, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MARCEL AND DONNA INFELD, VC 94-M-005 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 30.6 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located at 6154 Beachway Dr. on approx. 17,674 sq. ft. of land zoned R-2. Mason District. Tax Map 61-1 ((11)) 917.

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

Lori Greenlief, Staff Coordinator, presented the staff report and said the property is located in the Lake Barcroft subdivision, is zoned R-2, and is developed with a single family detached dwelling. The surrounding properties are zoned R-2 and developed with single family detached dwellings with the exception of the lot to the rear which is zoned R-3 and developed with Bailey's Elementary School. The applicant was requesting approval of a variance to the minimum front yard requirement to allow construction of an addition 30.6 feet from the front lot line. The minimum front yard requirement in this district is 35 feet; thus, the applicants were requesting a variance of 4.4 feet to the minimum front yard requirement. Ms. Greenlief called the Board's attention to a revised plat, which was submitted after the publication of the staff report, along with a memo describing the plat. She said also attached to the memo was a set of revised development conditions which reflected the correct plat date. Ms. Greenlief noted that staff had received two letters from the abutting property owners in support of the request.

The co-applicant, Donna Infeld, 6154 Beachway Drive, Falls Church, Virginia, said they would like to build a two car garage 30.6 feet from the front lot line, which would replace the existing carport. She said the main reason for the proposed garage is security as both she and her husband have jobs with late evening hours. Mrs. Infeld said their lot is a perfect right triangle with only three sides which limits what can be constructed in the side yard. She said there were actually three letters in support, two from the abutting neighbors and one from the Lake Barcroft Architectural Review Board.

Marcel Infeld, co-owner of the property, addressed the development conditions and said the shed mentioned in the staff report is located in the rear of the property on their side of the fence but on the property of Bailey's Elementary School. He noted that the development conditions require the removal of the shed or that it be relocated within the required setbacks. Mr. Infeld said they have offered to sign a "hold harmless agreement" with the School Board and asked that the BZA require the two parties to meet to resolve the issue rather than requiring the removal of the shed. He added if the BZA did require the removal of the shed he asked that a variance be granted which would allow them to relocate the shed to the northeast corner of their lot within 10 feet of the side lot line and within 1 foot of the school lot line. Mr. Infeld said this is necessary because of the unusual shape of the lot and the mature trees. He pointed out that the relocation of the shed to this location will act as a buffer if the school proceeds with its plans to relocate the dumpsters to the corner of their lot. Mr. Infeld said that Tom Williamson, the Site Coordinator for the School Board, had indicated that he would write a letter to the BZA but that he was currently out of town.

Chairman DiGiulian said the BZA had received a letter from the School Board and the second paragraph of the letter requested that the shed be removed from their property. Mrs. Thonen read an excerpt from the letter.

Mr. Infeld said the School Board had never notified them in writing regarding the removal of the shed. (The BZA provided the applicant with a copy of the letter.)

Mr. Pammel asked staff if the relocation of the shed to the proposed location would require a variance and staff said that it would. Mr. Ribble said if the applicants would not remove the shed at the request of the owner of the property why would they remove it at the BZA's direction.

Mr. Dively said he did not believe that the shed issue was properly before the BZA and that he had no problem with the garage addition. Chairman DiGiulian said the BZA could not address the issue of the variance for the shed. The other members agreed.

Mrs. Infeld agreed that the shed was a separate issue and that the School Board should notify them in writing.

Mr. Hammack pointed out that the letter from the School Board indicated that the applicants had been notified in writing. Mrs. Infeld said the list provided to the neighbors by the School Board noted that they had never received a certified letter.

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

Mr. Pammel made a motion to grant VC 94-M-005 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 29, 1994 and with the deletion of the condition which referenced the shed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-005 by MARCEL AND DONNA INFELD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 30.6 feet from front lot line, on property located at 6154 Beachway Drive, Tax Map Reference 61-1((11))917, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 29, 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 17,674 square feet.
4. There are certain aspects of the case that generate concern, in particular the shed on the subject property. Although the shed is not an issue before the Board of Zoning Appeals, and the Fairfax County School Board has written a letter requesting that it be removed, the Board of Zoning Appeals does not have the authority to require the removal. There is an issue between the parties that does need to be resolved and there are conflicting letters with respect to the shed. If it does result in the need for a variance, the Board of Zoning Appeals will consider that application at the appropriate time.
5. There is an unusual circumstance on the subject property, certainly the configuration of the lot. When looking at the location of the dwelling on the lot, it does not allow another location for the carport than that proposed by the applicants.
6. The applicants have taken a very interesting approach to putting the architectural addition onto the house.
7. The request is for a minimal front yard 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 RC Fields, Jr. & Associates, dated March 18, 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. 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. Dively seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 6, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 85, March 29, 1994, (Tape 1), Scheduled case of:

9:00 A.M. IVAN J. KESNER, VC 94-D-006 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.7 ft. from street line of a corner lot (30 ft. min. front yard req. by Sect. 3-407). Located at 1826 Anderson Rd. on approx. 15,026 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((16)) 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. Mrs. Kesner replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the 15,026 square foot property is located on the southwestern corner of Sportsman Drive and Anderson Road within the Pimmit Hills Subdivision. The subject property is surrounded by single family detached dwellings in the R-4 District. The Dulles Access Road is located east of the property. The applicant was requesting a variance to allow a carport addition to be located 18.7 feet from a street line of a corner lot. The Zoning Ordinance requires a 30 foot minimum front yard; therefore, a variance was requested for 11.3 feet.

Mr. Dively asked what was in that location now and Mr. Heine said there was only a driveway.

The co-owner, Ruth Kesner, 1826 Anderson Road, Falls Church, Virginia, said she and her husband have been Fairfax County residents for approximately 40 years and have lived on the same corner lot. She said they had thought they were fortunate to have a corner lot until they tried to obtain a building permit to construct a two car carport and were told that the lot had two front and two side yards. Mrs. Kesner said the extra width of the carport is needed because of the window wells and chimney that are located on the side of the house where the proposed carport would be constructed. She added that there is a double driveway already in place. Mrs. Kesner pointed out there is a safety factor involved because of the close proximity of their property to Dolley Madison Boulevard and Dulles Access Road. She said there were no objections from the neighbors, the zoning district would not be changed by the granting of the variance, and the structure would be architecturally compatible with the existing dwelling. (Mrs. Kesner called the BZA's attention to photographs of other double car carports in the neighborhood.)

In response to a question from Chairman DiGiulian with regard to a sight distance problem, Mrs. Kesner said the carport would set back approximately 40.8 feet from the intersection of Anderson Road and Sportsman Drive.

There were no speakers either in support or in opposition.

Mrs. Thonen asked staff if the shed was in violation and Mr. Heine said the shed was not a part of the application and would require further research. He noted that those errors are usually caught at the time the application is filed. Jane Kelsey, Chief, Special Permit and

Variance Branch, said the co-applicant, Mr. Kesner, had indicated that a letter was in the file regarding the shed stating that the shed was constructed in 1951 prior to the current Zoning Ordinance, thus was not in violation.

Mr. Hammack asked how far back the houses on Lots 23 and 24 were from Sportsman Drive. Mrs. Kesner said they sit back a distance of approximately 46 feet. In response to a question from Mr. Hammack regarding the length of the requested carport, Mrs. Kesner said the architect had suggested that the carport follow the line of the existing roof.

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

Mr. Hammack made a motion to grant VC 94-D-006 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 22, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-006 by IVAN J. KESNER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 18.7 feet from street line of a corner lot, on property located at 1826 Anderson Road, Tax Map Reference 40-1((16))204, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 29, 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 15,026 square feet.
4. The subject property has double front yard requirements which is unusual to most of the properties in the area.
5. 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 William E. Ramsey, PC., dated December 21, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 6, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 87, March 29, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ST. KATHERINE'S GREEK ORTHODOX CHURCH OF NORTHERN VIRGINIA, SP 93-M-119 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit church and related facilities. Located at 3149 Glen Carlyn Rd. on approx. 4.42 ac. of land zoned R-3. Mason District. Tax Map 61-2 ((1)) 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. The applicant's architect, Cy Merkezas, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the property is a 4.42 acre parcel and is developed with a church which consists of the sanctuary, multi-purpose building, and parking. The existing facilities were constructed prior to the special permit requirement for churches. Long Branch traverses the southern portion of the property. The property is surrounded by single family detached dwellings in the R-3 District on the north, east and west with townhouses in the R-12 District on the south. The property lies north of Route 7 and south of the Arlington Line.

The applicant was requesting to enlarge the existing multi-purpose building from 3,848 square feet to 21,075 square feet for a total gross floor area of 26,875 square feet, and to increase the number of parking spaces from 95 to 132 in order to meet the minimum current Zoning Ordinance requirement. Two corners of the proposed multi-purpose building will intrude into the Resource Protection Area. The applicant was also requesting to use the existing vegetation supplemented by additional plantings to meet the transitional screening requirement and barrier requirements. A waiver of Transitional Screening 1 is requested adjacent to the east lot line, and a 6 foot high wooden fence with supplemental plantings was proposed.

Mr. Heine said it was staff's conclusion that for the reasons outlined in the staff report, the proposed application could not meet the General Standards for special permit uses unless the Proposed Development Conditions were imposed. He said of overriding concern was the removal of the building addition from the RPA and the location of an on-site stormwater facility that would be capable of meeting the phosphorus reduction requirements of the Chesapeake Bay Preservation Ordinance. He said staff recommended approval only with the imposition of the Proposed Development Conditions contained in Appendix 1 of the staff report.

Cyros G. Merkezas, Architect, 1841 Columbia Road, N.W., Suite 202, Washington, D.C., said the proposed building would be an accessory use to the church and would be an addition to the community center, and would allow an expansion of the activities that currently take place in the center. He said it would include a basketball court, meeting rooms, offices for the priests/church staff, reception area, and a kitchen. Mr. Merkezas said the church has been working on the project for approximately two years and a meeting was held with the neighbors in August 1993 to outline the project and the comments were incorporated into the design before submission to the County.

A discussion took place between Mr. Dively and the speaker regarding the proposed development conditions. Mr. Merkezas asked that Condition Number 8 be deleted. The Chairman suggested revising Condition Number 9, regarding the removal of the portion of the building from the RPA. He suggested deleting the reference to "null and void." The speaker agreed.

Chairman DiGiulian called for speakers in support of the request.

Mike Alter, President of the Harborview Civic Association, said he was speaking only on his behalf and that he was aware that some of the neighbors did have some concerns. He said overall the church and the community have been good neighbors over the years and that he did support the church's proposal based upon the proposed development conditions. Mr. Alter said the neighbors were concerned with the visual and noise impacts, but that he believed those issues would be addressed through the tree barrier that would be added. He expressed concern that the deletion of Condition Number 8 would cause flooding on his property and that he had not been aware that the location of the building had been shifted.

In response to the speaker's comments, Mr. Merkezas said the shifting of the building occurred following a meeting with staff. He added that the building would be moved further away from Glencarlyn Road, thus further away from the townhouses and would not cause any flooding.

John Agnos said he had been a resident of Fairfax County for over 30 years and a member of the church for approximately the same length of time. He assured the BZA that the sole purpose of the building extension was to serve the needs of the present congregation and to enhance the community and the neighborhood.

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

Bruce Gruenewald, 6012 Hardwick Place, Falls Church, Virginia, said he did not have a prepared statement and submitted correspondence to the BZA. He said he had not had an opportunity to review the staff report and asked that the record be kept open for a period of time to allow the neighbors an opportunity to comment on the staff report, in particular the RPA issue.

Chairman DiGiulian asked the speaker if he had tried to obtain a copy of the staff report from the County. Mr. Gruenewald said he was not aware of the availability of the staff report when he called to be placed on the speaker's list. Chairman DiGiulian said it would not be appropriate to forego the public hearing since all the requirements have been met. In response to a question from Mr. Kelley as to when he became aware of the application, Mr. Gruenewald replied August 1993.

Mr. Dively asked the speaker what his objections were to the application. Mr. Gruenewald had four objections: 1) decreased property values; 2) increased parking problems; 3) public safety issue with regard to the sight distance problem along Glencarlyn Road; and, 4) increased noise.

In response to a question from Mr. Dively with respect to the number of parking spaces on site, Mr. Merkezas said there were currently 95 and the proposal would increase the number to 132, which is the current requirement for the use.

Pam Wood, 6002 Hardwick Place, Falls Church, Virginia, submitted correspondence to the BZA. She did not believe that the applicant had adequately addressed the issues raised in the staff report and asked that the record be left open for additional comments.

In rebuttal, Mr. Merkezas said there would be no change to the current traffic patterns at the site since the building is an accessory use. He said the church is trying to address the parking issue by providing as much parking as possible on site and still respect the environmental issues. Mr. Merkezas said no trees will be removed from the site to accommodate the building, the developer has agreed to reinforce the existing buffers between the church and the townhouse community, and the noise level will be reduced since many of the outside activities will be moved inside. He said the granting of the application will bring the entire site under the current regulations which will benefit the neighborhood.

Chairman DiGiulian said it was his understanding that the amount of impervious area that would be located within the 100 foot buffer would be less with the proposed plan. Mr. Merkezas said that was correct.

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

Mrs. Thonen made a motion to grant SP 93-M-119 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 22, 1994, with Conditions 8 and 9 modified as noted. Following a discussion among the BZA members, the motion remained as stated by Mrs. Thonen.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 93-M-119 by ST. KATHERINE'S GREEK ORTHODOX CHURCH OF NORTHERN VIRGINIA, under Section 3-303 of the Zoning Ordinance to permit church and related facilities, on property located at 3149 Glen Carlyn Road, Tax Map Reference 61-2((1))16, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 29, 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 4.42 acres.
4. The environment may not be hurt as much with the proposed building if all the landscaping and the grading is added; and, if the dead trees are removed and the vegetation is upgraded, it will help with the noise impact.
5. Staff has done a very good job in resolving the issues.

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 Donald F. Mori, Inc. dated October, 1993 and revised through February 15, 1994 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 number of seats in for the main area of worship shall be 525.

6. There shall be a 132 parking spaces provided and all parking shall be on site and as shown on the Special Permit Plat.

7. There shall be no clearing of vegetation or grading inside of the EQC line designated on the special permit plat except for the removal of dead and dying trees as determined by the Urban Forestry Branch. There shall be no structures located in the EQC area.

8. The Board of Zoning Appeals has no objections to the intrusion of a portion of the building into the RPA, but will leave the final decision to the Department of Environmental Management.

9. The applicant must meet the Department of Environmental Management's Water Management Ordinance and the Chesapeake Bay Preservation Ordinance.

10. Transitional screening shall be provided in accordance with the following: The size, type and quantity of all plantings, except along the eastern lot lines, shall be shown on a landscaping plan and approved by the Urban Forestry Branch, DEM. The quantity, size and type of these plantings shall be equivalent to Transitional Screening 1. The purpose of these plantings is to provide to the maximum extent possible screening which will soften the visual impact of the structures on the surrounding residential community.

Along the northern and western lot lines, existing vegetation supplemented by plantings, to the maximum extent possible, that are placed between the lot lines and the existing and proposed buildings shall be deemed to satisfy Transitional Screening 1. The size, type and quantity of these plantings shall be equivalent to Transitional Screening 1.

Along the southern lot line, the existing vegetation supplemented by plantings, to the maximum extent possible, that are placed between the proposed building addition and the northern bank of Long Branch shall be deemed to satisfy Transitional Screening 1. The size, type and quantity of these plantings shall be equivalent to Transitional Screening 1.

Along the eastern lot line, supplemental plantings, to the maximum extent possible, shall be placed between the six (6) foot high fence and the parking lot and driveway and shall be deemed to satisfy Transitional Screening 1.

11. The barrier requirement shall be waived along all lot lines, except the eastern lot line. A six foot high wooden fence shall be placed adjacent to the eastern lot line and supplemental plantings provided as stated above.

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

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

The lights shall focus directly onto the subject property.

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

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.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 6, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 89, March 29, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY S. ROSEN, SP 94-V-002 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 carport to remain 5.9 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-207 and 2-412). Located at 4109 Laurel Rd. on approx. 32,940 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 101-4 ((9)) 67.

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

Susan Langdon, Staff Coordinator, presented the staff report and said the 32,940 square foot property is located on Laurel Road in an area west of Mount Vernon Highway in the Woodley Hills Subdivision. The subject property and the surrounding lots are zoned R-2 and developed with single family detached dwellings. The request for a special permit resulted from an error in building location to allow an existing carport to remain 5.9 feet from a side lot line. A minimum side yard of 10.0 feet is required by the Zoning Ordinance for a carport on an R-2 lot. In regard to surrounding uses, the dwelling on adjacent Lot 68 to the west is located approximately 16.0 feet from the shared side lot line. Ms. Langdon said since the publication of the staff report the Deputy Chief of the Public Utilities Branch, Department of Environmental Management, has notified staff that the location of the floodplain identified on the submitted plat for Lot 67 is incorrect. She added there is no floodplain on the applicant's property, but is located on adjacent Lot 68 to the west. Ms. Langdon noted that one additional letter in opposition had been received by staff since the BZA received its package last week.

The applicant, Jeffrey S. Rosen, 4109 Laurel Road, Alexandria, Virginia, referenced the statement of justification submitted with the application.

Mr. Ribble asked the applicant to address the issues raised in the neighbors' letter.

Mr. Rosen said he and his wife moved into their house in October 1987 and in early in 1991 they hired a builder to construct the carport who did obtain the appropriate building permits from the County. He added at that time Lot 68 was vacant and submitted photographs to the BZA showing the lot. Mr. Rosen said the construction on the house on adjacent Lot 68 began in October 1992.

In response to a question from Mr. Kelley, Mr. Rosen said the carport was constructed in March 1991.

Mr. Rosen said the carport passed all inspections and they assumed the carport was properly located since it is 5.9 feet and from the lot line. He said the house on Lot 68 does not face the carport and the only time the carport is visible to the neighbors is when they are coming up the driveway or when they are standing behind their garage. Mr. Rosen read a petition with twenty-five signatures into the record in support of the request.

Mrs. Thonen noted the measurement and building permit discrepancy mentioned by the neighbors. Mr. Rosen disagreed with the neighbors' measurements and called the BZA's attention to the survey. He said the flower box was installed after the construction of the carport. Mrs. Rosen said the flower box was merely a safety precaution since the carport is 3 feet above ground level.

Chairman DiGiulian called for speakers in support of the request.

Jack Tumlinson, said he was a neighbor to both property owners and that he and his wife have lived in the area since 1967 and that he has walked up and down the street for many years. He said the carport was constructed on the applicant's property prior to the construction on adjacent Lot 68, and although he had not seen a building permit posted prior to the construction it did not mean the applicant had not obtained one. Mr. Tumlinson said he did not believe Lot 68 was adversely impacted by the carport since it abuts the neighbors' garage; therefore, it does not harm the enjoyment of the neighbors' property.

There were no further speakers in support and Chairman DiGiulian called for speakers in opposition.

Lauri Wroblewski, 4113 Laurel Road, Alexandria, Virginia, said she and her husband purchased their lot in August 1990 and filed for a building permit in January 1991. She said they experienced a lot of problems in obtaining a building permit and did not obtain the permit until August 1992 and the carport was under construction at that time with a valid permit. Ms. Wroblewski used the viewgraph to discuss photographs of the property. She said the carport should be relocated and a new survey done prior to the relocation.

In rebuttal, Mr. Rosen pointed out that the photographs submitted by his neighbor was taken with a 35 mm lens, which exaggerated the proportion of the relationship between the carport and the house. He said a survey was done and the only stake that was removed was done so by the neighbor on Lot 68 and that he disagreed that the carport location devalued the properties.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant SP 94-V-002 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 22, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-V-002 by JEFFREY S. ROSEN, 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 5.9 feet from side lot line, on property located at 4109 Laurel Road, Tax Map Reference 101-4((9))67, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 29, 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. It is obvious that the carport was built prior to the house next door going up.

I. There is some testimony from the next door neighbor that disputes the issue, but when weighing the accuracy of the survey the Board of Zoning Appeals has to accept the certified survey.

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 16, 1994, 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.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 6, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 92, March 29, 1994, (Tape 1), Scheduled case of:

9:30 A.M. KAY S. & JAMES L. GLYMPH, SP 93-S-073 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification on limits on keeping of animals to allow four dogs on a lot containing less than 12,500 sq. ft. Located at 6103 Lundy Pl. on approx. 8,932 sq. ft. of land zoned R-3. Springfield District. Tax Map 78-4 ((13)) 324. (MOVED FROM 2/23/94 AT APPLICANT'S REQUEST)

Chairman DiGiulian said the BZA had received a letter from the applicants asking that the application be withdrawn. Mr. Hammack made a motion to allow the withdrawal of SP 93-S-073. Mr. Pammel seconded the motion which passed by a vote of 7-0.

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9:30 A.M. WINCHESTER HOMES, INC., SP 94-H-003 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 dwelling to remain 3.8 ft. from side lot line (8 ft. min. side yard req. by Sect. 3-307). Located at 12909 Brafferton Ct. on approx. 15,087 sq. ft. of land zoned R-3 (Cluster). Hunter Mill District. Tax Map 25-2 ((14)) 104A (formerly 25-2 ((1)) pt. 21 and pt. 25).

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

David Hunter, Staff Coordinator, presented the staff report and said the subject property is 15,087 square feet in size and is located on Brafferton Court west of Monroe Street and south of Fox Mill Road. The subject property and surrounding lots in the Monroe Manor Subdivision are developed with single family detached dwellings, are zoned R-3, and were developed under the cluster provisions of the Zoning Ordinance. The request for a special permit resulted from an error in building location to allow a dwelling to remain 3.8 feet from a side lot line. A minimum side yard of 8 feet is required by the Zoning Ordinance on a lot zoned R-3 Cluster.

Keith Martin, attorney with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, said several lots, including Lot 104A, were resubdivided in order to create Lot 104A so that a particular house could be constructed on the site as requested by the purchaser. He said when the engineers staked out the house footprint before construction they inadvertently used the old survey, which was prior to the resubdivision. The County issued building permits and the house was 80 percent complete when the error was discovered. Mr. Martin said the house sits 3.8 feet from the side lot line and 8.0 feet is required; unfortunately, the house on Lot 103A, which has also been constructed, is approximately 14.0 feet from the shared lot line for a total of 18.0 feet separating the two houses. He added that this was a unintentional, human error and the purchasers are anxiously awaiting the outcome of the public hearing, since they are scheduled to go to closing in mid-April and are relocating to the area from California. Mr. Martin agreed to the development conditions contained in the staff report.

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

Mr. Kelley made a motion to grant SP 94-H-003 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated March 22, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-H-003 by WINCHESTER HOMES, INC., 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 3.8 feet from side lot line, on property located at 12909 Brafferton Court, Tax Map Reference 25-2((14))104A (formerly 25-2((1))pt. 21 and pt. 25), Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on March 29, 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 Greenhorne & O'mara, Inc., dated January 13, 1994 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.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 6, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 94, March 29, 1994, (Tape 1), Scheduled case of:

9:30 A.M. AARON AND CAROLINE THOMPSON, APPEAL 94-Y-007 Appl. under Sect(s). 18-301 of the Zoning Ordinance to appeal Zoning Administrator's denial of zoning approval on a Building Permit application for a screened porch addition to the dwelling on appellant's property. Located at 5569 Village Center Dr. on approx. 6,113 sq. ft. of land zoned PDH-3. Sully District. Tax Map 54-1 ((17)) (6) 10.

William Shoup, Deputy Zoning Administrator, said the appeal dealt with the denial of zoning approval for a building permit for a screened porch addition to the appellants' single-family dwelling. He said staff's position was set forth in the staff report dated March 21, 1994 and outlined the key points. The appellants' house was constructed in 1993 and under the Zoning Ordinance provisions in PDH developments there are no specified minimum yard requirements with the exception of lots that are located on the periphery of the development, which is not the situation in this case. Mr. Shoup said the location of structures during initial development is regulated by locations that are shown on a Final Development Plan (FDP). When those locations are not shown they are established by an approved grading plan, which is what occurred in this situation. He said the approved grading plan reflected the dwelling locations in the development and on the appellants' lot it showed a Florida room addition on the rear of the house to within 20 feet of the rear lot line, but the room was not constructed. In December 1993, the appellants proposed adding a combination deck and screened porch to the rear of the dwelling which would align with the side of the house. The deck was to extend to within 16 feet of the rear lot line and the screened porch would be located to within 20 feet of the rear lot line. Mr. Shoup said the open deck satisfied the provisions of Section 2-412; however, the screened porch is not a deck by definition therefore it was not subject to the provisions of Section 2-412. Because the screened porch is an addition or an alteration to an existing dwelling in the PDH District, it is subject to the provisions of Paragraph 7 of Section 16-403. This section requires that such additions be governed by regulations that are applicable to the R-zoning district which most closely characterizes the given development, which in this case is the R-3 Cluster. Therefore, the screened porch addition must satisfy a 25 foot minimum rear yard and a 8 foot minimum side yard. Since the proposal did not, the building permit was appropriately denied.

Chairman DiGiulian noted that page 7 of the staff report indicated that perhaps the appellants should have filed a variance application rather than an appeal. He asked if the subject had been discussed with the appellants. Mr. Shoup said he had discussed the

possibility of a variance with Mrs. Thompson after the appeal was filed, but the appellants chose to proceed with the appeal.

The co-appellant, Aaron Thompson, 5569 Village Center Drive, Centreville, Virginia, said he agreed with Mr. Shoup's comments with the exception of the discussion relating to the variance application. He said the issue had not been made known to them until after they had incurred significant time and expense to file the appeal. Mr. Thompson requested that the BZA waive the requirement based on Mr. Shoup's presentation since the lot was originally approved for a Florida room. He pointed out that the neighbors on either side of them have Florida rooms, both neighbors support the construction, and there is open space behind the subject property.

Mr. Hammack explained to the speaker that the BZA could not grant a variance without going through the public hearing process.

Mrs. Thompson said she had been informed by the Deputy Zoning Administrator, Melinda Artman, that it would be appropriate to file an appeal and was told at a later date by Mr. Shoup that a variance would be more appropriate. She added that they decided to proceed with the appeal because they have evidence from the County that the PDH-3 zoning requirements were met when their house was constructed. Mrs. Thompson said although the zoning reverted to the R-3 Cluster upon completion not one property in the immediate area could meet those general requirements.

Mr. Kelley made a motion to defer the case to allow the appellants an opportunity to file a variance application. Following comments from the other BZA members, Mr. Kelley withdrew his motion.

Mr. Pammel asked if it would make any difference if the subject property was zoned R-4 as opposed to R-3 Cluster. Mr. Shoup said the rear yard setback would be the same.

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

Mrs. Thonen said she did not like ruling against the appellants because they were in a turmoil, but she would have to support the Deputy Zoning Administrator's decision in A 94-Y-007. Mr. Pammel seconded the motion.

Mr. Ribble said he would support the motion.

Mr. Hammack said the Code requires staff to make citizens aware of their right to appeal; therefore, staff was in a difficult position but that he also would support the motion.

The motion passed by a vote of 7-0.

Mr. Pammel suggested that if the appellants choose to seek a variance that staff expedite the application and schedule it for the earliest possible date. Chairman DiGiulian agreed. Jane Kelsey, Chief, Special Permit and Variance Branch, agreed that staff would schedule the case on the next advertising date once the application has been filed.

Mrs. Thompson was upset and made comments that could not be picked up on the microphone that could not be picked up on the mike. Mr. Thompson said he did not believe they would be filing a variance.

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Page 95, March 29, 1994, (Tape 1), Action Item:

Approval of Resolutions from March 22, 1994

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Dively seconded the motion which passed by a vote of 7-0.

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Page 95, March 29, 1994, (Tape 1), Action Item:

Approval of Minutes from February 8, 1994

Mrs. Thonen made a motion to approve the Minutes as submitted. Mr. Hammack seconded the motion which passed by a vote of 7-0.

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Page 95, March 29, 1994, (Tape 1), Action Item:

Approval of revised plats for
Stephen C. & Jean B. Botts, VC 93-S-149
Heard and Approved on March 8, 1994

Chairman DiGiulian said he had reviewed the revised plat and had read the applicants' handwritten explanation as to what had been done, but he could still not accept the plat. He

said he had indicated at the March 8th public hearing that the BZA needed a current survey to show the location of the building relative to the front lot line. Chairman DiGiulian said it appears from the applicants' explanation the architect got Mr. Dunn's permission to modify the 1978 plat and no one has been to the site to try and establish the lot lines. Mr. Ribble said they were at the same place they were on March 8th.

The applicant, Steve Botts, 6800 Newman Road, Clifton, Virginia, said the BZA's ruling on March 8th stated that the variance was granted contingent upon the submission of new plats, which had been certified by a licensed professional. Mr. Botts said the plat before the BZA had been certified and did show the distance of the addition of the front lot line from Newman Road without any disclaimers. He said he believed that the plat complied to the letter with what the BZA had required.

Mr. Kelley said he was tired of hearing the case and that it had been a clear intent of the BZA all along that the applicants have a new survey done. Mr. Botts said that had never been made clear to him and that he believed the only identified concern had dealt with the submitted survey having conditions noted on it. He said the most recent one does not.

Following further discussion between the BZA and the applicant, Mr. Kelley made a motion that the applicants get either a recertification or a new survey by the original surveyor. Mrs. Thonen seconded the motion which passed by a vote of 7-0.

In response to a question from Mr. Botts as to the specific problem with the most recent submission, Chairman DiGiulian said the BZA had been presented with two plats at the original public hearing which showed two different front setbacks. He added that the BZA still did not know the correct offset.

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Page 96, March 29, 1994, (Tape 1), Action Item:

Request for Out of Turn Hearing for
Anthony W. and Virginia M. Scerbo, SP 94-P-012

Mrs. Thonen said she had read the applicants' letter and it appeared that the application was quite involved and that she was not sure that the case could be scheduled earlier than the 90-days. Mr. Hammack said the garage had been on the property for 28 years. Mr. Kelley said it appeared that the applicants could not obtain insurance until the property was brought into compliance; therefore, he made a motion to grant the out of turn hearing. Mr. Pammel seconded the motion.

Jane Kelsey, Chief, Special Permit and Variance Branch, suggested either May 10th or May 17th, whichever would be the earliest advertising date. Mrs. Thonen so moved to schedule the case of May 10th, if possible. The motion passed by a vote of 7-0.

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Page 96, March 29, 1994, (Tape 1), Action Item:

Request to do Intent to Defer for George L. Lane Appeal

William Shoup, Deputy Zoning Administrator, said just last week the Zoning Administrator's office had signed off on a local government ordinance form which related to the appellant's attempt to obtain approval for a on-site sewage disposal system. He said the appellant had made changes to the initial proposal and staff has now signed off on the form and he expected the appeal to be withdrawn soon.

Mr. Pammel made a motion to defer the appeal for a period of three months. Mr. Hammack seconded the motion which passed by a vote of 7-0.

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

Betsy S. Hartt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: May 3, 1994

APPROVED: May 10, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 5, 1994. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian and Mary Thonen were absent from the meeting.

Vice Chairman Ribble 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 Vice Chairman Ribble called for the first scheduled case.

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Page 97, April 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. RUSSELL C. DAVIS, VC 94-L-011 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 3.3 ft. from side lot line (8 ft. and a total of 20 ft. min. side yards req. by Sect. 3-307). Located at 5707 Ashfield Rd. on approx. 10,962 sq. ft. of land zoned R-3 (Cluster). Lee District. Tax Map 91-4 ((4)) 77.

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. Davis replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow construction of an addition 3.3 feet from the side lot line with side yards totaling 15.5 feet. The Zoning Ordinance requires a 8.0 foot minimum side yard and a total side yard of 20.0 feet; therefore, the applicant was requesting a 4.7 foot variance to the minimum side yard requirement and a 4.5 foot variance to the minimum total side yard requirement, respectively. Ms. Greenlief noted that one letter in opposition was received from an adjoining neighbor. She further noted that prior to the public hearing, staff received two letters in support of the request.

The applicant, Russell C. Davis, 5707 Ashfield Road, Alexandria, Virginia, addressed the BZA. He submitted a copy of his presentation which enumerated the required standards and noted that he had purchased the property from his wife's parents in October 1993. Mr. Davis also submitted a copy of the plat to show that the narrow lot has an exceptional shape and photographs which depicted the houses in the area with similar additions. Continuing his presentation, he said the storage area was included in the proposed addition because his house does not have a basement; therefore, storage space was limited. In summary, Mr. Davis said there was no other location for the garage, the addition would be architecturally compatible with the existing structure, there would be no detrimental impact on the neighbors, and the existing vegetation would adequately screen the addition. He expressed his belief that the application met the necessary standards, would be beneficial to the community, and asked the BZA to grant the request.

Mr. Davis explained that, although he had received verbal approval from the owner of Lot 76, Gerald Elphick, before beginning the project, he had been informed that the Elphicks had submitted a letter in opposition to the request. He expressed his belief that there would be no detrimental impact to Lot 76 and noted that he would not have invested his time and money into the project had the Elphicks voiced their opposition to the proposal when they were consulted in November 1993. Mr. Davis expressed his belief that because Lot 76 was a rental property, the condition of property was not in keeping with the neighborhood. He submitted two letters of support and noted that the other neighbors believed the addition would increase their property values.

In response to Mr. Kelley's question, Mr. Davis said that the Elphicks had never resided on Lot 76.

Mr. Hammack asked if variances had been obtained to construct the garages depicted in the photographs. Mr. Davis said he believed that most of the garages in the pictures required variances because the garages were located 3.0 or 4.0 feet from the lot lines.

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

The owner of Lot 76, Barbara Elphick, 2010 Windmill Lane, Alexandria, Virginia, addressed the BZA. She registered her opposition to the request and noted that the proposed addition would have a detrimental impact on her property. Ms. Elphick said that the applicant knew the space limitations when they purchased the property, the applicant's lot is not unusual for the area, and noted that several houses in the area were built without basements. She explained that, although a few of the properties in the area have garages, they are on half acre lots. Ms. Elphick expressed her belief that the garage addition would be too close to the lot line, would decrease her property value, and would have a detrimental impact on her property. She asked the BZA to deny the request.

Vice Chairman Ribble called for rebuttal.

In rebuttal, Mr. Davis stated that the variance provision was incorporated in the County to give relief to property owners with odd shaped lots. He said that the structure on Lot 76 would be approximately 34 feet from the garage addition and would not have a detrimental impact on the property. He again noted that the house was rented and the Elphicks had never resided on the property. Mr. Davis stated that only a small section of the garage would need the 4.7 foot variance and asked the BZA to grant the request.

Vice Chairman Ribble closed the public hearing.

Mr. Hammack made a motion to deny VC 94-L-011 for the reasons reflected in the Resolution.

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

Mr. Kelley stated that while he was against the motion, he believed the size of the garage should be reduced. Mr. Pammel said he would support a motion to grant-in-part. Mr. Hammack said he was hesitant to modify the request because the garage size would be substantially reduced and the applicant may want to enlist other options.

In response to an inquiry from Mr. Dively as to whether a 12 by 24 foot garage addition would be acceptable, Mr. Davis said he could build that size garage by-right. He explained that, because of the chimney and the need for storage space, he would like to build a wider garage.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-L-011 by RUSSELL C. DAVIS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 3.3 feet from side lot line, on property located at 5707 Ashfield Road, Tax Map Reference 91-4((4))77, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 5, 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 10,962 square feet.
4. The application does not meet the necessary standards for the granting of a variance.
5. Considering the size of the 28 foot long proposed addition, 3.3 feet would be too close to the side lot line.
6. The applicant would like to expand the storage space, but has proposed an oversized garage in order to satisfy these needs.
7. The BZA frequently grants garage additions which are much smaller in dimensions and required a lesser variance.
8. Although it may be a minimal variance on a lot which has converging lot lines, the lot is not that dissimilar from other lots in the neighborhood.
9. The proposed addition has too much bulk to be located so close to the lot line.

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

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

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

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

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

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

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

Mr. Kelley made a motion to waive the twelve month waiting period for the refiling of an application. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 1994.

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Page 99, April 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CHRISTOPHER G. & CAROL J. MOORE, VC 94-H-007 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 2.6 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-107). Located at 1712 Besley Rd. on approx. 20,864 sq. ft. of land zoned R-1 (Cluster). Hunter Mill District. Tax Map 28-4 ((24)) 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. Moore replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Donald Heine, Staff Coordinator, who had prepared the staff report. She stated that the applicant was requesting a variance to allow a 16.8 foot high roofed gazebo 2.6 feet from a rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, the applicant was requesting a 22.4 foot variance to the minimum rear yard requirement.

The applicant, Christopher G. Moore, 1712 Besley Road, Vienna, Virginia, addressed the BZA and expressed his belief that the application met all the required standards. Mr. Moore said the shape of the lot was very unusual and note the "S" shaped rear lot line which was apparently formed by the historic high water level of "Wolf Park Creek." He stated that most of the subject property is steeply hilly, boggishly wet, or subject to a forty foot wide storm drainage easement. Mr. Moore said that because of the topographical and the marsh-like conditions, his family cannot enjoy or develop the property without the variance.

Vice Chairman Ribble referred to the justifications in the applicants' letter and asked if he believed the primary hardship under the Zoning Ordinance was the topography, shape and shallowness of the lot. Mr. Moore said he did.

Mr. Moore said the strict application of the Zoning Ordinance would limit the use of the property. He noted that the addition would be compatible with the existing structure, the neighbors support the proposal, and asked the BZA to grant the request.

The co-applicant, Carol J. Moore, 1712 Besley Road, Vienna, Virginia, addressed the BZA. She stated that because of their proximity to the parkland, her husband regularly helps maintain the park by clearing dead bramble and removing litter. She explained that her husband had even responded to the Park Authority's request and wrapped chicken wire around trees in order to protect them from beavers. Ms. Moore expressed her belief that the gazebo addition will be aesthetically pleasing and asked the BZA to grant the request.

In response to Mr. Hammack's question as to why the addition could not be relocated so that it would not be so close to the parkland, Ms. Moore said it was because of the steep slope of the land. She explained the existing retaining wall would be used to support the gazebo.

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

Mr. Pammel made a motion to grant VC 94-H-007 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 29, 1994.

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

Mr. Hammack stated that, although he was not opposed to the vast majority of the addition, he believed the gazebo should not be so close to the parkland. He explained that in the process of maintaining the gazebo, the applicant would have to trespass onto the parkland. Mr. Hammack noted that many times citizens appropriate parkland for their own use and expressed

his belief that the project could be redesigned to allow additional land for the maintenance of the gazebo.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-H-007 by CHRISTOPHER G. AND CAROL J. MOORE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 2.6 feet from rear lot line, on property located at 1712 Besley Road, Tax Map Reference 28-4((24))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 April 5, 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 20,864 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The application is unusual. Normally applications meet some of the criteria, but this application is unique in that it meets all the criteria.
6. The lot has an unusual shape, size, and topography.
7. The forty foot storm drainage easement on the south, as well as the front yard setback requirement, precludes the development and enjoyment of the property.
8. The adjacent property to the rear is parkland and will not be developed; therefore, there is not detrimental impact to the adjoining neighbor.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 roofed-gazebo addition shown on the plat prepared by Alexandria Surveys, Inc., dated January 6, 1994, 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. Dively seconded the motion which carried by a vote of 4-1 with Mr. Hammack voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Vice Chairman Ribble recognized Gerald Hyland, Supervisor, Mount Vernon District, who was present in the Board Auditorium and extended the Board of Zoning Appeals' greetings.

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Page 101, April 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD CURTIS, VC 94-V-008 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.0 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 2701 Memorial St. on approx. 6,486 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-1 ((18)) (M) 501 and 502. (Concurrent with SP 94-V-004).

9:00 A.M. RICHARD CURTIS, SP 94-V-004 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 4.9 ft. from side lot line (7 ft. min. side yard req. by Sects. 3-307 and 2-412). Located at 2701 Memorial St. on approx. 6,486 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-1 ((18)) (M) 501 and 502. (Concurrent with VC 94-V-008).

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

Jane Kelsey, Chief, Special Permit and Variance Branch, presented the staff report for Donald Heine, Staff Coordinator, who had prepared it. She stated that the applicant was requesting a special permit for an error in building location to allow an existing deck to remain 4.9 feet from the side lot line. The Zoning Ordinance requires a minimum 7 foot side yard; therefore, the applicant was requesting a 2.1 foot special permit to the minimum side yard requirement.

Ms. Kelsey said that the applicant was also requesting a variance to allow construction of an addition 9.0 feet from a side lot line. The Zoning Ordinance requires a 12 foot minimum side yard; therefore, the applicant was requesting a 3.0 foot variance to the minimum side yard requirement.

The applicant's agent, John J. Murphy, III, 8880 Walutes Circle, Alexandria, Virginia, addressed the BZA. He explained that the non-compliance was done in good faith because the deck was in existence at the time of purchase and the applicant had believed it met the County requirements. Mr. Murphy said the deck was needed because it provided an entrance into the house. He expressed his belief that the application would not create an unsafe condition and met the necessary requirements for the granting of a special permit.

In addressing the variance application, Mr. Murphy stated that the dwelling on adjoining Lot 500 is approximately 50.0 feet from the lot line. He also noted that the adjacent property is currently used for material and car storage.

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

Mr. Kelley made a motion to grant SP 94-V-004 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 29, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-V-004 by RICHARD CURTIS, 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 4.9 feet from side lot line, on property located at 2701 Memorial Street, Tax Map Reference 93-1((18))(M)501 and 502, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 5, 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. The deck was built before the applicant bought the property.

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 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 use(s) indicated on the special permit plat, entitled Variance Plat, prepared by Alexandria Surveys, Inc., dated May 8, 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. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 1994. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley made a motion to grant VC 94-V-008 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 29, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-008 by RICHARD CURTIS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.0 feet from side lot line, on property located at 2701 Memorial Street, Tax Map Reference 93-1((18))(M)501 and 502, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 5, 1994; and

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

1. The applicant is the owner of the lot.
2. The present zoning is R-3.
3. The area of the lot is 6,486 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The lot has exceptional narrowness.
6. The proposed addition would be 50.0 feet from the lot line and approximately 59.0 feet from the neighbors structure.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated May 8, 1993 submitted with this application and is not transferable to other land.

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

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

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Residential Use Permit through established procedures, and this 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. Hammack seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Vice Chairman Ribble asked Jane Kelsey, Chief, Special Permit and Variance Branch, to revise the "Special Permit Mistake Form." Ms. Kelsey said that staff was aware of the Board of Zoning Appeals' (BZA) desire to have the form revamped and would have it done soon. She stated that staff would appreciate any suggestions the BZA may have.

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Page 104, April 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MIKE CORTINAS, VC 94-D-010 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.9 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 6617 Ivy Hill Dr. on approx. 12,614 sq. ft. of land zoned R-3. Dranesville District. Tax Map 40-2 ((13)) 89.

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. Cortinas replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow the construction of an addition 8.9 feet from the eastern side lot line. The Zoning Ordinance requires a 12 foot minimum side yard; therefore, the applicant was requesting a 3.1 foot variance to the minimum side yard requirement.

The applicant's brother and co-owner of the property, Marco A. Cortinas, 6617 Ivy Hill Drive, McLean, Virginia, addressed the BZA. He stated that they had purchased the property with the understanding that they would be able to build an addition to accommodate their father. Mr. Cortinas explained that his father, who presently resides in Florida, has been ill and would no longer be able to work.

Mr. Cortinas said that the existing structure is 8.9 feet from the property line and noted that he would not be intruding any farther into the side lot line than the existing house. He explained that if he had been aware the house, which was built in 1954, was too close to the lot line, he would not have purchased the property. Mr. Cortinas stated that because of the layout of the structure, it would be impractical to place the addition anywhere else on the lot. In summary, he noted that the neighbors supported the proposal, the addition would be aesthetically pleasing, and asked the BZA to grant the request.

Mr. Hammack asked the applicant to identify the properties in the photographs he submitted to the BZA. Mr. Cortinas said the photographs were related to his property and showed the BZA where the addition would be placed.

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

Mr. Dively made a motion grant VC 94-D-010 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 29, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-010 by MIKE CORTINAS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.9 feet from side lot line, on property located at 6617 Ivy Hill Drive, Tax Map Reference 40-2((13))89, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 5, 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 12,614 square feet.
4. The lot is narrow and the addition would not intrude any farther into the side lot line than the existing structure.
5. A hardship exists and the application would be in harmony with 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 of the specific addition shown on the plat prepared by Harold A. Logan, Associates, P.C., dated January 7, 1994, submitted with this application and is not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 1994. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. PHILLIP JAMES BANKS, SP 94-M-005 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 4.4 ft. from rear lot line and 3.4 ft. from side lot line (9.8 ft. min. rear yard req. by Sect. 10-104 and 12 ft. min. side yard req. by Sects. 10-104 and 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.

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. Banks replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated that the subject property is located on Dashiell Road east of Annandale Road, is 10,780 square feet in size, is zoned R-3, and is developed with a single-family detached dwelling. He noted that the surrounding lots in the Bel Air subdivision are also zoned R-3 and developed with single-family detached dwellings.

Mr. Hunter stated that the applicant was requesting a special permit to allow a reduction to the minimum yard requirements based on error in building location to allow a one story accessory structure measuring 9.8 feet in height to remain 4.4 feet from the rear lot line and 3.4 feet from the side lot line to the west. The Zoning Ordinance requires a 9.8 foot minimum rear yard and a 12.0 foot minimum side yard; therefore, an error of 5.4 feet or 55.1% 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.

In addressing the history of the case, Mr. Hunter stated that on July 28, 1993, the Board of Zoning Appeals denied SP 93-M-013 to allow a two-story detached garage measuring 21.7 feet in height to remain 4.4 feet from the rear lot line and 3.4 feet from a side lot line. He said that on August 13, 1993, the Zoning Enforcement Branch, DCP, issued a notice of violation to the applicant and directed the applicant to clear the violation within ninety days. In continuing his presentation, Mr. Hunter said that the applicant subsequently reduced the height of the garage from 21.7 feet to 9.8 feet. He further noted that on November 3, 1993, the BZA granted the applicant a waiver of the twelve-month waiting period for the refiling of a new application.

Mr. Hunter noted that the Code Enforcement Branch, Department of Environmental Management (DEM), issued a notice of violation to the applicant on April 15, 1992 because the structure was built in 1991 without a building permit.

Mr. Hunter stated that on February 2, 1994, a trial regarding failure to clear the violation was held in the General District Court. The applicant was tried in his absence, found guilty, and fined $2,500. The applicant subsequently appealed the General District Court's finding of guilt to the Circuit Court of Fairfax County. The Circuit Court has continued the case (until May 26, 1994) in order for the applicant to appear before the BZA.

The applicant, Phillip J. Banks, 3221 Dashiel Road, Falls Church, Virginia, addressed the BZA. He submitted a letter of support from the neighbor who would be most impacted and a petition signed by four of the closest neighbors. Mr. Banks said that he had reduced the size of the structure and had also removed a tree which blocked the garage entrance. He asked the BZA to grant the request and explained that he had made the error because he had used an adjacent neighbor's structure as an example.

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

Mr. Hammack made a motion to deny SP 94-M-005. He said that he had concerns with the well-documented application and did not believe there was any reason to change his original position regarding the case. Mr. Hammack noted that, although the applicant reduced the height of the building, the structure is too large. He expressed his belief that the applicant has not complied with the necessary standards for the granting of a special permit.

The motion died for lack of a second.

Mr. Pammel made a motion to grant SP 94-M-005 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated March 29, 1994.

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

Mr. Kelley said that he would like to have the applicant return to the BZA to document his compliance to the special permit development conditions. Mr. Pammel accepted Mr. Kelley's proposal and imposed the following development condition:

> "5. The applicant shall return to the BZA to show compliance with the development conditions within one year of the date of approval. Staff shall submit a report to the BZA on the compliance."

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and asked if it intended to include a time frame in which Mr. Banks would have to comply with Development Condition 4. It was the consensus of the BZA that the applicant had one year in which to comply with all the development conditions.

Mr. Hammack expressed his belief that the BZA was setting a terrible precedent in the area of compliance. He said he was sympathetic to the problem, but the structure is too large. He noted that although the BZA granted a special permit for a workshop in the area, the structure was not as large.

Vice Chairman Ribble said that he recalled that Mr. Banks had experienced frustration in his dealing with Fairfax County. He noted that the BZA had unanimously voted to deny the original applicant; but, he believed the error was in good faith and the applicant has tried to rectify the situation.

Mr. Kelley said that when the original application come before the BZA, he had seconded the motion for denial because he had been concerned with the height of the structure and the mass of bulk. Mr. Kelley said he was supporting the motion because the applicant had reduced the height of the structure by one-half.

Vice Chairman Ribble expressed his belief that the granting of the application would not set a precedent.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-M-005 by PHILLIP JAMES BANKS, 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 4.4 feet from rear lot line and 3.4 feet from side lot line, on property located at 3221 Dashfell Road, Tax Map Reference 60-2((15))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 April 5, 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. The applicant has learned a valuable lesson with regard to Fairfax County permit requirements and it is certainly not expected that he will ever violate the provision again.

I. A special permit which was granted in fairly close proximity to the applicant's property in July 1993 allowed a 13.4 foot high workshop to remain 0.7 feet from the property line. The applicant's request is to allow a structure to remain 4.4 feet from rear lot line and 3.4 feet from side lot.

J. The applicant reduced the height of the structure and its dimension are now fairly close to conforming to the Zoning Ordinance.

K. The structure is not obtrusive to the adjoining property owners who have indicated support for the request.

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 Kenneth W. White, Land Surveyor, dated December 1, 1992, revised January 10, 1994, submitted with this application, as qualified by these development conditions.

3. A Building Permit shall be obtained and final inspections shall be approved for the garage.

4. The existing Leyland Cypress evergreen shrubs shall be maintained along the western property line inside the wood fence and five foot high Leyland Cypress or similar evergreen shrubs shall be planted along the northern property line in order to mitigate the visual impact of the garage as approved by the County Urban Forestry Branch of the Department of Environmental Management.

5. The applicant shall return to the BZA to show compliance with the development conditions within one year of the date of approval. Staff shall submit a report to the BZA on the compliance.

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, twelve (12) 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 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. Dively seconded the motion which carried by a vote of 4-1 with Mr. Hammack voting nay. Chairman DiGiulian and Mrs. Thonen were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 13, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 108, April 5, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MT. VERNON UNITARIAN CHURCH, SPA 82-V-069 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-069 for church and related facilities to permit fund raising activity and nursery school. Located at 1909 Windmill Ln. on approx. 7.88 ac. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((1)) 108. (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. Fitzpatrick replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the 7.88 acre site is located at 1909 Windmill Lane in an area northwest of the intersection of Fort Hunt Road and Sherwood Hall Lane adjacent to the Hollin Hills Subdivision. The subject property is zoned R-2 and developed with a church and related facilities including the Hollin Hall Mansion. Surrounding the site are properties zoned R-2 and developed with single family detached dwellings.

Ms. Langdon said the applicant, Mount Vernon Unitarian Church, was requesting approval of a special permit for a Group 8 Temporary Use for a Decorator Showhouse in cooperation with the Campagna Center/Community Y on the church property. Both organizations are non-profit and

provide services and resources to the Fairfax County community. She noted that, although a nursery school existed on the site, it was not part of the application. The Decorator Showhouse, planned for the period of April 30, 1994 through May 31, 1994, would involve the restoration and decoration of the entire first, second, and third floors of Hollin Hall by interior decorators. The carriage house area would be used for boutique sales spaces and to offer small refreshments for sale. Approximately eleven exterior garden sites would be developed by landscapers and designers. Ms. Langdon noted that there would be a complementary educational program relating to garden design, horticultural motifs, floral design and other topics. Based upon the Campagna Center's prior experience with showhouses, the applicant estimated that 8,000 to 10,000 people will visit the house through the period, at a rate of approximately 50 people per hour. The hours of operation proposed are 10:00 a.m. to 3:00 p.m., Monday through Saturday; 5:00 p.m. to 8:00 p.m. on Thursday evenings; and 12:00 noon to 5:00 p.m. on Sundays. She stated that four special events were planned for the evenings of April 29, April 30, May 1, and May 15, 1994. Parking for the daily event will be accommodated within an existing 95 space paved parking area and 83 overflow parking spaces are proposed for a grassy meadow adjacent to the paved parking area. Ms. Langdon noted that the parking for the May 15, 1994 event would be located off-site and the participants would be transported by van to the site. She further noted that parking for other special events would be located on site and, if necessary, overflow would be parked off-site and bused to the site.

Ms. Langdon stated that it was staff's belief that the proposed use would be in harmony with the recommendations of the Comprehensive Plan, and satisfy all the General Standards and Standards for all Group 8 Uses. Therefore, staff recommended approval subject to the adoption of the proposed development conditions contained in the staff report dated March 29, 1994. In conclusion, Ms. Langdon noted that Condition 4 should be changed to read: "... a charitable event may occur during the period of April 29, 1994 through May 31, 1994 which shall be subject to the following restrictions:...." She said that staff had received numerous letters in support and one letter in opposition.

The applicant's agent, Gary L. Fitzpatrick, 6615 Oak Drive, Alexandria, Virginia, addressed the BZA. He noted that a similar permit had been granted approximately two years ago to allow Campagna Center to operate a Decorator Showhouse at River Farm, the headquarters of the American Horticultural Society. Mr. Fitzpatrick explained that Mount Vernon Unitarian Church, which was founded in 1959, wanted to be a good neighbor and allowed various civic organizations to use their facilities. He noted the Campagna Center activities help fund many areas of community assistance sponsored by the applicant.

Mr. Fitzpatrick explained that the project would provide funds for the renovation and preservation of Hollin Hall which is on the Fairfax County register of historic buildings. He stated that Hollin Hall, as well as Carriage House, would continue to be available to non-profit organizations.

In summary, Mr. Fitzpatrick said that Catherine Morrison, Executive Director, Campagna Center, and Cleavis Burke, Chairperson, Decorators Showhouse, were present to answer any questions. He noted that the applicant had contacted the one neighbor in opposition to try to alleviate concerns regarding the project. He further noted that Gerald Hyland, Supervisor, Mount Vernon District, expressed support for the request. Mr. Fitzpatrick said the applicant was in total agreement with the staff report, but would ask the BZA to waive the eight day waiting period.

In response to Mr. Dively's question as to whether the proposed development conditions met the applicant's intended uses, Mr. Fitzpatrick said they did.

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

Mr. Kelley made a motion to grant SPA 82-V-069 subject to the development conditions contained in the staff report dated March 29, 1994 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 82-V-069 by MT. VERNON UNITARIAN CHURCH, under Section 3-203 of the Zoning Ordinance to amend SP 82-V-069, on property located at 1909 Windmill Lane, Tax Map Reference 93-3((1))10B, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 5, 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 7.88 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-801 and 8-804 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Richard Heapes, Architect, dated February 3, 1994 and approved with this application, as qualified by these development conditions.

3. The Development Conditions for S-82-V-069 imposed by the Board of Zoning Appeals on October 12, 1982 remain in full force and effect except as modified by these conditions to allow a one time event to occur during the period of April 29, 1994 through May 31, 1994. These conditions are valid only during that period.

4. Irrespective of the conditions imposed pursuant to the approval of S-82-V-069, a charitable event may occur during the period of April 29, 1994 through May 31, 1994 which shall be subject to the following restrictions: the house and grounds may be available for viewing between the hours of 10:00 a.m. to 3:00 p.m. Monday, Tuesday, Wednesday, Friday and Saturday; 10:00 a.m. to 3:00 p.m. and 5:00 p.m. to 8:00 p.m. Thursday; and 12:00 noon to 5:00 p.m. Sunday. The 95 existing parking spaces on site shall be utilized, with additional parking needs accommodated in the grass meadow adjacent to the existing paved parking area. Approximately 83 parking spaces shall be provided in the meadow and shall remain natural grass. A maximum of four special events may be held. The four special events held at the site on April 29, 1994, April 30, 1994, May 1, 1994 and May 15, 1994 in conjunction with the showhouse shall conclude by 11:00 p.m. Parking for the special events on April 29 and 30 and May 1 shall be accommodated in the existing 95 spaces on site. Any overflow parking shall be in an area as designated off-site and in an area other than the adjacent residential streets. All parking for the special event on May 15 shall be designated off-site and in an area other than the adjacent residential streets. Tents for all four events may be placed in the grass meadow. No parking shall be permitted along the driveway to the property. Parking attendants shall be stationed in the parking lot to direct and assure parking consistent with the approved conditions and 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 Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

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

Mr. Kelley made a motion to waived the eight day waiting period. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 5, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 110, April 5, 1994, (Tape 1), Scheduled case of:

9:30 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 1/26/94 AND 3/8 AT APP.'S REQ.)

Page 111, April 5, 1994, (Tape 1), GEORGE L. LANE, APPEAL 93-V-028, continued from Page 110)

Vice Chairman Ribble stated that the applicant had requested a deferral and staff had suggested July 12, 1994.

William E. Shoup, Deputy Zoning Administrator, addressed the BZA and noted that staff was in agreement with the deferral.

Mr. Kelley made a motion to defer A 94-V-028 to the morning of July 12, 1994. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 111, April 5, 1994, (Tape 2), Action Item:

Approval of Resolutions from March 29, 1994

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

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Page 111, April 5, 1994, (Tape 2), Action Item:

Request for Date and Time
David L. Hunter Appeal

Mr. Dively made a motion to schedule the acceptance of the appeal for the after-agenda on the morning of October 25, 1994. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 111, April 5, 1994, (Tape 2), Action Item:

Request for Approval of Minutes
February 15, and February 23, 1994 Hearings

Mr. Pammel made a motion to approve the minutes as submitted. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 111, April 5, 1994, (Tape 2), Action Item:

Request for Date and Time
Martin B. Jarvis Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of June 7, 1994. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 111, April 5, 1994, (Tape 2), Action Item:

Request for Date and Time
Cooker Restaurant, Inc. Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of June 2, 1994. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 111, April 5, 1994, (Tape 2), Action Item:

Request for Date and Time
Michael and Fay Mpras Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of July 26, 1994. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 112, April 5, 1994, (Tape 2), Action Item:

Request for Date and Time
John E. and Kathryn M. Clark Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of October 11, 1994. Mr. Dively seconded the motion which carried by a vote of 5-0 with Chairman DiGiulian and Mrs. Thonen absent from the meeting.

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Page 112, April 5, 1994, (Tape 2), Information Item:

Letter from Robson Group Architects, Inc.
Regarding Audrey Y. Dolley and Adonna McNeil SP 93-L-072

Jane Kelsey, Chief, Special Permit and Variance Branch, called the Board of Zoning Appeals attention to a letter addressed to the BZA from Robson Group Architects, Inc. regarding SP 93-L-072 which was heard and denied on March 8, 1994.

In response to Mr. Kelley's question regarding the special permit request, Ms. Kelsey said that it had been a request to allow a child care facility in an existing house. To refresh the BZA's memory, she noted that the part of the required parking would have been located in an apartment complex parking lot. Mr. Kelley said he recalled the case and recalled that the BZA had also denied the request to waive the twelve-month waiting period for the refiling of an application.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: May 17, 1994 APPROVED: May 24, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 12, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 113, April 12, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM H. MCANDREW, VC 94-P-009 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.8 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-407). Located at 8306 Forestree Ct. on approx. 8,365 sq. ft. of land zoned R-4. Providence District. Tax Map 39-1 ((27)) 15.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. William H. McAndrew, 8306 Forestree Court, Vienna, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Silentree of Tysons Subdivision; surrounding lots to the east, south and west are also zoned R-4 and developed with single family detached dwellings; to the north is homeowners association open space zoned R-4. Ms. Langdon said that the applicant's request for a variance of 9.2 feet to the minimum yard requirement resulted from a proposal to construct an enclosed porch addition.

Mr. McAndrew presented the statement of justification, previously submitted in writing and incorporated into the record. He discussed compliance with the nine standards for granting a variance, stating that the property was purchased in good faith, the dwelling is located at the far end of the property, the shallowness of the rear of the property precludes any enclosure within the 25-foot minimum yard requirement, the intended use of the proposed deck modification is not of a general or recurring nature, strict application of the Ordinance would produce undue hardship and would unreasonably restrict reasonable use, granting of the variance would alleviate a clearly demonstrable hardship, the hardship is not generally shared by other properties in the same area, some other properties in the area could accommodate modifications and others might require a variance, granting the variance would not be of substantial detriment to adjacent properties. Mr. McAndrew said the proposed deck was behind the house; there are two residences on either side and nothing directly behind the subject dwelling; the closest house is approximately 1/8 of a mile away; there is a flood control area to the rear and a deep ravine with a creek which precludes construction by property owners in that area. He said the character of the zoning district would not be changed by granting this variance; other property owners in the area have decks but he did not know whether they required variances. Mr. McAndrew said the variance would be in harmony with the intended spirit and purpose of the Ordinance and not contrary to public interest.

Chairman DiGiulian asked the applicant to address the issue of the fence at this time. Mr. McAndrew asked if the Board would consider mitigating circumstances regarding the fence. He said staff's recommendation was that the fence, which is beyond his property line, be relocated to an area within his property line. He said that a deep ravine and an uncleared wooded area were located to the rear of his property; the closest house behind him was about 1/8 or 1/10 of a mile away; the slope of the ravine drops off about 85 degrees to Wolf Trap Creek; an earthern dam about 1/10 of a mile away and the flood control area precluded any construction.

Mr. McAndrew said that the property which his fence intrudes upon is Parcel D which is owned by the Homeowners Association. He said that, as a former president of the Association, he knew that it does not care about enforcing any entitlements or rights it might have. Mr. McAndrew said the fence was erected to protect his 11-year old retarded daughter who functions at the level of two or three years. Mr. McAndrew requested that the wording of Condition 4 be changed from "...shall be moved..." to "...shall be removed or moved to coincide with the applicant's rear lot...." He said he would like the Board to add another sentence, stating, "Upon notification to the existing property owners, and absent any objection, the fence can be located at their discretion." He asked, if the owners of the property did not care, why did it make any difference where he put his fence. Mr. Kelley said he believed the condition should be deleted because it was not the Board's concern and Chairman DiGiulian concurred. Mr. Kelley said it was a matter between the applicant and the Association. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said staff added that condition because the property in question is Homeowners' open space which was zoned R-4 and developed under the cluster provisions of the Ordinance which allowed open space. She said the provision for open space in the Ordinance was for the benefit of all the property owners within the subdivision; it precludes any one property owner from encroaching upon and, thereby, limiting the use by other property owners. Ms. Kelsey said that staff did not recommend approval of the plat with the fence on it and, if the Board approved the plat before them, they would be approving a plat with a violation on it. Ms. Kelsey said a Notice of Violation could be issued to the Homeowners Association by Zoning Enforcement, asking them to correct the violation. Mr. Kelley said he still did not believe it was the Board's concern to deal with the violation and Chairman DiGiulian concurred. Chairman DiGiulian said the matter before the Board concerned Lot 15 and not Parcel D and, if the Board approved the

application, they were approving the advertised variance in accordance with the plat, as far as he was concerned. Chairman DiGiulian said the Board did not have the authority to approve the fence, which had not been advertised.

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

Mr. Pammel moved to grant VC 94-P-009, for the reasons set forth in the Resolution and subject to the Proposed Development Conditions contained in the staff report dated April 5, 1994, as amended by deleting Condition 4.

Mr. Kelley seconded the motion.

Mrs. Thonen said she was concerned because the Board usually granted approval based upon plats submitted. She suggested that the Board should have the fence removed from the plat before approving the request. Chairman DiGiulian said he was not concerned because they would only approve what had been advertised. Mr. Pammel quoted Condition 1 which stated that, "This variance is approved for the location and the specified addition shown on the plat." He said he believed that was what the Board was acting upon.

Mr. Hammack said he believed staff had a good point. He said he was not sure the Board was required to include Condition 4 as proposed; however, staff's position that Parcel D was open space to be used by all the homeowners, in compliance with that particular cluster provision of the Ordinance, was a valid point. Mr. Hammack also said that Mrs. Thonen was right; traditionally, the Board has not approved any plats showing encroachments on other persons property and, if the owner were some person named Smith instead of the Homeowners Association, they would not be taking the same action. He suggested that the applicant might be required to get an easement or permission to keep his fence on their property from the Homeowners Association.

Mr. Dively said that, in the last couple of weeks, the Board had seen plats with problems, which the Board had left for remedial action to be taken at another time, including one where an applicant had a shed on a school's property. He said the Board voted in favor of the variance because the issue of the shed and the intrusion on the other property was not an issue before the Board at that time. Mr. Dively said he believed the fence was someone else's problem to be dealt with at another time and it had nothing to do with this variance request. Mr. Kelley said he concurred.

The motion carried by a vote of 5-1-1. Mrs. Thonen voted nay and Mr. Ribble abstained because he was not present for the entire hearing.

Mrs. Thonen said she was not opposed to granting the variance; however, she believed the plat should not show the fence. Mr. Hammack said that, if staff believed the fence to be in violation, they could bring it before the Board for a decision. Mr. Kelley said he had never known the Board to make that kind of a recommendation to staff and Mr. Hammack said he did not intend it as a recommendation.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-009 by WILLIAM H. McANDREW, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.8 ft. from rear lot line, on property located at 8306 Forestree Court, Tax Map Reference 39-1((27))15, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 12, 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 8,365 square feet.
4. The location of the dwelling on the lot is unusual.
5. The eastern lot line is very shallow.
6. The depth of the lot is very shallow.
7. The location of the house to the rear of the lot leaves the applicant with no other alternative but to request a variance to allow the enclosure of a 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 addition shown on the plat prepared by Stephen T. Palmer, Land Surveyor, dated January 25, 1994, 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. Dively seconded the motion which carried by a vote of 5-1-1. Mrs. Thonen voted nay and Mr. Ribble abstained.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 20, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 115, April 12, 1994, (Tape 1), Scheduled cases of:

9:00 A.M. THOMAS & HELEN CRICHTON, VA 75-D-101 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 75-D-101 to permit construction of addition 19.0 ft. & 15.9 ft. from side lot lines and permit fence 5.5 ft. in height to remain in front yard (20 ft. min. side yard req. and 4 ft. max. fence height permitted in front yard by Sect. 3-107). Located at 1023 Delf Dr. on approx. 27,681 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-3 ((15)) 10 and A. (Concurrent with SP 94-D-006).

9:00 A.M. THOMAS & HELEN CRICHTON, SP 94-D-006 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit structure (deck) to remain 6.0 ft. from side lot line and dwelling to remain 15.9 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 1023 Delf Dr. on approx. 27,681 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-3 ((15)) 10 and A. (Concurrent with VA 75-D-101).

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 Landow, AIA, Greenwald Cassell Associates, 6723 Whittier Avenue, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property was west of Balls Hill Road, in the West Langley Subdivision; lots to the northeast and west are also zoned R-1; the lot to the south is zoned R-2 and all lots are developed with single family detached dwellings.

Ms. Langdon said the special permit was being requested due to an error in building location and the applicant was requesting variances of 1.0 feet and 4.1 feet to the minimum side yard requirements for the addition and a variance of 1.5 feet for the fence. She said that a dwelling on adjacent Lot 33 to the south is located approximately 35 feet from the shared side lot line.

Mr. Landow presented the statement of justification, previously submitted in writing and incorporated into the record. He said Greenwald Cassell Associates was engaged by the applicants to design and construct a second-story addition over the garage. He said that, when they applied for a Building Permit, they were surprised to learn that the placement of the house was not in compliance with the minimum yard requirements and that the home was purchased by the applicants in good faith, without knowledge of the non-compliance. Mr. Landow said the existing deck was also in violation when the applicant purchased the house. Mr. Landow submitted a sketch to the Board for their edification and explained the proposed construction.

Mr. Landow said there would be no topographical disturbance or change; therefore, they were requesting a waiver of the topographic map with 5-foot contours and existent landscape. He said there also would be no change or disturbance to the landscaping or vegetation; therefore, they were also requesting the waiver of a plan showing limits of clearing, existing vegetation and proposed landscaping and screening.

Mr. Landow further stated that the deck was constructed of pressure treated wood; no hazardous waste was found on the site; the error in building location does exceed 10% of the measurements involved; the non-compliance occurred through no fault of the property owners and the reduction will not impair the purpose and intent of the Ordinance; it will be of no detriment to the use and enjoyment of other property owners in the immediate vicinity; it will not create an unsafe condition with respect to other properties or public streets; to force compliance with minimum yard requirements would cause unreasonable hardship on the applicant; the reduction will not result in increase in density or floor area ratio (FAR) from that permitted by the applicable zoning district regulations.

Mr. Landow said, with respect to the variance application for the second-story addition to the existing house, that an extraordinary situation exists because of the position of the house on the lot; the intended use of the subject property is not of so general or recurring a nature as to make reasonable or practical the formulation of a general regulation to be adopted by the Board; the strict application of the Ordinance would produce undue hardship with respect to the fact that the house already exists and is in violation; such undue hardship is not shared generally by other properties in the same zoning district in the same vicinity; the strict application of the Zoning Ordinance would effectively prohibit and unreasonably restrict the use of the subject property; the authorization of the variance would not be of substantial detriment to adjacent properties; the character of the zoning district would not be changed by granting the variance.

Mr. Landow said that the architectural character of the addition would be consistent with the neighborhood, that the variance would be in harmony with the intended spirit and purposes of the Ordinance and would not be contrary to the public interest.

Mr. Pammel said he was concerned about why a Building Permit was issued to construct a pool over a sanitary sewer easement. Chairman DiGiulian said it was a lateral easement.

Mrs. Thonen said she was concerned that the number of variances being granted would change the character of the zoning district. Mr. Ribble said he believed each case would have to be analyzed individually to find out what the applicants had requested. Mrs. Thonen said she did not believe this particular instance was in need of scrutiny; however, she believed the Board should begin giving this some thought. Mr. Dively noted that only two out of three variance applications had been approved in the area. Chairman DiGiulian noted that one was approved in 1970 and the next one was approved in 1991; he did not believe that would constitute rezoning. Mr. Kelley asked Mrs. Thonen to recall that she and he had raised questions about accessory dwelling units in the same neighborhood and the Zoning Ordinance was changed so that they no longer had to concern themselves with that type of situation.

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

Mr. Hammack moved to grant SP 94-D-006 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 5, 1994.

Mr. Hammack moved to grant VCA 75-D-101 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 5, 1994.

Mr. Landow requested a waiver of the eight-day waiting period. Mr. Ribble so moved. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VCA 75-D-101 by THOMAS & HELEN CRICHTON, under Section 18-401 of the Zoning Ordinance to amend VC 75-D-101 to permit construction of addition 19.0 ft. and 15.9 ft. from side lot lines and permit fence 5.5 ft. in height to remain in front yard, on property located at 1023 Delf Drive, Tax Map Reference 21-3((15))10 and 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 April 12, 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 approximately 27,681 square feet.
4. The lot has an exceptional shape.
5. The position of the dwelling on the lot is unusual.
6. The facts and situation apply to this particular 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 structures shown on the plat prepared by Alexandria Surveys, Inc., dated December 12, 1986, revised by Carl Landow, Architect, through January 26, 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. 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.

Mr. Ribble moved to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 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 94-D-006 by THOMAS & HELEN CRICHTON, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit structure (deck) to remain 6.0 ft. from side lot line and dwelling to remain 15.9 ft. from side lot line, on property located at 1023 Delf Drive, Tax Map Reference 21-3{{15}}10 and 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 April 12, 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 deck and 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 December 12, 1986, revised by Carl Landow, Architect, through January 26, 1994, 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.

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

Mr. Ribble moved to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 12, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 119, April 12, 1994, (Tape 1), Scheduled case of:

9:15 A.M. EARL DONALD AND DERMECIA PROFFIT, APPEAL 94-V-009 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the use of appellant's property for the operation of a grading and paving business is not a lawful nonconforming use and is therefore in violation of Zoning Ordinance provisions. Located at 2409 Ross St. on approx. 26,552 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-3 ((11)) 2.

William E. Shoup, Deputy Zoning Administrator, referenced his April 4, 1994, memorandum to the Board and noted that the Notice of Violation that was the subject of the appeal had been incorrectly issued and rescinded, rendering this appeal "moot"; a new notice was issued on April 4, 1994. Mr. Shoup said that the parties cited in the new notices will have 30 days from the date of the new notices in which to appeal. He suggested that the Board either dismiss this appeal or defer it for approximately 6 weeks to learn how the appellants respond to the new notices. He advised that the approach had been discussed with the appellants' attorney, who concurred; their attorney also indicated an intent to file a new appeal.

Mrs. Thonen asked if it would be cleaner just to dismiss this appeal and proceed as indicated and Mr. Shoup said it would.

Mr. Dively said that, based on the foregoing, he would move to dismiss this appeal. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 119, April 12, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL CONLON, SHURGARD STORAGE CENTERS, APPEAL 94-Y-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of rental vehicles and new vehicles at 11334 Lee Highway without site plan approval and a Non-Residential Use Permit is in violation of Zoning Ordinance provisions. Located at 11334 Lee Hwy. on approx. 231,587 sq. ft. of land zoned I-5. Sully District. Tax Map 56-2 ((1)) 37A. (DEF. FROM 3/8 AT APP.'S REQ. CHAIRMAN LIMITED TO 5 MINUTES.)

William E. Shoup, Deputy Zoning Administrator, stated that this was an appeal of staff's Notice of Violation that the appellant was using property for storage of rental trucks and new vehicles on a gravel lot at the rear of their property without obtaining site plan approval and a Non-Residential Use Permit (NonRUP). He said that, during a public hearing on March 8, the appellant represented that he was pursuing site plan waiver approval for the truck rental operation and the hearing was continued to this date to allow time for that to occur and to see what further action the appellant might take. Mr. Shoup said that the appellant was again requesting further continuance and referenced the letter from the appellant which had been submitted to the Board.

Mr. Shoup said it appeared that the appellant had obtained the engineering information necessary to satisfy the Department of Environmental Management (DEM) regarding approval of the site plan waiver, which appears imminent; however, nothing had been filed regarding the new car storage lot and there is a dustless surface requirement. Preliminary discussions between the appellant's engineer and DEM revealed that a full site plan would be required to address stormwater management concerns, landscaping and open space issues. Mr. Shoup said the appellant had indicated to him that they would be filing the site plan in approximately one month. Staff was concerned about continuing the appeal until the appellant obtained site plan approval, which could take months. He said that DEM indicated they would consider a waiver of the site plan and dustless surface requirement as an interim measure, while the appellant pursued full site plan approval; there were no guarantees that such waivers could be obtained. If it was the Board's intent to continue the appeal again, Mr. Shoup suggested continuing it until June 7 to allow time for the appellant to file a site plan waiver and demonstrate their intent; appropriate action could be taken at that time.

In answer to a question from Mrs. Thonen, Mr. Shoup advised that the appellant had obtained one previous deferral.

Chairman DiGiulian asked if the appellant or a representative were present. Mr. Shoup said he had spoken with Mr. Conlon the day before, at which time he indicated having the impression that, if he sent the letter, he would not be required to appear at the hearing. Mr. Conlon had another appointment, but said he would try to have someone appear in his stead.

Mr. Dively asked Mr. Shoup what the status of the NonRup and Mr. Shoup said it could not be issued until a site plan or site plan waiver were issued by DEM.

Mr. Kelley moved to defer this appeal until June 7, 1994; however, he indicated that he believed the appellant or his agent should have been present. He said, under any circumstances, the appellant should be present the next time the appeal is discussed. Mr. Shoup said he would convey that message to the appellant. Mrs. Thonen concurred. She also expressed concern that appellants did not take any action in the interim between the time of deferral and the next scheduled hearing date. Mr. Dively said he believed that issue should be reviewed and note taken if the appellant had been idle during the interim and no progress was reported. Chairman DiGiulian said he believed that would have an effect on the Board's decision at the next hearing. Mr. Hammack said he believed the appellant should have been at the hearing and that it was presumptuous of him to believe that he only needed to file a letter. He said that it was inconsistent for the appellant to express concern about losing his business, while not making an effort to be present when the appeal was discussed.

A discussion ensued about whether to defer to June 7 or set an earlier date in order to check on the appellant's progress.

In answer to a question from Mr. Kelley, Mr. Shoup said he believed the appellant could have proceeded more vigorously; however, he applied for the site plan waiver, which would probably be approved that week, addressing the truck rental aspect of the violation. Regarding the new car storage, Mr. Shoup said it was a substantial hurdle and required filing a full-blown site plan. He believed the appellant was now aware of the fact that action was required and had taken action to get his engineer involved.

Mr. Hammack noted that the original site plan waivers were denied June 1993 and the appellant had stretched the matter out for almost a year.

Mr. Pammel made a substitute motion to defer until the following week, a night meeting, to have Mr. Conlon come in with an explanation and/or status report.

Ms. Kelsey advised that the night meeting the following week had two controversial cases on the agenda and April 26 had a full agenda; she suggested May 3 if the Board deferred for a shorter period of time, since there was only one case scheduled for that date. Mrs. Thonen said the advantage of a night meeting would be that the appellant would not need to sacrifice working hours.

Chairman DiGiulian said he had no objection to deferring until June 7 if Mr. Conlon could come in and show the Board that he had made some progress between now and then.

Chairman DiGiulian said the motion on the floor was to defer to the morning of June 7, 1994, and he called for the question.

The motion carried by a vote of 5-2. Mr. Pammel and Mr. Hammack voted nay.

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Page 120, April 12, 1994, (Tape 1), Action Item:

Request for Reconsideration
Russell Davis, VC 94-L-011
Heard and denied April 5, 1994

Ms. Greenlief referenced her memorandum to the Board and advised that Mr. Davis was present if the Board wished to ask him any questions.

Page 121, April 12, 1994, (Tape 1), RUSSELL DAVIS, VC 94-L-011, continued from Page 120)

Mr. Kelley noted that Chairman DiGiulian had been absent from the last meeting when this case was heard and advised that the Board had a great deal of sympathy for the applicant and probably would have favorably considered a lesser variance. He said he had suggested 12 x 24 feet to the applicant without considering the chimney. Mr. Kelley said he would be willing to grant a lesser variance, the consensus of the Board having been that the bulk was too great for an oversized one-car garage. He asked for some input from other Board members and moved to reconsider.

Mr. Pammel recalled that there had been substantial opposition by the adjacent property owner. Mr. Kelley recalled that the property owner had been a real-estate affiliated non-resident who had written a letter and appeared at the hearing.

Mr. Kelley said the primary issue was the bulk of the project and he would consider 14 x 24 feet.

Mr. Dively raised the point of what notice the opposing neighboring property owner had of this request for reconsideration. Chairman DiGiulian advised that if the Board decided to reconsider, they would need to set a date and time specific and notify the opposing neighboring property owner. Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested waiving the twelve-month time limitation on refiling.

A discussion ensued regarding a waiver of the twelve-month limitation.

Mr. Pammel moved to deny reconsideration and waive the twelve-month time limitation. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

Mr. Kelley said he would like to add that the applicant would receive an expedited hearing, which Mr. Pammel accepted as an amendment to his motion and Mrs. Thonen accepted as seconder. The amendment carried by a vote of 7-0.

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Page 121, April 12, 1994, (Tape 1), Action Item:

Approval of Resolutions from April 5, 1994 Hearing

Mrs. Thonen so moved. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 121, April 12, 1994, (Tape 1), Action Item:

Approval of Minutes from March 1, March 8, and March 15, 1994 Hearings

Mr. Pammel moved to approve with a minor correction. Mrs. Thonen seconded the motion which carried by a vote of 7-0.

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Page 121, April 12, 1994, (Tape 1), Action Item:

Request for Intent-to-Defer
William A. Stewart Appeal
Scheduled for April 26, 1994
Clerk suggested morning of May 24, 1994

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 10:50 a.m.

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

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

SUBMITTED: May 3, 1994

APPROVED: May 10, 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 April 19, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:02 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 123, April 19, 1994, (Tape 1), Scheduled case of:

8:00 P.M. ALYCE M. CHESSNOE, SPR 90-S-066 and SPA 90-S-066 Appls. under Sect(s). 3-303 of the Zoning Ordinance to renew and amend SP 90-S-066 to permit a family day care home and amend development conditions. Located at 9701 Glenway Ct. on approx. 14,886 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 397. (MOVED FROM 3/1/94 AT APP.'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. The applicant, Ms. Chessnoe, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the 14,886 square foot site is located on Glenway Court, northeast of the intersection of Pohick Road and Old Keene Mill Road, in the Cherry Run Subdivision. The subject property and the lots to the north, south, and west are zoned R-3 Cluster and developed with single family detached dwellings and to the east is public park land. The site is currently developed with a three level single family dwelling and a paved driveway with four parking spaces.

Ms. Langdon said the applicant was requesting approval of a renewal of a special permit for a home child care facility and an amendment to the special permit to increase enrollment and change the hours of operation. The conditions approved in conjunction with SP 90-S-066 granted the home child care facility for a period of three years, with the maximum number of children on site at any one time of nine, and a total maximum daily enrollment not to exceed ten children. Hours of operation were limited to 6:30 a.m. to 6:30 p.m., Monday through Friday. The applicant was requesting approval to increase the number of children on site at any one time to ten, with the total maximum daily enrollment not to exceed sixteen children. The hours of operation would change to 6:00 a.m. to 6:00 p.m., Monday through Friday. One employee on site at any one time in addition to the applicant was proposed.

She said staff concluded 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 the General Standards and Standards for all Group 3 uses. For these reasons, staff recommended approval of SPR 90-S-066 and SPA 90-S-066 subject to the adoption of the Proposed Development Conditions dated April 12, 1994.

Ms. Langdon said staff had received 4 letters in opposition and 11 letters in support of this application, 12 of those letters had not arrived in time to be included in the BZA package last week. Those letters were distributed at the public hearing, as well as a letter from Steve Rohde with the Office of Children concerning Ms. Chessnoe's child care license.

Alyce Chessnoe, 9701 Glenway Court, Burke, Virginia, said her family child care facility is a real benefit to the working parents of her community and she has provided the service over a period of 17 years. She said as a single parent the use has been a chief source of income for her family. Ms. Chessnoe said for all these years there have been no official complaints registered against her business and her business has grown up as the day care children have grown and the potential for the children to become latchkey children was avoided. Last week when she learned that some of the neighbors had concerns with a family child care being located on the block, she talked to all the families and offered to answer any questions they might have and reassured them that she had an open door policy that encourages communication. Through those discussions, Ms. Chessnoe identified the issues that dealt with land use issues as being the time of operation and the number of children attending the center which might impact the amount of traffic. Ms. Chessnoe said she bought her house in 1981 with the idea of continuing to care for children and two issues that were brought forward at that time was the number of parking spaces on the property and the potential for cars to be able to turn around before re-entering the street. She said because she cares for siblings, walkers to and from school, and children who live in walking distance of her house the amount of traffic flow has been reduced and the parents are sensitive to the community's children. With respect to the hours of operation, Ms. Chessnoe said she had shifted the hours to 6:30 a.m. to 6:00 p.m. so that the school would close earlier in the evening which lessened the impact when children might be playing outside. She has also requested that the first child not arrive before 6:45 a.m., which is approximately 15 minutes after the majority of the working parents have left for work. Ms. Chessnoe said she had tried to be a good neighbor and tried to balance the needs of those in the community who need her services and those who live on the block and asked the BZA to grant the request.

Chairman DiGiulian called for speakers in support of the request.

Larry Schwartz, 6734 Stonecutters Way, Burke, Virginia, said both he and his wife work and their son has been in the applicant's care for approximately eight years. He and his wife like the home atmosphere and the fact that their son can walk to and from school.

Steve Osten, 9712 Glenway Court, Burke, Virginia, said he is a veterinarian and has more flexible work hours than most people and that during the 12 years he has lived in the neighborhood he has not experienced any traffic problem associated with the day care facility.

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

Mike Fagan, 9714 Glenway Court, Burke, Virginia, said he has lived in the community since 1981 and that he was opposed to anything that would increase the risk of an accident in the court.

Jeff Hmara, 9706 Glenway Court, Burke, Virginia, opposed the extended hours and the increase in the number of children. He said people have been seen speeding back and forth to the center and some have a tendency to blow their car horns to let the children know they have arrived. Mr. Hmara said they bought on a cul-de-sac principally because of the limited traffic and expected to have a very low traffic situation.

In response to a question from Mr. Kelley, Mr. Hmara said he personally had not contacted the police with regard to the people speeding on the cul-de-sac.

Chuck Watson, 9704 Glenway Court, Burke, Virginia, said he was not opposed to child care in the neighborhood as is, but he was opposed to any expansion. He said his sons, 11 and 13 years in age, play ball and run back and forth and that he would oppose any increase that might result in an accident to one of the children in the neighborhood.

Dick Cashon, 9703 Glenway Court, Burke, Virginia, opposed an expansion of the use which would result in an increase in traffic and an increase in noise from the cars coming and going to the center.

Dottie Jordan, 9710 Glenway Court, Burke, Virginia, was opposed to an expansion and noted that no one was debating the merits of the applicant's ability to be a day care provider. She said the applicant had an excellent reputation, but the neighbors are concerned with the amount of travel on the street. Ms. Jordan said the neighbors would like the number of the children at the day care center to remain the same.

Sharon Doyle, 9705 Glenway Court, Burke, Virginia, said since she is a working mother she is well aware of how important good day care is, but that she and her husband did have specific concerns with the expansion. Ms. Doyle said there is no question that the applicant provides a very high quality service to the parents; however, they had purchased their house at the end of a cul-de-sac because they have two small children. She said there have been numerous instances when there has been excessive speed, excessive numbers of cars and they have always been by the applicant's clients. Ms. Doyle responded to Mr. Kelley's earlier question by saying that the police have been contacted about monitoring the area for speeders. She said she would like the neighborhood to stay residential and pointed out that she did believe the use devalued the neighborhood properties and noted that contracts had been lost because there was a business in the neighborhood.

Doug Ayres, 9709 Glenway Court, Burke, Virginia, opposed any expansion of the existing day care center and said a main issue dealt with safety as he also has seen people speeding up and down the street going back and forth to the center. Mr. Ayres said he believed property values were affected by what people perceive about a neighborhood.

Tom Romig, 9711 Glenway Court, Burke, Virginia, reiterated the other speakers' remarks and said that he did not oppose the renewal, but was opposed to increasing the maximum number to 16 children. He said there were a lot of small children in the neighborhood and an increase in the traffic would be hazardous.

In rebuttal, Ms. Chessnoe said she had addressed many of the neighbors' concerns in her earlier remarks and that she had told the parents that blowing their car horns for the children was inappropriate. She added that the police are on duty at the beginning of each school year to make sure that no one passes by a stopped bus. Ms. Chessnoe said she was only asking for one additional school age child, that she was willing to keep the hours of operation the same, and that she did not believe her business depreciated property values.

Mrs. Thonen said the neighbors were to be commended because they were not opposed to child care being in the neighborhood, only to the expansion.

In response to a question from Chairman DiGiulian, Ms. Chessnoe explained that she was asking for the flexibility of being able to have one child in the morning and another child in the afternoon, which must count as two people although they would not be there at the same time.

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

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 90-S-066 and Special Permit Amendment Application SPA 90-S-066 by ALYCE M. CHESSNOE, under Section 3-303 of the Zoning Ordinance to renew and amend SP 90-S-066 to permit a family day care home and amend development conditions, **(THE BZA GRANTED ONLY SPR 90-S-066)**, on property located at 9701 Glenway Court, Tax Map Reference 88-1((7))397, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 19, 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 14,886 square feet.
4. After listening to the testimony, there is no doubt that the applicant provides a good day care service, one that is well received and highly thought of. However, in order to grant an expansion, the applicant must satisfy the General Standards under Section 8-006 of the Ordinance. Although the expansion is a modest one, the BZA must balance the impact on the community. This is a situation where from the applicant's point of view she has an ideal lot at the end of the cul-de-sac, but the BZA also understands the speakers' point of view. They bought on a cul-de-sac and live on a cul-de-sac to avoid traffic and to find a safe place for their children and they are concerned about the impacts that an expansion would have in their neighborhood. The applicant has not convinced the BZA that the expansion satisfies Standard 3 or 4 of the General Standards, which require that the applicant show that the use would not adversely affect the use or development of neighboring properties, or that the use would not impair the value of neighboring properties. In addition, the applicant has not satisfied Standard 4 which requires that the proposed expansion will be such that pedestrian and vehicular traffic will not be hazardous or in conflict with the existing or anticipated traffic in the neighborhood. The opposition should be complimented on not being opposed to the general use, as it now stands, because it shows some thought on their part and analysis, not just blanket opposition.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

1. This approval is granted to the applicant only 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, Healon & Davis, revised by Alyce M. Chessnoe, through December 8, 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 during the hours of operation of the permitted use.

4. The maximum number of children on site at any one time shall not exceed nine (9) children; the total maximum daily enrollment shall not exceed ten (10) children.

5. The garage shall be used for the required parking for the residence and shall not be converted to any other use. The driveway which can accommodate four (4) parking spaces shall be deemed sufficient for the Family Day Care Facility. No additional parking spaces are required for this use.

6. The site shall be available for inspections performed by the Zoning Enforcement Division to determine compliance with all special permit development conditions imposed in connection with this application. If it is determined that these conditions have not been met by the applicant, the Zoning Administrator shall undertake the appropriate procedures to effect compliance or the special permit use will be terminated.

7. This special permit for a home child care use is approved for a period of five (5) years from the final date of approval of this Special Permit.

8. The hours of operation shall be limited to 6:30 a.m. to 6:00 p.m., Monday through Friday. There shall be staggered arrival and departure times for the preschool and school aged children so as to prevent traffic congestion in the neighborhood.

9. The number of non-residential employees shall be limited to one (1).

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

Under Sect 8-015 of the Zoning Ordinance, this Special Permit shall automatically expire, without notice, thirty (30) months after the approval date* of the Special Permit unless the activity authorized has been established or unless additional time is approved by the Board of Zoning Appeals because of occurrence of conditions unforeseen at the time of the approval of this Special Permit. A request for additional time shall be justified in writing, and must be filed with the Zoning Administrator prior to the expiration date.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 27, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 126, April 19, 1994, (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. (DEF. FROM 11/16/93 TO ALLOW APPLICANT TO OBTAIN A SHARED PARKING AGREEMENT. DEF. FROM 2/8/94 - HELD UP IN DEM.)

Theodore Simpson, 7120 Georgetown Pike, McLean, Virginia, came forward and asked that the BZA hear his argument with respect to a deferral. Chairman DiGiulian said the BZA would hear his argument in the proper 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. The applicant's attorney, Mr. Hansbarger, replied that it was. He added that it had been his understanding that the case had been deferred from February 8th to allow the applicant an opportunity to obtain approval from the Board of Supervisors for a shared parking agreement. He added that the applicant was prepared to go forward with the public hearing. The Chairman said that was correct.

Chairman DiGiulian called Mr. Simpson to the podium so that the BZA could hear his request for a deferral.

Mr. Simpson said there was no public announcement that the Board of Supervisors planned to hear the shared parking agreement; therefore, the citizens had not had an opportunity to voice their opinion. He said the Board of Supervisors had not received the administrative item for review until the day it was scheduled to be heard. Mr. Simpson said the citizens were not aware that the shared parking agreement had been approved, thus they were not prepared for the public hearing before the BZA to go forward. He said it had been a difficult week with income tax preparation, the property had not been posted, and the County's Weekly Agenda noting that a public hearing would be held was delivered a week late.

Chairman DiGiulian said the BZA was not the appropriate forum to appeal an action of the Board of Supervisors and noted that the case was deferred from February 8th to this date for additional information from the Board of Supervisors. He ruled that the request for a deferral be denied. The BZA members supported the Chairman's ruling.

In response to a question from the Chairman with regard to the posting of the property, Susan Langdon, Staff Coordinator, explained when a case is deferred to a date and time certain the property does not require reposting.

Mr. Pammel said he assumed the property was properly posted for the Board of Supervisors' hearing. Ms. Langdon noted that a shared parking agreement does not involve a public hearing since it is an administrative item.

There was no further discussion and Chairman DiGiulian called for the staff report.

Ms. Langdon presented the staff report and said a public hearing held on November 16, 1993 was deferred to allow the applicant to amend Development Condition 5 of the special permit.

The BZA continued the hearing to February 8, 1994 and then again until April 19, 1994 to allow the applicant time to submit a Shared Parking Agreement request to the Board of Supervisors. On Monday, April 11, 1994, the Board of Supervisors approved the applicant's request for a Shared Parking Agreement at the Cooper Intermediate School on Balls Hill Road. A copy of the memo to the Board of Supervisors for the approval of shared parking had been distributed to the BZA. Staff submitted to the BZA Revised Proposed Development Conditions dated April 11, 1994, which included three additional conditions recommended by staff in conjunction with the approval of the Shared Parking Agreement. Ms. Langdon said Proposed Conditions 6, 7, and 8 were added to ensure the church is in conformance with the approved Shared Parking Agreement and that church attendees can safely cross Georgetown Pike to attend church services. She said staff had received one letter in support and one letter in opposition to the application since the February 8th public hearing.

William H. Hansbarger, 301 Park Avenue, Falls Church, Virginia, said the applicant submitted an application last year requesting an amendment to Condition 5, which stated that the church would exert its best efforts to see that the church attendees did not park on the neighborhood streets. Mr. Hansbarger said the applicant has now obtained approval of a shared parking agreement from the Board of Supervisors which will allow the church attendees to park at Cooper Intermediate School. He said the neighbors were notified of the public hearing and that he could not understand why Mr. Simpson was not. Mr. Hansbarger said the lawsuit filed against the church by Mr. Dennis has now been resolved and Mr. Dennis had written a letter agreeing with the shared parking agreement and supporting the applicant's request. He agreed with the Proposed Development Conditions but asked that Condition 6 be modified to allow the applicant to distribute the parking information to the church attendees periodically rather than weekly.

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

Mr. Simpson said he was strongly opposed to the application and said the proposed parking arrangement violates the Zoning Ordinance since the area is zoned R-1 and added that the shared parking agreement would impact the traffic flow. He said the use has already begun to devalue the properties in the area and is not in conformance with what is allowed under the Zoning Ordinance. Mr. Simpson said he did not believe the shared parking arrangement would alleviate the overflow parking problem and noted that the church attendees could park at Langley High School and be transported to the church by shuttle bus. He asked the BZA to deny the applicant's request.

Mr. Hansbarger waived rebuttal and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve SPA 73-D-151-4 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 11, 1994.

Mr. Hammack said he believed the development conditions had been written to address the neighbors concerns.

Mr. Pammel said the letter from Mr. Dennis was significant as he believed the development conditions were adequate.

At Mr. Hansbarger's request, Mr. Pammel amended Condition 6 as noted in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SPA 73-D-151-4 by MCLEAN BIBLE CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 73-D-151 for church and related facilities to amend development conditions, on property located at 850 Balls Hill Road, Tax Map Reference 21-3((1))56A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 19, 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-1.
3. The area of the lot is 5.75 acres.
4. The applicant was previously before the BZA and the case was deferred, primarily so the applicant could obtain approval of a shared parking agreement from the Board of Supervisors, which the applicant has done. At this point, the applicant has met all the criteria and standards for the granting of a special permit. Staff has reviewed the request and given it a favorable recommendation.

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, dated July 1989, revised through July 15, 1991 and approved with this application, as qualified by these development conditions.

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

4. This Special Permit is subject to the provisions of Article 17, Site Plans, unless waived 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 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.

6. Notices shall be placed periodically in the weekly bulletins distributed to church attendees on Sundays stating that parking on the neighborhood streets is prohibited and that, if the parking areas on the church property are full, cars must be parked at a location as approved by the Board of Supervisors under a shared parking agreement.

7. The church shall provide parking attendants to ensure that cars are directed to parking spaces on the church site or at a location as approved by the Board of Supervisors under a shared parking agreement.

8. Until such time as a pedestrian cycle may be added to the traffic signal at the intersection of Balls Hill Road and Georgetown Pike, the church shall employ off-duty officers of the Fairfax County Police Department to ensure that pedestrians attending Sunday services can cross Georgetown Pike and Balls Hill Road safely at the beginning and end of services.

9. The applicant shall provide acoustical treatment for the building addition in order to reduce the interior noise level to a maximum of 50 dBa Ldn using the following guidelines:

   Exterior walls shall have a laboratory sound transmission class (STC) of at least 45, and
   Doors and windows shall have a laboratory sound transmission class of at least 37. If windows function as walls, then they shall have the STC specified for exterior walls.
   Adequate measures to seal and caulk between surfaces shall be provided.

10. Screening shall be provided along the site's frontage on Balls Hill Road as shown on the Landscape Plan dated September 29, 1988 revised April 2, 1992 and shall be deemed to satisfy the screening requirement with the following addition:

    The southern edge of the proposed parking area shall be set back one-hundred (100) feet from the Georgetown Pike right-of-way and the area between the parking and the right-of-way shall be planted with a mixture of trees and shrubs in order to achieve a natural landscaped appearance and arrangement as determined by the Urban Forestry Branch, DEM. A portion of the plantings used to fulfill this requirement shall be placed along the southeastern edge of the parking area to stabilize the cleared area and prevent erosion and sedimentation. The specific number of plantings shall be as determined by the Urban Forestry Branch, DEM. The portion of the parking lot along Balls Hill Road Shall be set back a minimum of 60 feet from the future right-of-way of Balls Hill Road and the area between the parking and the right-of-way shall be planted with a mixture of evergreen and deciduous trees as determined by the Urban Forestry Branch, DEM.

11. If currently active, the septic field shall be disconnected and treated with lime to enhance the natural bacterial decomposition of the septic effluent. Effluent or sludge remaining in the tank shall be removed in accordance with Chapter 68 of the Fairfax County Code.

12. Best management practices aimed at meeting water quality standards as set forth in the Public Facilities Manual for the Occoquan Basin shall be provided for the site as determined by the Department of Environmental Management.

13. Parking lot lighting shall conform to the following specifications:

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

    The lights shall be a low-intensity design and shall focus the light directly on the subject property.

    If necessary, shields shall be installed, to prevent the light from projecting beyond the lot lines.

14. The barrier requirement shall be waived.

15. The maximum floor area of the addition shall be 12,000 square feet.

16. The main parking lot access points shall be controlled by gates at each access, and the gates shall be closed during the hours of darkness when there is no church activity taking place.

It is noted that these development conditions incorporate and supercede the previously approved development conditions. Only Conditions 5, 6, 7, and 8 were added or changed.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, twelve (12) months after the date of approval* unless a shared parking agreement has been approved. 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 and Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on April 27, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 129, April 19, 1994, (Tape 1), Action Item:

Approval of Resolutions from April 12, 1994

Mrs. Thonen made a motion to approve the resolutions as submitted. Mr. Pammel seconded the motion which passed by a vote of 7-0.

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Page 129, April 19, 1994, (Tape 1), Action Item:

Request for Date and Time for Ox Hill Baptist Church Appeal

Mr. Kelley said he not had an opportunity to thoroughly review the appeal and asked that the BZA defer accepting the appeal until April 26th. Hearing no objection, the Chair so ordered.

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Page 129, April 19, 1994, (Tape 1), Action Item:

Request for Change of Permittee for Courts Royal Associates, S-164-79

Mr. Ribble made a motion to approve the applicant's request for a change in permittee. Hearing no objection, the Chair so ordered.

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Page 130, April 19, 1994, (Tape 1), Action Item:

Request approval of revised plat for
Stephen C. & Jean B. Botts, VC 93-S-149

Mr. Pammel made a motion to approve the revised plat as it now met all the BZA's criteria. Mr. Ribble seconded the motion which passed by a vote of 7-0.

Chairman DiGiulian acknowledged Mr. Botts' presence in the Board Room and expressed his opinion that he was sure that both the BZA and Mr. Botts were glad to have this matter resolved.

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Page 130, April 19, 1994, (Tape 1), Action Item:

Request for Out of Turn hearing for
Elaine Marros, VC 94-S-039

Mrs. Thonen made a motion to approve the applicant's request for an out of turn hearing. Mr. Kelley asked if the public hearing could be scheduled for a date in May since the applicant had sold the property and it was scheduled for closing on May 31st. Following a discussion between the BZA and staff, Jane Kelsey, Chief, Special Permit and Variance Branch, suggested May 24, 1994. Mrs. Thonen so moved. Mr. Kelley seconded the motion which passed by a vote of 7-0.

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Page 130, April 19, 1994, (Tape 1), Action Item:

Request for Out of Turn hearing for
Virginia Run Community Association, SPA 87-S-045

Mrs. Thonen made a motion to deny the applicant's request for an out of turn hearing. She said the applicant had requested an indefinite deferral and was now requesting an out of turn hearing. Jane Kelsey, Chief, Special Permit and Variance Branch, noted that staff had contacted the applicant three times trying to bring the application to a finality. Mr. Ribble seconded the motion to deny the request which passed by a vote of 6-1 with Mr. Kelley voting nay.

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Page 130, April 19, 1994, (Tape 1), Action Item:

Request to do Intent to Defer for North Point Appeal

Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA that it had been staff's understanding that the appellant would be submitting a formal request for a deferral, but it had not yet been received by staff. Ms. Kelsey suggested that the BZA defer action until the April 26th public hearing. Mr. Kelley so moved. Mrs. Thonen and Mr. Ribble seconded the motion which passed 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 9:10 p.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: May 17, 1994

APPROVED: May 24, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on April 26, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; Robert Kelley; and James Pammel. John Ribble 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 131, April 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JOHN K. & JENA K. BUSTLE, VC 94-Y-013 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.6 ft. from side lot line (8 ft. min. side yard req. by Sect. 3-307). Located at 13614 Pennsboro Dr. on approx. 10,922 sq. ft. of land zoned R-3 and WS. Sully District. Tax Map 44-2 ((3)) 340.

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. Bustle replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a variance to allow construction of a garage addition 5.6 feet from the side lot line. The Zoning Ordinance requires an 8.0 foot minimum side yard; therefore, the applicants were requesting a 2.5 foot variance to the minimum side yard requirement.

The co-applicant, Jena K. Bustle, 13614 Pennsboro Drive, Chantilly, Virginia, addressed the BZA. She stated that the existing chimney, which protrudes four feet into the side yard, and the placement of the house on the lot has caused the need for a variance. She explained that the storm sewer easement on the southwestern portion of the property precluded the installation of curb and gutter; therefore, the garage could not be placed on that side of the property. Ms. Bustle expressed her belief that the application met the necessary requirements, there would be no detrimental impact on the area, there would be no change in the character of the zoning district, and the variance would be in harmony with the Zoning Ordinance. She noted that the neighbors supported the application and asked the BZA to grant the request.

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

Mr. Hammack made a motion to grant VC 94-Y-013 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 19, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-Y-013 by JOHN K. AND JENA K. BUSTLE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.6 feet from side lot line, on property located at 13614 Pennsboro Drive, Tax Map Reference 44-2((3))340, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 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-3 and WS.
3. The area of the lot is 10,922 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The lot is a corner lot and the structure is set far back from the two front yards.
6. The side lot line, which requires the variance, is converging to the rear.
7. The applicant has testified that easements preclude construct on the other side of the property.
8. The variance is minimal and is primarily needed to accommodate the chimney.

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

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

F. An extraordinary situation or condition of the subject property, or

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Terry Land Measurement, Inc., dated October 12, 1993, revised February 4, 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. 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 absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 11, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 132, April 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ANNA BONOMO, VA 92-D-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to amend VC 92-D-043 to permit construction of addition 18.2 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-E07). Located at 411 River Bend Rd. on approx. 36,315 sq. ft. of land zoned R-E. Dranesville District. Tax Map 8-4 ((4)) 276.

Susan Langdon, Staff Coordinator, addressed the BZA and stated that there was a problem with the legal notifications. She explained that one notice had been sent to an incorrect address and the mistake was not discovered until after the notification deadline passed. Ms. Langdon said the applicant has submitted letters and a petition from the affected property owners and has requested that the BZA accept the modified petition as an alternative to the certified mail receipts. Chairman DiGiulian stated the BZA could accept the petition as proper notification.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Anna Bonomo, 411 River Bend Road, Great Falls, Virginia, replied that it was.

Ms. Langdon presented the staff report. She stated that the applicants were requesting a variance to allow construction of an addition 18.2 feet from the side lot line. The Zoning Ordinance requires a 20.0 foot minimum side yard; therefore, the applicant was requesting a 1.8 foot variance to the minimum side yard requirement.

The applicant's contractor, Joseph F. Paone, 8032 Whitting Drive, Manassas, Virginia, addressed the BZA. He stated the property was unique in that camp-sized lots were united to form the property, and that after the house was built Sterling Montegue Road was installed. Mr. Paone explained that the variance was needed because the existing house does not sit square on the corner lot. He stated that the addition would be compatible with the existing structure and would be harmonious with the community.

Mr. Paone asked Ms. Bonomo to address the notification issue. Ms. Bonomo noted that the address she used to send the notification letter to Peter Fitzgerald and Sterling Montague had been obtained when she applied for an earlier variance. She said both Mr. Fitzgerald and Mr. Montague had signed a petition which indicated their acceptance of the variance.

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

Mr. Pammel made a motion to grant VA 92-D-043 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 19, 1994.

Mrs. Thonen seconded the motion and expressed her belief that there should be no further variances requested for the property.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application Amendment VA 92-D-043 by ANNA BONOMO, under Section 18-401 of the Zoning Ordinance to amend VC 92-D-043 to permit construction of addition 18.2 feet from side lot line, on property located at 411 River Bend Road, Tax Map Reference 8-4{(4)}276, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 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-E.
3. The area of the lot is 36,315 square feet.
4. The request is for a minimal variance.
5. The unusual configuration of the deep, narrow lot has caused the need for the variance.
6. The addition will not encroach any farther into the side yard than the existing structure.

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated January 24, 1994, 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 with Mr. Hammack not present for the vote. Mr. Ribble was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 11, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 134, April 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CAPTAIN RICKETTS, VC 94-H-017 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.9 ft. from side lot line such that side yards total 21.3 ft. (24 ft. min. side yards req. by Sect. 3-207). Located at 9911 Corsica St. on approx. 12,379 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((22)) 84. (OUT OF TURN HEARING GRANTED)

Susan Langdon, Staff Coordinator, addressed the BZA and stated that there was a problem with the legal notifications. She explained that one notice had been sent to Les Kroeger, Chairman of the Architectural Control Committee, instead of A. V. Stevens, Treasurer of the Tanglewood Community Association, whose name appears in the Fairfax County Assessment records. The mistake was not discovered until after the notification deadline passed. Ms. Langdon said the applicant had submitted a letter from Mr. Stevens and the applicant was asking the BZA to accept the letter as an alternative to the certified mail receipt. Chairman DiGiulian stated the BZA could accept the letter as adequate notification since it was minor and the homeowners association's representative had been notified within the required timeframe and another representative had been notified even though it was not within the legally mandated timeframe.

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. Ricketts replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to allow construction of an addition 10.9 feet from the side lot line such that side yards total 21.3 feet. The Zoning Ordinance requires an 24.0 foot minimum side yard; therefore, the applicant was requesting a 2.7 foot variance to the total minimum side yard requirement.

The applicant, David L. Ricketts, 9911 Corsica Street, Vienna, Virginia, addressed the BZA. He referred to the photographs submitted with the application and explained that the garage was literally falling down. Mr. Ricketts stated he purchased the house in 1972 and was unaware of the condition of the garage. He explained that when he attempted to replace the brick wall, he discovered the construction was not up to Code. Mr. Ricketts noted that the garage had been built without concrete footings, and the foundation walls were built on a series of pillars which consisted of bricks and cinder blocks. He stated that his garage is

literally suspended in mid-air and supported only by the integrity provided by the concrete floor. He referenced the photographs which he had submitted with his application which showed the structure and the way in which it was falling down.

Mr. Ricketts said the original structure was built within the setback requirements of the Zoning Ordinance and explained that he would simply replace the unsafe structure with a garage that would be built in compliance with the Building Code. He noted that the property could not be sold until the structure was brought up to both the Building and Zoning Codes and asked the BZA to grant the request.

In response to Mr. Hammack's question as to the name of the original builder, Mr. Ricketts said the builder, Mr. Anderson, was deceased. He noted the cost of replacing the garage would be approximately $30,000. Mr. Ricketts said because of the many errors in construction, his contractor has advised him that the garage must be torn down and rebuilt.

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

Mrs. Thonen made a motion to grant VC 94-H-017 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 19, 1994. Mr. Pammel seconded the motion.

Mr. Pammel stated that the circumstances described by the applicant were the most flagrant violations of Building Codes he has seen since his appointment to the Board of Zoning Appeals (BZA). He expressed his concerns regarding the amount of time involved and the expense incurred by the applicant. Mr. Pammel suggested that the Board of Supervisors be advised of the problems Captain Ricketts has had with his garage. He asked staff to contact the Department of Environmental Management (DEM) and request that it research its records to determine if other houses built by Mr. Anderson had not been built to Code. After a brief discussion, it was the consensus of the BZA that a memorandum be sent to DEM and to the Board of Supervisors.

Mr. Hammack requested that staff prepare a memorandum to the Board of Supervisors requesting that it assess the situation to determine if it would be appropriate to amend the Zoning Ordinance to simplify the process for similar cases.

The motions passed unanimously.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA and stated that the applicant had indicated that he would like a waiver of the eight-day waiting period.

Mrs. Thonen made a motion to waive the eight-day waiting period. Without objection, the Chair so ordered.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-H-017 by CAPTAIN RICKETTS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.9 feet from side lot line such that side yards total 21.3 feet, on property located at 9911 Corsica Street, Tax Map Reference 38-1((22))84, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 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 (Cluster).
3. The area of the lot is 12,379 square feet.
4. Although the original garage was inspected and approved by the appropriate County Inspector, it was not built to Code.
5. An unusual situation, which is not shared by others, exists on the property.
6. The granting of the variance would alleviate a clearly demonstrative hardship.
7. There would be no detrimental impact on the community.
8. The renovation of the garage would be beneficial to the neighborhood.
9. There would be no change to the zoning district.
10. The garage would be in harmony with 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 addition shown on the plat prepared by Ross & France, Ltd., dated June 30, 1971, recertified by Alec H. France on February 29, 1972, revised by Susan C. Pierce, submitted with this application and is not transferable to other land.

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 6-0 with 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 April 26, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 136, April 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. FREDDIE L. GASKINS, VC 94-P-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 17.0 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-407). Located at 2840 Douglas Ave. on approx. 3,930 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 97 and 98.

Chairman DiGiulian said staff had indicated the notices were not in order.

David Hunter, Staff Coordinator, addressed the BZA. He stated that the applicant had failed to notify an adjacent property owner and suggested the hearing be rescheduled to June 2, 1994.

Mrs. Thonen made a motion to defer the case to the suggested date. The Chair so ordered.

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Page 137, April 26, 1994, (Tape 1), Scheduled case of:

9:30 A.M. DAVID L. & PATRICIA D. MARVIL, SP 94-D-008 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 2.7 ft. from side lot line (20 ft. min. side yard req. by Sect. 3-107). Located at 932 Woburn Ct. on approx. 41,756 sq. ft. of land zoned R-1. Dranesville District. Tax Map 21-3 ((5)) 48.

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

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicants were requesting a special permit to allow a 7.3 foot high accessory structure to remain 2.7 feet from a side lot line. The Zoning Ordinance requires an 20.0 foot minimum side yard; therefore, the applicants were requesting a 17.3 foot special permit for an 86.5 percent error to the minimum side yard requirement. He noted that on November 20, 1993, the Zoning Enforcement Branch issued a Notice of Violation to the applicants and directed the applicants to clear the violation. Mr. Hunter stated that the applicants subsequently filed the special permit for a building in error.

The applicants' architect, Anthony C. Rounds, with the architectural firm of Rounds, VanDuzer and Associates, 467-A North Washington Street, Falls Church, Virginia, addressed the BZA and said the applicants' project included a pool, a deck, and a pool house. Mr. Rounds explained that the location of the pool was determined by the steep slope along the side lot line and the existing trees. He stated that the gazebo and the pool house were built as accessory structures with a connecting trellis. Mr. Rounds noted that the original plans had been drawn as a single structure with a roof which exceeded seven feet in height. He explained that although he had considered the structures to be in conformance with the Zoning Ordinance, staff considered it non-conforming and suggested that the project be broken into two separate structures with the pool house being placed twenty-six feet from the lot line.Mr. Rounds went on to explain that after the applicants implemented staff's suggestions, the gazebo was found to be non-conforming. He noted that a couple of construction errors compounded the problems.

Mr. Rounds submitted a photograph which depicted a view of the applicants' property from the opposing neighbor's property. He also submitted a photograph which showed a view of the neighbor's property from the applicants' property. Mr. Rounds noted that the applicants, through plantings and the placement of the accessory structures, have increased the privacy between the two properties. In summary, he submitted letters of support from four neighbors and asked the BZA to grant the request.

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

Chuck Chin, 926 Woburn Court, McLean, Virginia, addressed the BZA. He said he was the adjoining neighbor and had filed the complaint. Mr. Chin noted the letters of opposition and expressed his belief that the special permit application contained erroneous information and that the building permit was not executed in good faith. He submitted photographs to substantiate his convictions that the survey plat was wrong. He contended that the gazebo was mere inches, not two and one-half feet, from the lot line. He also contended that the fence was seven feet in height, not six feet as depicted by the plat. In summary, he said the surveyor's, the architect's, and the applicants' statements were not factual and asked the BZA to deny the request.

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

In rebuttal, Mr. Round assured the BZA that the surveyor's plat was accurate in the location of the gazebo, but acknowledged that the fence averaged six foot eight inches in height. He explained the variation in height was due to the grade. Mr. Round stated that the applicants were not successful in their attempts to resolve Mr. Chin's concerns.

The applicant, Patricia Marvil, 932 Woburn Court, McLean, Virginia, addressed the BZA and said she believed the surveyor's plat was correct. Ms. Marvil said it was only after the results of the survey were submitted to her that she realized a special permit would be necessary.

Mr. Kelley made a motion to grant SP 94-S-008 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated April 19, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-D-008 by DAVID L. AND PATRICIA D. MARVIL, 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 2.7 feet from side lot line, on property located at 932 Woburn Court, Tax Map Reference 21-3((5))48, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 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. The applicant took great steps to ensure that the construction would be in compliance; but unfortunately it did not work out that way.

I. The granting of the special permit would not set a precedent.

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 Kenneth W. White, Land Surveyor, dated May 12, 1993, revised through October 28, 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. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 11, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 139, April 26, 1994, (Tape 1), Scheduled case of:

9:30 A.M. GARY L. PAGE, VC 94-S-014 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure in minimum required front yard 24.1 ft. from front lot line (40 ft. min. front yard req. by Sect. 3-C07). Located at 12218 Henderson Rd. on approx. 47,348 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 95-1 ((1)) 12 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. Mr. Page replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a variance to allow construction of a detached garage 24.1 feet from the front lot line. The Zoning Ordinance requires a 40.0 foot minimum front yard; therefore, the applicant was requesting a 15.9 foot variance to the minimum front yard requirement.

The applicant, Gary Page, 12218 Henderson Road, Clifton, Virginia, addressed the BZA and stated he had acquired the property in August 1993. He said the property has exceptional topographic conditions and the exceptional shape of the lot, along with the desire to preserve a large deciduous tree, has caused the need for the variance. Mr. Page went on to explain that the septic system also restricted the location of the proposed addition. He used the viewgraph to depict the plat noting the pie shaped lot, the septic system, and the topographic condition of the property. He explained that it would not be feasible to place the addition elsewhere on the lot. In addressing alternative locations for the garage, Mr. Page explained the obstacles which prevented placing the garage in any other location. In doing so he noted the limited space on the northern side, the embankment on the southern side, and the topographic conditions of the property.

In response to Mrs. Thonen's question as to an alternative location, Mr. Page used the viewgraph to show the alternative location. He said that although the part of the site was relatively flat, the slope of the land would require the installation of a five to six foot high concrete slab.

In summary, Mr. Page expressed his belief that the application met the necessary standards and asked the BZA to grant the request.

Chairman DiGiulian stated that the proposed location and the alternative location had similar topographic conditions and expressed his belief that the addition could be placed elsewhere on the lot. He expressed concern regarding the granting of a front yard variance. Mrs. Thonen said she, too, had concerns regarding the request. Mr. Page referred to the photographs and stated that he believed the slope to be approximately one and one-half foot. Chairman DiGiulian stated the plat showed the slope to be approximately four feet. Mr. Page noted that the shrubs on the embankment, which is five feet above the road bank, would provide screening for the proposed garage.

In response to Mr. Dively's question as to how thick the foundation would have to be if placed on the proposed site, Mr. Page said he believed it would have to be one and one-half foot thick compared to the alternative locations which would have to be five or six feet thick. He noted the one other alternative location would require the removal of a large tree.

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

Mr. Dively made a motion to grant VC 94-S-014. The motion died for lack of a second.

Mrs. Thonen made a motion to deny VC 94-S-014 for the reasons reflected in the Resolution.

Mr. Hammack seconded the motion. He expressed his belief that the addition could be placed on a preferable location without a variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-S-014 by GARY L. PAGE, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure in minimum required front yard 24.1 feet from front lot line, on property located at 12218 Henderson Road, Tax Map Reference 95-1((1))12 and 6, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 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-C and WS.
3. The area of the lot is 47,348 square feet.
4. The application does not meet the necessary standards for the granting of a variance.
5. The BZA does not have the authority to grant a variance when the addition could be placed elsewhere on the lot without a variance.
6. There is an alternative location which would allow the garage to be placed in a better location closer to the house.
7. The request is for a front yard variance and the Zoning Ordinance is very strict regarding accessory dwellings in the front yard.

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

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

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

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

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

Mr. Hammack seconded the motion which carried by a vote of 4-1-1 with Mr. Dively voting nay and Mr. Kelley abstaining from the vote. Mr. Ribble was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 11, 1994.

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Page 140, April 26, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MARVIN GROENEWEG, SP 94-B-007 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit deck to remain 0.52 ft. from side lot line (7 ft. min. side yard req. by Sects. 2-412 and 3-307). Located at 5133 Red Fox Dr. on approx. 14,041 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((6)) 23.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Groeneweg 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 a 3.0 foot high

deck to remain 0.52 feet from a side lot line. The Zoning Ordinance requires a 7.0 foot minimum side yard; therefore, the applicant was requesting a 6.48 foot special permit to the minimum side yard requirement.

The applicant, Marvin Groeneweg, 5133 Red Fox Drive, Annandale, Virginia, addressed the BZA. He stated that, when he attempted to sell his house, he was advised that he would have to obtain a building permit for the patio deck which he and his son-in-law had constructed. Mr. Groeneweg explained that when he applied for a building permit, he was informed that a variance was needed because the deck was located too close to the lot line. He referred to the statement of justification and expressed his belief that he met the necessary standards for the granting of the special permit. Mr. Groeneweg said the photographs, the statement of justification, and the plat documented a patio deck project which was an attractive enhancement to the community.

Mr. Groeneweg stated that the corner lot has two front yards and two side yards. He explained that, although the error was seventy-four percent, there was no adverse impact on the neighbors because a board-on-board fence divided the properties. Mr. Groeneweg said the deck had been placed on an existing concrete slab which was in disrepair and expressed his belief that the project was actually the renovation of an old existing patio, rather than the construction of a new deck. He explained that the slope of the yard had caused a portion of the deck to require a special permit.

In summary, Mr. Groeneweg said the neighbors supported the request; the prospective buyers, Mr. and Mrs. Everett Kennedy, would like to keep the existing deck; and asked the BZA to grant the request. He also requested that the eight-day waiting period be waived.

Mr. Hammack noted the testimony had indicated that only one corner of the deck required a special permit. Mr. Groeneweg said that he understood the one section, which was three feet in height, required the special permit. He used the viewgraph to show the deck and the topographic condition of the property.

In response to Mr. Hammack's question as to what steps would have to be taken in order to bring the deck into compliance, Mr. Heine said the size of the deck could be reduced by 6.4 feet. Mr. Groeneweg said that in order to bring the deck into compliance, he would have to remove a four foot section of the deck. He explained that it would be very difficult to reconstruct the deck so that it would be architecturally and aesthetically pleasing. Jane C. Kelsey, Chief, Special Permit and Variance Branch, referred to the Zoning Ordinance and said that an open deck with no part of the floor higher than four feet, may extend into the minimum required yard by 5 feet; therefore, the deck would have to be located 7 feet from the lot line.

Chairman DiGiulian asked if a ground level concrete driveway could be built to the lot line. Ms. Kelsey said it could. Mr. Hammack asked if the deck were at ground level would it be in compliance. Ms. Kelsey said that under the Zoning Ordinance, the structure would be defined as a deck and would have to meet those requirements.

Mr. Groeneweg said that if he had been cognizant of the requirements, the deck would have been constructed within the guidelines.

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

Everett Kennedy, 6712 Bostwick Drive, Springfield, Virginia, addressed the BZA. He said that the deck was one of the reasons he was purchasing the house. Mr. Kennedy stated that if the deck were reconfigured, it would destroy the integrity of the deck. He asked the BZA to grant the request.

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

Mr. Dively said the integrity of the deck would be destroyed if it were reduced. He stated that the slope of the land caused the problem.

Mrs. Thonen noted that the property had two front and two side yards, but no backyard.

Mr. Dively noted the neighborhood support as well as the letter of support from the H. J. Whitener, President, Red Fox Forest Civic Association.

Mr. Hammack made a motion to grant SP 94-B-007 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report with the following additional development condition:

3. The deck and privy fence shall be maintained in good condition by the present owner. If the deck is ever removed or replaced, the replacement would have to be in compliance with the current Zoning Ordinance.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Kelley asked the maker of the motion if it was his intention that proposed Development Condition 3 would apply to all future owners of the property. Mr. Hammack said the

development condition would be applicable to the property. Ms. Kelsey said if the word "present" were deleted from Development Condition 3, then the condition would apply to all future owners. Mr. Hammack removed the word "present" from Development Condition 3. Mr. Kelley said he would oppose the condition. Mr. Hammack said sooner or later the deck would have to be replaced and when it was replaced, it should be brought into compliance. He also noted that, although the deck looked sturdy, it was built without a building permit.

Mr. Hammack added the following development condition:

4. The special permit development conditions shall be recorded in the Land Records.

Mr. Kelley said he also opposed proposed Development Condition 4. He noted that such a development condition would cloud the title to the property.

Mr. Dively asked what the requirements would be if, in the future, the existing deck were removed and a new structure built. Chairman DiGiulian said that without the additional development conditions, the variance would allow another deck to be built 0.52 feet from the lot line.

Mr. Kelley made a motion to amend the original motion by deleting proposed Development Conditions 3 and 4.

Mr. Dively seconded the amended motion which carried by a vote of 5-1 with Mr. Hammack voting nay. Mr. Ribble was absent from the meeting.

The original motion, as amended, carried by a vote of 5-1 with Mr. Hammack voting nay. Mr. Ribble was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-B-007 by MARVIN GROENEWEG, 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 0.52 feet from side lot line, on property located at 5133 Fox Drive, Tax Map Reference 69-4((6))23, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on April 26, 1994; and

WHEREAS, The Board has made the following findings:

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; and

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. This type of application is always the most difficult because people normally expect to be able to make improvement on their property and are not always aware that a deck or patio requires a building permit and must comply with the setback requirements.

I. The property has unusual topographic conditions.

J. Although the whole deck may be in violation, the violation to a large extent is a technical violation.

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 Survey, Lot 23, Section I, Red Fox Forest" prepared by Dewberry & Davis, dated January 26, 1994, 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. Thonen seconded the original motion which proposed two development conditions in addition to the Development Conditions Numbered 1 and 2 above.

Mr. Kelley moved to amend the original motion to delete the proposed two additional development conditions proposed by Mr. Hammack. Mr. Dively seconded the amended motion which carried by a vote of 5-1 with Mr. Hammack voting nay. Mr. Ribble was absent from the meeting.

The original motion, as amended, carried by a vote of 5-1 with Mr. Hammack voting nay. Mr. Ribble was 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 April 26, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 143, April 26, 1994, (Tape 1 and 2), Scheduled case of:

9:30 A.M. WILLIAM A. STEWART, III, APPEAL 94-M-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that a freestanding sign erected on appellant's property is an outdoor advertising sign, a use that is not permitted in the R-2 District, and therefore appellant is in violation of Zoning Ordinance provisions. Located at 3414 Holly Rd. on approx. 43,560 sq. ft. of land zoned R-2. Mason District. Tax Map 59-2 ((1)) 9.

Chairman DiGiulian noted that an intent-to defer was issued by the Board of Zoning Appeals on April 12, 1994.

Mr. Pammel made a motion to defer A 94-M-010 to the morning of May 24, 1994. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 143, April 26, 1994, (Tape 2), Scheduled case of:

9:30 A.M. MARVIN GROENEWEG, SP 94-B-007

Jane C. Kelsey, Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals. She stated that in his statement, the applicant had requested the BZA waive the eight-day waiting period.

Mrs. Thonen made a motion to waive the eight-day waiting period for SP 94-B-007. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 144, April 26, 1994, (Tape 2), Action Item:

Approval of Resolutions from April 19, 1994

Mr. Pammel made a motion to amend Conditions 6 and 7 of the Resolution for SPA 73-D-151-4, McLean Bible Church, to provide the wording submitted by staff. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Mr. Pammel made a motion to approve the remainder of the Resolutions as submitted. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 144, April 26, 1994, (Tape 2), Action Item:

Additional Time
George N. Summers, VC 86-V-061
1020 Millwood Road
Tax Map Reference 13-3((5))C1

Mrs. Thonen made a motion to grant the additional time. The new expiration date is April 19, 1995. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting. Mr. Pammel noted that the applicant had been granted fifteen extensions.

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Page 144, April 26, 1994, (Tape 2), Action Item:

Approval of March 22, 1994 Minutes

Mrs. Thonen made a motion to approve the minutes as submitted. The Chair so ordered.

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Page 144, April 26, 1994, (Tape 2), Action Item:

Request for Date and Time
Ox Hill Baptist Church

Mr. Hammack made a motion to schedule the appeal for the morning of June 14, 1994. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 144, April 26, 1994, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Irving Heymont, VC 94-V-050

Mrs. Thonen made a motion to grant an out-of-turn hearing for VC 94-V-050. The new scheduled hearing date will be June 14, 1994. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

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Page 144, April 26, 1994, (Tape 2), Action Item:

Request for Approval of Revised Plat and Resolution
Christopher L. Crawford, VC 93-D-064
September 28, 1993 Hearing

Jane C. Kelsey, Chief, Special Permit and Variance Branch, said the memo prepared by Donald Heine, Staff Coordinator, had indicated the revised plat reflected the Board of Zoning Appeals (BZA) specifications. She noted that a copy of the revised Resolution, as well as a copy of the minutes, had also been submitted to the BZA. Mr. Pammel made a motion to approve the plat and the Resolution of VC 93-D-064. The Chair so moved.

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Page 144, April 26, 1994, (Tape 2), Action Item:

Memorandum Regarding the Expiration of the Term of John F. Ribble, III

Mrs. Thonen made a motion to recommend that John F. Ribble, III, be appointed for another term on the Board of Zoning Appeals. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Ribble absent from the meeting.

Chairman DiGiulian stated that it would be appropriate to have the Clerk send a letter to the Circuit Court indicating the BZA's desire to have Mr. Ribble reappoint to the BZA.

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Page 145, April 26, 1994, (Tape 2), ADJOURNMENT:

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: May 24, 1994

APPROVED: June 7, 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 May 10, 1994. The following Board Members were present: Chairman John DiGiulian; Robert Dively; 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 141, May 10, 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 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. (MOVED FROM 10/19 and 12/7 AT APPL.'S REQUEST AND DEF. FROM 1/25/94. NOTICES NEEDED. (DEF. FROM 3/8 AT APP.'S REQ. NO MORE DEFERRALS)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. C. J. Lessard, President of C. J. Lessard Architects, Inc., 8229 Boone Boulevard, Vienna, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is surrounded by developed R-E lots to the north, south and west; to the northeast lies a large undeveloped parcel also zoned R-E; and property zoned R-A, residential or rural agricultural, lies to the southeast. Mr. Hunter said the subject property is undeveloped and heavily wooded. He said the applicant was requesting a variance to the minimum lot width requirement in order to subdivide the property into two lots with proposed lot 17-A having a width of 20 feet and requiring a variance of 180 feet.

Mr. Hunter said that the property could be developed with one single family detached dwelling without a variance. He said the property is surrounded by lots of similar size; there are no pipestem lots in the area and similar requests to create pipestem lots in the area by way of subdivision variances have been denied by the BZA. Mr. Hunter said that, if the Board determines a hardship exists in this case, such hardship appears to be shared by several nearby lots, especially those in the Meadowbrook Subdivision. He said it was staff's determination that the proposed application did not meet at least 8 of the 9 variance standards set forth in Sect. 18-404; staff had also concluded that the proposed development was not in harmony with the applicable recommendations of the Comprehensive Plan which stressed the protection of existing stable neighborhoods by insuring that infill development is of compatible use, density and intensity.

Mr. Lessard presented the statement of justification, previously submitted in writing and incorporated into the record. He hit upon key elements already covered by Mr. Hunter and stated that the current proposal was for a private drive with two lots having an average acreage of 3.35. Mr. Lessard said that, according to entitlement, 2-acre lots are allowed, in conformance with the plan he presented. He said the adjacent neighbors, 16B, 16A, 18 and 10A, range in size from approximately 2.2 acres to 6.63 acres, for an average of 3.9 acres. He was proposing 3.35 acres and he said that he currently could have 2 lots by right. Mr. Lessard said that the development in Great Falls had been fairly inconsistent and, over time, there had been many gift lots, some of which were pipestem, outlet lots and such.

Regarding the hardship issue, Mr. Lessard cited the sump dump lot location behind his property which he said would devalue it and the easement through the site stemming from the original subdivision, which he said did not coincide with the easement connections incorporated when the outlying properties were actually developed, required him to make changes on the original site plan to adjust for existing conditions.

Mr. Lessard cited mitigating economic issues, stating that he had taken control of the site through a divorce action, at which time a value was placed on the property that he could not now achieve with a single lot. He said that the hardship, in terms of the community, left him with two choices for installing a public road: It could be achieved on Lot 16B or Lot 18, either of which would impact his neighbors and compromise the rural characteristics of Great Falls. He went on to give existing examples of what he believed were not rural characteristics and roads which would not conform to "public roads," a term which he believed was used at this point to avoid a maximization of density.

Mr. Lessard said he did not believe his proposal would set a precedent because it was a lot width reduction to allow the use of a private drive and it would not affect the rural characteristics by not affecting Lot 16B and Lot 18 and their rural environs. He said he only needed to develop a second lot in order to achieve his economic goal at the time of his divorce; however, if he had to go forth on a site plan, he could absorb the public road cost with a third lot.

Mr. Pammel asked Mr. Lessard about the 20-foot gravel road shown on the plat and Mr. Lessard said it was not a gravel road. Mr. Pammel said that the plat then was not correct and Mr. Lessard said that may be true but he did not think it was a gravel road.

There were no speakers in support of the application.

The following people spoke in opposition to the application: Richard Peters, President of the Great Falls Citizens Association; Richard Slenker, 11329 Fairfax Drive, directly across

the street from the subject property; and Margaret Bridge, 11324 Fairfax Drive, next-door neighbor (Lot 18), who referenced a letter to the Board which she had sent in January 1994.

The statement by Mr. Peters cited the following concerns and reasons why the Association believed the application should be denied: Opposition to all pipestem variances where the sole reason for the variance was to increase density; the application did not meet the nine standards required by the Zoning Ordinance for variances; there are no existing pipestem lots in the area; three separate applications for variances for pipestems on nearby parcels were all denied by the Board; the Association agreed with the staff report regarding a lack of hardship; the resulting lots would not characterize lot sizes in the area where the average lot size is 4.6 acres; denial of the application would not create a situation approaching confiscation, nor would it deny the applicant all reasonable use of the land; allowing smaller lots and pipestem lots in an area where larger lots are the rule would tend to degrade adjacent and nearby properties in contravention of Standard 7 and could also jeopardize neighborhood stability by setting a precedent for possible subdivision of many or all of the ten lots in close proximity which are now 4 acres or larger, which would violate provisions of the Comprehensive Plan specific to the area, calling for infill development of compatible density and preservation of the existing low density residential character; pipestem and smaller lots would further be contrary to the public interest which is protected by Standard 9 of the Ordinance; the applicant's profession (architect) should have alerted him that the existing narrow public road frontage was inadequate for subdivision by right; a two-lot subdivision on a lot which is heavy wooded with a swale in the middle area and with runoff problems which are cited in the staff report would present disturbing environmental problems.

Concerns of the other speakers were, in essence, some of the same concerns as those expressed by Mr. Peters.

A petition in opposition, signed by every home owner in the area, was submitted to the Board.

Mr. Lessard came back to the podium for rebuttal. He said he had tried to contact neighbors but they did not want to meet with him; he did not understand why they believed his proposal would set a precedent. Mr. Lessard also said he did not know why the neighbors believed he would have to go through a zoning process to subdivide into three lots, when he knew that he did not. He said his neighbors believed that, if the variance were not granted, his only recourse would be to build on one lot, when he knew that was not true. He said that, since the original purchase with his wife, his plans had changed. He also said his property was not in a floodplain.

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

Mr. Hammack moved to deny VC 93-D-079 for the reasons set forth in the Resolution. He said he relied heavily upon the statements by Mr. Peters of the Great Falls Civic Association and the issues and points made in the staff report. He asked that Mr. Peters' statement be incorporated into the Resolution by reference.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 93-D-079 by C. J. LESSARD ARCHITECTS, INC., under Section 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., on property located at 11328 Fairfax Drive, Tax Map Reference 6-4((2))17, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 10, 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-E.
3. The area of the lot is approximately 6.77 acres.
4. The Board was in agreement with the issues cited in the staff report, which were incorporated into the Resolution by reference.
5. The statements made by the Great Falls Citizens Association reflected the opinion of the Board and were incorporated into the Resolution by reference.
6. In particular, the applicant failed to show that strict application of the Ordinance would produce undue hardship on him; he testified that he could develop one house on the property as a matter of right; he testified that he could develop three dwellings as a matter of right if he put in a public street; if the applicant could accomplish these things as a matter of right, he would not be required to seek a variance.

7. The applicant's proposed development particularly failed to satisfy Required Standard 8, that the character of the zoning district would not be changed by granting the variance.
8. The Board expressed the need for a clear understanding that the Zoning Ordinance did not allow them to consider economic issues such as divorce or resubdivision, and that they were required to base their decisions solely upon land issues.

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. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on May 25, 1993.

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Page 149, May 10, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JEFFREY F. & EVELYNE M. WILLIS, VC 94-M-015 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line (12 ft. min. side yard req. by Sects. 10-104 and 3-307). Located at 3617 Hummer Rd. on approx. 22,726 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((3)) 1B. (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. Jeffrey F. Willis, 3617 Hummer Road, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the Philralph Subdivision and is surrounded on three sides by single family detached dwellings also zoned R-3, and on the west by a single family detached dwelling zoned R-2. He said that the applicants were requesting a variance of 8 feet to allow a 660 square foot detached garage to remain 4 feet from the side lot line.

Mr. Willis presented his statement of justification, previously submitted in writing and incorporated into the record. He submitted photographs for the Boards review to demonstrate an overcrowded area and support his statements. Mr. Willis cited unsafe conditions when parking in the driveway because of the incline, causing autos to roll back into the street and creating a possible hazard to his children; vandalism and theft of auto decals was a

threat when parking on the street. Mr. Willis said that the house next door was 51 feet from the shared property line; this is the only neighbor who might see the addition and she had written a letter of support which he submitted to the Board. Mr. Willis said that, if he moved the garage over to the left, he would overrun the retaining wall and sidewalk and throw off the line of the existing driveway into the garage, forcing him to enter at an angle.

Mr. Willis said that there are other garages on Hummer Road which are three or four feet from the property line and he submitted photos to the Board.

Mr. Hammack asked Mr. Willis why he needed a 30 foot long garage. Mr. Willis said the garage did not necessarily need to be 30 feet long; however, he had 4 autos that he would like to keep inside and he would like to store materials at the back of the garage which he used to work around the house. He said the length was not as important as the location.

Mr. Hammack asked why Mr. Willis could not shift the garage over, away from the property line and Mr. Willis said that, if he shifted it over, the retaining wall would interfere with backing out of the garage. Mr. Willis referred to an existing garage shown on the plat, built around 1950, which could not be used because a 90-degree turn would be required to enter it. He said that the garage was flooded every time it rained.

At the request of Mr. Pammel, Mr. Willis demonstrated on the plat where the retaining wall was in relation to the proposed garage and the existing garage. He also pointed out a sidewalk which limited the location of the accessory structure.

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

Mr. Pammel said that, originally, he had doubts concerning the request and the location of the building so close to the property line, believing there was some flexibility to change the location of the proposed structure; however, he said the applicant had indicated to him that there really are significant constraints in terms of erecting the structure in any other location than what was proposed.

Mr. Pammel moved to grant VC 94-M-015 for the reasons set forth in the Resolution, subject to the Proposed 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 94-M-015 by JEFFREY F. & EVELYNE M. WILLIS, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 4.0 ft. from side lot line, on property located at 3617 Hummer Road, Tax Map Reference 60-3((3))1B, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 10, 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 approximately 22,726 square feet.
4. The applicant's testimony indicated that there are substantial constraints, primarily topographical, with regard to the possible location of the proposed garage/workshop and that there is no other location on the property to place the accessory structure

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

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

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

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

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

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

1. This variance is approved for the location and the specified detached garage shown on the plat prepared by Larry N. Scartz, Certified Land Surveyor, dated February 12, 1992, revised by C.F. Nunley, Architect, August 31, 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. 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 May 25, 1993. This date shall be deemed to be the final approval date of this variance.

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Page 151, May 10, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ANTHONY W. & VIRGINIA M. SCERBO, SP 94-P-012 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 (garage) to remain 0.7 ft. from side lot line and 1.6 ft. from rear lot line (10 ft. min. side yard req. and 14.5 ft. min. rear yard req. by Sect. 10-104). Located at 6813 Chestnut Ave. on approx. 7,320 sq. ft. of land zoned R-4. Providence District. Tax Map 50-4 ((15)) 138. (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. Robert C. Burgess of The Solutions Group, 10335 Democracy Lane, Fairfax, Virginia, the applicants' agent, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property was located north of Arlington Boulevard in the City Park Homes Subdivision; surrounding lots are also zoned R-4 and developed with single family detached dwellings. She said the request for a special permit resulted from an error in building location to allow an existing accessory structure to remain 0.7 feet from a side lot line and 1.6 feet from the rear lot line. Ms. Langdon said that, since the garage was constructed in 1965, prior to the current Zoning Ordinance, the provision which applies is Sect. 30-3 of the 1959 Zoning Ordinance. The Zoning Ordinance allowed an accessory structure of masonry to be located 2 feet from the side and rear lot lines, so long as such building was at least 12 feet further towards the rear of the lot than the main dwelling. Ms. Langdon said, regarding surrounding uses, the dwelling on adjacent Lot 137 to the west is located approximately 11.2 feet from the shared lot line.

The Board had no questions of staff.

Mr. Burgess presented the statement of justification, previously submitted in writing and incorporated into the record. He stated that the error in building location became apparent

last fall when Mr. Scerbo decided to sell his home of almost 40 years and retire to Florida. About a week prior to closing, it was discovered by the title insurance company that there was an error in building location. Over the last 30 years there have been no complaints filed. The original building application was dated 1965. Mr. Burgess guessed that the contractor measured from the chainlink fence on the property and not the lot line itself, resulting in the encroachment. Mr. Burgess said that forcing the applicant to relocate or remove the garage would be a substantial hardship; it is a large masonry structure, 30 x 30 feet.

Mr. Ribble referenced the first paragraph in Mr. Burgess's letter, requesting a reduction to the minimum yard requirements to allow the garage to remain 0.9 feet from the side lot line; whereas, the staff report said 0.7 feet. Mr. Burgess said he agreed with the staff report.

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

Mr. Ribble moved to grant SP 94-P-012 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report.

Mr. Burgess requested a waiver of the eight-day waiting period and Mr. Ribble so moved.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-P-012 by ANTHONY W. & VIRGINIA M. SCERBO, 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 (garage) to remain 0.7 ft. from side lot line and 1.6 ft. from rear lot line, on property located at 6813 Chestnut Avenue, Tax Map Reference 50-4((15))138, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 10, 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 Alexandria Surveys, Inc., dated October 27, 1993, and approved with this application, as qualified by these development conditions. Any plan submitted for this development shall be in substantial conformance with this plat.

3. The existing dwelling shall not be extended farther toward the garage than shown on the approved plat referenced above.

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

Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Hammack and Mr. Kelley were not present for the vote. Mrs. Thonen was absent from the meeting.

Mr. Ribble moved to grant a waiver of the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 4-0. Mr. Hammack 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 May 10, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 153, May 10, 1994, (Tape 1), Scheduled case of:

9:15 A.M. SWANEE A. BUSIC; LENA GENTRY; AND PINE RIDGE CIVIC ASSOCIATION, APPEAL 94-M-011 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's issuance of a Non-Residential Use Permit for the Gesher Jewish Day School, Northern Virginia Jewish Community Center. Located at 8900 Little River Trnpk. on approx. 6.21 ac. of land zoned R-1. Mason District. Tax Map 58-4 ((1)) 65A.

Carol A. Cole, Land Use Chair, Pine Ridge Civic Association, 3915 Pineland Street, Fairfax, Virginia, came to the podium to speak on behalf of the Association and Swanee Busic, an abutting property owner. Ms. Cole said she was concerned about safety, selective enforcement, and the County's failure to enforce its commitment agreed to on March 22, 1993. She said that, at a meeting on December 7, 1993, the Mason District Supervisor reaffirmed the commitment in the presence of representatives from the Virginia Department of Transportation (VDOT), the Fairfax County Department of Transportation (OT), JCC Gesher School, neighboring communities, and the Mason District Planning Commissioner. Ms. Cole said that the VDOT representative remained silent at the meeting when the County indicated that nothing had been heard from the Fire Department regarding improvements and Development Condition 6; VDOT approved a revised plan on December 15, 1993, which changed Development Condition 6. She said that, on January 18, 1994, the Zoning Administrator issued a Non-RUP and granted a 45-day waiver to allow time for the applicant to complete improvements in Development Condition 6, addressing safety. Ms. Cole said they could find no authority in the Ordinance for the Zoning Administrator to grant a 45-day waiver for a Non-RUP. She said Development Condition 6 was authored by the County and required approval from the Department of Environmental Management (DEM) and VDOT as to how the improvements are to be provided, not authority to deny. She said that VDOT's August 26, 1993, letter to DEM indicated no objections to the improvements set forth in Development Condition 6 and VDOT thereby gave its required approval to Development Condition 6. Ms. Cole said that the County stated that DEM gave its required approval on September 14, 1993, to Development Condition 6, based on VDOT's August 26, 1993, letter and its approval. She said it was their understanding that VDOT now has disapproved some of its previously approved improvements in Development Condition 6; it was their further understanding that VDOT made the changes after the December 7, 1993, meeting where VDOT remained silent when citizens asked if anyone had heard from the Fire Department regarding Development Condition 6. Ms. Cole submitted a copy of a letter dated October 11, 1993, from the Fire Department to VDOT, requesting signal phasing modification, one of the improvements in Development Condition 6. She said they, therefore, believed the Zoning Administrator exceeded her authority in issuing a Non-RUP, contrary to the Development Condition and in granting a 45-day waiver for a Non-RUP in violation of the Ordinance. Ms. Cole said that, even after the 45-day time limit for the questionable waiver expired, she personally spoke with the Zoning Administrator who agreed that the 45-day waiver had expired and said she would get back to Ms. Cole with a response to her request for written documentation. Ms. Cole said the Zoning Administrator had not returned her phone calls since that time and no written documentation was provided.

Ms. Cole said she then turned to Zoning Enforcement and they refused to act on the request. She said that the Zoning Administrator's response to the appeal gave the following reasons for issuing the Non-RUP and a 45-day waiver: Bad weather conditions prevented completion of the improvements and the road improvements and signs and light improvements in Development Condition 6 are analogous to "final grading, sodding and/or seeding," which are frequently

waived. Ms. Cole said that VDOT had now disapproved its previous approval of the safety improvements in Development Condition 6 for The Gesher School. The School has now relocated from its previous location. Ms. Cole said that Sect. 18-704 states that a 45-day waiver to complete paving services may be issued for Residential Use Permits because of inclement weather, not Non-Residential Use Permits. She said it also addresses exceptions in bad weather for sodding and/or seeding, landscaping and screening requirements and walks adjacent to streets and/or between driveways or parking lots. She said that nowhere did the section state that a 45-day waiver should be granted for a Non-Residential Use Permit. Ms. Cole said that the Zoning Administrator's response to the appeal was that completions of the changes to the intersection and the fire station signage and lights in Development Condition 6 are analogous to "final grading, sodding and/or seeding." She said she was very distressed with the Zoning Administrator's belief that the lives of those living in the community are analogous to a blade of grass or a slope. She alludad to the Zoning Administrator having exceeded her authority and having jeopardized lives of the citizens. Ms. Cole then provided a copy of a Police report for the past 16 months which she said listed 21 accidents, one of which had involved her daughter, at the intersection in question. She said that, in August 1993, VDOT approved Development Condition 6; in December 1993 VDOT disapproved part of its previous approval. She said that no written verification had been provided to the Association in spite of numerous requests to the County, including a request of April 7, 1993, that they be informed of all interpretations of the Development Conditions, a copy of which she provided to the Board.

Ms. Cole asked why a Non-RUP and a 45-day waiver should be granted because a school had to relocate from its previous location and whether all non-residential developers or businesses who must relocate should now be given Non-RUP's and waivers. Ms. Cole said she believed the Board's decision that day would set a precedent regarding the safety of her community and the County staff's ability and willingness to follow County rules, regulations, ordinances and development conditions.

Mr. Pammel asked what the current situation was regarding Condition 6 and VDOT approval and disapproval and, having been implemented, which issues that were in the original approval have been altered.

Jane W. Gwinn, Zoning Administrator, referenced page 5 of the response memo, stating that "fire station warning signs at each end of the service drive" had been implemented; "STOP sign and STOP bar for southbound traffic" had been implemented, as has "DO NOT BLOCK INTERSECTION; "restriping to permit dual left turn" has been implemented; "AUTHORIZED VEHICLES ONLY sign" has been implemented. The two that have not been implemented are: "FIRE VEHICLE WARNING signs with flashing red light activated" and "modification to signal phasing to display a red signal." Mr. Pammel asked if they were the ones that VDOT changed. Ms. Gwinn said that was what they had been told. Mr. Pammel said he would like that particular issue to be discussed by staff because he was concerned about VDOT changing conditions that had been prescribed by the Board of Supervisors in legislative action, and if that had actually occurred.

Ms. Gwinn responded to Mr. Pammel's question by referencing page 5 of the memo which set forth the Condition, stating the Condition specifically provided that "...the following road improvements..." including signage requirements, were required, provided they were approved by VDOT and DEM. She said that, on its face, her understanding was that the special exception condition provided for subsequent VDOT review and approval in this instance. Ms. Gwinn said Ms. Cole was correct in that VDOT disapproved the flashing red lights being activated by the FIRE VEHICLE WARNING sign; it was Ms. Gwinn's understanding that they were concerned about confusion resulting from the fact that a yellow sign usually means caution, and having a flashing red light would send a different message. She said they also did not support the signal phasing for the existing traffic signal at Route 236 and Guinea Road; however, they also required some additional modifications. The VDOT approval was to require modifications to be made on the JCC site, in order to allow 3 lanes to exit, two left coming on to Route 236, as well as a right turn lane, which required modifications to the existing service drive and striping out into Route 236 to indicate the intended traffic flow and an additional sign on Guinea Road to alert motorists to dual left turns off the site. Ms. Gwinn said they also required the addition of a lane usage sign on the JCC site to alert people exiting as to which lane they needed to use. It was her understanding that, subsequently, they also added a left turn arrow to the traffic signal at the existing light at Route 236 and Guinea Road. Ms. Gwinn said there were changes made by VDOT and it was her understanding that the special exception specifically provided for them. Ms. Gwinn said she was not at the meeting in December 1993 in Supervisor Trapnell's office. She said she certainly could appreciate the concerns of the citizens if they believed there had been agreement on one set of conditions which was subsequently revised by VDOT; however, it was within the breadth of the special exception that such an action was specifically provided for. Mr. Pammel asked, with the modifications and changes, if they went back to the Board for subsequent inclusion, to which Ms. Gwinn replied that they had not. Mr. Pammel asked then if this was an open ended situation, allowing VDOT to make modifications according to the language set forth in the special exception, so that after this occurred the Board was not aware of the changes that VDOT had made. Ms. Gwinn said that she would not characterize the situation as open ended because the special exception provided that the improvements would be made, provided that VDOT approved them. She said she believed that was not uncommon in the case of a rezoning, special permit or special exception. She said that conditions could be developed but they had to be reviewed by Engineering and VDOT for their approval, so it did not appear unusual to her that a condition had that provision built in. Ms. Gwinn said that Supervisor Trapnell had been aware of the subsequent changes by VDOT but, because the Condition

specifically provided that VDOT had the right to approve it, it did not appear to Ms. Gwinn that it was required to go back to the Board of Supervisors for an amendment to the special exception. Ms. Gwinn said that, in many ways, much of what was intended by Condition 6 was still retained by VDOT. Ms. Gwinn said she could not speak for VDOT; however, the Condition provided that they had final approval and, when they gave their approval and mandated as they did, she accepted it. She also said she believed that was largely responsible for the citizens appeal. Mr. Pammel said he, too, had a little problem with VDOT being the final signoff, because there always is an area which may be subject to negotiation for further modification, and VDOT is certainly not the end-all in any of the problems that are encountered, which caused him concern. Ms. Gwinn said that others had expressed that concern.

Ms. Gwinn said that the other part of the appeal addressed the authority of issuing the Non-RUP. She believed that, because there were changes by VDOT in terms of what they approved, it was not until December 15, 1993, that a VDOT plan was finally approved, which required some additional provisions to be made. Ms. Gwinn noted that, in the midst of what was probably the worst winter we have had in many years in terms of temperatures and ice storms, she was advised by the Gesher School that, because of weather conditions, they were precluded from completing the road improvements and especially the concrete work required to pull the nose back; the painting and striping also were not possible because of the temperatures. She said they requested the ability to open with a 45-day time period to complete the road improvements. Ms. Gwinn said she was sensitive to the concerns of the citizens and very aware that the application had been controversial and that the conditions were very important, especially Condition 6 which addressed valid safety and access concerns at the intersection. She said it appeared to her that the major purpose of the Condition was to ensure that traffic coming and going did not block the intersection of Route 236 and Guinea Road, as well as to ensure that access was not impeded along the service drive which serves the fire station and a subdivision to the west. She said it appeared to her that a possible interim measure could be taken to ensure that the two areas were not blocked and to ensure that any stacking occurred on the JCC site and not out on the service drive or intersection. Ms. Gwinn said that, recognizing the impossibility of completing the road improvements, due to the exceptionally extreme winter weather, she looked toward an interim measure to achieve the same purposes; thus, she issued the Non-RUP, stating that at the time school opened there had to be a STOP sign and a DO NOT BLOCK intersection sign on the JCC site to keep all the traffic contained there, and that the work had to be completed as soon as possible, but no later than 45 days hence, and that either the signs had to be installed or a person hired to perform that function so that the adequacy of the intersection and the service drive would be ensured, which was done.

Ms. Gwinn went on to say that the severe weather unfortunately continued and the school was unable to complete all of the work; she received a subsequent request from the engineer for an additional 45 days and she said that was not possible. She said they discussed what could be done and the result was that all the signage and painting and the STOP bar on the JCC driveway could be completed; but they could not do the striping on the JCC property for the dual left turns until the temperatures allowed the concrete work to be done to pull the nose back, which also applied to painting the lanes. Everything but those last two items was completed within the initial 45 days. It was Ms. Gwinn's understanding that the balance of the work was completed by April 5, 1994 and, subsequently, a revised Non-RUP had been issued.

Mr. Pammel said it was his understanding that the provisions of the Ordinance allow for a waiver of 45 days for Residential Use Permits but that there is no provision in the Ordinance for Non-Residential Use Permits. He asked Ms. Gwinn to respond to that because he wanted to know, specifically, under what section of the Ordinance the waiver was granted. Ms. Gwinn referenced page 2 of the memo which set forth Sect. 18-704, Par. 2, which addressed a lot being final graded, stating that sodding and seeding must be complete and that exceptions may be granted. She submitted that the paragraph was not limited to residential use only and it was her understanding that exceptions are the recognition that, in winter, there may be problems not just limited to residential use. She noted that Par. 3, landscaping and screening, although not specifically, provides that, in the winter, exceptions are made for landscaping and screening when a bond is posted for non-residential as well as residential use. Mr. Pammel said he understood that was standard operating procedure; however, he said, it was specifically represented that the Ordinance provides specifically for a waiver for a residential use but did not use the same language for a Non-RUP; he asked why the inconsistency existed in the Ordinance. Ms. Gwinn said her memory was that the provisions were adopted in the early 1970's; she did not know exactly why but she believed there obviously was a greater emphasis on protection for residential use and home owners; she said it could have been an oversight that non-residential use was not also addressed. Mr. Pammel noted that the appellants seized upon this particular issue to justify their position.

Mr. Dively asked for a clarification that all the conditions for the special exception had now been met and Ms. Gwinn said that was correct. Mr. Dively said, then, that this point was essentially "moot," to which Ms. Gwinn said that also was correct.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to dismiss the appeal because the issues were "moot." Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Hammack was not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 156, May 10, 1994, (Tape 1), ACTION ITEM:

Approval of Resolutions from May 3, 1994 Hearing

Mr. Pammel so moved. Mr. Hammack seconded the motion which carried unanimously. Mrs. Thonen was absent from the meeting.

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Page 156, May 10, 1994, (Tape 1), Action Item:

Approval of Minutes from April 12, 1994 Hearing

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

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Page 156, May 10, 1994, (Tape 1), Action Item:

Request for Date and Time for
A. Laine Bailey Appeal

William E. Shoup, Deputy Zoning Administrator, referenced his memo concerning the completeness and timeliness of this appeal application, stating that the Notice of Violation issued to the appellant was dated February 16, 1994, regarding a fence located in the front yard of the lot; a follow-up notice dated March 25, 1994, reiterated the February 16 information and extended the deadline for compliance; the appeal application does not specify which notice is being appealed. He said the appeal was filed on April 19, 1994, and it was his judgement that what the appellant was challenging was the notice dated February 16, 1994; the March 25, 1994, notice only indicated that the appellant remained in violation and did not constitute a new decision with respect to a violation. For that reason, he said it was staff's judgement that the appeal was not timely filed and staff recommended that the appeal not be accepted.

Mr. Shoup said that that the appellant had filed a variance application which would be be coming before the BZA on June 14, 1994.

Mr. Pammel moved to reject the appeal as not being timely filed. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 156, May 10, 1994, (Tape 1), Action Item:

Request for Out-of-Turn Hearing
Joseph T. Findaro, VC 94-H-054
Currently scheduled for July 12, 1994 (one week early)

Mr. Ribble moved to deny this request. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 156, May 10, 1994, (Tape 1), Action Item:

Request for Intent to Defer
Reston North Point Appeal
Scheduled for June 21, 1994
Clerk suggested morning of September 27, 1994

Mr. Pammel noted that granting the request for deferral might eliminate the need for the appeal and so moved. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 156, May 10, 1994, (Tape 1), Action Item:

Request for Intent to Defer
Donald H. & Linda L. Frazier Appeal A 93-D-016
Scheduled for May 24, 1994

Jane C. Kelsey, Chief, Special Permit and Variance Branch, suggested that it would be best to defer this appeal until September to find out what the Board might do at the June 2nd hearing for the variance, and still allow time to advertise if the appellants wished to go forward. William E. Shoup, Deputy Zoning Administrator, said he had no objection.

Mr. Pammel moved to defer until the morning of September 27, 1994. Mr. Dively seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 157, May 10, 1994, (Tape 1), ACTION ITEM:

Approval of April 26, 1994 Resolutions

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

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Page 157, May 10, 1994, (Tape 1), Action Item:

Request for Additional Time
South Congregation of Jehovah's Witnesses
SPA 89-M-044

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

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Page 157, May 10, 1994, (Tape 1), Action Item:

Approval of Minutes from March 29, 1994

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

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Page 157, May 10, 1994, (Tape 1), Action Item:

Request for Date and Time
Camille Washington Brown Appeal
Clerk suggested the morning of June 28, 1994

Mr. Pammel recalled that William E. Shoup, Deputy Zoning Administrator, had indicated in his memo that the appeal was considered to be timely filed and complete. Mr. Pammel moved to schedule the appeal for June 28, 1994, and the motion carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 157, May 10, 1994, (Tape 1), Action Item:

Jane C. Kelsey, Chief, Special Permit and Variance Branch, noted that the Board had been given copies of revised agendas for the balance of the session, stating that the Clerk was now scheduling for July 26, 1994. She noted that there would be no meeting the following week, May 17, 1994.

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Page 157, May 10, 1994, (Tape 1), Scheduled case of:

SWANEE A. BUSIC; LENA GENTRY; AND PINE RIDGE CIVIC ASSOCIATION, APPEAL 94-M-011

(This case was heard earlier in the public hearing.)

Mr. Hammack took this opportunity to note for the record why he left the room and did not participate in the hearing of this appeal earlier in the meeting. He said he served as a member of the Board of the Mantua Citizens Association this year and, although they were not making the appeal themselves, exhibits were distributed which showed Mantua Citizens Association on the face and he believed it would be best if he did not participate, to avoid any conflict of interest or even the appearance of a conflict of interest.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

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

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

SUBMITTED: May 24, 1994

APPROVED: June 7, 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 May 24, 1994. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Mary Thonen and Paul Hammack were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:13 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 159, May 24, 1994, (Tape 1), Scheduled case of:

9:00 A.M. FREDERICK L. BUNCH, JR., VC 94-L-016 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 19.8 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-507). Located at 4107 Komes Ct. on approx. 10,714 sq. ft. of land zoned R-5. Lee District. Tax Map 92-4 ((6)) 438.

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, Mr. Bunch, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located at 4107 Komes Court north of Huntley Meadows Park, is 10,714 square feet in size, is zoned R-5, and is developed with a single family detached dwelling. The request for variance resulted from the applicant's proposal to construct a screened porch addition 19.8 feet from the rear lot line. A minimum rear yard of 25 feet is required on a lot zoned R-5; therefore, the applicant was requesting a variance of 5.2 feet from the minimum rear yard requirement. Mr. Hunter said staff had received one letter regarding the application after the Board received its package.

The applicant, L. Frederick Bunch, Jr., 4107 Komes Court, Alexandria, Virginia, read a prepared statement into the record addressing each of the required standards. (A copy is contained in the file.) He said the placement of the house on the lot by the builder necessitated the need for a variance and noted that the property backs up to homeowners open space.

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

Mr. Ribble made a motion to approve VC 94-L-016 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 17, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-L-016 by L. FREDERICK BUNCH, JR., under Section 18-401 of the Zoning Ordinance to permit construction of addition 19.8 feet from rear lot line, on property located at 4107 Komes Court, Tax Map Reference 92-4((6))438, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 24, 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-5.
3. The area of the lot is 10,714 square feet.
4. The applicant has met the nine standards, in particular exceptional shallowness of the lot and the placement of house on the lot.
5. The request is only for a small 72 square foot variance.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Dewberry & Davis, dated February 10, 1994, submitted with this application and is not transferable to other land.

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

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

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

Mr. Kelley seconded the motion which carried by a vote of 5-0. Mrs. Thonen 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 June 3, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 160, May 24, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ELAINE MARROS, VC 94-S-039 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.4 ft. from side lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 6708 Harwood Pl. on approx. 17,970 sq. ft. of land zoned R-3. Springfield District. Tax Map 89-2 ((4)) (3) 5. (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, Ms. Marros, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is located south of Old Keene Mill Road, is 17,970 square feet in size, is zoned R-3, and is developed with a single family detached dwelling. The request for variance resulted from the applicant's proposal to construct a garage addition 10.4 feet from the northern side lot line. A minimum side yard of 12 feet is required on a lot zoned R-3; therefore, the applicant was requesting a variance of 1.6 feet from the minimum side yard requirement. Mr. Hunter said staff had received a petition regarding the application after the packages were delivered and copies were before the BZA.

Elaine Marros, 6708 Harwood Place, Springfield, Virginia, said there is a single car carport on the property which she would like to enclose into a two car garage. Ms. Marros noted that the lot is narrow with a very steep slope in the rear; therefore, there is no other place to construct a garage.

Chairman DiGiulian asked if the enclosure would be any closer to the lot line than the existing carport. Ms. Marros said it would not.

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

Mr. Pammel made a motion to approve VC 94-S-039 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 17, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-S-039 by ELAINE MARROS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.4 feet from side lot line, on property located at 6708 Harwood Place, Tax Map Reference 89-2((4))(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 May 24, 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 17,970 square feet.
4. The applicant met the specific criteria for a variance, specifically the narrow dimension of the width of the lot.
5. The applicant is proposing to enclose an existing carport and the enclosure will be no closer to the lot line than the carport presently exists.
6. The requested variance is 1.6 feet, which is a very nominal variance.

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

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

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

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

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

1. This variance is approved for the location of the specific addition shown on the plat prepared by Kenneth W. White, Land Surveyor dated February 22, 1994, 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. Dively seconded the motion which carried by a vote of 5-0. Mrs. Thonen 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 June 3, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 162, May 24, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MARVIN R. SOLOMON, VC 94-V-018 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.5 ft. from side lot line and 14 ft. from rear lot line (12 ft. min. side yard req. and 15.5 ft. min. rear yard req. by Sect. 10-104). Located at 2006 Shenandoah Rd. on approx. 10,451 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-1 ((9)) (13) 19.

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

Don Heine, Staff Coordinator, presented the staff report. He said the 10,451 square foot property is located on the north side of Shenandoah Road within the Hollin Hall Village Subdivision and is surrounded on four sides by single family detached dwellings in the R-3 District. The applicant was requesting a variance to allow a 400 square foot detached garage to remain 2.5 feet from a side lot line and 14.0 feet from the rear lot line. The Zoning Ordinance requires a 12 foot minimum side yard and a 15.5 foot minimum rear yard; therefore, a variance was requested for 9.5 feet from the minimum side yard requirement and 1.5 feet from the minimum rear yard requirement.

Marvin R. Solomon, 2006 Shenandoah Road, Alexandria, Virginia, said when he purchased the house in 1953 he had not considered adding a garage, but that he had put an addition on the rear of the house which now makes it difficult to construct a garage. He addressed each of the required standards and said the lot is narrow and tapers to the rear, the variance is only needed for one corner of the proposed garage, and other houses in the neighborhood have garages. Mr. Solomon said the existing metal shed would be removed to accommodate the construction of the garage.

A discussion took place between Mr. Ribble and the applicant as to why the garage needed to be 20 feet x 20 feet in size. Mr. Solomon said he needed to park two cars in the garage and that he would also like to have a workshop/storage area.

In response to a question from Mr. Dively regarding the location of other garages in the neighborhood, Mr. Solomon said they were in the rear of the lots.

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

Mr. Ribble made a motion to deny VC 94-V-018 for the reasons noted in the Resolution.

Mr. Kelley seconded the motion but said he could support a one car oversized garage.

The motion to deny passed by a vote of 5-0 with Mrs. Thonen and Mr. Hammack being absent from the meeting.

Chairman DiGiulian asked the applicant if he would be willing to reduce the size of the garage and Mr. Solomon said that he would. At the applicant's request, the Board waived the 12-month time limitation for filing a new application.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-018 by MARVIN R. SOLOMON, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 2.5 feet from side lot line and 14 feet from rear lot line, on property located at 2006 Shenandoah Road, Tax Map Reference 102-1{{9}}{13}19, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 24, 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 10,451 square feet.
4. This was a tough case because the applicant was correct that the lot was small at the time of the Zoning Ordinance and does taper toward the rear. However, part of the hardship might possibly be self-created because the applicant constructed an addition on the rear of the house which limited the location of the garage. A two car garage would be too much for the area.

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

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

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

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

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

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

The Board of Zoning Appeals granted the applicant's request to waive the 12-month waiting period for filing a new application.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 3, 1994.

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Page 164, May 24, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MESSIAH PRESBYTERIAN CHURCH, SP 94-S-009 Appl. under Sect(s). 6-303 of the Zoning Ordinance to permit church and related facilities. Located at 8134 Old Keene Mill Rd. on approx. 2,933 sq. ft. of a 0.8124 ac. of land zoned PRC and HC. Springfield District. Tax Map 79-4 ((11)) 1, 2, 3A, 3B, 3C, 3E, 4A, 4C, 5A, 5C, 6A and 6C.

Chairman DiGiulian said it appeared the notices were not in order and staff was suggesting that the application be rescheduled to June 21, 1994, at 9:30 a.m.

Mr. Pammel so moved. Mr. Dively seconded the motion which passed by a vote of 5-0 with Mrs. Thonen and Mr. Hammack being absent from the meeting.

Marilyn Anderson, Assistant Branch Chief, informed the BZA that the June 21, 1994, public hearing was a night meeting; therefore, the time needed to be corrected to 8:00 p.m. Mr. Pammel amended the motion.

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Page 164, May 24, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THE MEWS HOMEOWNERS ASSOCIATION, INC., SPA 91-L-002 Appl. under Sect(s). 3-503 of the Zoning Ordinance to amend SP 91-L-002 for community swimming pool and tennis court to amend development conditions. Located at 7047 Fieldhurst Ct. on approx. 2.16 ac. of land zoned R-5. Lee District. Tax Map 91-2 ((17)) pt. A3 (formerly 91-2 ((17)) pt. A2).

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

Don Heine, Staff Coordinator, presented the staff report. He said the 2.16 acre property is located on the southeastern end of Fieldhurst Court; is in the R-5 District; and, is developed with a swimming pool, tennis court, and bath house. The lots to the north and west are developed with townhouses in the R-5 and PDH-4 Districts, respectively. Vacant land in the R-5 District adjoins the property on the east and south and Telegraph Road is located to the south. The applicant was requesting an amendment to the special permit conditions to increase the membership of a community swimming pool and tennis club from 121 to 140. There will be no physical changes to the site.

Mr. Heine said it was staff's position that by imposing the proposed development conditions, 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 4 Uses. Therefore, staff recommended approval of SPA 91-L-002 subject to the imposition of the proposed development conditions contained in Appendix 1 of the staff report.

The applicant's attorney, Keith C. Martin, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, said the Mews Homeowners Association had voted to annex into the Association 19 contiguous townhouse units, which would be under construction shortly. Mr. Martin said since people would probably be moving into the townhouses at the end of the summer, the Mews HOA was requesting an increase in its membership. He added there will be no physical changes associated with the application since the pool and tennis club already exist.

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

Mr. Kelley made a motion to approve SPA 91-L-002 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 91-L-002 by THE MEWS HOMEOWNERS ASSOCIATION, INC., under Section 3-503 of the Zoning Ordinance to amend SP 91-L-002 for community swimming pool and tennis court to amend development conditions, on property located at 7047 Fieldhurst Court, Tax Map Reference 91-2((17))pt. A3 (formerly 91-2((17))pt. A2), Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on May 24, 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-5.
3. The area of the lot is 2.16 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in 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 Dewberry & Davis dated January 9, 1991, revised through February 17, 1994, and approved with this application, as qualified by these development conditions.

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

4. The maximum number of employees on site at any one time shall be two (2).

5. Memberships shall only be sold to residents of the Mews and Turnberry Mews Subdivisions and shall be limited to 140 household memberships.

6. There shall be 10 parking spaces provided. If the Director of DEM requires additional parking spaces above the ten (10) shown on the special permit plat, the spaces shall be provided in such a way as to not infringe on the required 25 foot transitional screening yard along the southwestern and northwestern lot lines. An amendment to this special permit shall not be necessary if the additional spaces are located in accordance with this condition. All parking shall be on site.

7. Pool lighting, including building mounted, coach and sidewalk lights, shall be limited to 10 feet in height, shall be directed downward into the pool area and shall be directed so as not to spill onto adjacent properties. There shall be no flood lights on the western side of the building. The coach lights or sidewalk lighting shall be generally located as shown on the special permit plat.

8. The regular hours of operation for the swimming pool and tennis court shall be limited to 9:00 A.M. to 9:00 P.M. After-hour parties for the swimming pool shall be governed by the following:

   Limited to six (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. Contiguous property owners shall consist of Units 7034, 7035, 7036, 7037, 7038, 7039, 7040, 7041, 7042, 7053, 7044, 7045, 7046 Fieldhurst Court and Units 7019, 7021, 7023, 7025, 7027, 7029, 7031, 7033 Chesley Search Way.

   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.

9. There shall be no swim meets held at the facility in which competitors live outside of the News and Turnberry Mews subdivisions.

10. There shall be no amplified noise emitted from the site.

11. The plantings shown on the special permit plat shall be deemed to satisfy the transitional screening requirement and shall be maintained. The fencing around the pool area and tennis courts shall be deemed to satisfy the barrier requirement and shall be maintained.

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

Mr. Ribble seconded the motion which carried by a vote of 5-0. Mrs. Thonen 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 June 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 166, May 24, 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. DEF. FROM 1/25/94 TO ALLOW THE APPELLANTS TO FILE A SPECIAL PERMIT - NOTICES REQUIRED.)

Chairman DiGiulian said the BZA had issued an intent on May 10, 1994 to defer the appeal to September 27, 1994, at 10:00 a.m.

Mr. Kelley so moved. Mr. Dively seconded the motion which passed by a vote of 5-0 with Mrs. Thonen and Mr. Hammack being absent from the meeting.

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Page 166, May 24, 1994, (Tape 1), Scheduled case of:

9:30 A.M. WILLIAM A. STEWART, III, APPEAL 94-M-010 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that a freestanding sign erected on appellant's property is an outdoor advertising sign, a use that is not permitted in the R-2 District, and therefore appellant is in violation of Zoning Ordinance provisions. 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 4/26)

William Shoup, Deputy Zoning Administrator, said the subject property is located at 3414 Holly Road, is zoned R-2, is one acre in size, and is developed with a one-story single-family framed dwelling and detached garage. Mr. Shoup said the appeal dealt with the Zoning Administrator's determination that a freestanding sign erected on the appellant's property is an outdoor advertising sign, a use that is not permitted in the R-2 District; therefore, the appellant is in violation of the Zoning Ordinance. He said staff's position is set forth in a memorandum dated May 17, 1994 and proceeded to summarize the key points.

Mr. Dively interjected that he was sure the BZA members had read the staff report and that he would like to discuss only what he believed to be the key issue. He said it appeared the appellant was not objecting to the zoning decision, although he did believe there was a first amendment issue. Mr. Shoup said the issue dealt with constitutionality. Mr. Dively asked if staff had relied on the Virginia Supreme Court case of Board of Zoning Appeals vs. University Square, and Mr. Shoup said that was correct. Mr. Dively asked staff to address only the constitutionality issue.

Mr. Shoup said it was staff's position that the constitutionality question was not a matter to be addressed by the Zoning Administrator nor the Board of Zoning Appeals (BZA) in making a decision relating to an appeal. Mr. Dively asked if staff believed the appropriate avenue would be for the appellant to institute a suit against the County. Mr. Shoup said Patrick Taves with the County Attorney's office was present and that he would defer to him for a response.

Mr. Taves said it appeared that the appellant was attempting to attack the underlying Zoning Ordinance itself, which was interpreted by and was the basis for the Zoning Administrator's decision; therefore, the BZA would not be the appropriate forum. He said as noted in the University Square case, the BZA is a creature of statute and its powers are strictly construed and he could not recall an instance when the BZA had ruled on the constitutionality of the Zoning Ordinance provisions.

Mr. Dively asked if there was anywhere in the statute that the BZA has the power to go beyond strictly zoning considerations. Mr. Taves said not in is his opinion. He said the Court, in the University Square case, interpreted that the trial court is supposed to look at the BZA's decision and determine whether it is plainly wrong or an abuse of discretion, thereby making it very clear that the trial court did not have the authority to deal with constitutionality, and as a derivative of that decision the court was in essence saying neither did the BZA.

The appellant, William Stewart, 3414 Holly Road, Annandale, Virginia, said he had been prepared to stand before the BZA as Patrick Henry did and bang his fist on the podium. Mr. Stewart said for many years one of his neighbors has continually filed complaints against him with the County, most of them unfounded. He said there is no recourse for an individual who has had a County zoning person in his yard every 6 months for the last 14 years. Mr. Stewart said, until the Freedom of Information Act was passed, he had no idea who was filing the complaints and pointed out that the complainant lives more than a mile from his property and the adjacent neighbors have filed no complaints. He said he believed that he was poking fun more at the complainant than the County, but that no one had the right to tell him what he can and cannot say. Mr. Stewart said he will probably not put the sign up again, but believed it was his right to do so if he chose to. He said the sign was not an advertisement for a product or a business but merely a statement.

Chairman DiGiulian called for speakers and the following citizen came forward.

Col. Charles E. Preble, 8027 Gallot Drive, Annandale, Virginia, represented the Camelot Civic Association and stated that in a meeting of the general membership on May 17, 1994, the Association authorized him to appear before the BZA. He commended the appellant for the many capital improvements he has made to his residence and grounds since acquiring the property. Col. Preble said if the appeal dealt with erecting a freestanding sign advertising the appellant's landscaping business, Camelot would be opposed although Camelot does endorse and encourage small business entrepreneurship, such as landscaping. If the appeal seeks to re-erect the vendetta sign that was on the property in January, Col. Preble said Camelot would also be opposed. He recommended that A 94-M-010 be denied since the sign is not compatible with the residential character of the neighborhood.

Mr. Kelley asked the speaker if signs were erected in the community during a political campaign. Col. Preble said they were and pointed out that the County Code specifically provides for those. A discussion took place as to what the speaker believed constituted a vendetta sign. Col. Preble replied in his opinion it is a sign that lets everyone know that one party has "an axe to grind" with another party.

Mr. Dively asked what classification a sign would fall under that was erected for 30 days saying "Clinton is a no-good womanizer." Mr. Taves said there are no provisions in the Zoning Ordinance that allows for this type of sign. Mr. Shoup said a citizen is very limited as to the type of sign that can be erected on private property.

Chairman DiGiulian said it was not clear as to what the appellant's goal was in erecting the sign. Mr. Taves pointed out that the appeal did not challenge the Zoning Administrator's determination that the sign was illegal, but was attempting to challenge the Ordinance itself from which the Zoning Administrator concluded that the sign was illegal. Therefore, if the BZA attempted to make that determination, it would be dealing with an issue that is not really before it, since the only ground was the constitutionality. Chairman DiGiulian said he was aware of that, but he still had to make a decision as to how he would vote and he had to look at the entire issue.

Mr. Kelley said he had taken an oath to uphold the Constitution, and now he was being told that the Constitution did not mean much. Mr. Taves said that was not what he was saying, only that it was a matter of jurisdiction and again referenced the Board of Zoning Appeals vs. University Square case. He added that the sign was not a political sign; therefore, it would not fall under those guidelines. Mr. Shoup agreed.

Mr. Pammel noted that the appellant had failed to obtain a sign permit before erecting the sign.

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

Page 168, May 24, 1994, (Tape 1), WILLIAM A. STEWART, III, APPEAL 94-M-010, continued from Page 167)

Mr. Dively made a motion that the appeal be denied, but on very narrow grounds. He said that he wanted it explicitly noted that the BZA would not make any decisions regarding content of signs, whatsoever. Mr. Dively said he believed the only issue before the BZA was a constitutional issue and that it had been persuasively argued that the BZA does not have the statutory jurisdiction to entertain such an issue and that the issue must go directly to the Fairfax County Circuit Court.

Mr. Kelley said he would second the motion, but before doing so, he asked Mr. Shoup to respond as to why the constitutional issue was raised with regard to the Cupp court case. Mr. Taves explained that the Cupp case dealt with the issue as to whether or not a certain action of the County, or any other government agency, constitutes a taking. He believed that the case had some pertinence in terms of the BZA's decisions because the BZA has the authority to impose conditions. Mr. Taves said perhaps there have been cases where staff has recommended the imposition of a particular condition, but the BZA concludes that the condition is not appropriate. He added the pertinence of the Cupp case would be the BZA taking in itself that it, when it acts, cannot exceed constitutional boundaries, but Cupp has no relevance to this case.

Mr. Ribble seconded the motion.

Chairman DiGiulian said he would support the motion because it stated that the BZA does not have the authority to rule on the constitutionality of the Ordinance. He added that if the BZA was hearing an appeal based upon the Zoning Administrator's interpretation of that Ordinance, he would have a problem with the interpretation and that he did not believe there was any difference between the appellant's sign and a campaign sign.

Mr. Kelley agreed and said that he would support the motion very reluctantly and that he was not sure that the BZA could not rule on constitutionality in this type of case.

Mr. Pammel said he would support the Zoning Administrator's position based upon the rationale that it is a permissive Ordinance and staff has researched the Ordinance and cannot find a provision that would govern the sign. He added that, more importantly, a permit was not obtained for the sign.

The motion passed by a vote of 5-0 with Mrs. Thonen and Mr. Hammack being absent from the meeting.

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Page 168, May 24, 1994, (Tape 1), Action Item:

Approval of Resolutions from May 10, 1994

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

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Page 168, May 24, 1994, (Tape 1), Action Item:

Request for date and time for Appeal Application for
Melvin F. and Teresa F. Sellers

Mr. Kelley made a motion to accept the appeal and schedule the public hearing for the morning of July 5, 1994. Mr. Dively seconded the motion passed by a vote of 5-0 with Mrs. Thonen and Mr. Hammack being absent from the meeting.

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Page 168, May 24, 1994, (Tape 1), Action Item:

Approval of April 5 and April 19, 1994 Minutes

Mr. Pammel made a motion to approve the minutes as submitted. Mr. Dively seconded the motion passed by a vote of 5-0 with Mrs. Thonen and Mr. Hammack being absent from the meeting.

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Page 168, May 24, 1994, (Tape 1), Action Item:

Request for Additional Time for
Mary I. Llewellyn & Frederick D. Bean, VC 91-D-092

Mr. Dively asked if this was the first request. Marilyn Anderson, Assistant Branch Chief, replied that it was. Mr. Dively made a motion to grant the applicants' request for additional time making the new expiration date November 15, 1996. Hearing no objection, the Chair so ordered.

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Atousa Amin-Shakeri, VC 94-D-060

In response to a question from Mr. Dively, Marilyn Anderson, Assistant Branch Chief, said the 90-day timeframe would have caused the case to be scheduled on August 9th, but staff has scheduled the case for July 26th, which is in essence a two-week out-of-turn hearing. Ms. Anderson added that if the BZA chose to schedule the case earlier she would suggest July 12th.

Following a discussion among the BZA, Mr. Dively made a motion to deny the request. Mr. Ribble seconded the motion which passed by a vote of 5-0 with Mrs. Thonen and Mr. Hammack being absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:15 a.m.

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

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

SUBMITTED: June 14, 1994

APPROVED: June 28, 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 June 2, 1994. The following Board Members were present: Vice Chairman John Ribble; Robert Dively; Paul Hammack; and James Pammel. Chairman John DiGiulian; Mary Thonen; and Robert Kelley were absent from the meeting.

Vice Chairman Ribble 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 Vice Chairman Ribble called for the first scheduled case.

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Page 171, June 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PAUL A. & JEANNE E. VANDER HYDE, VC 94-V-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line and 7.2 ft. from side lot line (25 ft. min. rear yard req. and 10 ft. min. side yard req. by Sect. 3-407). Located at 1803 Hunting Cove Pl. on approx. 12,832 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (7) 4.

Vice Chairman Ribble stated that the applicant had requested deferral and asked if anyone was present to speak to the deferral and the following citizens came forward

Elizabeth Demarest, 6117 Vernon Terrace, Alexandria, Virginia, and Leo Mayer, 5904 Mount Eagle Drive, Unit 1216, Alexandria, Virginia, addressed the Board of Zoning Appeals (BZA). They stated that they were in opposition to the deferral noting they had taken leave from their jobs in order to attend the meeting and a deferral would cause them to use additional leave. They also noted that their summer vacation plans may be disrupted if the hearing were to be deferred. In conclusion, they expressed their belief that the applicants' did not provide sufficient reason for the deferral and asked the BZA to hear the scheduled case.

Vice Chairman Ribble explained that the usual BZA policy was to grant one deferral and if the deferral was granted, the BZA would attempt to set a date acceptable to the neighbors.

In response to Mr. Hammack's question as to why the applicants needed a deferral, Jane C. Kelsey, Chief, Special Permit and Variance Branch, referred to the applicant's letter requesting deferral and said staff had no further information regarding the request.

Vice Chairman Ribble asked for a deferral date and Ms. Kelsey suggested June 28, 1994 at 9:30 a.m. Mr. Hammack asked Ms. Demarest and Mr. Mayer if the suggested date would be convenient and they indicated it would.

Mr. Dively made a motion to defer VC 94-V-019 to the suggested date and time. Mr. Hammack seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley absent from the meeting.

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Page 171, June 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. GREGORY J. & JANICE L. BUDNIK & ROBERT, TERESA, RICHARD & MARIAN SCRIMSHAW, VC 94-V-021 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit resubdivision of Lot 39 and part of Lot 34 to permit one buildable lot with lot width of 20.0 ft. and an outlot (150 ft. min. lot width req. by Sect. 3-106). Located at 8309 Telegraph Rd. on approx. 1.66 ac. of land zoned R-1. Mt. Vernon District. Tax Map 99-4 ((1)) 39 and pt. 34.

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. Budnik 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 re-subdivision of Lot 39 and a part of Lot 34 to permit one buildable lot with a lot width of 20.0 feet. The Zoning Ordinance requires a minimum lot width of 150 feet in the R-1 Zoning District.

Ms. Langdon said the property is currently vacant and is planned for residential use at one to two dwelling units per acre. The immediate area is characterized by lots containing single family detached dwellings or vacant lots. She explained that existing Lot 39 was currently landlocked with no legal right of access. The applicant proposed adjusting the lot lines between Lots 34 and 39 to obtain a 20.0 foot wide access area to existing Lot 39. Ms. Langdon stated that approximately 4,000 square feet of land along the southwestern lot line of existing Lot 34 would be subdivided to become part of Lot 39 so that Lot 39 would be able to access Telegraph Road. Additionally, approximately 4,000 square feet of existing Lot 39 along the northeastern lot line would be subdivided to become part of Lot 34. She explained that the applicant intended to create a 3,100 square foot outlot along the southern lot line of Lot 39. The outlot would be conveyed to Ralph Yow, the owner of Lots 41 and 42, in order to provide an area on which to maintain the driveway and embankment on Lot 42.

In summary, Ms. Langdon said it was staff's belief that the application met the variance standards and recommended approval subject to the development conditions contained in the staff report dated May 24, 1994.

Mr. Hammack asked whether Mr. Yow had agreed to accept the outlot. Ms. Langdon said that, although Mr. Yow was not included in the application, the applicants had indicated an agreement had been reached.

The applicant, Gregory Budnik, 8445 Canyon Oak Drive, Springfield, Virginia, addressed the BZA. He referred to the statement of justification contained in the staff report saying they needed the variance in order to gain access to the land-locked property. Mr. Budnik said negotiations were underway with the owner of Lot 34 in an attempt to achieve this objective. He explained that until approximately three years ago the property was owned by the same person; therefore, Lot 39 never had formal access through Lot 34. The subsequent sale of the properties, with a defective easement, had resulted in the present dilemma. Mr. Budnik said that, although the owners of Lot 34 refused to grant the easement, they were willing to adjust the lot lines. Continuing, he noted that rather than pursue the matter through the court system, he had opted to use the zoning process. In summary, Mr. Budnik asserted the reasons the application met the nine standards and noted the neighbors, as well as the Newington Civic Association, supported the request.

Mr. Budnik asked that if the BZA had dissension, the case be granted a deferral. He expressed concern regarding the proposed development conditions and asked that the following be substituted for proposed Development Conditions 5 and 6:

5. The applicant shall comply with the Chesapeake Bay Preservation Ordinance at the time of submission of the resubdivision plat and the grading plan and building permit. All applications shall be reviewed by DEM for accuracy and for compliance in accordance with the Chesapeake Bay Preservation Ordinance.

He explained that the Department of Environmental Management (DEM) would have full latitude in granting approvals, denials, or modifications.

In response to Mr. Hammack's questions, Mr. Budnik said that he did not have a copy of the substitute development condition, but would produce one. Mr. Budnik explained that, although Mr. Yow would not grant an easement on his property, he had granted informal access to the applicants' property so that construction could take place. He explained in return, Mr. Yow had asked if he could buy a 20 foot strip along the driveway. Mr. Budnik said that he did not have a formal agreement because he thought that once Outlot A existed, he could simply convey the property to Mr. Yow. Mr. Hammack expressed concern regarding the outlot and expressed his belief that a development condition which committed the transfer of Outlot A to the owner of Lots 41 and 42 should be included in the Resolution. Mr. Budnik noted that the price for Outlot A had not been established. He said he would agree to the condition as long as it would not cause a processing problem or prevent his obtaining a nominal price for the outlot.

Vice Chairman Ribble questioned Mr. Budnik about the previously recorded deed of easement. Mr. Budnik explained that the original owner sold the property to a developer who, because of financial problems, sold Lot 34 to the Scrimshaws. Continuing to explain, he said the Scrimshaws purchased the property with a twenty foot easement which is the portion of the property which would be involved in the adjustment of the lot lines. He further explained that because there were four owners of the property and only two had signed the easement agreement, the easement was not valid. Mr. Budnik noted that he chose to attempt to resolve the issue by applying for the variance rather than through litigation.

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

Mr. Hammack made a motion to grant VC 94-V-021 for the reasons reflected in the Resolution subject to the development conditions contained in the staff report dated May 24, 1994, with the modifications as reflected in the Resolution.

Mr. Dively asked Mr. Hammack to explain his concern regarding the outlot. Mr. Hammack described one of the characteristics of an outlot as being an unbuildable lot which is not taxed at the regular rate. He noted that many times the BZA has had applications regarding the use of outlots and noted that the applicant had addressed the outlot and indicated it was to be conveyed to another owner.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-021 by GREGORY J. AND JANICE L. BUDNIK, AND ROBERT, TERESA, RICHARD AND MARIAN SCRIMSHAW, under Section 18-401 of the Zoning Ordinance to permit resubdivision of Lot 39 and part of Lot 34 to permit one buildable lot with lot width of 20.0 feet and an outlot, on property located at 8309 Telegraph Road, Tax Map Reference 99-4((1))39 and part 34, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 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 1.66 acres.
4. The application meets the necessary standards for the granting of a variance.
5. Staff is justified in its recommendation because the property is landlocked.
6. The property has an unusual history and an unusual configuration.
7. The BZA has included an additional development condition which will resolve the concerns regarding the outlot.
8. The application would be in conformance with the Comprehensive Plan.

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

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

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

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

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

1. This variance is approved for the resubdivision of Lot 39 and part of Lot 34 as shown on the plat prepared by GJB Engineering, Inc., dated February 2, 1994, revised through May 4, 1994. All development shall be in conformance with this plat.

2. The driveway to Lot 39 shall be constructed in accordance with the Public Facilities Manual.

3. The applicant shall dedicate in fee simple to the Board of Supervisors 45 feet of right-of-way from the existing right-of-way line, plus 25 feet of grading/construction easements along the Telegraph Road frontage of Lot 39 upon request or at time of subdivision review, whichever occurs first.

4. Limits of clearing and grading shall be the minimum necessary to provide for the development as determined by the Urban Forestry Branch, Department of Environmental Management and shall be not greater than delineated on the plat.

5. The applicant shall comply with the Chesapeake Bay Preservation Ordinance at the time of submission of the resubdivision plat and the grading plan and building permit. All applications shall be reviewed by DEM for accuracy and for compliance in accordance with the Chesapeake Bay Preservation Ordinance.

6. The variance shall also be subject to the conveyance and acceptance of the proposed 3,100 square foot outlot by the applicant to the owners of adjacent Lot 41 and 42.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 174, June 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. RONALD T. HOLM, VC 94-L-022 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (deck) 8.0 ft. from rear lot line (13 ft. min. rear yard req. by Sects. 3-407 and 2-412). Located at 6301 Brockett's Crossing on approx. 8,334 sq. ft. of land zoned R-4 (Cluster). Lee District. Tax Map 91-3 ((14)) 24.

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. Holm replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to construct a deck addition. The deck was proposed to be located 8.0 feet from the rear lot line. A minimum rear yard of 13 feet is required by the Zoning Ordinance; therefore, the applicant was requesting a variance of 5.0 feet to the minimum rear yard requirement.

The applicant, Ronald Holm, 6301 Brockett's Crossing, Alexandria, Virginia, addressed the BZA. He stated that the exceptional topographical conditions of the pie shaped lot, as well as the placement of the house on the lot, has caused the need for the variance. Mr. Holm explained that the backyard is only twenty-five feet deep, while the front yard is forty-nine feet deep. He also noted that the power cable and french drain further restricted the use of the rear yard. Mr. Holm stated that the deck would be approximately eight feet in height and would require a twenty foot staircase. He expressed his belief that the renovation would not be detrimental to the area and noted his backyard is adjacent to the large wooded homeowners property. Mr. Holm explained the deck was also designed with security considerations and said he would be able to view the basement door and the deck staircase before leaving his dwelling. He further explained that the deck had been designed to accommodate the restrictions of the french drain and the power cable. In summary, Mr. Holm said the neighbors and the homeowners association supported the variance, and 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 VC 94-L-022 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 24, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-L-022 by RONALD T. HOLM, under Section 18-401 of the Zoning Ordinance to permit construction of addition (deck) 8.0 feet from rear lot line, on property located at 6301 Brockett's Crossing, Tax Map Reference 91-3((14))24, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 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 (Cluster).

3. The area of the lot is 8,334 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The lot has an unusual configuration.
6. The dwelling was located to the rear portion of the lot.
7. The french drain located in the rear yard and the power lines preclude placing the deck elsewhere on the lot.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Huntley, Nyce and Associates, Ltd., dated December 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.

Pursuant to Sect. 18-407 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 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley 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 June 2, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. STEPHEN V. WANSER, VC 94-V-023 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.5 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 6012 Fort Hunt Rd. on approx. 6,552 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-4 ((3)) (1) 5.

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

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to construct an addition 5.5 feet from a side lot line. A minimum side yard of 10 feet is required by the Zoning Ordinance; therefore, the applicant was requesting a variance of 4.5 feet to the minimum side yard requirement.

Ms. Langdon stated an approved plat showed a five foot minimum required side yard for the house which was constructed in 1948.

The applicant, Stephen Wanser, 6012 Fort Hunt Road, Alexandria, Virginia, addressed the BZA. He noted that, while the original structure was built within the Zoning Ordinance requirement, the setback requirements were changed. He further noted the adverse impact caused by the increased traffic on Fort Hunt Road had made the existing porch virtually unusable. Mr. Wanser stated that he would like to create a dining area by enclosing the existing screened porch; and, due to architectural consideration, he would also like to extend the addition seven feet further into the backyard. In summary, Mr. Wanser said the addition would be aesthetically pleasing, the neighbors supported the request, and asked the BZA to grant the request.

In response to Vice Chairman Ribble's question as to whether the addition would intrude any further into the side yard than the existing structure, Mr. Wanser said it would not.

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

Mr. Dively made a motion to grant VC 94-V-023 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 24, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-023 by STEPHEN V. WANSER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.5 feet from side lot line, on property located at 6012 Fort Hunt Road, Tax Map Reference 83-4((3))(1) 5, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 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 and HC.
3. The area of the lot is 6,552 square feet.
4. The request is in keeping with the way the house has been situated on the property for 40 years and is in keeping with the nature of the neighborhood.
5. The addition will not intrude any farther into the side yard than the existing structure.

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

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated February, 8, 1994, 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. Thonen, and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 177, June 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. GEORGE E. QUILLIN, VC 94-P-020 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.4 ft. from street line of a corner lot (30 ft. min. front yard req. by Sect. 3-407). Located at 1508 Crane St. on approx. 11,968 sq. ft. of land zoned R-4. Providence District. Tax Map 40-3 ((15)) 10.

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. Issac replied that it was. Vice Chairman Ribble noted that because part of the property lies in the City of Falls Church, the City had granted a variance for the second story of the structure which is within its jurisdiction.

Donald Heine, Staff Coordinator, presented the staff report and noted that the property is located on the northern corner of the intersection of Kennedy and Crane Streets. The boundary line between Fairfax County and the City of Falls Church traverses the southeastern part of the property. He stated that the applicant was requesting a variance to allow the enlargement of a dwelling to be located 20.4 feet from a front lot line of a corner lot. The Zoning Ordinance requires a 30.0 foot minimum front yard; therefore, the applicant was requesting a 9.6 foot variance.

The applicant's agent, David A. Issac, 1729 East Avenue, McLean, Virginia, addressed the BZA. He stated that the house, which was constructed in 1951, sits on an eighty foot wide lot which fronts on two streets. Mr. Issac explained that at the time the house was built, the builder was faced with the same problems and in order to build a usable house on the lot

had to obtain a Fairfax County variance. Mr. Issac said that the variance obtained in 1951 only applied to the first floor; therefore, in order to renovate the property a variance for the second story addition was required.

Mr. Issac used the viewgraph to depict the design of the proposed second story addition and explained that in order to consolidate the house, the existing foundation would be used for the bedroom addition. Mr. Issac said the design would also allow the applicant to retain the open space.

In response to Mr. Hammack's question as to whether the addition would encroach any further into the front yard than the existing structure, Mr. Issac said it would not. He affirmed that the structure would be aesthetically pleasing and would also be architecturally compatible with the neighborhood. In summary, Mr. Issac stated that the applicant had obtained a variance from Falls Church for the portion of the addition which falls within its jurisdiction. He expressed his belief that the application met the required standards and asked the BZA to grant a variance for the section which lies within the Fairfax County jurisdiction.

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

Betty Wright, 1006 Kennedy Street, Falls Church, Virginia, addressed the BZA. She stated that her property was most affected by the request and believed the renovations would be beneficial to the neighborhood.

The applicant, George Quillin, 1508 Crane Street, Falls Church, Virginia, addressed the BZA and presented a letter of support signed by the neighbors. He said the addition would enhance the property values in the area and would provide additional living space for his family.

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

Mr. Hammack made a motion to grant VC 94-P-020 for the reasons reflected in the Resolution subject to the development conditions contained in the staff report dated May 24, 1994 with an additional development condition 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 94-P-020 by GEORGE E. QUILLIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20.4 feet from street line of a corner lot, on property located at 1508 Crane Street, Tax Map Reference 40-3((15))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 June 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 11,968 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The request is to merely raise the roof of an existing structure and build a second story addition on the property which had been granted a variance when the house was constructed forty years ago.
6. The addition would be aesthetically pleasing and would be beneficial to the neighborhood.

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

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

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

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified two-story dwelling addition shown on the plat prepared by Huntley, Nyce and Associates, Ltd., dated February 16, 1994, 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. Dively seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 179, June 2, 1994, (Tape 1), Scheduled case of:

9:30 A.M. DONALD H. & LINDA L. FRAZIER, SP 94-D-017 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 22.0 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located at 7318 Westerly Ln. on approx. 18,827 sq. ft. of land zoned R-2. Dranesville District. Tax Map 21-3 ((13)) 6.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Hansbarger 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 7.7 foot high stoop to remain 22.0 feet from a front lot line. The Zoning Ordinance requires a minimum front yard of 35.0 feet; therefore, the applicant was requesting a modification of 13.0 feet to the minimum front yard requirement.

The applicants' attorney, William H. Hansbarger, with the law firm of Baskin, Jackson, and Hansbarger, 301 Park Avenue, Falls Church, Virginia, addressed the BZA and submitted three

letters in support of the application. Mr. Hansbarger addressed the provision for approval and expressed his belief that the application met all the provisions. He introduced Mrs. Frazier and said she would explain the sequence of events which lead to the request for a variance.

Mr. Dively referred to the photographs of the property and asked Mr. Hansbarger why there was a problem within the neighborhood. Mr. Hansbarger said he did not know. Mr. Pammel explained that the neighbors had criticized the size of the applicants' house and said it was overpowering.

The applicant, Linda L. Frazier, 7318 Westerly Lane, McLean, Virginia, addressed the BZA. She explained that when they renovated their house, they were faced with a very unusual grading problem. She used the viewgraph to depict the original site plan approved by Fairfax County and noted the thirty-five foot setback was shown to be at the bottom of the steps. She then showed the floor plan which again showed the same setback. Ms. Frazier stated that after the approved steps were constructed, the neighbors expressed concern with the design and asked they be redesigned to be more in keeping with the neighborhood. She said in order to achieve this goal, a landscape architect was given a contract to improve the appearance of the steps. She used the viewgraph to show the measures taken by the architect to redesign the steps so they would blend with the natural characteristics of the property.

Continuing, Ms. Frazier stated that during renovations the Fairfax County inspector had been consulted about the redesign of the porch and had determined that the steps would not encroach on the original site plan's thirty-five foot setback requirement. Again, she noted that the County officials, and the builder, had believed the approved steps were being constructed within the Zoning Ordinance requirements.

Ms. Frazier said it was not until the County issued a Notice of Violation and another survey was conducted that she realized an error had been made. She noted that they had done everything within their power to cooperate with the County and build within the Zoning Ordinance requirements.

Mr. Dively asked what had generated the opposition. Ms. Frazier said the West Langley Civic Association and Joseph Pinelli were the main opponents to the variance. She referred to the petition of support signed by all the property owners on Westerly Lane and noted the opposition was comprised of people who had been coerced by Mr. Pinelli and whose properties were not impacted by the renovation. Ms. Frazier expressed her belief that Mr. Pinelli was a difficult neighbor. She also stated that many members of the West Langley Civic Associate had called her to say they had not been apprised of the situation and had not supported the letter of opposition. She further stated that Westerly Lane was not a part of the Civic Association.

In response to a question from Mr. Pammel as to whether an existing house had been renovated within the same footprint, Ms. Frazier said he was correct. She stated that the steps were at approximately the same elevation as they were in the original house. She confirmed that the renovations had been based on the official survey which had indicated the structure was within the thirty-five foot setback.

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

Terry Henderson, 7307 Westerly Lane, McLean, Virginia, addressed the BZA. She stated that her family had lived on the property since 1934 and expressed her concern regarding the dispute and her hope that it would soon be resolved. Ms. Henderson said the applicants' structure is aesthetically pleasing and has enhanced the neighborhood.

The construction supervisor, Timothy McGowan, 2214 Orchid Drive, Falls Church, Virginia, addressed the BZA and said the property had a very steep grade which presented many problems. He explained that because of the slope, the applicants' house is much higher than the neighbors' house and expressed his belief that the neighbor's complaint was actually based on the size of the structure, and not on the setback issue.

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

Joseph Pinelli, 1107 Delf Drive, McLean, Virginia, addressed the BZA. He stated that although he had been characterized as being difficult, he has always treated the neighbors with respect. Mr. Pinelli said the request would have a negative impact on the adjacent properties. He went on to explain that the violation caused his yard to be shaded, deprived his property of the view, and had a detrimental impact on his privacy. He submitted a third letter of opposition from the owners of 7318 Westerly Lane.

Noting that he had only addressed the size of the structure, Mr. Pammel asked Mr. Panelli to speak to the application. Mr. Panelli said the Frazier's property is not on a single lane private road as stated in the application, but is on a County owned road. He expressed his belief that the error was not done in good faith and said that when the house was renovated the builder did not compensate for the steps; therefore, the steps were too steep and had to be modified. He used the viewgraph to show where the original steps had been and where the new steps were installed. Mr. Panelli noted that the applicant did not build to the specifications of the site plan.

Mr. Pammel explained that the structure was built within the Zoning Ordinance requirements. He noted the only encroachment was the height of the front steps which would have no impact on Mr. Panelli's property. Mr. Panelli said that the structure deprived his family of their privacy and noted that his wife and daughters could no longer sunbathe in the backyard.

Mr. Panelli stated that the steps could be redesigned and expressed his belief the expense would cause no hardship on the applicants. In summary, he said the variance would set a precedent, the structure does not conform to the neighborhood, and asked the BZA to deny the request.

In response to Mr. Dively's question as to whether the zoning in the area had been changed, Mr. Panelli said it had not. He explained that the original stair had not been in violation. Mr. Pammel noted the original plat showed the stairs to be in the same approximate position as the stairs in the application.

There being no further speakers Vice Chairman Ribble called for rebuttal.

Mr. Hansbarger said the non-compliance was done in good faith, the applicant met the necessary standards, and asked the BZA to grant the request.

Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant SP 94-D-017 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated May 24, 1994.

Vice Chairman Ribble called for discussion and said that he agreed with Mr. Pammel that the error was done in good faith. He expressed his belief the surveyor had made an honest mistake.

Mr. Pammel said the applicant had done everything possible to mitigate the error to the extent of hiring a landscape architect to reconfigure the stairs.

Mr. Hammack expressed his belief that the steps have not cause a detrimental impact on the neighborhood and said he agreed with Mr. Pammel's conclusions. He explained that one of the BZA's functions was to grant variances to allow steps to exceed the minimum yard requirements. He referred to the Zoning Ordinance which permitted the BZA to grant relief when an error was done in good faith.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-D-017 by DONALD H. AND LINDA L. FRAZIER, 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 22.0 feet from front lot line, on property located at 7318 Westerly Lane, Tax Map Reference 21-3((13))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 June 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;

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. Building Permits were issued and in every instance the plat and survey showed a setback of thirty five feet.

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

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

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

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

1. This special permit is approved for the location and the specified 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 Survey, Lot 6, Section Two, Bedford Acres," prepared by William E. Ramsey, P.C., dated December 7, 1992, revised August 3, 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 seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley 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 June 2, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 182, June 2, 1994, (Tape 1), Scheduled case of:

Donald and Linda Frazier Appeal

Mr. Pammel noted the Frazier Appeal was still outstanding. The appellants' attorney, William H. Hansbarger, with the law firm of Baskin, Jackson, and Hansbarger, 301 Park Avenue, Falls Church, Virginia, addressed the Board of Zoning Appeals (BZA)and said the BZA should consider the Frazier Appeal to be withdrawn. The BZA requested Mr. Hansbarger submit a written request for withdrawal. Mr. Hansbarger asked the BZA to waive the eight-day waiting period for the previous case. Mr. Pammel made a motion to waive the eight-day waiting period for Donald and Linda Frazier, SP 94-D-017. The Chair so ordered.

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Page 182, June 2, 1994, (Tape 2), Scheduled case of:

9:30 A.M. BRUCE L. HECOX, Appeal 94-L-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that appellant's use of property at 5520 Franconia Rd. as a towing service is in violation of Par. 5 of Sect. 2-302 and Sect. 18-701 of the Zoning Ordinance. Located at 5520 Franconia Rd. on approx. 19,194 sq. ft. of land zoned C-6. Lee District. Tax Map 81-4 ((1)) 70. (DEF. FROM 3/1/94 TO ALLOW APP. AN OPPORTUNITY TO RESOLVE OUTSTANDING ISSUES.)

Vice Chairman Ribble stated the appeal had been deferred to allow the appellant the opportunity to resolve outstanding issues. He called the appellant to the podium and Bruce L. Hecox, 5520 Franconia Road, Alexandria, Virginia, identified himself.

Page 183, June 2, 1994, (Tape 2), BRUCE L. HECOX, Appeal 94-L-002, continued from Page 182)

William E. Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and said that at the March 1, 1994 hearing, two issues had been discussed. The first issue involved the remediation effort of petroleum contamination on the appellant's property. The second issue involved the appellant's attempt to obtain financing to reestablish the service station use. Mr. Shoup noted the environmental issue had been resolved and submitted a letter dated March 7, 1994 from the Department of Environmental Quality, Commonwealth of Virginia, which indicated the case was closed. He asked Mr. Hecox to address the financial situation.

Mr. Hecox stated that, although the environmental issue had been resolved, he had not been able to obtain the necessary financing. He explained that he was unsuccessful in obtaining bank financing because of the petroleum contamination on the adjoining properties. Mr. Hecox said he was in the process of securing financing from the Virginia Asset Financing Corporation, 12020 Sunrise Valley Drive, Suite 260, Reston, Virginia. He explained that the company specialized in the 504 Loan Program, an economic development program of the United States Small Business Administration. Continuing, he said he had been informed by the Virginia Asset Financing Corporation's representative that everything looked favorable and he would get the money to revamp the business.

In response to questions from the BZA as to how long it would take to receive the money, Mr. Hecox said he did not know. He explained that he had submitted the required documents approximately six weeks ago. Mr. Hecox stated they had proven themselves to be extremely helpful and efficient in their dealings with him.

Mr. Hecox said that because of financial problems, he had let his special exception SE 86-L-019 expire. He explained that since he had been in contact with the Virginia Asset Financing Corporation, he has renewed his efforts to renovate the property. Mr. Shoup noted that the appellant would have to obtain a new special exception before he could reestablish the service station.

After a brief discussion, it was the consensus of the BZA to defer the appeal to allow the appellant to continue to pursue the necessary financial support.

Mr. Hecox expressed concern with the continuance of the appeal and said that he would probably have to file for bankruptcy. The BZA explained that it could not solve the problems for Mr. Hecox and asked staff to provide assistance to the appellant.

Mr. Hammack made a motion to defer A 94-L-002 to September 27, 1994 at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley absent from the meeting,

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Page 183, June 2, 1994, (Tape 2), Action Item:

Approval of Resolutions from May 24, 1994

Mr. Pammel made a motion to approve the Resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley absent from the meeting.

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Page 183, June 2, 1994, (Tape 2), Action Item:

Request for Date and Time
Earl Donald and Hermencia Proffit Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of August 2, 1994. Mr. Dively seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley absent from the meeting.

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Page 183, June 2, 1994, (Tape 2), Action Item:

Request for Date and Time
Ferguson Enterprises Inc. Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of August 2, 1994. Mr. Dively seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley absent from the meeting.

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Page 184, June 2, 1994, (Tape 2), Action Item:

Request for Date and Time
Luck Stone Corporation Appeal

Mr. Hammack made a motion to schedule the appeal for the morning of September 13, 1994. Mr. Dively and Mr. Pammel seconded the motion which carried by a vote of 4-0 with Chairman DiGiulian, Mrs. Thonen, and Mr. Kelley absent from the meeting.

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Page 184, June 2, 1994, (Tape 2), Information Item:

Possible Zoning Violation
Douglas and Lillian Ryan, VC 93-P-041

Mr. Pammel stated a neighbor had complained that the addition was not being constructed within the requirements as set forth in the development conditions.
He also noted that staff's investigation indicated a Building Permit had not been obtained.

After a brief discussion, it was the consensus of the BZA to have staff further investigate the matter. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that staff was in contact with the Zoning Enforcement Branch and would provide the BZA with the Zoning Administrator's determination.

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As there was no other business to come before the Board, the meeting was adjourned at 11:00 a.m.

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

John Ribble
John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: June 23, 1994

APPROVED: July 5, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 7, 1994. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:07 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 185, June 7, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MARGARET L. RYAN, VC 94-M-029 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.9 ft. from side lot line (15 ft. min. side yard req. Sect. 3-207). Located at 5108 Cherokee Ave. on approx. 22,400 sq. ft. of land zoned R-2. Mason District. Tax Map 72-3 ((11)) 149.

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, Ms. Ryan, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report and said the property is located in the Lincolnia Park subdivision and is surrounded on all sides by properties zoned R-2 and developed with single-family detached dwellings. The applicant was requesting a variance to permit construction of an addition consisting of a garage, study, bathroom and family room 12.9 feet from the side lot line. Ms. Greenlief said the Zoning Ordinance requires a minimum side yard of 15 feet in this district; therefore, the applicant was requesting a variance 2.1 feet. She added that the dwelling on Lot 150 is located 25 feet from the shared lot line.

Margaret L. Ryan, 5108 Cherokee Avenue, Alexandria, Virginia, said she was attempting to update a house that was built in 1953 by adding a garage and family room. She said the reason for the variance request was to allow her to expand the living space and to construct a two car garage, which she believed would enhance the neighborhood. Ms. Ryan noted that the addition could not be located on the other side of the lot because the property drops away, there is no street access, and the septic field is there. She said when she submitted the application it was her understanding that the adjacent property owners were in agreement with her request, and just recently learned of their objections.

Chairman DiGiulian called for speakers in support of the request.

Cramer Gilmore, 5109 Cherokee Avenue, Alexandria, Virginia, said he has been a neighbor for approximately 20 years and that he received variance approval in 1975 allowing him to construct a similar addition. He strongly supported the applicant's request as he believed it would substantially improve the quality of the property and benefit the neighborhood. Mr. Gilmore said the way the house is situated the family room, which wraps around the back of the house, looks out over the longest point of the applicant's property which would provide a pleasant view.

Sybil Major said she has lived next door to the applicant's property since 1956 on the side that will not be impacted by the garage. She believed the applicant's request will add to the property values and to the desirability of the neighborhood. Ms. Major said she has been very active in the community's affairs and pointed out that other houses in the neighborhood have been upgraded, which has added to the property values in a very old community.

There were no further speakers in support and Chairman DiGiulian called for speakers in opposition.

Dorothy Holland, 5112 Cherokee Avenue, Alexandria, Virginia, came forward and said the applicant could construct the addition on the other side of her property. She submitted letters from Sue Finn, 5107 Cherokee Avenue, and Jacqueline Bloxam, in opposition to the request. Ms. Holland pointed out that even after Mr. Gilmore's construction of his addition there was still 52 feet between the structures. She said the applicant had vaguely discussed with her the fact that she planned to build a garage. Ms. Holland said she had been unaware that the setback had changed from 25 feet to 15 feet and noted that the applicant was aware of the setback regulations when she purchased the property since the change did not occur until 1978. She did not believe the applicant met Standards 2, 4, 5, 6, 7, 8, and 9. Ms. Holland said her bedrooms are on the north end of her property and there is currently a distance of 59 feet between her house and the applicant's house. She said to reduce the distance by 22 feet will put the applicant's house in very close proximity to her bedrooms and will cut out the light that currently filters on to her property. Ms. Holland submitted additional photographs and asked that the BZA enforce the 25 foot setback.

Allen Holland, 5112 Cherokee Avenue, Alexandria, Virginia, the husband of the previous speaker, said they had very carefully reviewed the applicant's request for a variance and came to the conclusion that they did not agree with the request. He also disagreed with the change in setbacks and noted that he believed the request would adversely impact their property and would visually impact the view from their yard. Mr. Holland said his family has lived on their property for 34 years and when they moved into the house the treed region was delightful. He asked the BZA to deny the variance request.

In rebuttal, Ms. Ryan said she had neglected to submit letters in support from William Bloxam of 5113 Cherokee Avenue and John Dickson of 6445 8th Street, during her earlier presentation. She also submitted photographs to the BZA showing the distance that will be left between the two properties. Ms. Ryan said the structure would be the same height as the existing In rebuttal, Ms. Ryan said she had neglected to submit letters in support from William Bloxam of 5113 Cherokee Avenue and John Dickson of 6445 8th Street, during her earlier presentation. She also submitted photographs to the BZA showing the distance that will be left between the two properties. Ms. Ryan said the structure would be the same height as the existing structure with the exception of one point that will be 6 inches higher. She said she felt badly that her request was causing bad feelings in the neighborhood.

Mr. Hammack asked if the family room could be brought into the 15 foot setback. Ms. Ryan said the family room proposal was designed as presented based on cost convenience, the existing roof line, and her concern with the possibility of roof leaks. She added that the main reason for the variance was for the construction of the garage.

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

Mr. Hammack made a motion to approve VC 94-M-029 in part for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 2, 1994.

Mr. Kelley suggested that the motion be amended to delete the "in-part" as he did not see a problem with the addition. Mr. Dively agreed with Mr. Kelley's comments. Following a discussion among the BZA members, the amended motion failed by a vote of 3-3 with Mr. Dively, Mr. Kelley and Mr. Ribble voting aye; Chairman DiGiulian, Mr. Hammack, and Mr. Pammel voting nay. Chairman DiGiulian called for a vote on the original motion to grant-in-part which passed by a vote of 6-0. 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 94-M-029 by MARGARET L. RYAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.9 feet from side lot line **(THE BZA GRANTED THE VARIANCE FOR THE 21.0 FEET FOR THE PROPOSED GARAGE AND DENIED THE VARIANCE FOR THE 22.0 FOOT EXTENSION FOR THE FAMILY ROOM)**, on property located at 5108 Cherokee Avenue, Tax Map Reference 72-3((11))149, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 7, 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 22,400 square feet.
4. The applicant has made a good case for a variance on the garage and is requesting a minimal size garage even with the variance.
5. With respect to the family room, there is no compelling reason that the wall cannot be brought in and be in compliance with the minimum yard requirements.
6. The septic field on the other side of the lot precludes construction of a garage or addition and the septic field resulted in the house being located to the south side of the lot, thereby reducing the distance between the end of the house and the lot line.
7. The construction of the proposed addition will not interfere with the amount of light that filters onto the next door neighbor's property. Since there is a heavy tree cover on the property, it is hard to picture much light filtering onto 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-IN-PART** with the following limitations:

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 28, 1994, and revised June 7, 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. The addition shall be architecturally compatible with the existing dwelling.

4. The applicant must submit revised plats to the Board of Zoning Appeals within thirty (30) days of the public hearing.

Pursuant to Sect. 18-407 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 June 15, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 187, June 7, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM MOSLEY, VC 94-B-024 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure (garage) 3.0 ft. from rear lot line (12 ft. min. side yard req. by Sect. 3-307). Located at 5308 Juxon Pl. on approx. 13,398 sq. ft. of land zoned R-3. Braddock District. Tax Map 70-3 ((2)) (8) 23.

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

Don Heine, Staff Coordinator, presented the staff report and said the 13,398 square foot property is located on the southwest side of Juxon Place within the Ravensworth Subdivision, and is surrounded on four sides by single family detached dwellings in the R-3 District. The applicant was requesting a variance to allow a 14 foot high, 480 square foot detached garage to remain 3.0 feet from the rear lot line of a corner lot. The Zoning Ordinance requires a 12 foot minimum rear yard on a corner lot; therefore, a variance was requested for 9.0 feet from the minimum yard requirement.

Christopher P. Avery, 13942 Stonefield Drive, Clifton, Virginia, said the applicant has lived in the subdivision for approximately 4 years and it has been his intent for the last 2-3 years to build a garage. Mr. Avery said the property was acquired in good faith, the location of the house on the lot dictates the location of the garage, and pointed out there is an existing concrete driveway adjacent to both the front and rear entrances to the house on the side of the lot where the applicant proposed constructing the addition. Because of the topography on the right side of the applicant's lot, Mr. Avery said the proposed location is the only feasible location for the construction. He said 9 out of the 14 lots on Juxon Place have some type of garage or carport, and two of those owners have requested and received variance approval. Mr. Avery said the applicant is approaching retirement age and also has several elderly residents who frequently visit and the garage would provide protection from the inclement weather. He said he did not believe the request would adversely impact other properties and that the character of the zoning district will not be changed.

Chairman DiGiulian called for speakers in support of the request.

Joseph W. Bell, 5306 Juxon Place, owner of Lot 22, said he has lived on his property for 22 years. He said he has seen a lot of additions go up and that he agreed with the applicant's request. Mr. Bell believed the addition would benefit the neighborhood, but added that he would oppose the construction if it was on the other side of the lot. He believed that the proposed location was the most logical.

William Mosley, 5308 Juxon Place, said he had talked at length with the Hudsons, the most impacted neighbors, who had no objections to the addition. He pointed out that the 20 foot wide garage will abut the neighbors' garage, and that he believed the variance request was minimal.

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

Mr. Pammel made a motion to deny VC 94-B-024 for the reasons noted in the Resolution.

Mr. Hammack supported the motion as he believed it was too great a variance and the applicant could possibly construct an over sized one car garage with a minimal variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-024 by WILLIAM MOSLEY, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure (garage) 3.0 feet from rear lot line, on property located at 5308 Juxon Place, Tax Map Reference 70-3((2))(8)23, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 7, 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 13,398 square feet.
4. There are some lots that have a configuration and design that does not lend themselves to additions.
5. There was a lot of discussion about the convenience of the addition as opposed to the real issue of hardship.
6. The variance is not minor. It is very significant since 45 percent of the structure will be located within the side yard. The addition will be 14 feet in height and 24 feet wide. A 3 foot setback in a side yard is simply not sufficient.
7. The BZA rarely approves variances of that magnitude.

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

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

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

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

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

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. 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 June 15, 1994.

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Page 189, June 7, 1994, (Tape 1), Scheduled case of:

9:00 A.M. REESE W. RADCLIFFE, VC 94-Y-026 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (gazebo) 7.0 ft. from rear lot line (25 ft. min. rear yard req. Sects. 16-102 and 3-307). Located at 3501 Rushton Rd. on approx. 12,807 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 35-4 ((13)) 105.

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

Don Heine, Staff Coordinator, presented the staff report and said the 12,807 square foot property is located on the south side of Rushton Road within the Century Oak Subdivision located east of the Fairfax County Parkway, is surrounded on three sides by single family detached dwellings which are in the PDH-3 District, and on the east by community open space. The applicant was requesting a variance to allow a 17.0 foot high roofed gazebo addition to be located 7.0 feet from a rear lot line. The Zoning Ordinance requires a 25.0 foot minimum rear yard; therefore, a variance of 18.0 feet was requested from the minimum rear yard requirement.

The BZA questioned the use for parcels F and A and the how far a deck could extend into the rear yard. Mr. Heine said the referenced parcels were designated as a stormwater management facility. He added that the Zoning Administrator had determined the gazebo as an addition, not a deck. Mr. Heine read an excerpt from the Zoning Ordinance noting the setback restrictions for decks.

Reese W. Radcliffe, 3501 Rushton Road, Fairfax, Virginia, said he would like to build a deck with a gazebo and noted that if the gazebo is eliminated the deck could be built without a variance. Mr. Radcliffe noted that the lot does have an irregular shape, the lot has exceptional topographical conditions because of a 15 percent grade, and pointed out that the lots abutting the rear of his lot is unbuildable. He said the nearest house to the rear of his property is approximately 120 feet, the nearest house to the proposed gazebo is approximately 94 feet, and the nearest neighbor's lot line to the proposed gazebo is approximately 81 feet. Mr. Radcliffe said he had designed the deck on one level so that it would be accessible to his handicapped father-in-law, who spends a great deal of time at their house. He said other houses in the neighborhood have gazebos, and that he was not sure whether the construction had required a variance. Mr. Radcliffe said the design has been approved by the homeowners association, based upon the BZA approving the variance.

A discussion took place between Mr. Ribble and the applicant with regard to other lots in the neighborhood which appear to have charactertistics similar to the subject property.

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

Mr. Ribble made a motion to deny VC 94-Y-028 for the reasons noted in the Resolution.

Mr. Dively said he would vote in favor of the request and that he believed the lot did have an unusual configuration and the gazebo would not adversely impact the neighbor.

Mr. Hammack pointed out that the deck is almost 70 feet long and approximately 25 feet wide. He said the design could be reconfigured to eliminate 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 94-Y-026 by REESE W. RADCLIFFE, under Section 18-401 of the Zoning Ordinance to permit construction of addition (gazebo) 7.0 feet from rear lot line, on property located at 3501 Rushton Road, Tax Map Reference 35-4{(13)}105, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 7, 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 PDH-3 and WS.
3. The area of the lot is 12,807 square feet.
4. Although the subject property has several characteristics that meet the standards such as the exceptional shape, topographic conditions, and the extraordinary condition in that open space exists behind the lot, there are other lots in the neighborhood which have similar characteristics.
5. The request would adversely impact the neighborhood and the applicant has not met the nine required standards for the granting of a variance.
6. The deck is almost 70 feet long and at its widest width may be 25 feet.
7. The testimony seemed to indicate that the location was for the applicant's convenience and there are other locations to put the gazebo without a variance.

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

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

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

Page 191, June 7, 1994, (Tape 1), REESE W. RADCLIFFE, VC 94-Y-026, continued from Page 190)

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 with Mr. Dively voting nay. Mrs. Thonen was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 15, 1994.

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Page 191, June 7, 1994, (Tape 1), Scheduled case of:

9:00 A.M. DONALD M. & GLADYS M. LUND, VC 94-M-027 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (garage) 7.0 ft. from side lot line (20 ft. min. side yard req. Sect. 3-107). Located at 6452 Eppard St. on approx. 20,909 sq. ft. of land zoned R-1. Mason District. Tax Map 51-3 ((9)) 3B.

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 co-applicant, Mr. Lund, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located west of Sleepy Hollow Road, is 20,909 square feet in size, is zoned R-1, and is developed with a single family detached dwelling. The variance request resulted from the applicants' proposal to construct a garage addition 7.0 feet from the western side lot line. A minimum side yard of 20 feet is required on a lot zoned R-1; therefore, the applicants were requesting a variance of 13.0 feet from the minimum side yard requirement. Mr. Hunter said the height of the garage will be 15 feet as opposed to the 12 feet shown on the plat. He added that the applicant has amended the plat, but a condition is necessary to allow the garage height to be 15. Mr. Hunter suggested that Condition Number 4 be added which stated: "The height of the garage shall be 15 feet."

Donald and Gladys Lund, 6452 Eppard Street, Falls Church, Virginia, said the garage will be 22 feet wide with a 9 foot wide breezeway, which he believed will blend nicely with the neighborhood. He added that their lot is the only one that does not have a garage. Mr. Lund said there are no objections from the neighbors and asked the BZA to grant the request.

In response to questions from Mr. Ribble, Mr. Lund said Eppard Street is a dead end street and all the other neighbors have two car garages.

Mr. Pammel asked the applicant if he knew when the next door neighbor's garage was constructed and Mr. Lund said he did not. He added that it appeared that the garage had been built with the house. Mr. Hunter said staff's research of the Zoning Administration files indicated that the house on Lot 4 is located 20 feet from the shared lot line.

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

Mr. Dively made a motion to deny VC 94-M-027 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 94-M-027 by DONALD M. AND GLADYS M. LUND, under Section 18-401 of the Zoning Ordinance to permit construction of addition (garage) 7.0 feet from side lot line, on property located at 6452 Eppard Street, Tax Map Reference 51-3((9))3B, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 7, 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 20,909 square feet.
4. The request is for a 65 percent variance from the side lot line which is too much especially given the fact that the applicants are proposing to construct a breezeway.
5. The applicants could possibly reconfigure the design, but the present design is too much.

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 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 June 15, 1994.

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Page 192, June 7, 1994, (Tape 1-2), Scheduled case of:

9:00 A.M. GUY P. GERACHIS, VC 94-B-028 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 ft. and 9.3 ft. from side lot lines (20 ft. min. side yard req. Sect. 3-107). Located at 4509 Roberts Rd. on approx. 0.47 ac. of land zoned R-1. Braddock District. Tax Map 68-2 ((1)) 17.

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

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located north of Braddock Road and east of George Mason University, is 0.47 acres in size, is zoned R-1, and is vacant. The variance request resulted from the applicant's proposal to construct a dwelling 10 feet from the northern side lot line and 9.3 feet from the southern side lot line. A minimum side yard of 20 feet is required on a lot zoned R-1; therefore, the applicant was requesting variances of 10.0 feet and 10.7 feet from the minimum side yard requirement. Mr. Hunter noted that the subject property is 80.0 feet wide and the variance plat shows that the proposed dwelling is 54.7 feet wide.

Edward E. Wagaman, 425 Center Street, North, Vienna, Virginia, said the 9.3 foot dimension is offset to a 2.7 foot deep chimney, which actually results in a dimension of 12 foot to the house. He said the 10 foot dimension is to a 2 foot deep bay window, which results in a 12

foot dimension to the house. Mr. Wagaman said the house is bounded by an institutional use to the east, the George Mason University Catholic Church to the south, residential property zoned R-2 to the east, and a single-family residence to the north. He said the property was acquired in good faith 2 years ago and the lot was created in 1948, which was prior to the effective date of the current Zoning Ordinance. Mr. Wagaman said the subject property is characterized by exceptional narrowness not shared by surrounding parcels and pointed out that Lots 18, 19, and 20, located to the south of the subject property, have been consolidated for the construction of the Catholic Church. He said the applicant would like to construct a dwelling for his personal residence, and pointed out that there are houses in the surrounding area similar to the size of the proposed dwelling. If the variances are not granted, Mr. Wagaman said the applicant could only construct a 40 foot wide house, which he considered to be an undue hardship not shared by the surrounding properties. He acknowledged the concerns raised in letters from the neighbors and pointed out if the house were to be used as a fraternity house, it would require special exception approval. There will be a distance of 73 feet between the proposed dwelling and the Catholic Church and a 25 foot buffer will be planted. He said the applicant agreed with the development conditions contained in the staff report.

Mr. Hammack asked how long the applicant had owned the property and the speaker replied 3 years.

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

William Haran, President of the Kappa Phi Chapter Housing Corporation, 7320 Redfeld Court, Falls Church, Virginia, said he had reviewed the opposition letters and assured the BZA that the Chapter had no interest in the applicant's property at this time.

The applicant, Guy P. Gerachis, 39184 John Mosby Highway, Aldie, Virginia, said he was the legal and sole owner of the property and it was intention to build a single-family residence for his personal use. He said he has not previously developed the site because he was waiting for sewer, which has now occurred, since the construction of the adjacent Catholic Church. Mr. Gerachis said he had granted the Church an easement across the front of his property for a sight distance easement, and that he had chosen a wider design for the proposed house, as opposed to deeper, so that the house could be set further back from Roberts Road.

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

Bob Cilinski, 4521 Roberts Road, Fairfax, Virginia, said he lives adjacent to the subject property and said the neighbors had endured for many years the unjust disturbance weekly, and almost daily, from the fraternity house that was previously located in the house purchased by the Catholic Church. He said during many of those years the applicant, although he had never lived in the area, was a member of the fraternity and managed the house and allowed his property to be used for parties. Mr. Cilinski said the applicant, as a property owner in the neighborhood, has impacted the area in a detrimental way and has not used his property in the spirit of the Ordinance. He agreed the BZA's decision must be based on the criteria for the granting of a variance and proceeded to address the standards. Mr. Cilinski said the applicant was proposing a very large house and that he believed it would adversely impact the neighbors, the applicant was aware of the property's limitations when he purchased the property, and that a house could be constructed on the property without a variance. He said to grant the variance would change the character of the zoning district and that he believed the proposed house is "a wolf in sheep's clothing."

Bill Enderle, Director of Construction and Property Management of the Catholic Diocese of Arlington, 200 North Glebe Road, Arlington, Virginia, expressed concern that the applicant's request would adversely impact the Church's property.

Linda Anderson, 4505 Roberts Road, Fairfax, Virginia, said she lived on the north side of the applicant's property and objected to the size of the proposed house and to how close it would be to the shared lot line. She expressed concern with how the construction might impact the septic field and well on her property. Ms. Anderson said her family had suffered a great deal during the time the fraternity had occupied the adjacent property and pointed out that Supervisor Bulova had indicated that a special permit was not necessary for a house to be used as a fraternity.

K. Bruce Miller said he lives four houses south of the applicant's property and that he had lived around a lot of fraternities, but the idea of building a large house that might possibly be used as for a fraternity house in the future did not impress him as something positive. He agreed with the previous speakers' comments.

Charles S. Shaw, 4605 Tapestry Drive, Fairfax, Virginia, Lot 133A, spoke on behalf of himself and the George Mason Forest Homeowners Association since the President, Paul Kite, could not be present. He said he has lived on his property for approximately 2 years and said his house and one other face the back of the R-1 properties, which are located on a pipestem driveway. Mr. Shaw said the huge scale of the proposed house is completely out of character with the neighborhood along Roberts Road, and the significant variance that is requested absolutely destroys the nature of the R-1 zoning. He said he had somewhat reluctantly

supported the church's request, but in that support he had requested additional screening be planted, which was done. Mr. Shaw said the proposed house would be 53 percent the size of the church.

Etta Bowles Richards, 4501 Roberts Road, Fairfax, Virginia, agreed with all the previous speakers. She said she has lived in the neighborhood all her life and has lived there peacefully until the fraternity house came in and destroyed the neighborhood.

John Lee, 4603 Tapestry Drive, Fairfax, Virginia, Lot 134A, agreed with the previous speakers. He said his main concern was the size of the proposed house and the number of trees that would be removed. Mr. Lee said he was impacted by the fraternity house and that he had gone through many sleepless nights.

In rebuttal, Mr. Wagaman said this was not a fraternity house, but was merely the applicant trying to build a private residence and make use of a very narrow lot. He believed the proposal was in character with the neighborhood and was comparable to the sizes of the other houses. Mr. Wagaman stated that the Zoning Ordinance does require that a special exception be obtained for a fraternity house. He said the applicant's house will sit in the middle of the lot, there is a buffer between the applicant's lot and the church, and the applicant is a private owner who is entitled to a reasonable use of the property.

Mr. Gerachis said the footprint of the proposed house is 1,700 square feet and the footprint of the chapel next door is over 6,400 square feet. He said the proposed house would be almost identical in footprint to the houses in George Mason Forest and that he worked for the company that designed those houses. Mr. Gerachis said he graduated from George Mason in 1984 and the property next door owned by the fraternity was sold to the church in 1992 and that he was instrumental in that sell. He said it was unfortunate about what happened in the past, but it was his intentions to build a house and live on the property.

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

Mr. Hammack made a motion to deny VC 94-B-028 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 94-B-028 by GUY P. GERACHIS, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 10.0 feet and 9.3 feet from side lot lines, on property located at 4509 Roberts Road, Tax Map Reference 68-2((1))17, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 7, 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-1.
3. The area of the lot is 0.47 acres.
4. The decision was not made based upon the former use of the property by a fraternity, because that use does not really involve the future use of the property and the BZA cannot speculate as to what the future use of the property might be.
5. The BZA has to look at the land use issues involved and if the applicant has made a case for a variance to be granted and if the hardship requirement has been met, which are according to the decisions handed down by the courts and are to be strictly applied.
6. The applicant has presented an application that requires two fairly substantial variances to the side setback lines.
7. The lot is narrow and deep, but the applicant purchased the property knowing this and knew the setback requirements would limit the construction on the property.
8. The applicant could build a house that did not require a variance, if he so chose, and that is where the decision has to be made.
9. The proposed house would be very large for the width of the lot and the testimony indicates that the request would be for the convenience of the property owner.
10. If the applicant cannot present testimony showing that the request would not be for a convenience or prove that a hardship exists under which no reasonable use of the property can be made, the BZA must deny the application.

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. 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 June 15, 1994.

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Page 195, June 7, 1994, (Tape 1), Scheduled case of:

9:00 A.M. FREDDIE L. GASKINS, VC 94-P-012 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 17.0 ft. from front lot line (30 ft. min. front yard req. by Sect. 3-407). Located at 2840 Douglas Ave. on approx. 3,930 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((9)) 97 and 98. (DEFERRED FROM 4/26/94 FOR NOTICES).

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

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located south of the City of Falls Church, is 3,930 square feet in size, is zoned R-4, and is vacant. The variance request resulted from the applicant's proposal to construct a two story dwelling 17.0 feet from the front lot line. A minimum front yard of 30 feet is required on a lot zoned R-4; therefore, the applicant was requesting a variance of 13.0 feet from the minimum front yard requirement.

Mr. Hunter noted that the subject property is located on an unimproved cul-de-sac and the bulb of this cul-de-sac encroaches onto the subject property and is oriented to the south. He further noted that the variance plat shows that the proposed dwelling is to be located approximately 55 feet from the existing edge of pavement of Douglas Street.

Freddie L. Gaskins, 6630 Costner Drive, Falls Church, Virginia, said he purchased the property approximately 10 years ago in good faith with the intentions of building a single family dwelling. He said approximately 4 years ago the County decided to construct a cul-de-sac, which normally goes to the end of a street, partially on his and a neighbor's property so it would not impact the church's property at the end of the street. Mr. Gaskins said the cul-de-sac took the front of his property which then left his property narrow and shallow and the plans for the house had to be redesigned. He said there are 14 houses on the street and only 2 meet the setback restrictions in the Zoning Ordinance. Mr. Gaskins said

the request will not impact any of the neighbors since the property is abutted on two sides by churches and the lot to the right is unbuildable.

In response to a question from Mr. Ribble as to whether or not he was paid for the property, Mr. Gaskins replied that he did receive compensation but he would much rather have the land.

Chairman DiGiulian called for speakers in support of the request, and hearing no reply he called for speakers in opposition.

Youssef Zabareh, 2827 Douglas Avenue, Falls Church, Virginia, spoke on his behalf and three adjacent neighbors in opposition to the request, although he said they did understand that this was a serious matter to the applicant. He expressed concern with the parking situation that exists on the street and stated that it was the neighbors' understanding that the applicant only purchased the property 3 to 4 years ago. Mr. Zabareh said he believed the house could be relocated so that a variance would not be needed.

In rebuttal, Mr. Gaskins said it was a matter of record when he purchased the property.

Mr. Dively asked the applicant if it was his testimony that he had owned the property for approximately 3 to 4 years when he learned of the condemnation for the cul-de-sac. Mr. Gaskins said that was correct. He said there was no parking problem on the street.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 94-P-012 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated April 19, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-012 by FREDDIE L. GASKINS, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 17.0 feet from front lot line, on property located at 2840 Douglas Avenue, Tax Map Reference 50-2((9))97 and 98, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 7, 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 3,930 square feet.
4. This is one of those situations where the County through the process of acquiring land, whether they did it through imminent domain or whether they basically arrived at an agreement, has taken sufficient property from the applicant to create a rather serious problem.
5. The BZA cannot deny a variance which would in effect take away all of the applicant's rights to develop the land.
6. The County did not pay for the entire lot, they only bought a portion of it; therefore, they basically put it back in the BZA's court.

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location of the specific dwelling shown on the plat prepared by Runyon, Dudley, Anderson Associates, Inc., dated September 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.

Pursuant to Sect. 18-407 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. Dively seconded the motion which carried by a vote of 5-0 with Mr. Hammack not present for the vote. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 15, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 197, June 7, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL CONLON, SHURGARD STORAGE CENTERS, APPEAL 94-Y-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of rental vehicles and new vehicles at 11334 Lee Highway without site plan approval and a Non-Residential Use Permit is in violation of Zoning Ordinance provisions. Located at 11334 Lee Hwy. on approx. 231,587 sq. ft. of land zoned I-5. Sully District. Tax Map 56-2 ((1)) 37A. (DEF. FROM 3/8 AT APP.'S REQ. CHAIRMAN LIMITED TO 5 MINUTES. DEF. FROM 4/12 - APPELLANT MUST BE PRESENT.)

Chairman DiGiulian informed the other members that a request for a deferral to a date in September had been received and questioned if that was a sufficient amount of time.

The appellant's attorney, Henry E. Hudson, said he hoped that the issue could be resolved in that timeframe. He explained that the impediment was negotiating the easement for the drainoff, which had begun, and he was very optimistic that the amended site plan could be filed by September 27th. He said if the BZA was so inclined to grant a longer deferral it would be appreciated.

Marilyn Anderson, Assistant Branch Chief, suggested the morning of October 25th. Mr. Ribble so moved. Mr. Pammel seconded the motion.

William Shoup, Deputy Zoning Administrator, agreed with the deferral.

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

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9:30 A.M. THE FOUR SEASONS TENNIS CLUB OF MERRIFIELD LTD. PARTNERSHIP, SP 94-P-010 Appl. under Sect(s). 5-503 of the Zoning Ordinance to permit commercial tennis courts. Located at 3010 Williams Dr. on approx. 5.75 ac. of land zoned I-5 and HC. Providence District. Tax Map 49-3 ((1)) 90; 49-3 ((22)) A. (IN ASSOCIATION WITH SE 94-P-011).

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

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located south of Route 29, east of Prosperity Drive, and north of Route 50; is zoned I-5 and Highway Corridor; and, is comprised of two parcels totaling 5.75 acres. Parcel A is developed with a 45 foot high brick and metal building which houses ten tennis courts. Parcel 90, located adjacent to Parcel A to the north, is mostly wooded and is vacant except for an 1,800 square foot frame storage shed which is to be removed. Access to the site is by way of a 25 foot wide ingress-egress easement which leads from Williams Drive to the southeastern corner of the site. The site contains 61 parking spaces, and existing asphalt pavement leads from the entrance and parking area on Parcel A to the terminus of Eskridge Road at the rear of the site. A metal gate is located at this rear entrance, which is for emergency access only. I-5 zoning surrounds the site with offices to the south, the Merrifield Post Office facility to the north and west, and a movie theatre parking lot to the east.

Mr. Hunter said the applicant was requesting special permit approval for commercial tennis courts at a tennis club which was built by right in 1972. On Monday, June 6, 1994, the Board of Supervisors approved concurrent SE 94-P-011 which allowed an increase in the Floor Area Ratio from 0.50 to 0.65 in order to allow 8 tennis courts to be covered with a bubble from October until May subject to the Development Conditions dated May 19, 1994, revised June 2, 1994.

Since the existing and proposed tennis courts will have no adverse impact on the surrounding area, staff believed that the expansion meets the applicable provisions of the Zoning Ordinance. Staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions with the implementation of the Proposed Development Conditions, and recommended approval of SP 94-P-010 subject to the Proposed Development Conditions dated May 19, 1994.

John Edwards Harrison, 2200 Wilson Boulevard, #800, Arlington, Virginia, said the driving force behind the applicant's request was the desire for an addition to the summer youth program. He said the program is comprised of approximately 200 children and the program will be moving to Virginia from Maryland. Mr. Harris said without the 8 additional courts, there will be no court time available for the program. He asked the BZA to grant the request and requested that Condition Number 6 be modified to reflect "2,400" rather than 1,400.

Mr. Kelley asked if the club planned to install a permanent cover over the tennis courts and Mr. Harrison said not at the present time.

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

Mr. Dively made a motion to grant SP 94-P-010 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated May 19, 1994 with Condition Number 6 changed as requested by the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-P-010 by THE FOUR SEASONS TENNIS CLUB OF MERRIFIELD LTD. PARTNERSHIP, under Section 5-503 of the Zoning Ordinance to permit commercial tennis courts, on property located at 3010 Williams Drive, Tax Map Reference 49-3((1))90 and 49-3((22))A, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 7, 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 I-5 and HC.
3. The area of the lot is 5.75 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 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/Special Exception Plat prepared by Rinker-Detwiler & Associates, P.C. dated January 19, 1994, revised through April 18, 1994 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 commercial tennis courts is subject to the provisions of Article 17, Site Plans as determined by the Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit plat and these development conditions.

   Friday, from 7:00 am to 11:00 pm, Saturdays, 7:00 am to Midnight, and Sundays and major holidays, 7:00 am to 11:00 pm. The hours of operation for the outdoor tennis courts shall be limited to 7:00 am to Dusk (9:00 pm).

6. The maximum membership shall be 2,400.

7. The maximum number of employees on site at any one time shall be 23.

8. Seventy-three (73) parking spaces shall be provided as shown on the Special Permit/Special Exception plat. All parking shall be on site.

9. There shall be no lights provided for the outdoor tennis courts.

10. Landscaping in the form of evergreen trees shall be provided along the northwestern property line as shown on the Special Permit/Special Exception Plat. A Landscape Plan shall be submitted with the site plan and approved by the County Urban Forester.

11. The eight (8) tennis courts shall be covered with bubble covers only during the months of October through May.

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble 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 June 15, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 199, June 7, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MARTIN B. JARVIS, APPEAL 94-V-013 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the keeping of horses on appellant's property constitutes the operation of a boarding stable and that the activity is being conducted without special permit approval in violation of Par. 1 of Sect. 2-303 of the Zoning Ordinance. Located at 10808 Harley Rd. on approx. 20.00 ac. of land zoned RE. Mt. Vernon District. Tax Map 118-2 ((1)) 11.

Page 200, June 7, 1994, (Tape 1), MARTIN B. JARVIS, APPEAL 94-V-013, continued from Page 199)

Chairman DiGiulian said it appeared that no action was required by the BZA on appeal A 94-V-013 since the Notice of Violation had been rescinded.

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Page 200, June 7, 1994, (Tape 1), Action Item:

Approval of June 2, 1994 Resolutions

Approval of April 26 and May 10, 1994 Minutes

Request for Change of Permittee for
Reston Montessori School

Request for Additional Time for
Unity of Fairfax Church of the Daily Word, SPA 73-P-007-3

(The new expiration date for SPA 73-P-007-3 is December 29, 1996.)

Request for Additional Time for
Apostolic Church of Washington, Inc., SP 91-Y-036

(The new expiration date for SP 91-Y-036 is August 27, 1995.)

Request for date and time for Kenneth Haar & Donald Crump Appeal

(The appeal was scheduled for the morning of September 8, 1994.)

Request for date and time for David Robertson Appeal

(The appeal was scheduled for the morning of September 13, 1994.)

Request for date and time for Gatehouse Center Limited Partnership Appeal

(The appeal was scheduled for the morning of October 4, 1994.)

Request for date and time for Gulick Group, Inc. Appeal

(The appeal was scheduled for the morning of October 4, 1994.)

Mr. Pammel made a motion to approve all After Agenda Items as submitted with staff's recommendations. Mr. Kelley seconded the motion which passed by a vote of 6-0. 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 11:33 a.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: July 5, 1994

APPROVED: July 12, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 14, 1994. The following Board Members were present: Chairman John DiGiulian; Robert Dively; 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 201, June 14, 1994 (Tape 1), Scheduled case of:

9:00 A.M. ANN LOUISE LAINGE BAILEY, VC 94-V-030 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fences a maximum of 8.5 ft. in height to remain in front yard (4 ft. max. fence height allowed by Sect. 10-104). Located at 7820 West Boulevard Dr. on approx. 21,353 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((17)) 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. Ann Louise Lainge Bailey, 782 West Boulevard Drive, Alexandria, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that properties to the north, south and west are also developed with single family detached dwellings; the property directly to the east is parkland associated with the George Washington Parkway. Ms. Greenlief referenced a letter received from the applicant the previous day and distributed to the Board that morning, addressing several aspects of the staff report. She said that one point in the letter referenced the date of the Notice of Violation. She stated further that an original notice was issued on December 7, 1993; it was subsequently rescinded and reissued on February 16 and March 26, 1994. Ms. Greenlief said that two letters were received from neighbors and were included in the members' packages.

There were no questions of staff.

Ms. Bailey presented the statement of justification, previously submitted in writing and incorporated into the record. She stated that she believed her situation was unique and that she had the support of her neighbors as evidenced by forty names on a petition encouraging her to keep the fence, especially because they like the garden and would like to see it remain.

In answer to a question from Mr. Ribble, Ms. Bailey said she had lived in the house since 1989. She said Ridge Crest Drive was a dead-end street which had a great deal of traffic turning around and shining headlights into windows. Mr. Ribble and Ms. Bailey discussed whether the issue involved a fence or trellis.

Cathy Chenkel spoke in support of the fence, stating that she had circulated the petition, signed by most of the members of the Wellington Civic Association Board, who also supported the fence. It was Ms. Chenkel's opinion that the issue involved a screen and not a fence; it provided privacy from the traffic and cars turning around at the dead end in the middle of the night and was a mitigating factor in beautification and gardening.

Anthony Antoniole, 7810 Ridge Crest Drive, spoke in opposition, stating that his house had a direct view of the property in question. His concerns included the presence on the property of railroad ties, random pieces of fence, wire strung across certain areas, and the 8-foot lattice fence extending for lengths of 48 feet, 24 feet, 8 feet, and another 24 feet, all at different angles; it is a monstrosity, in his opinion, which his family has to view from their front door. He also noted that there is a drainage ditch on the lot, containing trash. Mr. Antoniole expressed concern that the fence would fall apart in high wind and present a safety hazard.

Ms. Bailey came to the podium for rebuttal, stating that the fence had been partially erected when she received a Notice of Violation as a result of a complaint from Mr. Antoniole and there had not been any work done on the fence since that time; the fence has not been completed. She said she had not thrown trash into the ditch, which had been there when she purchased the property.

Mr. Dively asked about the possibility of taking the fence down to 4 feet and Ms. Bailey said that would destroy the purpose of the fence as a screen and a place to grow vines.

Mr. Ribble moved to grant VC 94-V-030 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 7, 1994.

Mr. Kelley seconded the motion, stating that he had driven by the subject property and concurred with Mr. Ribble.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-030 by ANN LOUISE LAINGE BAILEY, under Section 18-401 of the Zoning Ordinance to permit fences a maximum of 8.5 ft. in height to remain in front yard, on property located at 7820 West Boulevard Drive, Tax Map Reference 102-2((17))68, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 14, 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 approximately 21,353 square feet.
4. The lot has two front yards; the second front yard was created some time ago when Ridge Crest Drive was extended into the area; houses were built on Ridge Crest Drive at that time as well.
5. A visual inspection of the area revealed that there are other lots along the street which had previous back yards converted to front yards in the same manner.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 fences, shown on the plat prepared by Alexandria Surveys, Inc., dated February 22, 1994, submitted with this application and is not transferable to other land.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 22, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 203, June 14, 1994 (Tape 1), Scheduled case of:

9:00 A.M. ALEXANDER CONG GIAP, SP 94-M-013 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 carport to remain 2.7 ft. from side lot line & deck to remain 2.0 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 3720 Annandale Rd. on approx. 11,462 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((9)) 2. (Concurrent with VC 94-M-034).

9:00 A.M. ALEXANDER CONG GIAP, VC 94-M-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures and to allow 4.6 ft. high fence to remain in front yard (prohibited by Sect. 10-104). Located at 3720 Annandale Rd. on approx. 11,462 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((9)) 2. (Concurrent with SP 94-M-013).

Chairman DiGiulian advised that the notices were not in order on the two applications and requested a suggested deferral date and time from Jane C. Kelsey, Chief, Special Permit and Variance Branch.

Based on Ms. Kelsey's advice, Mr. Kelley moved to schedule the applications for September 8, 1994, at 9:30 a.m. Mr. Pammel seconded the motion.

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Page 203, June 14, 1994 (Tape 1), Scheduled case of:

9:00 A.M. CSC PROPERTIES, INC., VC 94-B-037 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit six foot high fence to remain in front yard of a corner lot (4 ft. max. fence height allowed by Sect. 10-104). Located at 9100 Lynchburg Ct. on approx. 17,915 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-4 ((35)) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Morgan S. Whiteley, Agent, CSC Properties, Inc., 11714 Amkin Drive, Clifton, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located within the Bailey Property Subdivision; the property is surrounded on three sides by single family detached dwellings also zoned R-2 and single family homes across Hunt Road on property zoned PDH-3. He said the applicant was requesting a variance of 2 feet to the height of the fence. Mr. Hunter said that, on June 24, 1989, the Board of Supervisors (BOS) approved Rezoning Application RZ 88-A-111 in the name of CSC Properties, Inc., to rezone certain property in the Braddock (formerly Annandale) District from R-1 to R-2, subject to proffers dated June 11, 1989. He said that the rezoning led to the creation of the subject property. Proffer 9 stated that the applicant was to provide noise attenuation, such as acoustical fencing, to achieve a maximum exterior noise level of 65 dBA Ldn, as determined by the Department of Environmental Management (DEM) for rear yards; the proffer also stated that no such structure would exceed the height limitations in Sect. 10-104 of the Zoning Ordinance. Mr. Hunter said that, on August 11, 1994 and December 21, 1993, the Zoning Enforcement Branch issued Notices of Violation to the applicant indicating that the fence was built in violation of Par. 3 of Sect. 10-104 of the Ordinance.

Mr. Whiteley came forward to present the statement of justification, previously submitted in writing and incorporated into the record. He said that the location exposed the property to noise levels in excess of 65 dBA. Mr. Whiteley said they had an acoustical analysis performed by Wyle Laboratories, which was included in the application, determining that it would be necessary to construct a solid 6-foot high fence in order to reduce exterior noise levels to outdoor recreational areas below 65 dBA. Mr. Whiteley said that the strict application of the Zoning Ordinance would require the reduction of the fence height to 4 feet, which would fail to produce acceptable noise levels and restrict reasonable use of the property.

Marjorie and Michael Kwart, residents of the property being considered under VC 94-B-038, spoke in support of the application and referenced the petition, signed by residents in the Court, in support of the application.

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

Mr. Hammack moved to grant VC 94-B-037 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 7, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-037 by CSC PROPERTIES, INC., under Section 18-401 of the Zoning Ordinance to permit six foot high fence to remain in front yard of a corner lot, on Appl. under Sect(s). 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 9100 Lynchburg Court, Tax Map Reference

58-4((35))9, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 14, 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 approximately 17,915 square feet.
4. There may be a conflict between two issues in the Zoning Ordinance as to whether the height of the fence is more important than the noise attenuation level which the fence is proposed to mitigate.
5. There is a great deal of traffic noise all during the day and into the night and noise attenuation measures are more important in this instance.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 specified fence shown on the plat prepared by Rinker-Detwiler & Associates dated January 6, 1994, and revised March 21, 1994, submitted with this application and is not transferable to other land.

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 June 22, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. CSC PROPERTIES, INC., VC 94-B-038 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit six foot high fence to remain in front yard (4 ft. max. fence height allowed by Sect. 10-104). Located at 9106 Lynchburg Ct. on approx. 18,351 sq. ft. of land zoned R-2. Braddock District. Tax Map 58-4 ((35)) 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. Morgan S. Whiteley, Agent, CSC Properties, Inc., 11714 Amkin Drive, Clifton, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located in the Bailey Property Subdivision; it is surrounded on three sides by single family detached dwellings also zoned R-2 and single family homes across Hunt Road on property zoned PDH-3. He said the applicant was requesting a variance of 2 feet to the height of the fence.

There were no questions of staff and Mr. Whiteley presented the statement of justification, previously submitted in writing and incorporated into the record. He said the property was located next door to the property which was the subject of the previous application, VC 94-B-037. In this case, the front yard is actually the rear yard and is exposed to noise levels in excess of 65 dBA; the retention of the 6-foot fence would reduce the noise to acceptable levels.

Marjorie and Michael Kwart, residents of the property, spoke in support of the application and referenced the petition signed by residents in the Court in support of the application. Ms. Kwart said they wished to retain the fence for security reasons, as well as noise attenuation.

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

Mr. Hammack moved to grant VC 94-B-038 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 7, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-038 by CSC PROPERTIES, INC., under Section 18-401 of the Zoning Ordinance to permit six foot high fence to remain in front yard, on property located at 9106 Lynchburg Court, Tax Map Reference 58-4((35))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 June 14, 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 approximately 18,352 square feet.
4. There may be a conflict between two issues in the Zoning Ordinance as to whether the height of the fence is more important than the noise attenuation level which the fence is proposed to mitigate.
5. There is a great deal of traffic noise all during the day and into the night and noise attenuation measures are more important in this instance.

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 specified fence shown on the plat prepared by Rinker-Detwiler & Associates dated October 29, 1993, and revised March 21, 1994, submitted with this application and is not transferable to other land.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 22, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 206, June 14, 1994 (Tape 1), Scheduled case of:

9:30 A.M. JAMES H. & NANCY R. HOWREN, VC 94-V-031 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (garage) 3.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 1953 Shiver Dr. on approx. 30,730 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 93-3 ((24)) 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. The applicant's agent, Thomas L. Kerns, 3030 Clarendon Boulevard, Arlington, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the Hollin Glen Subdivision; it is surrounded on three sides by single family detached dwellings also zoned R-4, and on the southwest by Stream Valley Park which is also zoned R-4. Mr. Heine advised that the applicant proposed to add a two-car garage, mud room and attic addition, requiring a variance of 7 feet to the minimum side yard requirements. He said there had been 2 letters of support and 1 letter of opposition received.

There were no questions of staff and Mr. Kerns presented the statement of justification, previously submitted in writing and incorporated into the record. He said he believed the subject property has exceptional narrowness (75 feet in width, which is 5 feet less than the 80 foot minimum for the R-4 District); it is exceptionally deep, 450 feet; the topography slopes approximately 30 feet toward the rear of the lot and half of the lot is heavily wooded in the rear and contains a sanitary sewer and conservation easement. Mr. Kerns said that approximately half the homes in the community have either carports or garages, including three neighbors to the left with enclosed garages. He said there is approximately 40 feet between the applicant's dwelling and that of the adjacent neighbor, which would leave 22 feet between the proposed addition and the neighboring residence if the Board granted this request. He presented a letter from that neighbor in support of the addition.

In reply to a question from Mr. Dively, Mr. Kerns said the garage could not be placed to the rear because of the slope.

There were no speakers in support of the application.

Patricia Miller Uchello, 6424 Princeton Drive, Alexandria, Virginia, came forward to speak in opposition. She said she had a ratified contract to buy the house at 2001 Shiver Drive, on the property adjacent to the proposed addition, and would be the owner as of June 28, 1994. Ms. Uchello requested that the Board deny the request because it is not in keeping with the

scale of the neighborhood; the front of the addition would extend forward of the front of the house and the oversized garage would make the new owners feel very penned in. Ms. Uchello said that a show of support from the current owners was not significant because they would be leaving and she would be left to cope with the proposed addition. A letter from Ms. Uchello was submitted to the Board.

Mr. Kerns said the addition was placed to minimize the effect of the drop to the rear of the lot and does project 6 feet forward of the front of the existing building, which he said he did not believe was disharmonious with the area. He noted that the existing adjacent house has a side yard of 22 feet, with a depth of 40 feet.

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

Mr. Pammel moved to deny VC 94-V-031 for the reasons set forth in the Resolution.

Hammack seconded the motion, suggesting possible future consideration of an oversized one-car garage. He also referenced the pool in the rear yard as an indication that the rear yard might be considered for the accessory structure. Mr. Ribble also stated he did not believe this to be an unusual situation.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-031 by JAMES H. & NANCY R. HOWREN, under Section 18-401 of the Zoning Ordinance to permit construction of addition (garage) 3.0 ft. from side lot line, on property located at 1953 Shiver Drive, Tax Map Reference 93-3((24))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 June 14, 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 30,730 square feet.
4. The proposed structure would encroach to within 3.0 feet from the side lot line.
5. The 21-foot proposed length of the addition is excessive and further intrudes upon the adjacent property.
6. It is acknowledged that the lot is narrow, which it was when acquired by the applicant.
7. The topography limits where the proposed addition could be placed in the rear; however, there is an extensive area in the rear yard which may present some possibilities for an accessory structure, rather than an attached structure.

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

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

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

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

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

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

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

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

Mr. Hammack seconded the motion which carried by a vote of 6-0. 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 June 22, 1993.

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Page 208, June 14, 1994 (Tape 1), Scheduled case of:

9:30 A.M. FATIMA NETO, SP 94-D-014 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 12.0 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 1910 Virginia Ave. on approx. 1.03 ac. of land zoned R-2. Dranesville District. Tax Map 41-1 ((9)) 4A. (Concurrent with VC 94-D-035).

9:30 A.M. FATIMA NETO, VC 94-D-035 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 4A2 having lot width of 25.51 ft. (100 ft. min. lot width req. by Sect. 3-206). Located at 1910 Virginia Ave. on approx. 1.03 ac. of land zoned R-2. Dranesville District. Tax Map 41-1 ((9)) 4A. (Concurrent with SP 94-D-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. Elizabeth Baker, Planner, with the law firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Blvd., Arlington, Virginia, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, referenced a letter before the Board from a neighbor requesting a deferral. She advised that the neighbor had rescinded the request for a deferral and was present and prepared to go forward.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is surrounded by other single family detached dwellings, also zoned R-2. Mr. Heine said the request for a special permit was for an error in building location.

Mr. Heine said that the applicant was also requesting a variance to a minimum lot width requirement in order to subdivide the property into two lots, with proposed Lot 4-A-2 having a width of 25.51 feet, requiring a variance of 74.49 feet. He said it was staff's determination that the proposed variance application did not meet several of the required standards for variances as set forth is Sect. 18-404; specifically, standards 2, 4, and 9. In addition, the proposed development is not in harmony with the Comprehensive Plan which recommends residential use of the property at 1 to 2 dwelling units per acre. The plan states that infill development should occur at the lowest density range and that pipestem lots should only be encouraged for the protection of an Environmental Quality Corridor (EQC). The requested two-lot subdivision is at the Comprehensive Plan's high density range and does not contain an EQC.

Ms. Baker presented the statements of justification for both applications, previously submitted in writing and incorporated into the record.

The applicant, Fatima Neto, 1910 Virginia Avenue, spoke in support of her applications, stating that she would like to subdivide the property in order to keep her home and better provide for her children since the death of her husband, in whose memory she would like to continue residing in the home.

There were no speakers in support of the applications.

The following people spoke in opposition to the variance application: Jim Mann, President, Franklin Area Citizens Association, who submitted to the Board a letter and a petition in 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 dwelling to remain 12.0 ft. from

side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 1910 Virginia Ave. on approx. 1.03 ac. of land zoned R-2. Dranesville District. Tax Map 41-1 ((9)) 4A. (Concurrent with VC 94-D-035).

opposition to the request; Daniel Sullivan, 1912 Virginia Avenue, who submitted a letter to the Board and whose property the applicant uses for limited access to a garage in the rear in accordance with an old agreement and whose property the applicant would expect to use for the purpose of general access if the request is granted, which purpose he feels is precluded by the Agreement; and Brian Moss, 1921 Virginia Avenue.

The following concerns were expressed by the opposition: The application did not meet the criteria for a variance; the Comprehensive Plan does not approve subdivision with a pipestem lot for 2 dwellings per acre unless an EQC is involved; the granting of the variance could set an unfavorable precedent; the majority of lots in the area are similar in size to the existing Neto lot; there are eight adjacent or nearby properties that could seek the right to subdivide in a similar manner; the rural nature of the area could be marred by granting this variance and setting a precedent; the loss of tree cover; the claimed financial hardship should not be considered and the applicant was said to have other property in McLean which she could sell if there were a financial hardship; upkeep of the existing driveway; and a decrease in property values.

There were no other speakers and Chairman DiGiulian called Ms. Baker to the podium for rebuttal.

Ms. Baker said that the deed conveying the land to the Sullivans in 1965 specifically said the owners and heirs would retain rights to ingress and egress through the property, which is not limited to the garage in the rear and, in answer to a question from Mr. Dively, Ms. Baker said the subdivision had no effect upon the easement. In response to Mr. Mann's comments she said the Comprehensive Plan was not a way to override the Zoning Ordinance as the property already is zoned R-2 and she believed they were not doing anything in conflict with that. Concerning the setting of a precedent, Ms. Baker said there already are a number of pipestem lots in the area, as well as many lots with a frontage of less than 100 feet. Ms. Baker noted that they were requesting use of an existing pipestem which would have no impact upon the character of the community. She said that, since there would be only one dwelling on the driveway, the increase in traffic would be negligible.

In answer to a request from Mr. Dively to address the precedential nature, against which there was much opposition, Ms. Baker presented a map showing pipestems and very narrow driveways in the area for access purposes, although she admitted that many were not pipestems as defined in the current Zoning Ordinance, but outlet roads approved under the previous Ordinance.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant SP 94-D-014 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained the staff report dated June 7, 1994.

Mr. Kelley moved to deny VC 94-D-035 for the reasons set forth in the Resolution.

Mr. Dively said he believed this to be a private dispute between neighbors. He also said there were a number of existing similar situations in the area and, therefore, this would not be precedent-setting. Mr. Dively said that, as far as he could tell, the subdivision would be in keeping with the land use in the area and he would vote to approve.

The motion to deny carried by a vote of 5-1. Mr. Dively voted nay. Mrs. Thonen was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-D-014 by FATIMA NETO, 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 12.0 ft. from side lot line, on property located at 1910 Virginia Avenue, Tax Map Reference 41-1((9))4A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 14, 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 use(s) indicated on the special permit plat, entitled "Variance/Special Permit Plat Showing a Resubdivision of Lot 4A of the Resubdivision of Lots 4 and 5 of the Subdivision of the D.P. Divine Property," prepared by Alexandria Surveys, Inc., dated November 9, 1993, revised through March 11, 1994, 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. Dively 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 June 22, 1994. 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 94-D-035 by FATIMA NETO, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 4A2 having lot width of 25.51 ft., on property located at 1910 Virginia Avenue, Tax Map Reference 41-1((9))4A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 14, 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 approximately 1.03 acres.
4. The staff report was said to be accurate in its assessment and was incorporated by reference.
5. The applicant does not meet Standards 2, 4, 6, 7 and 9.
6. There are several lots of similar size in the immediate vicinity of the subject property and, by allowing this pipestem lot, an unacceptable precedent would be created.

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. Dively 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 June 22, 1993.

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Page 211, June 14, 1994 (Tape 1), Scheduled case of:

9:30 A.M. HELEN J. HESTER AND DAVID A. & SUE A. LAY, VC 94-L-025 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 26.2 ft. from front lot line (35 ft. min. front yard req. by Sect. 3-207). Located 3118 Arundel Ave. on approx. 8,665 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 92-2 ((19)) 63. (MOVED FROM 5/3)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Ron Elliott, Building Design Associates, Architects, 6177 Grovedale Court, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is in the Valley View Subdivision; the property is surrounded by single family detached dwellings, also zoned R-2. The applicant was requesting a variance of 8.8 feet to the minimum front yard requirements.

There were no questions of staff and Mr. Elliott returned to the podium to present the statement of justification, previously submitted in writing and incorporated into the record.

Mr. Elliott said the property is a corner, shallow lot, necessitating the request for a variance. He said the applicant proposed adding a second floor addition and a simple covered porch to the front of the house, inside the existing footprint.

Helen J. Hester, 3118 Arundel Avenue, came to the podium to also reaffirm the affidavit.

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

Mr. Dively moved to grant VC 94-L-025 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated April 26, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-L-025 by HELEN J. HESTER AND DAVID A. & SUE A. LAY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 26.2 ft. from front lot line, on property located at 3118 Arundel Avenue, Tax Map Reference 92-2((19))63, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 14, 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 and HC.
3. The area of the lot is approximately 8,665 square feet.
4. Front yard variances are not usually considered favorably; however, this is a minimum intrusion.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 covered porch addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 22, 1994, 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 June 22, 1994. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. BRADLEY E. & BEVERLY P. LOWE, VC 94-B-033 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line (15 ft. min. side yard req. by Sect. 3-207). Located at 9101 Braeburn Dr. on approx. 15,300 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7)) (2) 9.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Bradley E. Lowe, 9101 Braeburn Drive, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the applicant was requesting a variance of 10 feet to the minimum side yard requirement. The dwelling on adjacent Lot 8 to the west is located approximately 29.9 feet from the shared side lot line.

There were no questions of staff.

Mr. Lowe came forward to present the statement of justification, previously submitted in writing and incorporated into the record. He submitted a letter of support from the adjacent neighbor on the side where the addition was being proposed. Mr. Lowe said he had also spoken with other neighbors and no one indicated any opposition to his proposal. He said the lot is clearly narrow; there is a storm sewer easement on the left side and a flood plain easement in the rear, leaving no other spot to place the addition, a two-car garage with a bedroom above it.

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

Mr. Pammel compared this application to one heard earlier in the morning and moved to deny for the reasons set forth in the Resolution.

Mr. Kelley said he believed the applicant might wish to request a waiver of the twelve-month limitation on refiling because the BZA might look favorably upon a lesser variance.

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The applicant requested a waiver of the twelve-month limitation on refiling and Mr. Kelley moved to grant. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Hammack 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 94-B-033 by BRADLEY E. & BEVERLY P. LOWE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line, on property located at 9101 Braeburn Drive, Tax Map Reference 69-2((7))(2)9, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 14, 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 approximately 15,300 square feet.
4. The proposed addition would encroach to within 5.0 feet of the side lot line, with a length of 29.8 feet creating further intrusion.
5. The excessive bulk of the proposed addition should not be imposed on the adjacent property owner.
6. Approval would establish an unfavorable precedent.
7. An smaller addition might be looked upon favorably.

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

Mr. Kelley moved to grant a waiver of the twelve-month limitation for refiling. Mr. Dively seconded the motion which carried by a vote of 5-0. 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 June 22, 1993.

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Page 214, June 14, 1994 (Tape 1&2), Scheduled case of:

9:30 A.M. TRUSTEES OF COLCHESTER FREEWILL BAPTIST CHURCH, SP 94-S-011 Appl. under Sect(s). 3-C03 and 8-914 of the Zoning Ordinance for church and related facilities to permit building addition and reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 13.0 ft. from side lot line (20 ft. min. side yard req. by Sects. 3-C03 and 10-104). Located at 12410 Popes Head Rd. on approx. 2.18 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((6)) B, 2D. (Concurrent with VC 94-S-032).

9:30 A.M. TRUSTEES OF COLCHESTER FREEWILL BAPTIST CHURCH, VC 94-S-032 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain 0.0 ft. and 1.8 ft. from front lot lines (10 ft. min. req. by Sect. 11-102). Located at 12410 Popes Head Rd. on approx. 2.18 ac. of land zoned R-C and WS. Springfield District. Tax Map 66-4 ((6)) B, 2D. (Concurrent with SP 94-S-011).

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, James C. Mullins, 8156 Community Drive, Manassas, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that surrounding properties are also zoned R-C and WS; to the north, south and west are vacant parcels; to the east is a vacant parcel and Lot 3 developed with a single family detached dwelling. She said that the site is currently developed with a church with a seating capacity of 140, and 11 foot tall pole shed, a 16.5 foot tall storage shed, a 29-space paved parking area and 2 driveway entrances, one from Colchester Road and one from Popes Head Road. Ms. Langdon said that the existing church was established prior to the Zoning Ordinance amendment which makes churches special permit uses in residential zoning districts. If approved, the application will serve to bring the entire site under special permit. Ms. Langdon said the applicant was requesting approval of a special permit to construct a 1,986-square foot addition, 20.8 feet in height, at the rear of the existing church building to provide additional classroom space. The applicant was also requesting a reduction to the minimum yard requirement based on an error in building location to permit an accessory structure to remain 13.0 feet from a side lot line. The accessory structure, which was constructed in 1956, is a pole shed used by the congregation for picnics. The existing parking area is 0.0 feet from Colchester Road and 1.8 feet from Pope Head Road. The applicant had originally requested a variance to allow the parking lot to remain closer than the allowed 10.0 feet from the lot line and has now redesigned the parking lot to meet all Ordinance requirements and has withdrawn the variance application.

Ms. Langdon said that, with 140 seats, 35 parking spaces are required; the applicant has provided 45 spaces, as shown on the plat; the applicant was requesting a modification of transitional screening along the southern, western, and a portion of the eastern lot line, to allow existing vegetation to satisfy screening requirements and a waiver of the barrier requirements along all lot lines. Ms. Langdon said staff concluded that, with implementation of the Proposed Development Conditions, the proposed building addition, and the modification of the minimum yard requirement would be in harmony with the recommendation of the Comprehensive Plan and would satisfy all the General Standards and Standards for all Group 3 and Group 9 uses. Ms. Langdon said that staff further recommended approval of the modifications to transitional screening requirements along the eastern, southern and western lot lines, provided the existing vegetation along the eastern lot line remains undisturbed and the additional landscaping is provided as proposed in Condition 5. Staff also recommended approval of the waiver of the barrier requirements along all lot lines.

Ms. Langdon advised that a letter in support of the application had been received the previous day and a copy had been distributed to the Board members that morning.

There were no questions of staff at this time.

Mr. Mullins said he would like to stress the point that the justification was that the applicant presently had a three-room Sunday School, children and adults, and the adult class was being held in the sanctuary and the range of ages of children in each class was very large because of a lack of space; i.e., children aged 12-18 years was too wide a range for them to adequately learn together. Mr. Mullins said he believed they had met the necessary requirements for a special permit.

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

Mr. Kelley moved to grant SP 94-S-011 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 7, 1994.

Chairman DiGiulian reiterated that the variance request had been withdrawn by the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-S-011 by TRUSTEES OF COLCHESTER FREEWILL BAPTIST CHURCH, under Section 3-C03 and 8-914 of the Zoning Ordinance for church and related facilities to permit building addition and reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 13.0 ft. from side lot line, on property located at 12410 Popes Head Road, Tax Map Reference 66-4((6))B, 2D, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 14, 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-C and WS.
3. The area of the lot is approximately 2.18 acres.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-903 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Charles D. Farmer, Land Surveyor, dated February 4, 1994, revised through May 11, 1994, 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, unless waived 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. Existing vegetation along the northern lot line and northern most portion of the eastern and western lot lines shall be preserved and maintained and shall satisfy the requirements of Transitional Screening 1. The requirement of Transitional Screening 1 shall be modified along the southern, southwestern and southeastern lot lines provided supplemental landscaping is planted between the parking lot and Popes Head Road, Colchester Road and the southeastern lot line adjacent to Lot 3 to soften the visual impact of the parking lot and church structure. Interior and peripheral parking lot landscaping shall also be provided. Size, species and number of all plantings shall be determined by the Urban Forestry Branch of the Department of Environmental Management (DEM) at the time of site plan review. The barrier requirement shall be waived along all lot lines.

6. Limits of clearing and grading shall be as shown on the special permit plat and shall be subject to review and approval by the Urban Forestry Branch.

7. Right-of-way dedication to 26 feet from the centerlines of Popes Head Road and Colchester Road shall be provided for public street purposes and shall convey to the Board of Supervisors in fee simple on demand or at the time of site plan approval, which ever occurs first. Ancillary easements shall be provided if necessary to facilitate any improvements.

8. The maximum number of seats in the main area of worship shall be 140.

9. A maximum of 45 parking spaces shall be provided as shown on the Special Permit Plat. All parking shall be on site.

10. Stormwater Management (SWM) and Best Management Practices (BMPs) shall be provided as required by the Chesapeake Bay Preservation Ordinance and the Water Supply Protection Overlay District, unless waived by the Department of Environmental Management (DEM). If waivers of the stormwater management and BMP requirement are not approved, and a structural SWM/BMP is required, then the type, location and size of the SWM/BMP shall be determined by the Department of Environmental Management. If the location requires clearing any additional vegetation not shown to be cleared on the approved special permit plat, the clearing plan shall be reviewed by the Urban Forestry Branch of DEM and tree replacement may be required.

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

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

Mr. 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 June 22, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 217, June 14, 1994 (Tape 2), Scheduled case of:

9:30 A.M. IRVING HEYMONT, VC 94-V-050 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (garage) 28.1 ft. from front lot line of a corner lot (35 ft. min. front yard req. by Sect. 3-207). Located at 3904 Adrienne Dr. on approx. 28,481 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 110-2 ((7)) 10. (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. Irving Heymont, 3904 Adrienne Drive, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in Sulgrave Manor; surrounding properties are also zoned R-2 and developed with single family detached dwellings; the variance request of 6.9 feet was a result of the applicant's proposal to construct a garage addition.

There were no questions of staff at this time.

Mr. Heymont presented the statement of justification, previously submitted in writing and incorporated into the record. The applicant advised that he had a corner lot with two front yards and 35-foot minimum front yard requirements, one front yard being at the side of the house where a side yard minimum requirement would be 15 feet under normal R-2 zoning and where the applicant proposed building a garage. Mr. Heymont said this was the only place where the garage could be located with direct access to the house, creating a 28.1 foot front yard. He said the rear of the house is a glass wall and there is a steep slope beginning a short distance from the patio and continuing to the property line. Mr. Heymont said he is in poor health and cannot do the shoveling required in inclement weather to gain access to his car. Mr. Heymont said he showed his plans to owners of nine of the ten adjacent properties and each of them had signed letters stating that they had no objections, which he submitted to the Board; the tenth house is vacant.

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

Mr. Ribble moved to grant VC 94-V-050 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 7, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-050 by IRVING HEYMONT, under Section 18-401 of the Zoning Ordinance to permit construction of addition (garage) 28.1 ft. from front lot line of a corner lot, on property located at 3904 Adrienne Drive, Tax Map Reference 110-2((7))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 June 14, 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 approximately 28,481 square feet.
4. The applicant has the unusual situation of double front yard setback requirements.
5. The variance affects only a corner of the lot.

6. The lot has topographical problems.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 February, 25, 1994, submitted with this application and is not transferable to other land.

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 6-0. 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 June 22, 1994. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:50 a.m. and reconvened at 11:00 A.M.

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10:00 A.M. OX HILL BAPTIST CHURCH, APPEAL 94-Y-016 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a freestanding off-site sign in violation of the sign area and height limitations set forth in the Zoning Ordinance. Located at 13821 Lee Jackson Memorial Hwy. on approx. .5033 ac. of land zoned R-1, HC and WS. Sully District. Tax Map 34-4 ((1)) 52.

Chairman DiGiulian asked if the appellant was ready to be heard and Joyce A.N. Massey, the appellant's agent, 4101 Elmwood Street, Chantilly, Virginia, came forward.

William E. Shoup, Deputy Zoning Administrator, summarized staff's position, stating that there were specific limitations for off-site signs, applying to religious, charitable, fraternal, military and service organizations, that restrict such signs to no more than 8 square feet in area and 6 feet in height. He said the appellant's sign was more than 20 square feet in area and approximately 11.5 feet high. It was staff's position that the appellant was in violation of Zoning Ordinance provisions. Mr. Shoup said the appellant had based the appeal on the fact that the Zoning Ordinance provides for other types of uses to have larger off-site signs and that the Zoning Ordinance restrictions violate the appellant's constitutional rights. Mr. Shoup referenced the staff report, stating that staff's position was that, just because there are other uses that may have signs which can be larger than the appellant's, it is not a basis for appeal. He said that the Board of Supervisors (BOS) had adopted specific provisions which directly address the type of sign the appellant was displaying; it was staff's position that the BZA had no authority to override the Board's decision to adopt the provision. Regarding the constitutional issue, staff's position, based upon the Virginia Supreme Court ruling in University Square Associates, a copy of which was incorporated by reference, was that the BZA did not have the authority to rule on the constitutionality of the underlying Zoning Ordinance provision at issue and it was also staff's position that that is exactly what the appellant was challenging, the underlying Zoning Ordinance provision. Mr. Shoup said it was staff's recommendation that the BZA uphold staff's position in this appeal. He noted that David Stone, Assistant County Attorney, was present to answer any legal questions.

Ms. Massey came forward to present the appellant's position. Mr. Dively asked Ms. Massey why she believed the BZA had authority to hear the appeal. She said that University Square Associates specifically provided on page 294 that the BZA was not asked to rule on the constitutional issue before the trial court and the Supreme Court. She said they never challenged the constitutionality of Condition 3 of the special use permit. Ms. Massey said that immediately took that case and that decision outside of the present case. She said they came before the BZA in the face of a decision by the Zoning Administrator that they had to remove their sign because they were in violation of the Ordinance. She said they were told they had a right to appeal any decision and that the BZA, under the Code and the Ordinance, had the authority to reverse or enforce the decision. Ms. Massey said the BZA was vested with the powers of the State of Virginia; if they were to be brought into Federal Court for their decision this date, she did not believe there would be any doubt that they would fall within the realm of the Fourteenth Amendment and their decision would be a State action.

Mr. Dively asked Ms. Massey if the Court of Appeals said that the BZA is a creature of statute possessing only those powers expressly conferred upon it and she said it did. He asked where it was given the power to review the constitutional issues. Ms. Massey cited Phillips v. Tellum where she said the BZA was told it had the authority to hear and decide appeals from any order, requirement, decision or determination made by an administrative officer in the administration or enforcement of the article referenced or of any ordinance adopted pursuant thereto. Ms. Massey said she thought she could best explain the situation by the most extreme example possible of the BOS adopting a Zoning Ordinance that states no black person in Fairfax County can have a fence exceeding 6 feet tall and all white people can have a fence 9 feet tall. She said that, theoretically, the Zoning Administrator, pursuant to a citizen's complaint, determines that a certain black person with a 6 foot fence is in violation and the black person appeals the decision to the BZA. She said the BZA's position would be, using the decision that is argued here on behalf of the Zoning Administrator, that the only questions it could consider are: (1) is the appellant black; and (2), is the fence more than 6 feet tall. If the answers are "yes," then the BZA will enforce the Ordinance. Ms. Massey translated that the appellant would have to remove the sign unless they appeal to the Circuit Court. Mr. Hammack said that was correct, but the appellant in this case was not being asked to remove the sign permanently, only to reduce it in size. Ms. Massey said they were being asked to remove the sign because it is not in compliance. She said they could reinstall a sign that would be in compliance, but they are being made to comply with the Ordinance that is being enforced against them on the face of what the church believes is an unconstitutional ordinance.

Ms. Massey said that the members of the BZA took an oath stating that they do solemnly swear or affirm that they will support the Constitution of the United States and the Constitution of the Commonwealth of Virginia, and that they will faithfully and impartially discharge all the duties encumbent upon them as members of the Board of Zoning Appeals according to the best of their ability, so help them God. Mr. Hammack said they were sworn to uphold the laws of the Commonwealth and asked Ms. Massey to tell him where this particular Ordinance had been determined to be unconstitutional by a court having the jurisdiction to decide that. Ms. Massey cited a Supreme Court case pertaining to an ordinance relating to billboards and distributed copies of the material to the Board members. Mr. Hammack acknowledged that they followed Metromedia, Inc. v. City of San Diego, which she cited, but said that was billboard regulation and it distinguished between on-site and off-site signs and also prohibited any

non-commercial advertising in an area where commercial advertising would be applied, which was not the issue in this case. He said the appellant was allowed to have a sign advertising the church and the issue is the size of the sign which is off-site. Ms. Massey said that the finding in the cited case was that the ordinance was not content neutral, and the fact that it was a billboard did not matter and any sign ordinance would have said the same thing. Mr. Hammack and Ms. Massey continued the discussion along this vein at great length.

Ms. Massey referenced Mr. Dively's earlier question and suggested that Phillips v. Tellum was more on point than University Square. Mr. Hammack said it would have been helpful if Ms. Massey had cited those cases in her brief. Ms. Massey said she would be happy to supplement her earlier statement.

Mr. Dively asked Ms. Massey why Phillips v. Tellum was more on point than University Square Associates. Ms. Massey said that, when they filed their appeal, University Square Associates did not raise the issue of the constitutionality of the special use permit requirement 3. She said that, when they came before the equivalent of the BZA, they challenged only the interpretation, akin to the appellant saying their sign was not too high and asking the BZA to interpret that issue; whereas, the appellant is not questioning whether or not they violated the Ordinance, rather they are saying that the sign does exceed the height requirement, the sign does exceed the area requirement, but the legislation is unconstitutional on its face. University Square Associates did not raise that argument until they went to the trial court; because of that, the trial court did not even have the decision by the Board of Zoning Appeals as to whether or not the Ordinance was constitutional.

Mr. Dively said that Justice Kennan wrote that the ruling in this case was consistent with the decisions in other states that have addressed this issue and have held that a party seeking judicial review of a Board of Zoning Appeals' decision may not challenge the validity of an underlying zoning legislation and asked Ms. Massey if she said that was not controlling in this case. Ms. Massey said that she believed that, in that circumstance, it was exactly the right rule and what she believed it was addressing was, just as you can't raise an new issue on appeal, the trial court on a writ of certiorari is sitting, not as a trial de novo, but one to review and, if the BZA did not address the issue that the appellant is now raising, it is not appropriate for the Court at that level of review to look at the underlying statute. She said it is taken as a fact at that point. Ms. Massey said she did not agree that the decision said that the BZA may not consider the constitutional issue.

The discussion of legal issues continued.

Mr. Shoup said he would like to have Mr. Stoner respond to some of the legal issues raised. He said they were not asking the appellant to remove the sign, only to reduce the height and area of the sign, which is too large and too high.

Mr. Stoner said, in the case of University Square Associates, he believed the language quoted by Mr. Dively was appropriate and he directed the Board's attention to page 388 and quoted from that page, "...Applying this expressly limited standard of review, we hold that the certiorari process does not authorize the trial court to rule on the validity or constitutionality of legislation underlying a Board of Zoning Appeals decision...." He held that there was no suggestion in the language that it was limited to the specific situation presented in the case; namely, where the appellant had not raised the constitutional issues before the BZA. He said he believed this was much broader and says even the trial court on reviewing a decision by BZA does not have the authority to rule on the validity or constitutionality of the underlying ordinance. Mr. Stoner said that, by extension, the same limitation would apply to this Board. Mr. Dively asked if that had not been distinguished because the constitutional issue had not been raised at the level of the Board of Zoning Appeals. Mr. Stoner said he did not believe it had. He said the language he quoted was not limited to that circumstance; it did not say, "in this instance," the certiorari process does not authorize the trial court to rule on the validity or constitutionality of legislation, but speaks very generally, based upon the limited authority granted in the Virginia Code.

Mr. Stoner noted that Mr. Shoup had already explained that the Virginia Supreme Court, the General Assembly and the Virginia Code had stated that the Board has very limited review but, in the discussion of the tests applicable to sign ordinances, he believed one branch of the test had been left out and cited City of Ladue et al. v. Galleo, decided the previous day by the U.S. Supreme Court, stating that the Circuit Court explained that, even where a local sign ordinance is, in fact, content based, where it is motivated by a desire to eliminate certain secondary effects that are unrelated to the content or communicative impact of the communication, that ordinance is still going to be reviewed as if it were content neutral, so it will not be subject to strict scrutiny, but to a lower level of scrutiny. He said he wanted the Board to be aware that it was not simply a question of whether an ordinance is content neutral or content based.

Chairman DiGiulian called on Ms. Massey for a two-minute rebuttal. Ms. Massey said that she did not waive her argument on the Fourteenth Amendment basis and that includes the equal protection argument. She said that what it said to the Board was, if different classifications were being made, which the sign ordinance does, in order for them to withstand constitutional challenge when they touch upon a suspect group or classification, as a right to practice religious is protected, it again must pass the strict scrutiny test. She said she did not believe they met the second level of scrutiny. Ms. Massey asked the Board,

in deciding whether they had jurisdiction, to consider that the Code also provides that not just a person aggrieved may sue the Board, so may a Board of Supervisors. She believed they were talking about the validity when they so stated.

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

Mr. Hammack moved to uphold the determination of the Zoning Administrator that the appellant erected a freestanding off-site sign in violation of the sign area and height limitations set forth in the Zoning Ordinance for the following reasons: The case got into the very broad areas heavy with applicable law; i.e., whether the BZA has jurisdiction to make a constitutional ruling, how the decisions of the Virginia Supreme Court or U.S. Supreme Court apply; insofar as the appellant having chosen to raise the issues at the lowest level of appeal, he believed that was to the appellant's credit; he did not believe that the appellant had proven to him that the Ordinance is unconstitutional or that the application in this particular case to an off-site sign because of the size is unconstitutional. Mr. Hammack said the Zoning Ordinance had been enacted by the BOS in its legislative capacity. He said he had read the cases cited by the appellant, such as Metromedia, which is 45-pages long with dissents by different Justices and a lot of room for interpretation as to what and how the ordinances apply. Mr. Hammack said that, while reading the cases, he noted a certain amount of scrutiny that is applied to the applications in zoning ordinances but, basically, he believed the law upheld reasonably enacted ordinances. Mr. Hammack said that, in the case of Metromedia, it is a broad decision. Metromedia is cited as one of the cases that the appellant believed supported her position; however, in that particular case, the ordinance in San Diego permitted commercial advertising in an area and prohibited all non-commercial advertising on the same signs; the court held that it could not discern any particular safety, threat or governmental reason to distinguish between the two forms of advertising and held that, to prohibit the non-commercial advertising in an area where commercial advertising was permitted was unconstitutional. Mr. Hammack said he did not believe that was the case in this issue; he believed the Board was dealing with the sign ordinance in Fairfax which deals with size and the appellant had admitted, for purposes of this appeal, that the sign is in violation of the Ordinance as it is written; there had been no argument to the contrary on that point. Mr. Hammack cited City of Ladue et al. v. Galleo, which had been in the newspaper that morning, stating that the ordinance had prohibited non-commercial advertising or speech in an area where certain commercial advertising was permitted and, in particular, that case involved the sign put in the window of a house that was 8 inches by 11 inches, rectangular, that said something like Peace in the Gulf, an expression of a belief or a sentiment. He believed that situation to be entirely different to the situation at issue. The BZA was not trying to prohibit the appellant from advertising the existence or location of the church, rather they were dealing with the size of the sign. Mr. Hammack said the appellant made good arguments; he had read the statute which did not have very many limitations on historical markers which are part of an overall, broad category of signage regulations that exist in Fairfax and he believed there was no distinction between this church or this religion and other religions; in fact, this particular ordinance deals with religious, charitable, fraternal, military, and service organizations within the County. Mr. Hammack said the appellant argued that all signs should be the same size, which conclusion he could not embrace. He said he could distinguish in the Metromedia and City of Ladue et al. v. Galleo cases from the existing case, although they state some broad principles; unfortunately, the other two cases were not available to consider as part of the brief or the appeal when they were filed and he could not address them with any degree of familiarity for that reason; however, he believed the Fairfax County Ordinance to be constitutional as written and he had some serious reservations because a Board of Zoning Appeals, which sits in a quasi-judicial capacity, is not a court, and he had reservations as to whether they had authority to determine what is otherwise apparently a legally enacted statute as unconstitutional; he believed that was for a court to do, at least in this situation.

Mr. Hammack referenced the last case cited by Ms. Massey in her brief, San Antonio Independent School District v. Rogriguez, which dealt with financing of the Texas School System and, while it raises the issues about suspect classes, the appellant had not explained why religion is a suspect class or how that case applies. He said he believed that case also could be distinguished from the present issue.

For all of those reasons, Mr. Hammack made a motion to uphold the Zoning Administrator's determination.

Mr. Dively seconded the motion, on a much narrower issue, he said. He said he was not ready to address the First Amendment issues. He said he believed that varying the size, based on content, could be an effective infringement upon First Amendment rights and he believed the appellant had made a good argument that University Square Associates is not as crystal clear as he originally thought it to be; however, he still believed the better interpretation was that the Board was not in a position to rule on the validity of the underlying legislation on constitutional reasons; specifically, the footnote by the Supreme Court says that the appropriate way to do this is either by a request for an amendment to the BOS, or to sue the BOS of the County directly. Mr. Dively said he believed that every case cited was in a posture of an appellant suing a city or a county and not a Board of Zoning Appeals and he believed that a better interpretation of the University Square Associates case is that the BZA lacked jurisdiction to rule on the constitutional issues.

Chairman DiGiulian called for further discussion and hearing no response, closed the public hearing.

Page 222, June 14, 1994 (Tape 2), OX HILL BAPTIST CHURCH, APPEAL 94-Y-016, continued from Page 221)

The motion to uphold the Zoning Administrator's decision carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 222, June 14, 1994 (Tape 2), Action Item:

Request for Reconsideration
Margaret Ryan
VC 94-M-029

Mr. Ribble moved to deny the request. Mr. Pammel seconded the request which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 222, June 14, 1994 (Tape 2), Action Item:

Request to Dismiss
by Zoning Administrator
Jarvis Appeal

Chairman DiGiulian said he believed the Notice of Violation had been withdrawn. Mr. Pammel moved to grant the request. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 222, June 14, 1994 (Tape 2), Action Item:

Approval of Resolutions from June 7, 1994 Hearing

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

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Page 222, June 14, 1994 (Tape 2), Action Item:

Request for Additional Time
Forthway Center for Advanced Studies
SPA 89-307-1

Mr. Pammel so moved. The new expiration date is June 20, 1996. Mr. Ribble seconded the request which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

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Page 222, June 14, 1994 (Tape 2), Action Item:

Jane Kelsey, Chief, Special Permit and Variance Branch, noted that the Board had before them copies of the new agendas which they might wish to review before the next meeting, noting especially the out-of-turn hearing requests.

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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
Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

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

SUBMITTED: July 19, 1994

APPROVED: July 26, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 21, 1994. The following Board Members were present: Chairman John DiGiulian; Robert Dively; 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. in the lobby of the Government Center Due to a thunder storm which caused a power failure at the Government Center, the cases could not be heard and had to be rescheduled. There are no tapes available.

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Page 223, June 21, 1994, (No Tape of Hearing), Scheduled case of:

8:00 P.M. KIMBERLY GLASER, SP 94-V-016 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals to allow three dogs on a lot containing less than 12,500 sq. ft. Located at 2500 Byrd Ln. on approx. 8,778 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((9)) (7) 13.

Chairman DiGiulian stated that the legal notices were not in order.

Mr. Kelley made a motion to defer SP 94-V-016 to September 20, 1994 at 8:00 p.m. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 223, June 21, 1994, (No Tape of Hearing), Scheduled case of:

8:00 P.M. MESSIAH PRESBYTERIAN CHURCH, SP 94-S-009 Appl. under Sect(s). 6-303 of the Zoning Ordinance to permit church and related facilities. Located at 8134 Old Keene Mill Rd. on approx. 0.8124 ac. of land zoned PRC and HC. Springfield District. Tax Map 79-4 ((1)) 1, 2, 3A, 3B, 3C, 3E, 4A, 4C, 5A, 5C, 6A and 6C. (DEFERRED FROM 5/24/94 FOR NOTICES)

Chairman DiGiulian noted that, due to the power outage at the Government Center, the case had to be rescheduled.

Mr. Pammel made a motion to defer SP 94-S-009 to August 2, 1994 at 10:00 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 223, June 21, 1994, (No Tape of Hearing), Scheduled case of:

8:00 P.M. BENJAMIN A. RIGGS, SP 94-D-015 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 shed to remain 4.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 2025 Griffith Rd. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (M) 2. (Concurrent with VC 94-D-036).

8:00 P.M. BENJAMIN A. RIGGS, VC 94-D-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in excess of 200 sq. ft. to remain (size limited by Sect. 10-102). Located at 2025 Griffith Rd. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (M) 2. (Concurrent with SP 94-D-015).

Chairman DiGiulian noted that, due to the power outage at the Government Center, the cases had to be rescheduled

Mr. Pammel made a motion to defer SP 94-D-015 and VC 94-D-036 to August 2, 1994 at 10:00 a.m. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 223, June 21, 1994, (No Tape of Hearing), Scheduled case of:

8:00 P.M. RESTON NORTH POINT APPEAL (BZA ISSUED AN INTENT TO DEF. TO 9/27 ON 5/10)

Chairman DiGiulian noted that at the May 10, 1994 public hearing, the Board of Zoning Appeals had issued an intent to defer the appeal to the morning of September 27, 1994.

Mr. Pammel made a motion to defer Reston North Point Appeal, A 94-H-006, to the morning of September 27, 1994. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 224, June 21, 1994, (No Tape of Hearing), Action Item:

Approval of Resolutions from June 14, 1994

Mr. Kelley made a motion to approve the Resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 224, June 2, 1994, (No Tape of Hearing), Action Items:

Request of Date and Time
LXR, Inc., The Music Store Appeal

Request for Out-of-Turn Hearing
Robert E. McCreight, VC 94-B-071

Request for Out-of-Turn Hearing
Charles S. Phalen, Jr., VC 94-Y-070

Request for Out-of-Turn Hearing
Bruce L. and Gail F. Crockett, VC 94-D-072

Request for Out-of-Turn Hearing
Burke Community Church, SPR 77-S-269 and SPA 77-S-269-3

Request for Out-of-Turn Hearing
Mantua Swim Club, SPA 81-P-089-2

Request for Out-of-Turn Hearing
Floris United Methodist Church, SPA 88-C-057

Request for Out-of-Turn Hearing
Mr. and Mrs. Visted, SP 94-S-028

Intent to Defer
George Lane Appeal, A 93-V-028

Chairman DiGiulian noted that, due to the power outage at the Government Center, the action items had to be rescheduled.

Mr. Kelley made a motion to defer all of the above-referenced action items to the June 28, 1994 public hearing. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

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Page 224, June 21, 1994, (No Tape of Hearing), Scheduled case of:

Revised Plats
Margaret Ryan, VC 94-M-029

Chairman DiGiulian stated that staff had submitted, for his signature, the revised plat for the above-referenced case. The Chair found the plat to be in order.

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As there was no other business to come before the Board, the meeting was adjourned at 8:15 p.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John P. DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: June 28, 1994

APPROVED: July 5, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on June 28, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; 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 225, June 28, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL ZNILEK, VC 94-S-043 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of deck 1.0 ft. from rear lot line (6.2 ft. min. rear yard req. by Sects. 16-102, 3-307 and 2-412). Located at 7403 Arundel Pl. on approx. 9,881 sq. ft. of land zoned PDH-3. Sully District. Tax Map 89-3 ((30)) 13A.

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 Znilek, 7403 Arundel Place, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the Middleford Subdivision; the property is surrounded on three sides by single family detached dwellings, also zoned PDH-3 and, on the north, by public parkland which is also zoned PDH-3. He said that the applicant was requesting a variance of 4 feet and also noted an error in the staff report, stating that the requested variance was 0.2 feet.

There were no questions of staff and Michael Znilek presented the statement of justification, previously submitted in writing and incorporated into the record, stating that the property has exceptional shallowness, irregular shape and exceptional topography. He said that the exceptional shallowness exists only on two or three of the lots in the area; one of the properties already has obtained variance approval and has constructed a deck to the rear of the house to within 6 inches of the property line, as referenced in the staff report. Mr. Znilek claimed undue hardship if he cannot build a reasonably sized deck. He said that, according to the house plans, the dwelling was intended to have a deck and the value of his home would be reduced, compared to other homes in the area which all have the ability to construct a deck. The proposed deck will use the existing doors that are designed to provide access to the house from the family room and no other exterior doors exist on that main level. He said that moving the deck to any other location would effectively eliminate any sunlight from the existing finished basement and a sizable portion of the usable back yard area. Mr. Znilek submitted letters of support from other property owners and approval from the Homeowners Association's Architectural Review Committee, pending approval of the variance.

In answer to a question from Mr. Ribble, Mr. Znilek said the property behind his lot belongs to Fairfax County.

Mr. Pammel asked, since the property is zoned PDH-3, could the deck have been built by right if it had been shown on the Development Plan when it was initially approved. Mr. Heine said he would need to check the Ordinance to answer that. Mr. Pammel said that in the past, if a deck were not shown on the Development plan, a variance would be required but, when shown on the Development Plan, it would be a by-right use. Mr. Heine said staff had checked some of the past cases and found that most of them had additions, which is a slightly different situation in that they would need to meet the requirements of the R-3 Cluster requirements which would also be 25 feet from the rear lot line. Mrs. Thonen asked if that would be true of PDH zoning. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said she believed Mr. Heine meant that any additions after the development had been completed would have to conform to the closest bulk regulations for the most similar zoning district; however, when the development was originally constructed the Development Plan must meet certain criteria, none of which are necessarily exact setbacks, but must be approved by the Director of the Department of Environmental Management (DEM). She said she would find the precise wording in the Zoning Ordinance in a moment.

In the interim, there were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Znilek submitted photographs to the Board of typical decks within the subdivision, including one, built under a variance, which he said was approximately the same size as he was proposing.

Ms. Kelsey said that under Development Plans for all Planned Developments, the Zoning Ordinance indicated that "...the planned development shall be of such design that will result in a development achieving the stated purposes of the planned development district more than would development under a conventional zoning district." She said she believed it was examined at the time of rezoning, as well as at the time of site plan review, to determine whether or not it met the criteria, so there are no specific distances required; however, when it is reviewed in the Zoning Evaluation Division and DEM, it would be examined to see whether it meets the goal of the planned district. Chairman DiGiulian asked, if the deck had appeared on the Rezoning Development Plan in the proposed location, would it have been approved; Ms. Kelsey said it would have. Mr. Pammel suggested that some of the decks on the photos submitted by the applicant probably were built under those standards and Ms. Kelsey

said she had not researched them and could not respond without having done so; there was only one variance referenced in the staff report. In answer to a question from Mrs. Thonen, Ms. Kelsey said that, after the Development Plan has been approved, any subsequent addition, including a deck, would need to meet the setbacks for the most similar zoning district.

Chairman DiGiulian again closed the public hearing.

Mr. Pammel moved to grant VC 94-S-043 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 21, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-S-043 by MICHAEL ZNILEK, under Section 18-401 of the Zoning Ordinance to permit construction of deck 1.0 ft. from rear lot line, on property located at 7403 Arundel Place, Tax Map Reference 89-3((30))13A, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 28, 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 PDH-3.
3. The area of the lot is approximately 9,881 square feet.
4. The deck would have been permitted by right if it had been shown on the Development Plan and approved as part of the PDH-3 zoning and development review and processing at the time of rezoning.
5. What the applicant is now proposing has been done by others in the neighborhood, by right, at the time of development.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 deck shown on the plat prepared by Rinker-Detwiler and Associates, dated April 26, 1991, revised and recertified by Peter Juanpere, AIA, March 30, 1994, submitted with this application and is not transferable to other land.

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

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

Mr. Ribble seconded the motion which carried by a vote of 6-1. Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 6, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 227, June 28, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MICHAEL HANCHER, VC 94-D-040 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (garage) 5.3 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 2023 Burfoot St. on approx. 11,970 sq. ft. of land zoned R-4 and HC. Dranesville District. Tax Map 40-1 ((20)) 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. Michael Hancher, 2023 Burfoot Street, Falls Church, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the applicant proposed to construct a garage addition requiring a variance of 4.7 feet from the minimum side yard requirements.

There were no questions of staff and Mr. Hancher presented the statement of justification, previously submitted in writing and incorporated into the record, stating that he purchased the property in 1963. He said that two neighbors were granted variances and denial of his request would create a hardship by denying him reasonable use of his property.

Chairman DiGiulian said he noticed a stoop projecting out from the house and reducing the 13.4-foot dimension stated as the width of the proposed garage.

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

Mr. Hammack moved to grant VC 94-D-040 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 21, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-040 by MICHAEL HANCHER, under Section 18-401 of the Zoning Ordinance to permit construction of addition (garage) 5.3 ft. from side lot line, on property located at 2023 Burfoot Street, Tax Map Reference 40-1((20))24, Mr Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 28, 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 and HC.
3. The area of the lot is approximately 11,970 square feet.

4. The lot is narrow.
5. Projecting from the residence is a stoop which requires additional width to allow the garage to be functional.
6. The proposed addition is on the side adjacent to parkland and would not adversely impact any other residences.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Huntley, Nyce and Associates, LTD, dated March 23, 1994, 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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 6, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MARTINA BUTCHER, EXECUTOR OF ESTATE, VC 94-M-044 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot 2 having lot width of 20.43 ft. (100 ft. min. lot width req. by Sect. 3-206). Located at 4931 Sunset Ln. on approx. 1.00 ac. of land zoned R-2. Mason District. Tax Map 71-4 ((1)) 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, Donald Smith, 5618 Wharton Lane, Centreville, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located north of the intersection of Braddock and Backlick Roads and is surrounded on all sides by lots also zoned R-2. The applicant's proposal requires a variance of 79.57 feet. He noted that VC 86-M-011 was approved by the BZA on May 20, 1986, to permit the subdivision of former adjacent Lot 4 to the north into two lots, with Lot 4B having a width of 12.27 feet; Condition 7, approved with that variance, requires that ingress and egress on Lots 4B and 5 be provided by a common driveway located on Lot 4A. Mr. Hunter said that, by letter dated June 21, 1994, the applicant and owner of Lot 5 consented to grant ingress and egress across Lot 5 to proposed Lot 2. If the subject variance is approved, the situation of triple stacked lots would exist where other pipestem lots exist on Sunset Lane; this application would further exacerbate an undesirable situation. Mr. Hunter said that, in staff's opinion, this application does not meet 8 of the 9 variance standards set forth in Section 18-404; therefore, if it is the intent of the BZA to approve the application, staff recommended that approval be subject to the Proposed Development Conditions contained in Appendix 1 of the staff report.

In answer to a question from Mr. Hammack, Mr. Hunter agreed that Ms. Butcher owns Lot 5. Mr. Hunter said that, as stated in the letter dated June 21, the applicant had consented to provide ingress and egress across Lot 5 to proposed Lot 2. Mr. Hammack remarked that the applicant was providing access for herself.

Mr. Smith said that Ms. Butcher was one of the three heirs and executrix of the estate of her parents. He said the land consisted of one acre which had never been subdivided; it is zoned R-2 or two 1/2 acre lots. After making comparisons with other lots in the vicinity, Mr. Smith said he found that most 1/2-acre lots are appraised in the $50,000 range, depending on improvements; thus, the one-acre of Smith land is appraised at $100,000. Mr. Smith said, accordingly, the estate is appraised as two half-acre lots but, without a variance, they are being deprived of the full use of the property. He said they were applying for a variance to subdivide the one-acre lot into two half-acre lots; the surrounding area reveals 6 or more outlet roads, easements, and private driveways in the neighborhood, and he submitted photos. Mr. Smith explained that the existing entrance would be utilized and a new access would not be created. It was Mr. Smith's stated belief that the request met all of the 9 standards for a variance and they agreed to all of the Proposed Development Conditions.

Mr. Hammack asked Mr. Smith how Lots 5 and 6 originally were created. Mr. Smith said that, in 1949, when the Subdivision Control Ordinance was approved, there was a condition allowing two cuts under 5 acres, without going through Subdivision Control, continuing up through 1975 when it was removed from the Ordinance; the property was co-owned by the Butchers at that time.

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

Mrs. Thonen moved to deny VC 94-M-044 for the reasons set forth in the Resolution.

Mr. Dively seconded the motion.

Mr. Hammack noted for the record that the BZA is not authorized under the Ordinance to consider economic issues in arriving at its decisions. He said he also believed that, in further dividing the property from what was allowed by the Ordinance, they would be getting into the area of subdividing and there are many other larger lots in the area which could be divided into much smaller lots. He said there are other ways the land could be developed, such as consolidating and putting in a public street; however, he did not believe it was a function of the BZA to make that further subdivision as is requested in this instance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-044 by MARTINA BUTCHER, EXECUTOR OF ESTATE, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2 having lot width of 20.43 ft., on property located at 4931 Sunset Lane, Tax Map Reference 71-4((1))6, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 28, 1994; and

1. The applicant is executor and one-third heir of the estate.
2. The present zoning is R-2.
3. The area of the lot is approximately 1.00 acres.
4. The applicant does not meet any of the standards required for a variance.
5. The applicant has reasonable use of the land without a variance.

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

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

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

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

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

Mr. Hammack seconded the motion which carried by a vote of 6-1. Chairman DiGiulian voted nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 6, 1993.

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Page 230, June 28, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JAMES G. & SUSAN D. DILULLO, VC 94-Y-041 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure (pool) in front yard of lot containing less than 36,000 sq. ft. and 6 ft. high fence to remain in front yard of a corner lot (4 foot max. height allowed by Sect. 10-104). Located at 5551 Village Center Dr. on approx. 8,942 sq. ft. of land zoned PDH-3 and WS. Sully District. Tax Map 54-1 ((17)) (6) 1.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. James G. DiLullo, 5551 Village Center Drive, Centreville, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Sully Station Subdivision; surrounding lots in the north, south and west are also zoned PDH-3 and WS; the property to the east is zoned R-3; all surrounding lots are developed with single family detached dwellings. Ms. Langdon said that this application for a variance of 2 feet from the minimum height requirements resulted from the applicant's request to allow an accessory structure, a pool, in the front yard of a lot containing less that 36,000 square feet and to allow a 6-foot high fence in one front yard of a corner lot; the maximum height allowed for a fence in a front yard is 4 feet.

There were no questions of staff at this time.

Mr. DiLullo presented the statement of justification, previously submitted in writing and incorporated into the record, stating that the Homeowners Association had granted permission for the existing fence; he said he had asked if Fairfax County required a permit at that time, prior to installation, and was told it did not. Mr. DiLullo said the property has exceptional shape and size because it is a corner lot and is very shallow; there is no other area on the property where the pool could be constructed.

In answer to questions from Mr. Dively, Mr. DiLullo said the front of the property is Village Center Drive; there are pine trees between his property and Braddock Road; parcel H, behind the property, belongs to the Homeowners Association. Mr. DiLullo submitted photos of other fences on Braddock Road, including one owned by his neighbor and attached to his fence.

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

Mr. DiLullo requested a waiver of the eight-day limitation, if the request was approved.

Mr. Dively moved to grant VC 94-Y-041 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 21, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-Y-041 by JAMES G. & SUSAN D. DILULLO, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure (pool) in front yard of lot containing less than 36,000 square feet and 6-foot high fence to remain in front yard of a corner lot, on property located at 5551 Village Center Drive, Tax Map Reference 54-1((17))(6)1, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 28, 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-3 and WS.
3. The area of the lot is approximately 8,942 square feet.
4. The lot has the unusual situation of two front yards.
5. There is no other practical location for the swimming pool.
6. The structure will be on the Braddock Road side, shielded by pine trees, thereby not impacting other properties in the vicinity.
7. Adjacent Parcel H belongs to the Homeowners Association and will not be impacted to the same degree as residential 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 including pool and 6.0 foot high fence shown on the plat prepared by Alexandria Surveys, Inc., dated March 23, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained for the swimming pool 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 7-0.

Mr. Dively 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 June 28, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 232, June 28, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH B. & NANCY TOMPKINS, VC 94-V-042 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit fence 5.9 ft. in height to remain in the front yard of a corner lot (4 ft. max. height allowed by Sect. 10-104). Located at 8146 Wellington Rd. on approx. 36,448 sq. ft. of land zoned R-2. Mt. Vernon District. Tax Map 102-2 ((1)) 24A.

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 B. Tompkins, 8146 Wellington Road, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the lots to the north, south and west are also zoned R-2 and developed with single family detached dwellings; to the east is West Boulevard Drive and the Mt. Vernon Memorial Highway. Ms. Langdon said the applicant wished to have a 5.9 foot high fence remain in the front yard of a corner lot. She said that 21 letters had been received by staff in the past week, including one from the applicant and one from the contractor, which were submitted to the Board.

There were no questions of staff at this time.

Mr. Tompkins presented the statement of justification, previously submitted in writing and incorporated into the record. He submitted 2 more letters of support. Mr. Tompkins said that there is a day care center next door to him which generates noise, along with noise from the cars and vans using the driveway which is up against the property line. Mr. Tompkins said that his neighbor has a permit for a day care center, allowing up to 5 children during the day and 2 additional children before and after school, so there can be at least 7 children next door at one time, and the Tompkins have seen at least that number coming and going on and off the property. He said they were concerned about the risk of a lawsuit as a result of children coming onto their property and getting injured. Mr. Tompkins said that, if the fence were only 4-feet tall, the children could probably see over the fence and might be attracted by the basketball court in the driveway; they are concerned about their own privacy and believe the fence also would provide privacy to the Dinsicks, who operate the day care center. It was Mr. Tompkins' understanding, he said, that the Dinsicks had submitted a

letter of opposition, which he had not seen. Mr. Tompkins said he believed the fence was consistent with the character of the neighborhood and cited a variance granted on June 14, 1994, for an 8-foot fence on the property of A. N. Louise Lainge Bailey, as well as other fences in the area.

Mr. Tompkins said the Proposed Development Conditions met with his satisfaction.

The following people spoke in support of the application: Pamela Parker, across the street neighbor of the applicant; and Tommy Stedhan.

The supporters believed the fence was an attractive addition and blocked some of the activity next door at the Dinsicks; they believed the fence should be higher.

Leo Lloyd, 8138 Wellington Road, spoke in opposition and referenced "spite fences; he also had a letter in opposition from his neighbor, Robert Taylor, because the fence did not conform with the Ordinance. Mr. Lloyd said his view of the public park was obstructed by the fence. David Bolte, Wellington Road, objected to the fence on the basis of non-conformance and removal of natural vegetation. Linda Dinsick, 8142 Wellington Drive, spoke in opposition to the variance request stating that, additionally, the fence was not erected in good faith, it would change the character of the district and would be contrary to public interest.

Mr. Hammack compared the previous natural 20-foot barrier with the erection of the fence in a discussion with Mr. Bolte.

Mr. Dively asked Ms. Dinsick what she meant when she said the fence was not erected in good faith. She said that, when they discussed the intention of the Tompkins to build a fence, they asked them to be sure that it complied with the Zoning Ordinance, and the Tompkins told her that they knew what the zoning requirements were. Mr. Kelley asked Ms. Dinsick if she knew what they were and if she informed the Tompkins of what they were. She said she knew but did not inform the Tompkins because they said they knew what the zoning requirements were.

There were no other speakers and Chairman DiGiulian called Mr. Tompkins to the podium for rebuttal.

Mr. Tompkins referenced Mr. Lloyd's mention of a spite fence and he said that was not the case because the fence was constructed for good reasons which he had previously explained. He said it was true that there previously had been a 8- to 20-foot natural barrier there previously which did not protect their rights as the fence did. Mr. Tompkins said the fence did not alter Mr. Lloyd's view of the parkway from what it was previously. Mr Tompkins said, to his knowledge, Mr. Bolte did not live in the immediate neighborhood but just drove by the subject property. Mr. Tompkins said the letters in opposition were solicited by the Dinsicks without advising the letter writers about the existence of the day care center, nor was this fact made known to the Executive Committee when they considered the issue.

Mr. Ribble moved to grant VC 94-V-042, noting that several letters had been submitted, some of which may not have explained all the facts. The reasons for his motion to grant are set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated June 21, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-042 by JOSEPH B. & NANCY TOMPKINS, under Section 18-401 of the Zoning Ordinance to permit fence 5.9 ft. in height to remain in the front yard of a corner lot, on property located at 8146 Wellington Road, Tax Map Reference 102-2((1))24A, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 28, 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 approximately 36,448 square feet.
4. There was a great deal of testimony and several letters were written, both pro and con.
5. According to the law, seeking a variance may be an escape valve for property owners who would not otherwise be permitted to do certain things under the Zoning Ordinance. This is especially true in the case of a hardship.
6. This property has a double front yard, which is a hardship.

7. There is no existing sight distance problem, being 30 feet from Wellington Road.
8. The applicant amply explained the reason for the fence and produced photos, along with photos of what existed previously and could be considered "volunteer" growth.
9. A variance granted in the area recently was not precedent setting and dealt with an entirely different situation; all cases are considered on an individual basis. This case also is not precedent setting.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 fencing 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 variance plat prepared by R. C. Fields, Jr. and Associates, dated March 24, 1994, submitted with this application, as qualified by these development conditions.

3. The wooden stockade fence shall be kept in good repair.

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 variance shall not be legally established until this has been accomplished.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 6, 1994. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. PAUL A. & JEANNE E. VANDER MYDE, VC 94-V-019 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line and 7.2 ft. from side lot line (25 ft. min. rear yard req. and 10 ft. min. side yard req. by Sect. 3-407). Located at 1803 Hunting Cove Pl. on approx. 12,832 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-4 ((3)) (7) 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. Paul A. Vander Myde, 1803 Hunting Cove Place, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the Belle Haven Subdivision, and is surrounded by single family detached dwellings also zoned R-4; Ft. Hunt Road is located east of the subject property. He said the applicant was requesting a variance of 10 feet from the minimum rear yard requirement and 2.8 feet from the minimum side yard requirement. Mr. Heine said that, subsequent to the publication of the staff report, a question arose concerning a statement in the staff report that the following variances were approved in the neighborhood and the question was, "what is neighborhood"? The cases identified within the staff report are those within a two-block area surrounding the subject property. Mr. Heine said that staff had done further research on the subdivision, discovering that many variances had been approved and several had been denied. He said a short addendum to the staff report had been written which included a tax map of the subdivision with asterisks marking those lots and an attached listing of the variance numbers. He said there was one recent application, VC 93-V-126, approved by the BZA on January 5, 1994, not shown on the tax map as it was outside the area covered; it was for a stoop to be constructed 24.7 feet from the front lot line and 17 feet from the rear lot line. Mr. Heine said that, since the Board Package had been sent out, staff had received a letter from the applicant, transmitting letters from a neighbor and an architect in support of the applicant.

Mr. Vander Myde thanked the BZA for having granted a deferral from the original hearing date of June 1, 1994. He presented the statement of justification, previously submitted in writing and incorporated into the record; he touched upon some of the highlights as follows: They propose to enclose an existing deck, only 100 square feet of which requires the variance; sound land use planning is being utilized by not disturbing the existing slope, trees, plants and vegetation; the vast majority of the neighbors believe the addition to be attractive and architecturally compatible with the surrounding neighborhood; a model and the architect's drawings were shown to all the neighbors; neighbors at 6100 Ft. Hunt Road who had a variance approved on 2/9/93, advised them to submit a petition of support; 36 signatures were obtained from all contiguous and adjoining property owners and submitted to the Board. Mr. Vander Myde said that, since then, the neighbors at 6117 and 6119 Vernon Terrace had submitted letters of opposition, after initially signing the petition in support. He said that Ms. Demerest had informed them in writing that she would oppose the application and the office file contained a complete record of correspondence to the Demerests, which had gone unanswered, reflecting the applicant's attempts to pursue a rational resolution of the matter.

In answer to a question from Mr. Ribble, Mr. Vander Myde said that the house was placed in its present location because of the marine clay situation.

Ms. Vander Myde also spoke in justification of the request, explaining why the addition could be placed only in the proposed location.

Margaret Rass, architect for the applicants' original house at 1803 Hunting Cove Place, as well as for the proposed addition, addressed the subject of marine clay, which she said required extreme care when developing the site. She noted that there is more good soil at the top of the site and significantly more marine clay at the lower end of the site. She said that, in order to minimize the need to deal with the hazards of cutting into the marine clay, she suggested that the house be located as far to the top of the site as possible; even with those measures, the rear basement wall had to be designed as a retaining wall in order to hold the marine clay in place. Ms. Rass said that the idea of the addition was to gain more privacy and add more level, usable space to the rear yard with an minimal impact to surrounding properties. She said the downhill side of the property was the only space available, which lent itself to a deck structure to add more level space to the rear yard while maintaining the existing grade lines; the location allowed the addition to naturally tie into the existing screened porch on that side of the house; an approved variance would allow a roof over the deck. She said that the roof would be hipped to soften any impact on surroundings properties and would be covered with natural shakes to blend in with the house and the setting.

Mr. Hammack asked Ms. Rass why she could not design the deck to wrap around Deck C. She said it would still encroach upon the minimum side yard even if it went around the side; plus, it would not offer the privacy for the back yard which is exposed from the top of the hill and the sides; they also wish to use the existing trees in the back as a buffer for privacy.

Mr. Vander Myde interrupted to note that the dwelling to the rear is sited 5 feet above the roof line of his dwelling.

Elizabeth Demerest, 6117 Vernon Terrace, immediately adjacent to the applicant's property, came forward to speak in opposition, submitting exhibits of the relationship of her property to the applicants' property. She said that her property sits on the hill which overlooks their property and has a view of the Belle Haven Country Club and the Potomac River, beyond. Ms. Demerest said that her property would suffer substantial negative impact if the

application were approved. Her primary opposition dealt with the view from her property and its change as a result of the applicants' development of their property. She said she had paid more for her lot than other lot purchasers because of the view and did not want it marred; further, her lot is appraised higher than other lots, because of the view, and she did not want it devalued. She submitted photographs to support her position.

Mr. Kelley inquired of Ms. Demerest what the distance was between the two dwellings at the nearest point and she said she did not know. He asked her if she believed the new addition would shorten that distance because, in the photos, the right hand corner of the house appeared to be just as close as the new addition would be. Ms. Demerest could not shed any light on that and Mr. Kelley said he would save that question for the architect to answer in rebuttal.

Mr. Pammel referenced that Ms. Demerest had questioned why the applicants had sited their dwelling to the rear of the lot and he explained to her that it was because of the marine clay located to the front of the lot. He explained that the County began having problems with marine clay many years ago and a number of structures had failed because they were located on marine clay without adequate and proper engineering. Mr. Pammel said that the County established standards in the 1950's to address the problem. He said that the applicants' architect was only abiding by those standards established by Fairfax County in locating the residence. Mr. Pammel said that, if the dwelling had been sited at the bottom of the lot, the applicants would have been subjecting themselves to possible landslides from the upper portion. He said they had properly located the building to the rear of the property to minimize the hazard and locate the house on stable soil. Mr. Pammel said all of this had been done with the complete concurrence of Fairfax County's inspection program. Ms. Demerest said she objected because that was not the argument that was cited in the application and, if that was the reason, the data was not made available for independent evaluation by another architect or another engineer, which might have resulted in the dwelling being placed another 10 feet forward. Mr. Pammel assured Ms. Demerest that County requirements placed the house in its present position and she said "okay."

Leo Mayer, Ms. Demerest's former husband, who did not give his present address, spoke in support of her opposition. He said that he learned of the special footings required to build the house and believed that could have been done just as easily further down on the lot. He said they originally supported the addition because they were told no neighbors opposed; they withdrew support when they realized that was not true. Mr. Mayer went on to mention another neighbor who he believed was in opposition and who would be similarly affected by the addition. He said he had checked realty records for property values, which he said were influenced by the value of the view.

Chairman DiGiulian called for two minutes of rebuttal time.

Mr. Vander Myde came to the podium to say that, for over 50 years, the Vander Myde property and the Demerest property were one property. He said that Randall Caton, one of the principals of Belle Haven Real Estate, back in 1925 purchased both lots and they stayed as one lot until 1979, when the Mayers first purchased their property. At that time, Mr. Vander Myde said the Mayers had an option to buy the lower lot, Lot 4, which is now the Vander Myde property, and they chose not to do so. Mr. Vander Myde said that should be considered history and the issue of the variance should be addressed at this point. He said that the distance from the corner of his dwelling and the corner of the Demerest dwelling is 82 feet; with the proposed addition, the distance to the corner of the Demerest house on that side is 87 feet, 5 feet more.

Chairman DiGiulian closed the public hearing.

Mr. Kelley moved to grant VC 84-D-019 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated May 24, 1994.

Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel stated that he would like to add an additional point to the findings of fact, that the existence of a substancial amount of marine clay on the site severely constricts development of the property; thus, the present location of the house and the addition is a minor modification and the encroachment into the rear yard is not significant. Mr. Kelley thanked Mr. Pammel for adding that.

Mr. Hammack proposed a motion. He said the Vander Myde's had presented a good case but, in the last analysis, there is an addition 24 feet long by 12 feet wide, plus a bulge on the other side and he believed, after weighing everything else, the proposal was for convenience. He said the applicants could build a 14 foot by 12 foot addition and not require a variance. Mr. Hammack said he did not believe the arguments concerning privacy and the placement of the house in its present location are an overriding reason to grant a variance. He said the other point he believed was important was that, while Ms. Demerest cannot really complain about losing view to the existence of the house, she has some merit in that the structure as proposed would cut off what remaining view she has, which would impact her property; he referenced Standard 7 under Sect. 18-404, and said the authorization will be

of substantial detriment to the adjacent property. Mr. Hammack said he believed the addition could be configured around the end of the deck, so as not to require a variance and still afford the privacy that is desired. He said he believed there is harm to the adjoining property owner and the request should be denied. The motion failed for lack of a second.

Mr. Kelley's motion carried by a vote of 6-1. Mr. Hammack voted nay.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-019 by PAUL A. & JEANNE E. VANDER MYDE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.0 ft. from rear lot line and 7.2 ft. from side lot line, on property located at 1803 Hunting Cove Place, Tax Map Reference 83-4((1))100B, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on June 28, 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 12,832 square feet.
4. The lot has exceptional topographical conditions resembling an amphitheater.
5. A homeowner may anticipate a change in the view if the property in front of them is owned by someone else. The adjacent property owner in this case had the right to purchase the subject property and gave up the ability to control their view when the chose not to exercise that right.
6. The view has changed more due to the maturing of trees and vegetation than by the applicant's placement of the house.
7. Opposition could not refute that there is a 40-foot rise at the rear of the property.
8. The residence on this lot does not fill up as much of the lot as most other dwellings in the subdivision.
9. The existence of a substantial amount of marine clay on the site severely restricts development; thus, the location of the house and addition constitutes only a minor modification and encroachment into the rear yard is not significant.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 covered deck addition shown on the plat prepared by Alexandria Surveys, Inc., dated February 3, 1994, 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 6-1. Mr. Hammack voted nay.

Mr. Ribble moved to waive the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on June 28, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 238, June 28, 1994, (Tape 2), Scheduled case of:

9:30 A.M. CAMILLE WASHINGTON BROWN, APPEAL 94-M-017 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of beehive boxes, garden tractor, a camper top and a boat on appellant's vacant property is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 5731 Poplar Ln. on approx. 19,108 sq. ft. of land zoned R-3. Mason District. Tax Map 61-4 ((1)) 100B.

Camille Washington Brown, 8715 Evangel Drive, Springfield, Virginia, came forward to say she was prepared to proceed with the appeal.

William E. Shoup, Deputy Zoning Administrator, presented the staff report. He said that the issue was the storage of various items on the appellant's vacant lot. Mr. Shoup said that storage of such items would be permitted as an accessory use in the R-3 Zoning District but, to have an accessory use, there must be a existing permitted principal use. He said there is no dwelling or other permitted principal use existing on the lot; therefore, the storage that is occurring on the lot is not an accessory use but the principal use on the property. He said that the use is not a permitted principal use in the R-3 District. Mr. Shoup asked the Board to uphold the Notice of Violation that was issued on March 17, 1994.

Mr. Dively asked Mr. Shoup what was permitted on the lot. Mr. Shoup said the following are permitted: accessory uses and home occupations, affordable dwelling unit developments, single family detached dwellings and public uses.

Chairman DiGiulian asked Mr. Shoup if a garden would be allowed. Mr. Shoup said that, under Article 10, gardens are listed as accessory uses; however, a garden would not be allowed unless there was an existing dwelling. It is not in a district that would permit an agricultural use as a principal use.

Ms. Brown said that the County staff had been helpful to her in understanding the permitted uses in an R-3 District. She said her property originally was owned by her father and was part of the original 70,000 square foot property. The property was subsequently divided among three siblings, including Ms. Brown, with 25 feet dedicated to the County to widen the road and an easement for drainage across the widest portion of the property of one of her brothers, rendering half the lot unusable for building. Based upon her father's generosity to the County, Ms. Brown said she was asking the County for some leniency in granting a variance so that her one brother who lives next to her lot would be allowed to do some gardening. Ms. Brown said her brother had removed the storage shed, the boat, and the tractor which he used for a very small garden. She said there are no dwelling around her lot, which she believed created an exceptional condition in the R-3 District. Ms. Brown said her lot was on a cul-de-sac and there are trees on three sides of the lot. She said the lot is full of trees which act as a buffer to Lot 118, which is a long distance away, as well as

the adjoining apartments. She said that Lots 104, 105 and 106 are fields; Lot 100A is owned by her brother who has been doing some gardening for his family and the local shelter; Lot 101 is also owned by her brother. Ms. Brown said the gardening her brother had been engaged in seemed compatible with the surrounding adjacent areas and appeared consistent with what was occurring. She said she had driven around the area and noted that the Ordinance was not uniformly enforced and she was requesting leniency on an individual-case-basis since the area contains no existing dwellings adjacent to her property. Ms. Brown submitted photos of the area.

Julie Washington came forward to speak in support, stating she is married to Ms. Brown's brother and they live on Lot 100A; they are the individuals who had the garden tractor on the lot and put in a garden. She said that, until recently, they did not know they were in violation; they had received several notices from the County on various violations existing on their own lot, with which they complied. Ms. Washington said that, since that time, every time they called the County to find out what was wrong, they would get a different answer about what could not be considered permissible. She said her husband had tried to maintain the lot in question, as well as the 25 feet which belongs to the County, in front of their own lot. She said that the road stops half way in front of their lot; they have asked the County why they did not extend the road to the end of the lot and they said they could not do that. Ms. Washington said that, because of this, Ms. Brown could not even reach her lot on a rainy day because there is no road to the lot even though the land was dedicated.

Chairman DiGiulian asked Mr. Shoup, if Lots 100A and 100B were under the same ownership, but still two separate lots, would the uses discussed be permitted. Mr. Shoup said, if the lots were under the same ownership and tied together with some type of a building permit application, they could be considered one lot. Chairman DiGiulian asked, what if they were not tied together with a building permit application, but were under the same ownership, and one lot had a dwelling on it and the other lot was vacant. Mr. Shoup said the key to having a use considered accessory, was to have it located on the same lot with the principal use and the Zoning Ordinance definition of "lot" requires the lots to be tied together through a building permit application or a special permit of some sort.

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

Mr. Dively moved to deny the appeal. He said the question was whether or not the Zoning Administrator had erred in applying the Zoning Ordinance. Mr. Dively said he believed the reasoning of why the Zoning Administrator acted had been adequately explained and the actions and decisions were commensurate with the Ordinance. He said they really had not heard any reasons why the Zoning Administrator's decision was not in keeping with the Ordinance. Based on those facts, Mr. Dively moved that the Zoning Administrator's determination be upheld.

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

Chairman DiGiulian said it appeared to him that County staff should have more to do than look for violations of this type. Mr. Hammack said he agreed with Chairman DiGiulian and the photographs did not indicate a tremendous abuse of the regulation although, technically, the Zoning Administrator was correct. Mr. Shoup pointed out that staff had received a complaint and it was only in response to a complaint that the violation had been pursued. A short discussion ensued.

Chairman DiGiulian asked staff, if Ms. Brown attempted to get a building permit approved for Lot 100B, could she obtain approval without building a street across the frontage of her lot? Mr. Pammel said he believed she would not need to.

Ms. Washington said they had been working with the County about maintaining the dedicated portion of the property. The Board advised her to ask the County to maintain the property.

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Page 239, June 28, 1994, (Tape 2), Action Item:

Approval of Minutes from May 24, 1994 Hearing

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

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Page 239, June 28, 1994, (Tape 2), Action Item:

Request for Out-of-Turn Hearings
Items 3-8
McCreight, VC 94-B-071; Phalen, VC 94-Y-070;
Crockett, VC 94-D-072; Burke Community Church, SPR 77-S-269;
Mantua Swim Club, SPA 81-P-089-2;
Floris United Methodist Church, SPA 88-C-057

Page 240, June 28, 1994, (Tape 2), MCCREIGHT, VC 94-B-071; PHALEN, VC 94-Y-070; CROCKETT, VC 94-D-072; BURKE COMMUNITY CHURCH, SPR 77-S-269; MANTUA SWIM CLUB SPA 81-P-089-2; FLORIS UNITED METHODIST CHURCH, SPA 88-C-057, continued from Page)

Mr. Pammel said he had read the requests for these items and could find nothing to suggest they should be moved up, since the Board already had a full agendas up to the break. He moved to deny these requests. Mr. Hammack said he believed #7, Mantua Swim Club, should be considered. Mr. Pammel said he did not how the Board could fit it into the remaining agendas and he had no problem with early September. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that all the agendas except August 2nd had already been advertised and, technically, that date already was gone. Mr. Hammack withdrew his request. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 240, June 28, 1994, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Mr. & Mrs. Visted, SP 94-S-028

Mr. Pammel moved to grant this request because an error when the permit was issued caused the permit to be rescinded after some construction had already begun and the applicants were notified that they would need to obtain a variance. He believed this was a hardship. Chairman DiGiulian stated that, based upon the fact that this hardship was caused by the County, he had advised staff to go forward with the advertising which could be pulled if the Board did not agree.

Mr. Ribble seconded the motion which carried by a vote of 7-0. The hearing was scheduled for the morning of August 2, 1994.

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Page 240, June 28, 1994, (Tape 2), Action Item:

Request for Intent-to-Defer
George Lane Appeal

Mr. Pammel moved to defer to the morning of November 1, 1994. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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Page 240, June 28, 1994, (Tape 2), Action Item:

Approval of Resolutions from June 21, 1994

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

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Page 240, June 28, 1994, (Tape 2), Action Item:

Paul A. & Jeanne E. Vander Myde
Request for Waiver of the Eight-day Limitation
VC 94-V-019

At this time, the applicant from a case heard earlier in the meeting requested a waiver of the eight-day limitation.

Mr. Ribble moved to waive the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 7-0.

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Page 240, June 28, 1994, (Tape 2), Action Item:

Request for Date and Time of Appeal Application
LXR, Inc., The Music Store

William E. Shoup, Deputy Zoning Administrator, referenced his memo of June 7, 1994 and, based upon what the appellant had submitted, said he believed the scope of the appeal should be limited to just what the appellant submitted on the appeal application form which dealt with the use of the property for retail sales. Mr. Shoup said that this was an appeal of a Notice of Violation for operating a retail sales establishment and for conducting live band performances and dancing on the subject property. He said that nowhere in the appeal did the appellant address the live band performances or dancing and, he was assuming that the only thing being appealed was the retail sales portion of the Notice of Violation. He requested that the BZA concur that the scope of the appeal be limited in that regard.

Mr. Pammel said he had read the justification and moved to limit the appeal as recommended by Mr. Shoup. A discussion ensued and it was decided not to vote on the scope of the appeal.

Page 241, June 28, 1994, (Tape 2), LXR, INC., THE MUSIC STROE, continued from Page 240)

Chairman DiGiulian said he had not yet read the justification and was not prepared to vote on the issue of scope, as did Mr. Kelley.

Mr. Pammel moved to schedule the appeal for morning of October 11, 1994. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 241, June 28, 1994, (Tape 2), Action Item:

Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that she had been contacted by Mr. Mauter of the Office of Personnel, who requested that the BZA try to reschedule their Tuesday meetings for September, October, November and the first one for December, 1994, to other dates in order that Personnel might begin using the Board Room on those dates at 12 Noon for a nationally televised conference on Personnel Training, sponsored by the United States Chamber of Commerce, in conjunction with the Fairfax County Chamber of Commerce. She said that Tuesday was the only day that they could televise the conference.

Ms. Kelsey said she had discussed this with the Chairman and she believed it was his desire to bring it before the Board for discussion. Chairman DiGiulian said it was his suggestion that Mr. Mauter be advised that the Board would vacate the Board Room by Noon, but that they would retain the Tuesday Board dates. A discussion ensued. Ms. Kelsey did not have the answers to many of the Board's questions concerning why the Chamber had to use the Board Room and Mr. Hammack said he did not believe they should give up their meeting time unless they knew more details. Mr. Hammack said he objected to vacating by Noon. Chairman DiGiulian said that was better than moving the meeting to a different day.

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As there was no other business to come before the Board, the meeting was adjourned at 11:35 a.m.

Geri B. Bepko

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John P. DiGiulian

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: July 26, 1994

APPROVED: August 2, 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 July 5, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:00 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 243, July 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD M. & DIANE M. FRYKMAN, VC 94-S-052 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 6.9 ft. from side lot line such that side yards total 16.8 ft. (8 ft. min. side yard req., 20 ft. min. side yards total req. by Sect. 3-307). Located at 9754 Rehanek Ct. on approx. 11,730 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((7)) 154.

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, Mr. Frykman, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the 11,730 square foot property is located on the northeast side of Rehanek Drive within the Cherry Hill Subdivision and northeast of Pohick Road. The subject property is surrounded by single family detached dwellings in the R-3 District developed under the Cluster provisions of the Zoning Ordinance. The applicant was requesting a variance to allow a one-story room addition to be located 6.9 feet from the side lot line with side yards totalling 16.8 feet. The Zoning Ordinance requires an 8.0 foot minimum side yard and side yards to total a minimum of 20.0 feet; therefore, a 1.1 foot variance was requested from the minimum side yard requirement and 3.2 feet from the total minimum side yards requirement.

Richard M. Frykman, 9754 Rehanek Court, Burke, Virginia, said he and his wife purchased the property in January 1984, the property is trapezoidal shaped with converging lot lines to the rear, and is located on a cul-de-sac. He said because the house is not sited squarely on the lot, the addition could not be constructed without a variance. Mr. Frykman believed the addition would be architecturally compatible with the house and the neighborhood. He said the addition would provide a year round room for the entire family, but would primarily provide a place to install a hot tub for his wife to use in the treatment of rheumatoid arthritis. Mr. Frykman used the viewgraph to display a drawing showing the surrounding properties in proximity to the proposed addition.

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

Mr. Hammack made a motion to grant VC 94-S-052 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 28, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-S-052 by RICHARD M. AND DIANE M. FRYKMAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 6.9 feet from side lot line such that side yards total 16.8 feet, on property located at 9754 Rehanek Court, Tax Map Reference 88-1((7))154, 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 5, 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 (Cluster).
3. The area of the lot is 11,730 square feet.
4. The applicant has presented testimony indicating that the house is sited sort of caddy cornered on a lot that is somewhat narrow and trapezoidal in shape.
5. The request is for a minimal variance and does not have any impact on the adjoining property owner.
6. The applicant has satisfied 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 specific room addition shown on the plat prepared by Dewberry and Davis, dated March 22, 1994, 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 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 244, July 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ROGER H. & PAMELA N. HILL, VC 94-B-061 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.0 ft. from side lot line. Located at 4709 Guinea Rd. on approx. 20,732 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((7)) (2) 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, Mr. Hill, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the 20,732 square foot property is located on the southeast side of Guinea Road within the Springbrook Forest Subdivision. The subject property is surrounded by park land in the R-2 District on three sides and on the north by a single family detached dwelling, which is also in the R-2

District. The applicant was requesting a variance to allow a two-car garage addition to be located 10.0 feet from the side lot line. The Zoning Ordinance requires a 15 foot minimum side yard; therefore, a 5.0 foot variance was requested from the minimum side yard requirement.

Roger H. Hill, 4709 Guinea Road, Annandale, Virginia, said he and his wife purchased the property in July 1980. He said although the lot is almost half an acre it is only 100 feet wide, and the combination of the narrowness of the lot and the placement of the house dictates the location of the garage. Mr. Hill said since they purchased the property the traffic on Guinea Road has increased dramatically and enclosing the carport would provide additional security. He added that the subdivision is almost 30 years and most homeowners have garages, the request would not adversely impact the neighbors, and the garage has been placed as far as possible from the parkland. Mr. Hill pointed out the letter in support from the adjoining property owner.

Mr. Dively asked if it was correct that the foundation of the proposed garage would be identical to the existing carport. Mr. Hill said that was correct.

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

Mr. Pammel made a motion to grant VC 94-B-061 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 28, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-061 by ROGER H. AND PAMELA N. HILL, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.0 feet from side lot line, on property located at 4709 Guinea Road, Tax Map Reference 69-2((7))(2)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 July 5, 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 20,732 square feet.
4. This is the type of application that the BZA has been sympathetic to in the past since the applicant is merely enclosing an existing carport in order to create a garage.
5. The applicant is maintaining a minimum 10 foot separation between the proposed garage and the lot lines.

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 garage addition shown on the plat prepared by Dove & Associates, dated May 14, 1988, revised and recertified through May 15, 1994 by Cevat Kaya Biron, 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 addition shall be architecturally compatible with the existing dwelling.

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 246, July 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. STANLEY M. & FRANCES W. ELLIS, VC 94-P-045 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.1 ft. from rear lot line (20 ft. min. rear yard req. by Sect. 3-507). Located at 2830 Oakton Manor Ct. on approx. 5,978 sq. ft. of land zoned R-5. Providence District. Tax Map 47-2 ((13)) 35.

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. Reese, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the 5,978 square foot property is located on Oakton Manor Court north of Route 123 in the Oakton Manor Subdivision. The subject property and lots to the north and east are zoned R-5 and developed with single family attached dwellings. The lots to the south, across Route 123 are zoned R-3 and developed with single family detached dwellings. Adjacent to the subject property to the west is the Oakton Shopping Center zoned C-6. The request for variance resulted from the applicants' proposal to construct a sunroom addition to be located 14.1 feet from the rear lot line. A minimum rear yard of 20 feet is required by the Zoning Ordinance on an R-5 lot. Accordingly, the applicants were requesting a variance of 5.9 feet to the minimum rear yard requirement.

Gary A. Reese, Esquire, 10621 Jones Street, #201A, Fairfax, Virginia, said the applicants acquired the property in good faith and they agreed with the development conditions contained in the staff report. Mr. Reese said the property is abutted on one side by a shopping center, on the second by a service road that leads on to Route 123, and on the third side by a party wall. He said the rear of the property, which is extremely narrow, has a brick and board on board fence and because of the close proximity of the shopping center and Route 123, the rear yard is virtually unusable. Mr. Reese called the BZA's attention to a letter in support of the request from the adjoining neighbor and added that he believed the applicants had met the nine required standards for the granting of a variance. In closing, he acknowledged the presence of the applicant, Mr. Ellis, and the construction contractor in the Board Auditorium and pointed out that the applicants' request has been approved by the homeowners association.

Mr. Pammel said he was very familiar with the area surrounding the subject property and pointed out that the property is immediately adjacent to the Pettibone Sports Bar and Grill. He made a motion to grant VC 94-P-045 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 94-P-045 by STANLEY M. AND FRANCES W. ELLIS, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.1 feet from rear lot line, on property located at 2830 Oakton Manor Court, Tax Map Reference 47-2((13))35, 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 5, 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-5.
3. The area of the lot is 5,978 square feet.
4. The applicant has presented testimony indicating that the nine required standards for the granting of a variance have been satisfied.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Payne Associates, dated September 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. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 248, July 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PAUL W., JR. AND NANCY W. ICKE, VC 94-H-048 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.8 ft. from side lot line and accessory structures (stables) to remain 21.4 ft. and 0.0 ft. from side lot lines (20 ft. min. side yard req. for addition and 40 ft. min. side yard req. for stables by Sects. 3-E07 and 10-104). Located at 1929 Hunter Mill Rd. on approx. 2.00 ac. of land zoned R-E. Hunter Mill District. Tax Map 27-4 ((1)) 4.

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

Susan Langdon, Staff Coordinator, presented the staff report and said the 2.0 acre property is located on Hunter Mill Road north of the intersection of Hunter Mill Road and Lawyers Road. The subject property and surrounding lots are zoned R-E. To the north and west is a 23 acre parcel containing horse stables. To the south is a single family detached dwelling and a portion of Fairfax County's Clark Crossing Park, with the remainder of the Park to the east. The request for variance resulted from the applicants' proposal to construct an addition 13.8 feet from a side lot line. A minimum side yard of 20 feet is required by the Zoning Ordinance on an R-E lot. Accordingly, the applicants were requesting a variance of 6.2 feet to the minimum side yard requirement for the addition. Variances were also requested to allow two accessory stable structures to remain. One structure is a 9.1 foot high barn located 21.4 feet from the eastern lot line. The other structure is a 11.0 foot high barn that is 0.0 feet from the southern lot line and is located partially on the applicants' property. A minimum side yard of 40.0 feet is required under Section 10-104 of the Zoning Ordinance for stables.

Paul Icke, Jr., 1929 Hunter Mill Road, Vienna, Virginia, said he and his wife would like to put an addition on the house they constructed in 1979, which was large enough for the two of them but they now have two children and are in need of additional living space. He said the lot was created as a family cut from a larger 23 acre parcel in 1979, with the remaining 21 acre parcel being used for a horse boarding business which has been operating for approximately 15 years. Mr. Icke said the lot is extremely narrow and elongated due to the physical constraints eminating from the floodplain limitations and a driveway easement serving his brother's property and the horse breeding facility. He said at the time the family cut was made, and with the assistance of a land surveyor, the shape of the lot was determined based on the 2 acre lot size requirement and based upon 80 percent of the entire parcel being floodplain. Mr. Icke said if the variance was not granted, it would prevent them from constructing the most architecturally feasible and aesthetically acceptable addition to the existing dwelling. He added there were no objections from the neighbors and the proposal will not have any adverse on the adjoining neighbors.

With respect to the barn structures, Mr. Icke said one issue dealt with an overhang and the other error dealt with the confusion as to what was the rear and side yards during the creation of the lot.

Mr. Hammack asked if staff had considered requesting that the applicants bring both parcels into the application since one barn is located on the lot line. Ms. Langdon said staff had not made that request, but staff did believe Condition 2 addressed that issue.

Mr. Icke said since both lots were owned by family members he did not believe it was a problem, but any error would be rectified prior to selling the parcels.

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

Mr. Ribble made a motion to grant VC 94-H-048 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 28, 1994.

Mr. Pammel noted that he passes this property daily and he has seen it under water.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-H-048 by PAUL W., JR., AND NANCY N. ICKE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.8 feet from side lot line and accessory structures (stables) to remain 21.4 feet and 0.0 feet from side lot lines, on property located at 1929 Hunter Mill Road, Tax Map Reference 27-4((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 July 5, 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-E.
3. The area of the lot is 2.0 acres.
4. The applicant has met the nine required standards for the granting of a variance.
5. The lot has an unusual shape.
6. Because of the existence of floodplain on the majority of the lot, the applicant's property has topographical difficulties.
7. The applicant addressed the location of the stables to the BZA's satisfaction in that there is an extraordinary situation since the stable connects 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 location and the specified addition and structures shown on the plat prepared by Richard O. Spencer, Inc., dated March 18, 1987, revised through March 14, 1994, submitted with this application and is not transferable to other land.

2. This variance is approved for the structures located at Tax Map 27-4((1))4 and is not intended to grant approval of a variance for structures located on any other lot.

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.

Pursuant to Sect. 18-407 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 July 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 250, July 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. NORMAN SUMMERS, VC 94-M-047 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 8.0 ft. from side lot lines (15 ft. min. side yard req. by Sect. 3-207). Located at 6440 Holyoke Dr. on approx. 9,111 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 61-3 ((6)) 14.

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

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located at 6440 Holyoke Drive south of Columbia Pike and southwest of Lincolnia Road. The subject property is 9,111 square feet in size, is zoned R-2, and is located in the Highway Corridor Overlay District. The request for variance resulted from the applicant's proposal to construct a single family detached dwelling to be located 8.0 feet from both side lot lines. A minimum side yard of 15 feet is required on a lot zoned R-2; therefore, the applicant was requesting a variance of 7.0 feet from the minimum side yard requirement.

Norman Summers, 3736 South Four Mile Drive, Arlington, Virginia, said it has been his dream to move back to the community that his grandparents started in the early 1800's, where he grew up, and where 90 percent of the homes are owned by his relatives. Mr. Summers said because of his limited finances and being the single parent of three pre-teen children the granting of the variance would allow him to build an adequate structure. He said all the lots in the community are 50 feet wide and approximately 200 feet deep; therefore, 90 percent of the homes are 30 feet wide, which was similar to his request.

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

Mr. Kelley made a motion to grant VC 94-M-047 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 94-M-047 by NORMAN SUMMERS, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 8.0 feet from side lot lines, on property located at 6440 Holyoke Drive, Tax Map Reference 61-3((6))14, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 5, 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 and HC.

3. The area of the lot is 9,111 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance, in particular the exceptional narrowness of the lot.

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

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

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

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

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

1. This variance is approved for the location of the specific single family detached dwelling shown on the plat prepared by Payne Associates, dated March 23, 1994, submitted with this application and is not transferable to other land.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 251, July 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. LEE & CARLAYNE HOLLOWAY, VC 94-M-049 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of three additions, 11.0 ft., 11.1 ft. and 11.3 ft. from side lot lines and 25.2 ft. from front lot line (15 ft. min. side yard req. and 35 ft. min. front yard req. by Sect. 3-207). Located at 6406 Lakeview Dr. on approx. 13,100 sq. ft. of land zoned R-2. Mason District. Tax Map 61-3 ((14)) 145.

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, Mr. Holloway, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located at 6406 Lakeview Drive in Lake Barcroft. The subject property is 13,100 square feet in size, is zoned R-2, and is developed with a single family detached dwelling. The request for variance resulted from the applicants' proposal to construct a two story addition to be located 11.0 feet from the eastern side lot line, a second floor addition to be located 11.3 feet from the western side lot line, and a garage addition to be located 25.2 feet from the front lot line. A minimum side yard of 15 feet and a minimum front yard of 35 feet is required on a lot zoned R-2; therefore, the applicant was requesting a variance of 4.0 feet and 3.6 feet from the minimum side yard requirement, and a variance of 9.8 feet from the minimum front yard requirement.

Lee Holloway, 6406 Lakeview Drive, Falls Church, Virginia, submitted architectural drawings showing the front and rear view of the proposed addition to the BZA. He said he and his wife have lived on the property for approximately 30 years and the house has a flat roof, which they would like to change to a peaked roof. Mr. Holloway said the neighbors on either side of his property support the request.

There were no speakers either in support or in opposition.

Mr. Ribble noted that a letter had been received from the owner of 6407 Lakeview Drive, Arnold Conkler, in opposition to the request. The applicant had not seen the letter and the BZA provided him with a copy.

Mr. Holloway said they were merely changing the type of roof and did not believe it would impact the neighbor's view of the lake.

Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 94-M-049 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 28, 1994.

Mr. Pammel noted that much of what the applicant was proposing was within the existing footprint of the present dwelling, since the applicant was only adding a roof which increases the height by 12.1 feet. The only real variance that was being requested was for the garage and given the severe topography of the lot, the proposed location is the only logical place.

Mr. Ribble asked when the opposition letter had been received and Mr. Hunter replied the letter was faxed to staff on Friday, July 1st. Mr. Ribble said he believed that was very last minute and in the future he might be inclined not to consider such a late submittal. He added that he would support the motion for the reasons stated by the maker and seconder.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-049 by LEE AND CARLAYNE HOLLOWAY, under Section 18-401 of the Zoning Ordinance to permit construction of three additions, 11.0 feet, 11.1 feet and 11.3 feet from side lot lines and 25.2 feet from front lot line, on property located at 6406 Lakeview Drive, Tax Map Reference 61-3((14))145, 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 5, 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 13,100 square feet.
4. The lots around Lake Barcroft are difficult to build on and it is understandable that homeowners do not want their view of the lake disturbed, but there is no other place for the applicants to construct the addition.
5. The applicants do have a building problem since the lot deeply slopes down towards the lake.
6. The applicants cannot construct any closer to the lake.
7. The applicants would need a variance in order to construct an addition anywhere on the lot.
8. Much of what the applicants are proposing is within the existing footprint of the present dwelling, and they are only adding a roof which will increase the height of the house by 12 feet.

9. The only real variance that is being requested is for the garage, and given the topography of the lot the applicants have illustrated and justified to the BZA that the proposed location is the only logical location.

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

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

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

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

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

1. This variance is approved for the location of the specific additions shown on the plat prepared by Rice Associates, P.C., dated March 15, 1994, and revised March 28, 1994, 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.

Mr. Hammack seconded the motion which carried by a vote of 6-0-1. Mr. Hammack abstained since he was not present in the Board Auditorium during the public hearing.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 13, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. MR. & MRS. BRIAN FRYDENLUND, VC 94-V-051 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (garage) 8.7 ft. from side lot line such that side yards total 17.9 ft. (8 ft. min., 20 ft. total side yard req. by Sect. 3-307). Located at 1401 Oakbrooke Ave. on approx. 9,399 sq. ft. of land zoned R-3 (Cluster). Mt. Vernon District. Tax Map 102-4 ((17)) 8.

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

Lori Greenlief, Staff Coordinator, presented the staff report and said the property is located in the Oakbrooke Subdivision and is surrounded by land zoned R-3 and developed with single-family detached dwellings. The variance request was to permit construction of a garage addition 8.7 feet from the side lot line, such that the side yards total 17.9 feet. The total minimum side yard requirement is 20 feet; therefore, the applicant was requesting a variance of 2.1 feet to the total requirement. The applicant met the minimum side yard requirement.

Maragret J. Frydenlund, 1401 Oakbrooke Avenue, Alexandria, Virginia, said they would like to enclose the existing carport into a two car garage. She said there were no objections from the neighbors and noted that materials similar to the existing dwelling will be used in the construction of the garage. Mrs. Frydenlund said they would like to enclose the carport to provide additional security and to improve the looks of the property, which would be beneficial to the neighborhood.

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

Mr. Dively made a motion to approve VC 94-V-051 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 28, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-051 by MR. AND MRS. BRIAN FRYDENLUND, under Section 18-401 of the Zoning Ordinance to permit construction of addition (garage) 8.7 feet from side lot line such that side yards total 17.9 feet, on property located at 1401 Oakbrooke Avenue, Tax Map Reference 102-4((17))8, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 5, 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 (Cluster).
3. The area of the lot is 9,399 square feet of land.
4. This is a situation where the homeowner is proposing constructing a garage over an existing footprint of a carport.
5. The application meet the individual side yard requirements.
6. The request is for a minimal variance.
7. The lot is narrow and tapers towards the rear.

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

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

6. That:

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

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified garage addition shown on the plat prepared by RC Fields, Jr. & Associates, dated March 1,1994, 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. 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. 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 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 255, July 5, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MRS. PAUL & DAVID D. ELSBERG, VC 94-V-062 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 25.5 ft. from front lot line and permit accessory structure to remain 0.0 ft. from front lot line on a lot containing less than 36,000 sq. ft. Located at 11345 River Rd. on approx. 16,768 sq. ft. of land zoned R-E. Mt. Vernon District. Tax Map 119-4 ((2)) (1) 15 through 20, pt. 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. The applicant, Mr. Elsberg, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report and said the property is located in the Gunston Subdivision and is surrounded by land zoned R-2 and developed with single-family detached dwellings, with the exception of the property to the north which is private open space. The requested variance was to permit an addition 25.5 feet from the front lot line. The minimum front yard requirement is 50 feet; therefore the applicants were requesting a variance of 24.5 feet. Ms. Greenlief said the applicants were also requesting approval of a variance to allow an accessory structure to remain in the front yard 0.0 feet from the front lot line. Section 10-104 of the Zoning Ordinance prohibits the location of an accessory structure in the front yard of a lot containing less than 36,000 square feet. She noted that in 1988 the BZA approved a variance for the location of an addition 16.2 feet from the front lot line. Ms. Greenlief said the information regarding the variance approval was contained in the staff report. She said staff received one letter just prior to the public hearing, which had been distributed to the BZA.

David M. Elsberg, 11345 River Road, Lorton, Virginia, said the 1988 variance was requested to allow them to construct additional living space, which is also the reason for this variance request. Mr. Elsberg said the property was purchased in 1948 by the co-applicant and has

been under their ownership since that time. The lot is comprised of 5 and 1/2 contiguous lots that are extremely shallow and narrow. He said the subdivision was created in the late 1920's and the lots were sold individually in sizes that are 100 feet in length and 25 feet in width. The property is also located close to the Potomac River, which makes it impossible to build closer to the river because of geological reasons. Mr. Elsberg said the proposed addition would be in harmony with the existing structure and would improve the character of the neighborhood. The expansion is directed to the natural development of the property, which is toward the open area. He said the proposed addition is smaller and less obtrusive than the one approved in 1988, since it requires a lesser variance.

A discussion took place between Mr. Hammack and the speaker regarding Mr. Hammack's concern as to the shed being located partially in the right of way. Mr. Ribble pointed out that a fence was also located in the right of way.

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

Peter Schmeissner, 6312 57th Avenue, Riverdale, Maryland, said his property was located directly behind the applicant's property and that he objected to any further construction that would block his view of the river entirely.

In rebuttal, Mr. Elsberg said there was no other direction to expand on the lot and that he did not believe the standards addressed the issue of blocking someone's view from their property.

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

Mr. Hammack made a motion to grant in part VC 94-V-062 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated June 28, 1994.

Mrs. Thonen asked staff if the applicant's proposed addition would block the entire view of the river. Ms. Greenlief said she was not sure of the location of the other houses on the street; therefore, she could not say whether the addition would block the view. She added that if the shed is moved back it would alter the view.

Mr. Ribble noted that the shed has been in the present location for approximately 30 to 40 years, and that he believed Condition 1 addressed the issue.

Mr. Pammel said he believed the particular situation was self-inflicted and the applicant testified that 7 years ago it was rebuilt, and "common sense" should have told the applicant to obtain a survey.

Mr. Hammack asked staff if the portion of the house that extended further out than the 22 feet was proposed construction or existing. Ms. Greenlief said the extension was approved under the 1988 variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-062 by MRS. PAUL AND DAVID D. ELSBERG, under Section 18-401 of the Zoning Ordinance to permit construction of addition 25.5 feet from front lot line and permit accessory structure to remain 0.0 feet from front lot line on a lot containing less than 36,000 square feet **(THE BZA GRANTED THE VARIANCE FOR THE CONSTRUCTION OF ADDITION, BUT DENIED THE VARIANCE TO PERMIT THE ACCESSORY STRUCTURE TO REMAIN)**, on property located at 11345 River Road, Tax Map Reference 119-4{(2)}(1)15 through 20, pt. 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 July 5, 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-E.
3. The area of the lot is 16,768 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance with respect to the addition to the dwelling, but has not satisfied the BZA that conditions exist that would allow the accessory structure to remain on the lot line and encroach into the right of way of River Road.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 and shed shown on the plat prepared by RC Fields, Jr. & Associates, dated May 9, 1994, submitted with this application and not transferable to other land. It is noted that this approval is to allow the shed to remain 0.0 feet from the front lot line and is an approval for only that portion of the structure located on the subject property.

2. A Building Permit shall be obtained for the addition 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 July 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 257, July 5, 1994, (Tape 1 and 2), Scheduled case of:

9:30 A.M. VIRGINIA RUN COMMUNITY ASSOCIATION, SPA 87-S-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 87-S-045 for community swimming pool, tennis courts, and community center to expand hours of operation and amend conditions. Located at 15300, 15308 Lee Hwy. & 15355 Wetherburn Ct. on approx. 4.99 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((6)) M; 64-2 ((3)) 4, 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. The applicant's attorney, Kirsten Weight, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report and said the property is located at the intersection of Lee Highway, Pleasant Valley Road, and Wetherburn Court in the Virginia Run Subdivision, is zoned R-C, and contains 4.99 acres. Single-family detached dwellings on land also zoned R-C surround the use except for the parcel to the west, which is vacant. The applicant was requesting approval of an amendment to an existing special permit which was granted in 1987 to allow a change in hours. (Ms. Greenlief called the BZA's attention to the viewgraph.) The applicant was also requesting an increase in the occupancy load of the community center from 52 to 100 persons with no physical changes proposed for the site. Ms. Greenlief stated that staff believed attention had been paid to the close proximity of the adjoining dwellings on Wetherburn Court, and given that fact, staff recommended that the tennis courts remain as previously approved, 9:00 a.m. to 9:00 p.m., and that the pool be allowed to open at 8:00 a.m. for swim team practice only, with no swim meets, whistles, bells, bullhorns or amplified noise. She said staff believed that allowing the community center to open at 6:00 a.m. 5 times a year could be accomplished without adverse impact, provided the number of people on site between 6:00 a.m. and 8:00 a.m. is limited to 20 people setting up for the special event. Ms. Greenlief said these recommendations have been included in the development conditions contained in the staff report. She added that staff had reworked the numbers with regard to the pool capacity and it appeared that the minimum parking space requirement can be met by allowing 72 persons in the community center while the pool is open, rather than 100 persons as requested by the applicant, and the change from 52 to 72 was reflected in Condition 9. Ms. Greenlief said staff had received eight letters regarding the application, five of which were included in the package, and three were distributed to the BZA just prior to the public hearing.

Kirsten Weight, with the firm of Chadwick, Washington, Olters, Moriarty & Lynn, P.C., 9990 Lee Highway, Suite 450, Fairfax, Virginia, said the proposed changes relate to the governing, administration, and management of the association. She said the changes requested would not increase the number of events that occur at the Association, but merely allow the Association to do what it does presently in a better, more efficient, and more organized fashion. Ms. Weight said the present special permit was applied for and obtained by the developer, who is not responsible for the management of the facility; therefore, he was unable to anticipate the needs of the community consisting of 1,300 homes. She said the Association evaluated the conditions and in 1992 submitted an amendment to change the conditions to better reflect the needs of the community. The application was deferred because there were problems with the application and because of the opposition from the adjoining landowners on Wetherburn Court. Ms. Weight said the Association's requests are substantially reduced from the original request filed in 1992. The application was reactivated in March 1994 and after the reactivation the Association sent letters to the abutting landowners making them aware of the fact that the application had been filed, advising them of the requested changes, and inviting them to a meeting. Following that meeting, an ad hoc committee was formed to work with the landowners on Wetherburn Court to try to reach a compromise, which failed. The Association then had to make a choice to go forward with the application or once again request a deferral. The Board of Trustees decided to go forward for two reasons: 1) the Association has been operating under the current restrictions for a long time and they have an urgent need to address the growing needs of the community; and 2) they have an urgent need to address the administration management needs of the committees and the Board of Trustees. She said although the concerns of the Wetherburn Court residents have been simmering for a long time, the current Board of Trustees is ready and willing to address the problems, but she did not believe the concerns of the residents would be aggravated or increased by the requested changes.

Ms. Weight outlined the change in hours by saying that the increased hours in the community center would simply be to accommodate the management, administration, and governing needs of the Association. She added this would allow the committees to continue a meeting past 9:00 p.m. rather than recessing and reconvening at another location. She outlined the request as follows: 1) five early openings of the community center per year, which would allow earlier setups of special events; 2) opening the swimming pool and tennis courts at 8:00 a.m.; and, 3) extending the closing of the community center on Friday, Saturday, and pre-holiday evenings to 11:00 p.m.

Ms. Weight said the Association was aware of the neighbors' concerns and had plans to address those concerns and briefly outlined those plans. She added that the application would not adversely impact the neighbors, since the number of events will not be increased.

Mr. Hammack and the speaker discussed the type of events that would require the community center opening at 6:00 a.m. Ms. Weight said the special events begin between 8:00 and 9:00 a.m. and this would allow a small number of people, approximately 20, to set up and organize the events.

Mr. Pammel referenced different instances in letters received by the BZA from the abutting neighbors, which he believed should be controlled by the Association. Ms. Weight agreed and said there was a citizen present who could address that reference.

Greg Rickter said he was at the event Saturday and learned of the neighbor's complaints. He said that just as he and his wife were leaving the center, a carload of kids pulled into the parking lot, immediately backed out of the lot, and in the process began blowing the car horn and shouting. Mr. Rickter assured the BZA that it was not people attending the event.

Mr. Hammack noted that in reading the letters it appeared that the noise generated by the activities held at the center is out of control. Mr. Rickter said he believed the complaints

were being carried too far. Mr. Hammack called the speaker's attention to the petition signed by the abutting neighbors.

A discussion took place between the BZA and Ms. Weight as to why the management could not deal with the various contractors between the existing hours. She said this would make the workload more manageable and that she did not believe it would adversely impact the neighbors.

There were no further questions and Chairman DiGiulian called for speakers in support of the application.

Debbie Anderson, President of the Virginia Run Homeowners Association, said the facilities were owned in common by all the residents and have been under utilized because of the restrictions put in place by the developer. She said the management committees, especially the Board of Trustees and the Architectural Review Board, are severely hampered in carrying out their business by having to end their meetings at 9:00 p.m.

In response to a question from Mr. Dively about meeting in individual houses, Ms. Anderson said the meetings are open to the community and it is difficult to accommodate a large number of people.

Ms. Anderson said the Association is concerned with the issues raised by the neighbors with regard to safety, parking, and speeding vehicles. She said this has been a long process and that she believed the request was reasonable and was in the best interest of all homeowners. Ms. Anderson submitted a petition with approximately 200 signatures in support of the request.

Priscilla Knight, President of the Architectural Review Board, explained the process that the ARB goes through in reviewing each application and urged the BZA to grant the request.

Lynn Cummings, Chairman of the Activities Committee, said the committee was in full support of the application and outlined the committee's function.

Tom Martin, Administrator of the Swim Team, pointed out that the current hours restrict the swim team's activities and said to his knowledge Virginia Run is the only team that starts at 9:00 a.m. He said the current hours impact the amount of time that the pool is available to the community and that he was in support of the request.

Annette Riley-Robadoo said she has lived in the community for six years and her family has been involved with the swim team since the beginning. She believed the swim team is an asset to the community and believes the swim team builds a feeling of commitment, dedication, and team work. Ms. Riley-Robadoo agreed that the extended hours would benefit the community.

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

Donna Wilder, 15369 Wetherburn Court, Centreville, Virginia, distributed handouts to the BZA. She said the request did not represent the community and referenced a copy of the Association's by-laws and said the request was not brought to the entire community for consideration. Ms. Wilder said the neighbors had personally delivered petitions and that she had hand delivered two letters regarding the "Sip and Dip." She said she met with Paul McAdam, in the Zoning Enforcement Branch, but Mr. McAdam would not take the letters saying that it was not necessary. Ms. Wilder said she had taken the letters to Supervisor Frey's office and they were faxed to the BZA. She played a tape of the latest event held at the pool for the BZA to show the level of noise generated by these events. Ms. Wilder said the tape was made from the deck of her house.

Mr. Hammack asked if the police and Zoning Enforcement had been contacted. Ms. Wilder said they had and documentation would have been available if they had received adequate notification of the public hearing. She said Sandra Singer, with the Zoning Enforcement Branch, had also been contacted.

Steve Simmons, 15371 Wetherburn Court, Centreville, Virginia, said this was not an issue that pits the community against the residents on Wetherburn Court. He said he participates in some of the activities held at the community center, but there comes a time when a balance must be reached. Mr. Simmons believed that the previous speaker had outlined the residents' concerns and that he believed the complaints did show adverse impact on the abutting neighbors. He said during the meetings with the Board of Trustees it was his understanding that an agreement had been reached, but when the written agreement was finalized it was not the verbal agreement that had been reached. Mr. Simmons asked the BZA to deny the request.

Charles Bremer, 15363 Wetherburn Court, Centreville, Virginia, said he has lived on this property since 1989 and has three children, two of which are under the age of 2 years of age. He said his biggest concern is safety and the amount of traffic that the community center activities generates. Mr. Bremer said the problem with trying to resolve the issues is that the members of the board rotate, therefore the current board is not aware of the history.

In rebuttal, Ms. Weight said the Board of Trustees recognize that the issues raised are very valid, and they are taking action to deal with those concerns. She expressed concern with the volume of the noise from the party depicted on the tape played by the speaker, since she

believed that staff had adjusted the volume making it louder. (This comment was later rebutted and explained by Mr. Hammack.) Ms. Weight stated that the request will not adversely impact the abutting neighbors, the Association cannot restrict parking on a public street, and that she believed the request was reasonable.

Mr. Pammel said there were aspects of the case that concerned him and he believed it was always better for an applicant to appear before the BZA with a clean slate, which in this instance was not the case. He believed the Association was undertaking activities that go beyond what normally a community association does and that he was concerned with the number of complaints. Mr. Pammel made a motion to defer decision on SPA 87-S-045 for approximately one month to allow staff an opportunity to obtain documentation from the Fair Oaks Police Department noting the complaints that have been filed with respect to this particular Association; the activities that have been conducted by the Association; and specifically, whether these complaints, in their opinion, are of a greater magnitude than they normally encounter with an Association pool or simply average.

Chairman DiGiulian said he would like the Association to present to the BZA documentation indicating what specific steps it plans to take to address the residents' concerns. He said one speaker testified that the residents of Wetherburn Court had not been made aware of the application until late in the process, and this concerned him since those residents are the most impacted.

Mr. Hammack said the applicant's request to extend the hours for the community center to 10:00 p.m. to accommodate the various committees seemed reasonable, but the applicant's request to extend the hours for set up of special events to 6:00 a.m. had not been justified. He suggested that all involved parties sit down and reach an agreement with respect to the development conditions since it is apparent that there is a problem.

Mr. Dively said he would support the motion but that he did not want it to appear that the BZA was taking a punitive action since he believed the Association had a very difficult situation. He believed most of the requests were reasonable and suggested that the parties work together to resolve the concerns.

Chairman DiGiulian said the BZA had not intended it to be a punitive, but by the same token all the problems do need to be addressed.

Mr. Hammack seconded the motion.

Jane Kelsey, Chief, Special Permit and Variance Branch, reminded the Chairman that there were thirteen cases scheduled on August 2nd. Chairman DiGiulian suggested that each side be given 10 minutes for additional comment.

Mr. Hammack noted for the record that staff had merely adjusted the microphone during the playing of the tape, not the volume on the recorder.

In response to a question from Mrs. Thonen regarding the July 26th public hearing, Ms. Kelsey said there were 9 cases scheduled for that date.

The motion to defer decision to August 2nd at 10:30 a.m. carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote.

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The BZA recessed at 11:35 a.m. and reconvened at 11:45 a.m.

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Page 260, July 5, 1994, (Tape 2), Scheduled case of:

9:30 A.M. MELVIN F. AND TERESA F. SELLERS, APPEAL 94-Y-018 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a five (5) foot high stockade fence in a front yard on a corner lot is in violation of Par. 3B of Sect. 10-104 of the Zoning Ordinance. Located at 4209 Plaza Ln. on approx. 10,924 sq. ft. of land zoned R-3. Sully District. Tax Map 45-1 ((3)) (58) 24.

William Shoup, Deputy Zoning Administrator, said the appeal involved the construction of a fence that exceeds 4 feet in height in a front yard in violation of Paragraph 3(B) of Section 10-104 of the Zoning Ordinance. The appellants' lot is a corner lot; therefore, it has two front yards which was depicted on the viewgraph. Mr. Shoup said the appellants erected a solid wood fence in excess of 4 feet, a portion of which is located in the front yard contiguous to Pennerview Lane as shown in the photographs before the BZA.

Melvin F. Sellers, 4209 Plaza Lane, Fairfax, Virginia, said after receiving the Notice he met with Senior Zoning Inspector, Gerald Carpenter, to discuss the matter. He stated that Mr. Carpenter advised him that the only reason he had issued the Notice was because a complaint had been filed and that the reason for the height limitation on corner lot fences was to make certain that there was no sight restriction. Mr. Sellers said he believed the person who filed the complaint was an employee of a local contracting company who was not awarded the

continued from Page 260)

job for constructing the fence. He said he built the fence at its present height to keep his four year old daughter from climbing out of the yard. Mr. Sellers read a letter in support from the adjoining neighbors into the record. He said there are many fences in the Greenbriar community and several adjoining communities which exceed the height limitation. Since those homeowners had not been cited, he did not believe the restriction was being enforced and that he was being treated unfairly.

Mr. Hammack said it did not appear from the statement submitted with the appeal that the speaker believed the Zoning Administrator's interpretation was in error. Mr. Sellers said he could not dispute the interpretation. Mr. Hammack said that was the only question the BZA could address, and that he believed the appellant should be before the BZA with a variance as opposed to an appeal.

Chairman DiGiulian called for speakers to the appeal.

Emerson Cale, with the Greenbriar Civic Association, spoke in support of the Zoning Administrator's position as the Association believed there was a sight distance problem, which presented a safety issue. He said the appellant was notified of the Zoning Ordinance requirement when the post holes were being dug and the Association had received 5 complaints from the community.

William Paul Wert said he lives immediately adjacent to and behind the appellants and displayed a drawing of the property on the viewgraph. He said he has gotten to know the appellants' two children and they certainly would like to get outside the fence and he appreciated the need to make the fence higher than the 4 feet. Mr. Wert said because the property has a 2 foot rise from the sidewalk to the foundation of the house, the fence appears to be lower than it actually is and only the posts are higher than allowed. He pointed out that the fence sets well back from the corner almost parallel to his house and any car slowing down and stopping has more than adequate time to see past the driveway to see any approaching car. Mr. Wert did not believe there was a safety issue involved with the children walking to and from school and noted that the fence has improved the headlight glare from cars and noise that projects onto his property.

Mr. Hammack made a motion the BZA defer decision in A 94-Y-018 to allow the appellants an appropriate amount of time to file a variance application.

Mr. Shoup said staff would agree to the deferral if it could be done in such a way that the appellants would be required to file a variance application expeditiously.

Chairman DiGiulian believed the BZA should make a decision since the fence is clearly in violation of the Zoning Ordinance, and the appellant testified that he was aware of the violation.

Mr. Dively asked if staff would hold the Notice of Violation in abeyance while the appellants proceed with a variance. Mr. Shoup said staff would not require that the fence be removed until such time as the BZA ruled on the variance.

Mr. Pammel said it was clear cut based on the testimony and a delay would not benefit anyone.

Mr. Hammack withdrew his motion for deferral and made a motion to uphold the Zoning Administrator's decision in A 94-Y-018. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Kelley and Mr. Ribble not present for the vote. The BZA's decision became final July 13, 1994.

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Page 261, July 5, 1994, (Tape 2), Action Item:

Reconsideration Request for
Joseph B. and Nancy Tompkins
Heard and Granted on June 28, 1994

Mrs. Thonen made a motion to deny the request for reconsideration. Mr. Hammack and Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 261, July 5, 1994, (Tape 2), Action Item:

Approval of June 28, 1994 Resolutions

Mr. Dively made a motion to approve the resolutions as submitted. Mr. Hammack seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 262, July 5, 1994, (Tape 2), Action Item:

Approval of Minutes for June 2 and June 21, 1994

Mrs. Thonen made a motion to approve the minutes as submitted. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 262, July 5, 1994, (Tape 2), Action Item:

Out of Turn Hearing Request for
Providence Baptist Church, SPA 85-D-018

Mr. Pammel made a motion to deny the applicant's request for an out of turn hearing. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote. The public hearing is scheduled for September 8, 1994.

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Page 262, July 5, 1994, (Tape 2), Action Item:

Out of Turn Hearing Request for
Lucille C. and Leon M. Roberts, SP 94-P-029

Mrs. Thonen made a motion to deny the applicant's request for an out of turn hearing. Mr. Dively seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote. The public hearing is scheduled for September 27, 1994.

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As there was no other business to come before the Board, the meeting was adjourned at 12:07 p.m.

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

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

SUBMITTED: July 26, 1994

APPROVED: August 2, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 12, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; 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 263, July 12, 1994, (Tape 1), Scheduled case of:

9:00 A.M. VICENTE M. WITT, VC 94-B-059 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 8.5 ft. from side lot line. Located at 4912 Bexley Ln. on approx. 11,258 sq. ft. of land zoned R-3. Braddock District. Tax Map 69-4 ((9)) 12.

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

Lori Greenlief, Staff Coordinator, addressed the BZA. She stated that the applicant was requesting a variance to allow construction of a garage addition 8.5 feet from the side lot line. Ms. Greenlief noted that the proposed garage would encompass the area of the existing carport. The Zoning Ordinance requires a 12.0 foot minimum side yard; therefore, the applicant was requesting a 3.5 foot variance to the minimum side yard requirement.

The applicant, Vicente M. Witt, 4912 Bexley Lane, Fairfax, Virginia, addressed the BZA and stated that location of the garage was restricted because the corner lot has two front yards. Mr. Witt expressed his belief that the application met the Zoning Ordinance requirements, and explained the property is the only one in the community that does not have a garage. In summary, he said the neighbors supported the application and asked the BZA to grant the request.

In response to Chairman DiGiulian's question as to whether the garage addition would intrude any farther into the side yard than the existing carport, Mr. Witt said it would not.

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

Edward F. Conway, Jr., 1913 Bexley Lane, Fairfax, Virginia, addressed the BZA. He stated that he lives directly across from the applicant's house and was in support of the request.

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

Mr. Pammel made a motion to grant VC 94-B-059 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 5, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-059 by VICENTE M. WITT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 8.5 feet from side lot line, on property located at 4912 Bexley Lane, Tax Map Reference 69-4((9))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 12, 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 11,258 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The variance is for the enclosure of the existing carport and will come no closer to the lot line than the existing structure.
6. The 3.5 foot variance request is minimal.
7. The proposed site is the only location where a garage addition could be located.
8. There is a topographical situation on the property to the right of the residence, where the lot slopes down, further restricting 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 shown on the plat prepared by Dewberry & Davis, dated April 26, 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. The addition shall be architecturally compatible with the existing dwelling.

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

Mrs. Thonen and Mr. Hammack seconded the motion which carried by a vote of 5-0-1 with Mr. Dively abstaining from the vote. Mr. Ribble was not present for the vote.

*This was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 264, July 12, 1994, (Tape 1), Scheduled case of:

9:00 A.M. BRADLEY W. & NANCY L. JOHNSON, VC 94-D-057 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 16.7 ft. from rear lot line and deck 6.8 ft. from rear lot line. Located at 2122 Natahoa Ct. on approx. 10,111 sq. ft. of land zoned R-4. Dranesville District. Tax Map 41-1 ((25)) 13.

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

Donald Heine, Staff Coordinator, presented the staff report. He stated that the applicants were requesting two variances. The first variance would allow a two-story addition 16.7 feet from the rear lot line. The Zoning Ordinance requires a minimum 25 foot rear yard; therefore, the applicants were requesting an 8.3 foot variance to the minimum rear yard requirement.

The second variance request would allow a 9.0 foot high deck 6.8 feet from the rear lot line. The Zoning Ordinance requires a 13 foot minimum rear yard; therefore, the applicants were requesting a 6.2 foot variance to the minimum rear yard requirement.

The applicant, Bradley W. Johnson, 2122 Natahoa Court, Falls Church, Virginia, addressed the BZA and stated that the need for additional living space prompted his request for the variance. Mr. Johnson explained that they have lived in the house for eight years and, although his wife and two children would prefer to remain in the neighborhood, without the addition they would have to move. He said the proposed site is the only practical place to locate the two-story addition. Mr. Johnson said the exceptional shape, as well as the topographical conditions, of the lot have caused the need for the variance. He expressed his belief that the application met the Zoning Ordinance requirements and asked the BZA to grant the request.

Mr. Hammack asked whether the addition would be a two story addition from grade which would be comprised of a basement and first floor. Mr. Johnson said that was correct and referred to the elevation drawing. He pointed out the house was built into the side of a hill with a walk out basement, and added that it would be possible to relocate the proposed deck so as to require a lesser variance.

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

Mr. Hammack made a motion to grant-in-part (to grant an addition 16.7 feet from rear lot line and to deny the deck 6.8 feet from rear lot line) VC 94-D-057 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 5, 1994.

The BZA noted that the applicant would have to submit new plats within thirty days.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-057 by BRADLEY W. AND NANCY L. JOHNSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 16.7 feet from rear lot line and deck 6.8 feet from rear lot line, **(THE BZA GRANTED AN ADDITION 16.7 FEET FROM REAR LOT LINE AND DENIED THE DECK 6.8 FEET FROM REAR LOT LINE)**, on property located at 2122 Natahoa Court, Tax Map Reference 41-1((25))13, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 12, 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 10,111 square feet.
4. The application meets, in-part, the necessary standards for the granting of the variances.
5. The applicant has presented testimony which justifies the granting a variance for the proposed addition.
6. The placement of the house in a position on the truncated lot, as well as the requirement that the addition has to be off the kitchen, has caused the need for the variance.
7. The variance for the addition is only needed for a triangular portion of the room.
8. The deck variance would be more of a convenience to the applicant.
9. Although it would require a little additional work on the applicants' part, the deck could be relocated to require no variance at all.
10. The applicant has not satisfied the BZA that the necessary standards for the granting of a variance for the deck have been satisfied.

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

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 AN ADDITION 16.7 FEET FROM REAR LOT LINE AND DENIED THE DECK 6.8 FEET FROM REAR LOT LINE)** with the following limitations:

1. The variance is approved for the location of the specific two-story addition shown on the plat prepared by William E. Ramsey, P.C., Land Surveyor, dated March 3, 1994, 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 two-story addition shall be architecturally compatible with the existing dwelling.

4. The applicant must submit revised plats to the Board of Zoning Appeals within thirty (30) days of the public hearing.

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

Mr. Pammel seconded the motion which carried by a vote of 6-0-1 with Mr. Ribble abstaining from the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 266, July 12, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH FINDARO, VC 94-H-054 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.9 ft. from side lot line. Located at 8951 Miller Ln. on approx. 12,559 sq. ft. of land zoned R-3. Hunter Mill District. Tax Map 28-4 ((23)) 9.

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

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was requesting a variance to construct a garage addition 9.9 feet from a side lot line. Mrs. Langdon noted that the proposed garage would encompass the area of the existing carport. The Zoning Ordinance requires a 12 foot minimum side yard; therefore, the applicant was requesting a 2.1 foot variance to the minimum side yard requirement

The applicant, Joseph Findaro, 8951 Miller Lane, Vienna, Virginia, addressed the BZA. He stated that the garage addition would be no closer to the side lot line than the existing carport. In summary, Mr. Findaro said the proposed site is the only possible location for the garage, the neighbors supported the request, and the application met the necessary standards of the Zoning Ordinance. He also asked the BZA to waive the eight-day waiting period.

In response to Chairman DiGiulian's question as to whether the garage addition would intrude any farther into the side yard than the existing carport, Mr. Findaro said it would not.

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

Mrs. Thonen made a motion to grant VC 94-H-054 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 5, 1994.

Mrs. Thonen made a motion to waive the eight-day waiting period. Mr. Dively seconded the motion which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-H-054 by JOSEPH FINDARO, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.9 feet from side lot line, on property located at 8951 Miller Lane, Tax Map Reference 28-4((23))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 July 12, 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 12,559 square feet.
4. The addition would come no closer to the side lot line than the existing carport.
5. The neighbors support the request.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated April, 11, 1994, 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.

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 July 12, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 268, July 12, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JOHN S. CLARK, VC 94-P-055 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from side lot line. Located at 1103 Kennedy St. on approx. 10,000 sq. ft. of land zoned R-4. Providence District. Tax Map 40-3 ((13)) 15.

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

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was requesting approval to construct an addition by enclosing an existing screened porch 5.0 feet from a side lot line. The Zoning Ordinance requires a 10.0 foot minimum side yard; therefore, the applicant was requesting a 5.0 foot variance to the minimum side yard requirement.

The applicant, John S. Clark, 1103 Kennedy Street, Falls Church, Virginia, addressed the BZA and said he would like to enclose a screened porch which was built approximately thirty-five years ago. Mr. Clark noted the addition could not be located elsewhere on the exceptionally narrow lot without a variance. He said the neighbors supported the request, the application met the standards of the Zoning Ordinance, the addition would not protrude any further into the side yard than the existing screened porch, and the existing roof would be used. In summary, Mr. Clark 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 VC 94-P-055 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 5, 1994.

Mrs. Thonen seconded the motion and noted that had the screened porch been closed in when it was constructed in 1959, the addition would have met the setback requirement.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-055 by JOHN S. CLARK, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.0 feet from side lot line, on property located at 1103 Kennedy Street, Tax Map Reference 40-3((13))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 July 12, 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 10,000 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The screened porch was built thirty-five years ago in 1959 and it is a shame the applicant had to come before the BZA for the variance.
6. The lot is narrow.

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

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

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

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

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

1. This variance is approved for the location and the specified addition shown on the plat prepared by Alexandria Surveys, Inc., dated March, 25, 1994, 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 July 20, 1994. This date shall be deemed to be the final approval date of this variance.

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9:00 A.M. SAM & SUZANNE SCOGGIN, VC 94-H-063 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing less than 36,000 sq. ft. Located at 10815 Cross School Rd. on approx. 21,368 sq. ft. of land zoned PRC. Hunter Mill District. Tax Map 27-1 ((3)) (1) 8.

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

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting a variance to allow an existing detached garage to remain 12.4 feet from the northern side lot line in the front yard of a lot containing less than 36,000 square feet.

In presenting the background of the case, Mr. Hunter said on March 15, 1994, the BZA upheld the Zoning Administrator's position that the appellant constructed the detached garage within the front yard of the property in violation of Par. 11C of Sect. 10-104. He stated that the staff report detailed the Zoning Administrator's position.

The applicant, Sam Scoggin, 10815 Cross School Road, Reston, Virginia, addressed the BZA. He referred to the letters of support and noted that several dozen neighbors had also contacted him to offer their full support for the request. Mr. Scoggin said of the 120 houses in the neighborhood, his house was the only one without a garage. He noted that the unique character of the neighborhood made it very hard to distinguish the setback distance of the garage addition. Continuing, Mr. Scoggin explained that to move the garage addition so that it would meet the Zoning Ordinance requirement would require the removal of trees, require regrading, and would destroy the appearance of the mature wooded lot. In summary, he expressed his belief that the application met the Zoning Ordinance requirement, and asked the BZA to grant the request. He also requested the BZA waive the eight-day waiting period.

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

Mr. Kelley made a motion to grant VC 94-H-063 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 5, 1994.

Mr. Hammack stated that the case has an unfortunate history. He referred to the house location plat and noted the large storm drainage easement, as well as the topographic conditions, effectively precluded the placement of the garage elsewhere on the property.

Mr. Kelley made a motion to waive the eight-day waiting period. Mr. Ribble seconded the motion which carried by a vote of 7-0.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-H-063 by SAM AND SUZANNE SCOGGIN, under Section 18-401 of the Zoning Ordinance to permit accessory structure to remain in front yard of a lot containing less than 36,000 square feet, on property located at 10815 Cross School Road, Tax Map Reference 27-1((3))(1)8, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 12, 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 PRC.
3. The area of the lot is 21,368 square feet.
4. 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 of the specific addition shown on the plat prepared by Rice Associates, P.C. dated August 31, 1993, submitted with this application and is not transferable to other land.

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

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

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been legally established. 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. Dively seconded the motion which carried by a vote of 7-0.

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 July 12, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 271, July 12, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THOMAS S. SABOLSKY, VC 94-B-058 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of six foot high fence in front yard of a corner lot. Located at 4701 Guinea Rd. on approx. 0.50 ac. of land zoned R-2. Braddock District. Tax Map 69-2 ((7)) (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. Mr. Sabolsky replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the applicant was requesting a variance to allow a 6 foot high fence to be built in the front yard. The Zoning Ordinance permits a maximum 4 foot high fence; therefore, the applicant was requesting a modification of 2.0 feet to the maximum height of a fence.

The applicant, Thomas Sabolsky, 4701 Guinea Road, Annandale, Virginia, addressed the BZA. He stated that the property is on a very busy corner and the strict application of the Zoning Ordinance would produce an undue hardship on the ability to maintain and protect the property. He explained that the in-ground swimming pool created an attractive nuisance. Citing an incident when young people trespassed on the property and had a party at which one young man drowned, Mr. Sabolsky stressed the serious liability problems he faces because

young people climb the fence and use the back yard as a cut through to a park. He further explained that the same young people have vandalized the property. Continuing, he noted that in order to protect their liability, the community pool has a six foot fence in the front yard.

Mr. Sabolsky noted the high volume traffic area and stated the fence would also provide better protection for his four year old child. He further noted the fence would be approximately seventy-six feet from the corner; therefore, would have no effect on sight distance. In summary, he said the fence would enhance the appearance of the property, would provide protection for the children in the area, would have no detrimental impact on the neighborhood, and the neighbors supported the request. Mr. Sabolsky asked the BZA to grant the request.

In response to Mr. Ribble's question as to the letters in opposition, Mr. Sabolsky said the neighbor did not realize the property had two front yards and had believed the fence was going to be installed closer to the street.

Mr. Kelley expressed his concern regarding sight distance and asked if a professional opinion could be obtained before the BZA made a decision. Mr. Sabolsky explained that the board-on-board fence would be at least seventy-six feet from the street corner.

Mrs. Thonen expressed her belief that the application did not meet the necessary requirement for a six foot high fence. Mr. Sabolsky said the safety issue not only involved his own children, but involved other children in the community who may climb the fence and use the pool. He admitted there was another fence around the pool.

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

Mr. Dively made a motion to grant VC 94-B-058 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 5, 1994.

Mr. Ribble seconded the motion and said the property has two front yards and basically the fence would be installed in the side yard and would not cause a sight distance problem.

Mr. Pammel stated he could not support the application. He explained that, although there would be no sight distance problem, the applicant based his case on the security aspects of the pool. Mr. Pammel went on to explain that if a board-on-board fence were to be installed around the swimming pool, it would solve the applicant's liability problems.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-058 by THOMAS S. SABOLSKY, under Section 18-401 of the Zoning Ordinance to permit construction of six foot high fence in front yard of a corner lot, on property located at 4701 Guinea Road, Tax Map Reference 69-2((7))(2)1, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 12, 1994; and

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

1. The applicant is the owners of the land.
2. The present zoning is R-2.
3. The area of the lot is 0.50 acres.
4. The liability problems are realistic issues which are included in the required standards.
5. The property is on two busy roads whose traffic volume has increased over the years.
6. The applicant has provided testimony that the location of the property has caused the need to seek privacy.
7. The applicant has argued persuasively that the fence would not have a detrimental impact on the traffic flow or impair the view from the traffic lane.
8. The applicant has presented testimony that people cut through his yard which would bear on the use of 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 of the specified fence shown on the plat prepared by Stephen T. Palmer, L.S. dated April 9, 1994, 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. Ribble seconded the motion which carried by a vote of 4-3 with Chairman DiGiulian, Mr. Dively, Mr. Kelley, and Mr. Ribble voting aye. Mrs. Thonen, Mr. Pammel and Mr. Hammack voted nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 273, July 12, 1994, (Tape 1), Scheduled case of:

9:30 A.M. JON AND LOUISE EREKSON, SP 94-Y-021 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements to permit addition 13.5 ft. from side lot line. Located at 4361 Silas Hutchinson Dr. on approx. 10,815 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 33-4 ((2)) 297.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Jon Erekson, 4361 Silas Hutchinson Drive, Chantilly, Virginia, replied that it was. Mr. Erekson introduced the architect, Thomas Sullivan, 7422 Fairwood Lane, Falls Church, Virginia, and said Mr. Sullivan would present the case to the BZA.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was requesting a special permit to allow a modification to the minimum yard requirements in the R-C District to allow construction of an addition 13.5 feet from a side lot line. The Zoning Ordinance requires a minimum 20.0 foot side yard; therefore, the applicant was requesting a modification of 6.5 feet to the minimum side yard requirement. Ms. Langdon noted that prior to rezoning to the R-C District, the property was zoned R-2 Cluster with a minimum side yard requirement of 8.0 feet with a total side yards of 24.0 feet, which the proposed addition would meet.

Mr. Sullivan stated that when the applicants purchased the property, they were told by the builder there was room to build a garage. He explained the applicant did not choose to build the garage during the original construction. Mr. Sullivan went on to further explain that when the Ereksons decided to add a breakfast room and garage addition, they were informed a special permit would be required. Continuing, he said the existing parking area would be used for the garage, and as there would be enough room for the car to turn around in the driveway, the garage would not create a safety problem. In summary, Mr. Sullivan asked the BZA to grant the request.

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

Mr. Hammack made a motion to grant SP 94-Y-021 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 5, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-Y-021 by JON AND LOUISE EREKSON, under Section 8-913 of the Zoning Ordinance to permit modification to the minimum yard requirements to permit addition 13.5 feet from side lot line, on property located at 4361 Silas Hutchinson Drive, Tax Map Reference 33-4((2))297, 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 12, 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-C, WS and AN.
3. The area of the lot is 10,815 square feet.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-913 of the Zoning Ordinance.

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

1. This special permit is approved for the location and the specified 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/or use(s) indicated on the special permit plat prepared by Paciulli, Simmons & Associates, Ltd., dated June 17, 1983, finalized September 8, 1983, revised by Jon L. Erekson, dated May 2, 1994, submitted with this application and not transferable to other land.

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 1994. This date shall be deemed to be the final approval date of this special permit.

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9:30 A.M. LORIE A. HENSON, SP 94-L-019 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals to permit four dogs on a lot containing less than 12,500 sq. ft. Located at 6445 Silver Ridge Ct. on approx. 2,640 sq. ft. of land zoned R-8. Lee District. Tax Map 91-3 ((10)) 254.

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

David Hunter, Staff Coordinator, presented the staff report. He stated that the applicant was requesting a special permit to allow four Bichon Frisse dogs to be housed and cared for on the property. Mr. Hunter said the dogs included two males and two females and have an average weight of fifteen pounds. The dogs would be confined to the basement during the day and would remain inside the three story townhouse except when walked outside on a leash.

The applicant, Lori A. Henson, 6445 Silver Ridge Circle, Alexandria, Virginia, addressed the BZA. She stated she had been unaware of the provision which prohibited the number of animals that could be housed on a property. Ms. Henson said the dogs are basically house-dogs, and except when they are taken for a walk, the small dogs stay inside the house. She explained that the dogs do not like the heat and can only be outside for short periods of time.

In response to Mr. Kelley's question as to why the applicant was requesting the special permit, Ms. Henson said a next door neighbor, who hates animals, had registered a complaint with the Zoning Enforcement Branch. She explained that the neighbor had previously asked her not to feed a stray cat and when she continued to feed the cat, the neighbor had stopped speaking to her. She emphasized that during working hours, the dogs stayed inside.

Mrs. Thonen said she had conducted a cross calling of the residents of the Windsor Park Home Owners Association and concluded that the community was in opposition to the keeping of the animals. She explained many people have expressed the desire to keep four dogs on small lots and the community did not want to set a precedent.

Mr. Kelley asked if the applicant had ever allowed the dogs to remain outside when she was not at home. Ms. Henson again stressed that the dogs did not go outside except when walked. She said she did not know why the dogs did not like to stay outside, but noted they are very sensitive to the heat. Ms. Henson said the dogs, by nature, are quiet and friendly.

Mr. Hammack asked if the dogs were kept for breeding purposes. Ms. Henson stated, that although the dogs have had litters, the males are now neutered. She noted that in the past three years, the two female dogs have each had a litter. Ms. Henson said the dog which was struck by the car belonged to her sister and that no more than four dogs were housed on the property.

The BZA provided Ms. Henson with the letters in opposition and asked her to respond to them during rebuttal. The BZA also asked Ms. Henson to read the proposed development conditions in the staff report.

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

The President of the Windsor Park Home Owners Association, Harry B. Avery, 6439 Patience Court, Alexandria, Virginia, addressed the BZA. He presented a statement in opposition from the Windsor Park Board of Directors. Mr. Avery said the Zoning Ordinance provision restricting the number of dog should be enforced and expressed concern regarding setting a precedent in the community. He noted that within twenty-four hours, the posted sign had been removed from the property, and further noted the dogs were still allowed to run loose.

Jeanne Hoag, 6443 Silver Ridge Circle, Alexandria, Virginia, presented letters in opposition to the BZA. She said that she did not dislike dogs, but did have problems with the care given to the applicant's animals. Ms. Hoag explained that the applicant's practice of feeding stray cats had also caused problems. She read a portion of her letter of opposition into the record and expressed her belief that the applicant was breeding the dogs for profit. She also expressed her concern regarding an area in the backyard which is marked by a wooden cross and expressed her belief that a dog was buried there. She asked what steps could be taken to have the applicant remove the grave. Ms. Hoag, too, said the posted sign had been removed.

Mariann Scheetz, 6441 Silver Ridge Circle, Alexandria, Virginia, addressed the BZA. She said she had observed the instant removal of the posted sign and expressed her belief that the Zoning Ordinance provision should be enforced. She stated that the applicant's dogs have become a nuisance to the townhouse community, the animals were being breed, and the dogs were allowed to run free. She asked the BZA to enforce the Zoning Ordinance and deny the request.

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

Ms. Henson expressed her belief that the hearing was ridiculous and said the she took good care of the dogs. She noted that many other dogs in the neighborhood were left outside in the extreme heat and were prone to barking. She further noted that contrary to the behavior of the other dogs in the area, her dogs did not bark unless they saw another dog. Ms. Henson again said the dogs were kept in the basement, and although the dogs have had a couple of litters, there were no laws broken. She expressed her desire to move, but unfortunately the townhouse has not appreciated enough for her to be able to do so.

Chairman DiGiulian asked Ms. Henson if she agreed with the proposed development conditions. Ms. Henson said she did.

In response to Mr. Hammack's question as to whether there were currently puppies on the property, Ms. Henson said there were. She stated that, although each of the female dogs has had two litters, she did not breed dogs.

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

Mrs. Thonen made a motion to deny SP 94-L-019 for the reasons reflected in the Resolution. Mr. Ribble seconded the motion.

Mr. Kelley stated that he could not support the motion. He said if the nay's prevailed, he would offer a motion to grant the special permit for one year. Mr. Kelley noted that an additional development condition which would require all breeding to take place totally off premises would be included. He explained "totally off premises" would mean that all puppies would stay off the premises and the sale of the puppies would take place off premises.

Mrs. Thonen expressed her belief that the applicant has had plenty of time to address the neighbors' concerns and the concerns still existed. Mr. Kelley said the motion he suggested would limit the special permit to one year. Chairman DiGiulian said he agreed with Mr. Kelley's position to give the applicant time to place the dogs elsewhere.

The motion carried by a vote of 4-3 with Mrs. Thonen, Mr. Hammack, Mr. Pammel and Mr. Ribble voting aye. Chairman DiGiulian, Mr. Dively, and Mr. Kelley voted nay.

Mrs. Thonen stated that the letters and petitions submitted to the BZA had been made a part of the record.

Mr. Hammack said he supported the motion because he believed breeding activity has been taking place on the premises. He expressed his desire to have staff give the applicant a reasonable amount of time to find suitable homes in which to relocate the animals.

Jane Kelsey, Chief, Special Permit and Variance Branch, stated she would relay Mr. Hammack's comments to the Zoning Enforcement Branch.

Mr. Ribble stated that, although the letters had been submitted very late in the process, he had read several which were not just letters of opposition, but disputed much of the applicant's testimony.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-L-019 by LORIE A. HENSON, under Section 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals to permit four dogs on a lot containing less than 12,500 square feet, on property located at 6445 Silver Ridge Circle Tax Map Reference 91-3((10))254, 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 12, 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-8.
3. The area of the lot is 2,640 square feet.
4. Windsor Park has small lots and the residents have been very good about enforcing the Zoning Ordinance requirements.
5. The community does not dislike dogs, but they do not want to set a precedent that permits four dogs on the small lots.
6. It is very hard to take the proper care of the dog on such small lots. The applicant's deck covers most of the lot.
7. Although the applicant loves her dogs, the application does not meet the necessary standards for the granting of a special permit.

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

THAT the applicant has 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.

Page 277, July 12, 1994, (Tape 1), LORIE A. HENSON, SP 94-L-019, continued from Page 276)

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

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

This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 20, 1994.

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Page 277, July 12, 1994, (Tape 1), Scheduled case of:

9:30 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 1/26/94 AND 3/8 AT APP.'S REQ. DEF. FROM 4/5 AT APP.'S REQUEST. NOTICES NEEDED.)

Chairman DiGiulian stated that on June 28, 1994, the Board of Zoning Appeals issued an intent-to-defer A 93-V-028 to November 1, 1994.

Mrs. Thonen made a motion to defer A 93-V-028 to November 1, 1994 at 10:00 a.m. The Chair so ordered.

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Page 277, July 12, 1994, (Tape 1), Action Item:

Approval of Resolutions from July 5, 1994

Mr. Hammack and Mr. Pammel made a motion to approve the Resolutions as submitted. The Chair so ordered.

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Page 277, July 12, 1994, (Tape 1), Action Item:

Approval of Minutes from June 7, 1994

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

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 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: July 26, 1994

APPROVED: August 2, 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 July 19, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 8:00 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian announced the order in which the cases would be heard, calling for the first case.

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Page 279, July 19, 1994, (Tape 1), Scheduled case of:

8:00 P.M. BLOCKBUSTER CHILDREN'S AMUSEMENT CORPORATION, SP 94-P-018 Appl. under Sect(s). 4-603 and 4-303 of the Zoning Ordinance to permit commercial recreation use. Located at 9121 Lee Hwy. on approx. 25.24 ac. of land zoned C-6, C-3 and HC. Providence District. Tax Map 48-4 ((1)) 12F.

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, Antonio J. Calabrese, with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the site is presently developed with the Pan Am Shopping Center which was constructed in 1983. She said that to the east of the site is land zoned R-8 and developed with the Hampton Court Townhouses and land zoned R-1 which is vacant; to the south are the Providence Hall Apartments, zoned R-20; to the west is a vacant parcel zoned C-3; and to the north, adjacent to the shopping center, is a cemetery zoned R-1 and to the north, across Lee Highway, are various commercial uses zoned C-8. Ms. Langdon said that the applicant was seeking a special permit to allow a commercial recreation use called the Discovery Zone, which will occupy a 13,500-square-foot section of the existing Pan Am Shopping Center and will be located at the northern end of the Center, adjacent to the existing Safeway Store. She said that the Discovery Zone will consist of indoor creative fitness equipment, including giant bins, human "gerbil" tunnels, swinging bridges, spider walks and spiral slides. Ms. Langdon went on to include the following information: The applicant proposed to include private party rooms and a game room; parents will accompany their children and actively participate in the activities; the facility will include a food service/break area where soft drinks, prepackaged food, popcorn, hot dogs and other assorted food items will be served. Ms. Langdon said that 54 parking spaces are required for the use, based upon the gross floor area, and 54 parking spaces have been provided within the shopping center. She said staff concluded that, with the implementation of the Revised Proposed Development Conditions, the proposed use is in harmony with the recommendations of the Comprehensive Plan and will satisfy all the General Standards and standards for all Group 5 Uses; staff recommended approval of this application.

Mr. Calabrese came forward and introduced a new planner with the firm, Meaghan Shevlin, a graduate of Virginia Polytechnic Institute who received a Masters Degree in Planning from the University of Virginia. Ms. Shevlin presented the statement of justification, previously submitted in writing and incorporated into the record. She referenced marketing material which had been distributed to the Board members for their review and explained the nature of the proposed facility, stating that it was directed toward children aged 3 years to 9 years. Ms. Shevlin ran a video of the activities included in the Discovery Zone.

Ms. Shevlin emphasized that they were proposing no new construction and no change to the facade of the building; the Discovery Zone would be taking the place of several smaller retail stores.

Mr. Hammack asked staff why there was no stipulation about the hours of operation in the Proposed Development Conditions, since this use was primarily for children.

Ms. Langdon said staff did not feel that the hours would impact the adjacent businesses since the applicant planned to close by 9:00 p.m., which is the closing time of the shopping center, as a whole, with a few exceptions. She said that hours of operation could be imposed if the Board so wished.

Mr. Hammack said that, since the Board limited hours of operation on activities of adults, to prevent abuse, he believed the same should be true of children's activities; he believed teens should have some restrictions. Mr. Calabrese said that the target age of the children is actually up to only about 12 years and does not target teens. He said that the lease obligations required adherence to hours imposed by the shopping center, though he did not have them at hand.

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

Mr. Hammack moved to grant SP 94-P-018 for the reasons set forth in the Resolution, subject to the Revised Proposed Development Conditions dated July 19, 1994, as amended by adding Condition 6, which states: "The hours of operation shall be 10:00 a.m. to 9:00 p.m. on Monday through Friday; 10:00 a.m. to 6:00 p.m. on Saturday; and 12:00 Noon to 5:00 p.m. on Sunday."

Mr. Dively noted that the hours Mr. Hammack specified were the same as those stated in the application.

Mr. Ribble asked if the shopping center closed at 6:00 p.m. on Saturday and was surprised that the answer was "yes"; however, Mr. Calabrese said that portions of the shopping center were probably open later than 6:00 p.m., but the hours stated in the statement of justification were consistent with the lease.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-P-018 by BLOCKBUSTER CHILDREN'S AMUSEMENT CORPORATION, under Sections 4-603 and 4-303 of the Zoning Ordinance to permit commercial recreation use, on property located at 9121 Lee Highway, Tax Map Reference 48-4((1))12F, 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 19, 1994; and

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

1. The applicant is a lessee of the land.
2. The present zoning is C-6, C-3 and HC.
3. The area of the lot is approximately 25.24 acres.
4. An additional Condition, Number 6, should address the hours of operation.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-503 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 a 13,500 square foot unit adjacent to the Safeway Store at the northern end of the 25.24 acre Pan Am Shopping Center 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, dated April 11, 1994, Page 2 revised April 25, 1994, 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, unless waived 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. Parking shall be provided in accordance with the Public Facilities Manual as determined by the Department of Environmental Management.

6. The hours of operation shall be limited to 8:00 A.M. to 10:00 P.M., seven days a week.

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

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

Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. 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 July 27, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 281, July 19, 1994, (Tape 1), Scheduled case of:

8:00 P.M. MOUNT VERNON CHURCH OF CHRIST, SPA 84-L-047 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 84-L-047 for church and related facilities to permit construction of building and increase in parking. Located at 8607 Old Mill Rd. on approx. 3.02 ac. of land zoned R-2 and HD. Lee District. Tax Map 100-4 ((1)) 1. (MOVED FROM 6/21 FOR NOTICES)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Stephen Fox, with the law firm of Miles and Stockbridge, 11350 Random Hills Road, Fairfax, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property was developed with a multi-purpose building, storage building, and parking area; the site is located on the east side of Old Mill Road, north of U.S. Route 1. He said that the property is surrounded by multi-family dwellings zoned PDH-16 on the north, multi-family dwellings zoned R-20 on the east, vacant land zoned PDH-20 on the south, and the undeveloped portions of the Lee Woodlawn Terrace Historic Plantation zoned R-1 on the west. Mr. Heine said the applicant proposed to construct a new church containing 4,060 square feet of gross floor area, retain an existing storage building, and provide 56 new gravel surface parking spaces. He said the applicant also was proposing a modification of the transitional screening requirement adjacent to the north, south, and west lot lines, and a waiver of the barrier requirement adjacent to all lot lines. Mr. Heine said that the existing vegetation on the southern portion of the property was intended to meet the transitional screening requirement adjacent to the southern lot line. He said that staff had recommended screening conditions which they believed would ensure that the use would be compatible with the surrounding neighborhood. Mr. Heine said it was staff's conclusion that, for the reasons outlined in the staff report and with the imposition of the Proposed Development Conditions, the proposed application met the General Standards for special permit uses and would be in harmony with the Comprehensive Plan; therefore, staff recommended approval of the application.

There were no questions of staff at this time.

Mr. Fox came forward to present the statement of justification, previously submitted in writing and incorporated into the record, stating that the size of the congregation varies in size from 50 to 70 active members. He said they have reached a point where their existing facilities do not adequately house the current congregation and the situation has stunted their growth. Mr. Fox said the proposed facility would seat 216 and it is believed that the intensity of the proposed development is not excessive in view of the size of the parcel. He acknowledged the location of the property within the Woodlawn Historic District and said, as the staff report indicated, they had met with the Architectural Review Board which said it wishes them to return for purposes of reviewing the hard architectural plans; they are prepared to do that. Mr. Fox said the staff report adequately stated the applicant's justification for the proposal and he asked the Board to approve the application.

Mr. Hammack asked Mr. Fox if he had read the Proposed Development Conditions and if he agreed with them. Mr. Fox said he had read them and did agree with them.

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

Mrs. Thonen moved to grant SPA 84-L-047 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 12, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 84-L-047 by MOUNT VERNON CHURCH OF CHRIST, under Section 3-203 of the Zoning Ordinance to amend SP 84-L-047 for church and related facilities to permit construction of building and increase in parking, on property located at 8607 Old Mill Road, Tax Map Reference 100-4((1))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 July 19, 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 and HC.
3. The area of the lot is approximately 3.02 acres.
4. The applicants have done what they could to preserve the historic area.
5. The church has been at its present location for a long time and it is a very nice, quiet little church. They do a very good job.

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 Bengtson, Debell, and Elkin, Ltd., dated January 1994, revised through May 1994 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. Final Architectural plans and building design shall be reviewed and approved by the Architectural Review Board. This special permit shall become null and void if it is not approved by the Architectural Review Board.

6. The maximum number of seats in the main area of worship shall be 216.

7. There shall be 56 parking spaces provided and shown on the special permit plat and all parking shall be on site.

8. Transitional screening shall be provided in accordance with the following: The size, type and quantity of all proposed plantings and existing plantings shall be shown on a landscaping plan and approved by the Urban Forestry Branch, DEM. The purpose of these plantings is to provide to the maximum extent possible screening which will soften the visual impact of the structures on the surrounding residential community.

   Along the northern lot line, Transitional Screening 1 shall be provided, except where the existing storage building is located in the screening yard. The two trees located near the northeast corner of the parking lot shall be saved.

   Along the eastern lot line, Transitional Screening 1 shall be provided; where feasible, the existing vegetation shall be used to satisfy the Transitional Screening 1 requirement.

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

   Along the western lot line, transitional screening shall be modified as follows:

   Evergreen plantings shall be provided between the parking areas, the dumpster and the front lot line to screen their view from the street and surrounding properties

   Foundation plantings shall be provided around the church

   Landscape plantings shall be provided between the church building and the front lot line, which will soften the view of the non-residential use.

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

10. Right-of-way to 45 feet from the centerline of Old Mill Road necessary for future road improvements shall be dedicated for public street purposes and shall be conveyed to the Board of Supervisors in fee simple on demand by Fairfax County or at the time of site plan approval, which ever occurs first.

11. All frontage improvements including curb, gutter, and trail should be constructed by the applicant and connect with the existing improvements to the north and south. For those frontage improvements not provided at site plan review, ancillary easements for future construction shall be provided.

12 Should stormwater management be required, the location of the facility shall be in the general area shown on the plat. Best Management Practices (BMPs) shall be provided, as determined by the Director, DEM, to meet the requirements of the Chesapeake Bay Preservation Ordinance.

13. Any proposed lighting shall be in accordance with the following:

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

    All lights shall focus directly onto the subject property.

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 27, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 283, July 19, 1994, (Tape 1), Scheduled case of:

8:00 P.M. MT. VERNON UNITARIAN CHURCH & FT. HUNT COOPERATIVE PRESCHOOL, SPA 82-V-069-2 Appl. under Sect(s). 3-203 of the Zoning Ordinance to amend SP 82-V-069 for church and related facilities and nursery school to permit change in development conditions. Located at 1909 Windmill Ln. on approx. 7.88 ac. of land zoned R-2. Mt. Vernon District. Tax Map 93-3 ((1)) 10B.

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, Angela Love-Zaranka, 5705 Tremont Drive, Alexandria, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is developed with a sanctuary, sports facilities, the Holland Hall Historic Mansion, the carriage house, greenhouse, numerous storage sheds, and an outdoor recreation area. He said that the nursery school is located within the meeting rooms of the sanctuary and the carriage house. Mr. Heine said that the site is located south of Windmill Road and north of Mason Hill Drive and is surrounded by single family detached dwellings zoned R-2. He said that the applicant was requesting an increase in enrollment for the nursery school from 35 to 50 students; there will be no physical changes to the site. Mr. Heine said the applicant was also requesting modification to the transitional screening and barrier requirements adjacent to all lot lines; the existing vegetation, and location and orientation of the buildings on site are intended to justify modification and a waiver of the additional screening and barrier requirements. He said that staff was recommending the relocation of the nursery school's outdoor recreation area to a minimum of 25 feet from the northwestern lot line to the interior of the property; staff believed this was necessary to insure that the use is compatible with the adjoining single family detached residential uses. Mr. Heine said it was staff's conclusion that, for the reasons outlined in the staff report, the proposed application, with the imposition of the Proposed Development Conditions, met the General

Standards for special permit uses and was in harmony with the Comprehensive Plan; therefore, staff recommended approval of this application, subject to the Proposed Development Conditions contained in the staff report dated July 12, 1994.

Mr. Heine noted that staff was in receipt of a letter from an adjoining neighbor, expressing some concerns, and the letter had been distributed to the Board. The letter was from Mr. & Mrs. Miner and a copy was made available to Ms. Love-Zaranka, who had not seen it previously. She said she would go ahead and present the statement of justification and then address the issues in the letter. Ms. Love-Zaranka said that Ft. Hunt is a cooperative preschool which has been at the Church since 1959 and has developed over the years from a Mothers-Day-Out for two-year-olds to better meet the needs of the community. She said they currently have one 2-day program for 8 two-year-olds, one 2-day program for 8 2 -year-olds, one 3-day program for 12 3-year-olds, and one 5-day program for 12 4-year-olds. Ms. Love-Zaranka said that they have no more than 35 students at the school at any one time. She said they would like to add a class of 9 to 15 5-year-olds and increase the amount of students present at one time to no more than 50. Ms. Love-Zaranka said that adding a 5-year-olds class would benefit the community and would round out the Ft. Hunt experience. She said the parents are actively involved in the daily operation of the school; one parent is in the class every day and parents serve on the Board of Directors; the new class would be located in the existing carriage house. Ms. Love-Zaranka said that the carriage house has 8 rooms; they currently use 3 and would use 2 of the vacant rooms for a total of 5 rooms with the addition of the 5-year-olds. She said they are not planning any additional construction on the property.

Regarding the letter in opposition, Ms. Love-Zaranka said the writer appeared to note that there were problems experienced during the recent Decorator Showhouse which increased the volume of traffic due to the comings and goings of the cars; there was additional parking provided on the grassy knoll and the parents were concerned with the excessive number of people who attended; they had additional parents available to guide and help the children in and out of the parking lot. Ms. Love-Zaranka said that it was a one-time occurrence and would not be repeated.

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

Mr. Ribble moved to grant SPA 82-V-069-2 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 12, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 82-V-069-2 by MT. VERNON UNITARIAN CHURCH & FT. HUNT COOPERATIVE PRESCHOOL, under Section 3-203 of the Zoning Ordinance to amend SP 82-V-069 for church and related facilities and nursery school to permit increase in enrollment, on property located at 1909 Windmill Lane, Tax Map Reference 93-3((1))108, 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 19, 1994; and

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

1. The applicant is a lessee of the land.
2. The present zoning is R-2.
3. The area of the lot is approximately 7.88 acres.
4. It was noted that a letter in opposition requested two entrances and exits to the church; however, the neighborhood was opposed to that and that is why the proposal was limited to one exit.
5. It was noted that the Showcase event was a one-time occurrence that probably created a little more traffic than was expected, but the event would not occur again.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

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

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

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Richard Heapes, Architect, dated February 3, 1994 and approved with this application, as qualified by these development conditions.

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

4. This Special Permit is subject to the provisions of Article 17, Site Plans, as may be determined by 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 church and related facilities shall continue to use the existing ingress/egress from Windmill Lane and ingress/egress to the property shall be prohibited from Mason Hill Drive.

6. The maximum seating capacity for the main area of worship shall be limited to 250.

7. The maximum daily enrollment of the nursery school shall not exceed fifty (50) students.

8. The hours of operation of the nursery school shall be limited to 9:15 a.m to 12:00 noon, Monday through Friday.

9. There shall be a total of 95 parking spaces provided and all parking shall be on site and should be on the impervious surface parking lot as shown on the Special Permit Plat.

10. The existing on site vegetation shall be maintained and shall satisfy the transitional screening requirement for all lot lines.

11. The barrier requirement shall be waived along all lot lines, provided that the fence located adjacent to the northwestern lot line remains.

12. An outdoor recreation area which provides 100 sq. ft. of play area for each child on the playground at any one time shall be located to the interior of the site. Plantings shall conceal the play area from the view of adjoining residential lots as approved by the Urban Forestry Branch, DEM.

13. The special permit plat shall be amended within 30 days and returned to the BZA for approval so as to show the location and amount of all outdoor recreation areas.

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 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 27, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 285, July 19, 1994, (Tape 1&2), Scheduled case of:

8:00 P.M. IGLESIA DE DIOS EL JARDIN DEL EDEN, INC., SP 94-M-020 Appl. under Sect(s). 3-303 and 8-914 of the Zoning Ordinance for church and related facilities and reduction to minimum yard requirements based on error in building location to allow addition to remain 7.0 ft. from side lot line and 28.0 ft. from street line. Located at 3500 Tyler St. on approx. 15,000 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((17)) (G) 24 and pt. 25.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, H.

Kendrick Sanders, with the law firm of Gilliam, Sanders & Brown, P.L.C., 3905 Railroad Avenue, Fairfax, Virginia, replied that it was. He noted that the new affidavit was just filed and was before the Board, as he had just recently been engaged by the applicant.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located in the Courtland Park Subdivision and is comprised of Lot 24 and half of Lot 25; the area surrounding the site is also zoned R-3 and developed with single family detached dwellings. He said the applicant was requesting approval of a special permit application in order to establish a church and related facilities in an existing single family detached dwelling. Mr. Hunter said that the property is a corner lot and contains a two-story brick dwelling constructed in 1959 and a one-story addition built in 1993, where church services are currently being held without benefit of special permit approval. He said that the applicant's statement of justification indicated that the church has a membership of 30 and that religious services will be held from 7:30 p.m. to 9:00 p.m., Monday through Saturday; and 2 services are scheduled for Sunday. Mr. Hunter said that the property owners would occupy the older portion of the residence and serve as non-paid caretakers of the property. He said the applicant was requesting a modification of the transitional screening requirements along all lot lines; the applicant was also requesting a special permit to allow a reduction to the minimum yard requirements based on error in building location, to allow the recently-constructed addition to remain 7.1 feet from the side lot line and 28.0 feet from the front lot line along Lake Street; a variance to allow the existing dwelling to remain 7.1 feet from the southern property line is also required and the applicant has not filed this necessary application.

Mr. Hunter went on to state that, on April 2, 1993, the owner of the property obtained a building permit for the addition; the building permit specifically stated that the addition may only be used for or as part of the existing dwelling and for no other use. He said that the plat submitted with the building permit showed that the side yard was to be 12 feet and the front yard was to be 30 feet. It was noted that the applicant will need to request from the Department of Environmental Management (DEM) a waiver of the dustless surface requirement, unless the two existing gravel driveways are paved or removed. Mr. Hunter said that the plat on which the staff report was based would have required a variance for the peripheral parking lot landscaping requirement to permit parking to remain too close to the rear lot line; however, a revised plat had been submitted which showed the required peripheral parking lot landscaping. He said that, on December 17, 1993, the Zoning Enforcement Branch, OCP, issued a Notice of Violation to the applicant, indicating that an investigation conducted since July 25, 1993, revealed that church services and related activities were being held on the subject property without benefit of special permit approval. Mr. Hunter further stated that the primary concerns with the application were the preservation and protection of the residential character of the area, including the intensity of the requested use and the potential for adverse impact on adjacent properties. He said that the proposed special permit property is a small narrow lot within the residential neighborhood and, in staff's opinion, the site lacks adequate transitional screening and sufficient mitigation of auditory impact on neighboring residential properties. Mr. Hunter said that the scale of the structures, the amount of impervious surface and the parking areas that intrude into the required yard, illustrate the intensity of the use. He said staff concluded that the proposed use of the property does not meet all the standards for a special permit, as required by Sect. 8-006 of the Ordinance, and is not in harmony with the applicable recommendations of the Comprehensive Plan. Mr. Hunter said that staff recommended denial of the application for a church and related facilities. He said that, if the Board intended to approve the error in building location, staff recommended that it condition approval, subject to the Proposed Development Conditions contained in Appendix 2 of the staff report. Mr. Hunter said staff further recommended that, if the special permit for error in building location is approved, the concrete parking area be located in the front yard along Lake Street and the entrance closest to Tyler Street be removed, enabling the residential use to be residential in appearance. Mr. Hunter said, as previously stated, a new plat had been submitted on July 14, 1994, which addressed the peripheral parking lot landscaping issue; a revised affidavit had also been submitted that day and copies had been distributed to the Board.

Mr. Hunter said that Art Singer, Senior Zoning Enforcement Official, was present to answer any questions regarding the violation.

Mr. Sanders came forward to present the statement of justification and submitted a petition signed by several neighbors of the church, expressing no opposition to the continuance of the activities.

Mr. Sanders said that the group of people representing the church had attempted to go through the process of applying for a special permit without the advice of consultants or attorneys, which they finally found to be an impossibility. He said he had only been involved for two weeks and had advised revision of the plat in an attempt to conform to the Ordinance and staff recommendations. Mr. Sanders said the major changes were in the required peripheral parking lot landscaping, which would also serve as part of the transitional screening modification. He said he had learned through the Office of Research and Statistics that the Hispanic community in Fairfax County had grown from 3% to 6% from 1980 to 1990, representing 50,000 residents; according to the census data, there are about 3,300 Hispanic residents in the tract immediately behind the Culmore Apartments, behind the shopping center strip on Route 7, between Columbia Pike and Route 7; about one block over, to the next tract which starts to encompass Lake Barcroft, the tract includes about 150 Hispanic people. Mr. Sanders

said the facility under consideration is located immediately adjacent to the apartment project to the east; it is on the border of a community of single family detached dwellings zoned R-3.

Mr. Sanders stated that Pastor Alvarez was attempting to provide a place where people of Hispanic origin may worship. The Pastor is from El Salvador, as are several other members of the Church, which is chartered in New York where there is an active church at this time. The church is South- and Central-American based.

In his opinion, Mr. Sanders said Fairfax County had never addressed the Comprehensive Plan versus churches, one of the reasons being the difficulty of such a task and the controversy of such a move. He said the Ordinance says churches are permitted in all zoning districts and churches are not incompatible with residential uses. He mentioned the previous application by the Unitarian Church, heard that day, which was in the middle of a residential area. It would later be pointed out that the church was there before the dwellings.

Mr. Sanders agreed that the church was roughly the size of a house, 2,900 square feet. He said the staff report raised the issue that there are seats for more than 30 or so people, which he said could be handled by conditions imposed by the BZA if that is an issue. Mr. Sanders proceeded to go through the staff report, item by item, to try to deal with the issues. He said that the matter of the days and times of services were flexible and he had explained to the church members that it was not considered normal to have services every day of the week. Mr. Sanders said the staff report said that 30 seats were proposed and 8 parking spaces were to be provided. He said the new plat provided for 11 total parking spaces which he believed would permit 44 seats. Mr. Sanders referred to the statement that a waiver of the transitional screening is required and, with the new plat, it is not required because there is landscaping provided on the periphery.

Chairman DiGiulian reminded Mr. Sanders that the red indicator light was on to signal that his time was up.

Mr. Sanders addressed the request to allow the addition to remain 7.1 feet from the side lot line, explaining that the slab was poured when the house originally was built and he did not believe a variance was required; the porch, or walkup, is 28 feet from the street line and the building itself is outside the required 30 feet from the front lot line. He said that aspect could be modified if the Board so decided.

Mr. Sanders further said he would approach the situation as if he were requesting permission to build the structure, not considering Zoning Enforcement's participation in the situation. He cited the applicant's congregation having come from another country and said that caused them to make an innocent mistake. Regarding complaints about noise, Mr. Sanders said they use acoustic and electronic instruments in their services. He said, if that was an issue, it would not be a problem because the noise would be muted or done away with; no noise would be permitted to travel off-site and disturb the neighbors. He said that could be a condition.

Mr. Sanders said the Virginia Department of Transportation (VDOT) had never asked for any dedication and the applicant would, of course, dedicate a foot or whatever was required, if and when Tyler Street was ever improved, which could also be a condition. He said he did not believe that improvement would ever occur.

Mr. Sanders said the 3,000 Hispanics in the area were not comfortable going to the existing churches in the area and this was a small start toward having their own church. Regarding the parking situation, Mr. Sanders said that most of the congregation would probably walk from the adjacent apartments to the church.

Mr. Sanders asked the Board to give the applicant a temporary special permit instead of denying the application. He asked the members of the congregation to stand in a show of support for the application. A group of people in the Board Room stood.

There were no speakers in support of the application.

The following people spoke in opposition to the application: Barry Caron, Courtland Park Civic Association, 3433 Washington Drive, Falls Church, Virginia; Alexander Beim, 3504 Gordon Street; Richard Rowan, 3510 Lake Street, across from the church; Bess Carter, Tyler Street, one block from church; Marie J. Schmidt, 3517 Gordon Street; Egan Wik, Blaire Road, Woodrow Wilson Action Group; George Merrick; Steven Greg, 3504 Washington Drive, one block from the church; Susan Grant; and Dan Sheehy.

Some of the concerns and issues voiced were as follows: This was not a religious or First Amendment issue, but a zoning issue; the activity is in violation of the Zoning Ordinance; there is insufficient parking in an area that is already suffering from congestion; church members park on neighboring properties and in neighboring driveways; the lot is too small to support the type of activity; the church is located near one of the worst intersections in Fairfax County and this activity will further impact it; there are many existing churches in the community which are viewed as assets to the community and good neighbors because they are built upon lots which are appropriately sized to support their activities, they have never had incidents of off-site parking encroachment into the neighborhood, and have never had late night services with noise that disturbed the neighbors; the structure itself is unsightly and an eyesore; services are held 7 days a week, twice on Sundays, using acoustical and

electronic amplified instruments and music until late hours; worshippers come in buses to attend; the special permit was sought only after a Notice of Violation had been issued; the applicant lacked integrity and obtained the building permit under false pretenses: the dwelling was said to be residential and the addition was said to be a family room; the amplified noise impacts neighbors several blocks away; the cement surrounding the structure causes water runoff problems for neighbors; traffic congestion and parking is dangerous; the facility is incompatible with the character of the neighborhood. There was mention of help being available to the congregation through Federal Funds being funded through the County for home improvement. Photos were submitted of an excessive number of cars parked on the property. A list of noise ordinance violations was submitted by the Police, showing violations as late as midnight.

Mr. Sanders came to the podium for rebuttal. He said that he believed the structure would remain and the issue was whether or not any use could be made of it that is compatible with the neighborhood. Mr. Sanders said the church did not want all the neighbors coming out and speaking of the church as if it were a pool hall or a drag strip. He said it was his understanding that the structure was legal except for the two areas mentioned in the special permit. Mr. Sanders said he believed the question was, whether the applicant could have any type of sanctuary in the facility if it is strictly conditioned to be small and unobtrusive to the neighborhood. He said he considered this to be a unique situation and not precedent setting.

Mr. Kelley moved to grant-in-part SP 94-M-020, for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated July 12, 1994. The church and related facilities were denied.

Mr. Pammel referenced an earlier mention of Federal Funds being available for home improvement loans. He said that one of the standard criteria is strict adherence to the Zoning Ordinance which, obviously, in this case has not happened. For that reason, he could not support the applicant.

Mr. Ribble referenced a statement made earlier that a particular church was in the middle of a residential neighborhood, as the one under discussion is. He said that the difference was that the church referenced was in existence before the neighborhood.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

GRANTED-IN-PART

In Special Permit Application SP 94-M-020 by IGLESIA DE DIOS EL JARDIN DEL EDEN, INC., under Sections 3-303 and 8-914 of the Zoning Ordinance for church and related facilities **(THE BOARD DENIED THE CHURCH AND RELATED FACILITIES)** and reduction to minimum yard requirements based on error in building location to allow addition to remain 7.0 feet from side lot line and 38.0 feet from street line, on property located at 3500 Tyler Street, Tax Map Reference 61-2((17))(6)24 and pt. 25, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 19, 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 and HC.
3. The area of the lot is approximately 15,000 square feet.
4. Regarding the church, the applicant has not presented testimony indicating compliance with General Standards for special permit uses and additional standards for the use as contained in the appropriate sections of the Zoning Ordinance.
5. If the land were vacant and an application were filed to construct a church, it would probably not be approved by the Board.
6. The area of 15,000 square feet is far too small for a church of any kind.
7. Allowing the church to remain would adversely impact the neighborhood.
8. The traffic and related problems surrounding the church use are unacceptable and incurable.

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.

Page 289, July 19, 1994, (Tape 1&2), IGLESIA DE DIOS EL JARDIN DEL EDEN, INC., SP 94-M-020, continued from Page 288)

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART** (THE CHURCH AND RELATED FACILITIES WERE DENIED) with the following limitations:

1. This approval 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 structure (addition) indicated on the special permit plat entitled Garden of Eden Church, prepared by Site Design Engineering, Inc., undated, stamped received by DCP April 22, 1994 and approved with this application, as qualified by these development conditions.

3. The parking spaces in the front yard along Lake Street shall be removed and the entrance closest to Tyler street shall be closed.

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, six (6) months after the date* of approval unless plans have been approved, inspections completed and final approval obtained. The Board of Zoning Appeals may grant additional to obtain final approval if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on July 27, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 289, July 19, 1994, (Tape 2), Action Item:

Approval of Resolutions from July 12, 1994 Hearing

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

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Page 289, July 19, 1994, (Tape 2), Action Item:

Request for Acceptance of Appeal for Martin B. Jarvis

Mr. Pammel moved to accept the appeal and set it for public hearing on the morning of September 27, 1994. Mr. Hammack seconded the motion which carried by a vote of 7-0.

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Page 289, July 19, 1994, (Tape 2), Action Item:

Request for Intent-to-Defer
from July 26, 1994
to morning of October 25, 1994
Michael E. K. Mpras Appeal

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

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Page 289, July 19, 1994, (Tape 2), Action Item:

Request for Intent-to-Defer
from August 2, 1994
to morning of September 13, 1994
Ferguson Enterprises, Inc., Appeal

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

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Page 290, July 19, 1994, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Marcena J. Cain, t/a K & D Realty, SP 94-Y-034
Now Scheduled for October 11, 1994

Mrs. Thonen moved to grant an out-of-turn hearing for the morning of October 4, 1994. Mr. Dively 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 9:45 p.m.

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

John DiGiulian
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: July 26, 1994

APPROVED: August 2, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on July 26, 1994. The following Board Members were present: Vice Chairman John Ribble; Mary Thonen; Robert Dively; 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 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 291, July 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ATOUSA AMIN-SHAKERI, VC 94-D-060 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 9.9 ft. and 13.1 ft. from side lot lines and 18.3 ft. from front lot line. Located at 1656 Kirby Rd. on approx. 8,607 sq. ft. of land zoned R-1. Dranesville District. Tax Map 31-3 ((1)) 125.

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, Ms. Amin-Shakeri, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the 8,607 square foot property is located on the northwest side of Kirby Road. The subject property is surrounded by single family detached dwellings in three residential zoning districts. On the north and west, the adjoining lots are in the R-1 District, while the lot to the east is in the R-2 District, and the lot on the south is in the R-5 District. Mr. Heine said the applicant was requesting three variances to allow a two-story addition to be located 13.1 feet from the north side lot line, 9.9 feet from the south side line, and 18.3 feet from the front lot line. The Zoning Ordinance requires a 20 foot minimum side yard; therefore, variances of 6.9 feet and 10.1 feet, respectively, were requested. The Zoning Ordinance requires a 40 foot minimum front yard; therefore, a variance was requested for 21.7 feet.

Mr. Dively asked staff to explain why there was such a disparity in the zoning surrounding the subject property. Mr. Heine said he had not researched the case from that viewpoint. Mrs. Thonen said that over the years various citizens have requested rezonings on their individual lots, but because the subject property was not rezoned it does not meet the requirements for R-1 zoning.

Jane Kelsey, Chief, Special Permit and Variance Branch, used the viewgraph to point out the lots surrounding the subject property that are zoned R-1 and R-5.

Atousa Amin-Shakeri, 1656 Kirby Road, McLean, Virginia, said the subject property was subdivided prior to the adoption of the existing Zoning Ordinance. She said the lot is zoned R-1, which requires a 20 foot setback from the side lot line. Ms. Amin-Shakeri said it is very difficult to do anything with the house since the lot is extremely narrow.

Mr. Hammack said it appeared that the addition would not be any closer to the southern lot line than the existing dwelling. The applicant said that was correct.

There were no speakers in support and Vice Chairman Ribble called for speakers in opposition.

Joseph Warrin, 6302 Hunting Ridge Lane, McLean, Virginia, said he was the owner of Lot 16, which abuts the subject property. Mr. Warrin said he purchased his property in 1984 and shares the rear lot line with the applicant. He objected to the applicant's request because it would extend the house closer to his property, which would cause a detrimental impact on his property.

Mr. Pammel asked the speaker the size of his lot. Mr. Warrin replied 14,000 square feet and noted that he had a 6 foot high privacy fence surrounding his property.

Mr. Warrin asked if the BZA had received Mr. Miller's opposition letter and Vice Chairman Ribble replied in the affirmative.

Mr. Heine noted that staff had received two letters in opposition subsequent to the BZA receiving their package, and those letters were distributed just prior to the public hearing.

In rebuttal, Ms. Amin-Shakeri said Mr. Warrin's house was built in 1984 but her house was built in the 1930's and she had no say in the location of the present house, unlike Mr. Warrin. She did not believe there was an impact with regard to privacy since the speaker can see onto her lot, as well as she can see onto his lot. Ms. Amin-Shakeri said had she been aware of Mr. Warrin's opposition she would have brought a letter from her next door neighbor on the other side of the property, who would be the most impacted, in support of the request.

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

Mr. Hammack made a motion to grant VC 94-D-060 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 21, 1994. He added one Condition which read:

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

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-060 by ATOUSA AMIN-SHAKERI, under Section 18-401 of the Zoning Ordinance to permit construction of addition 9.9 feet and 13.1 feet from side lot lines and 18.3 feet from front lot line, on property located at 1656 Kirby Road, Tax Map Reference 31-3((1))125, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 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-1.
3. The area of the lot is 8,607 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance; in particular, the lot is very narrow as it is 58 feet at the front, only 44 feet at the rear with converging lot lines, and a very deep depth of 177 feet.
5. The applicant testified that the house was constructed in the 1930's; they are basically extending existing lot lines and only increasing the front and rear; they are minimally enlarging to the north by a couple of feet.
6. The applicants had no choice as to where the house is located and additions cannot be added without adding to the existing footprint.
7. The variances are minimal and justified under 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 specific addition shown on the plat prepared by Huntley, Nyce and Associates, Ltd., dated May 5, 1994, submitted with this application and is not transferable to other land.

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 6-0. 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 3, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 293, July 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MANTUA HILLS SWIMMING ASSOCIATION, SPA 81-P-089-2 Appl. under Sect(s). 3-303 of the Zoning Ordinance to amend SP 81-P-089 for community swimming & tennis facilities to permit building additions. Located at 9330 Pentland Pl. on approx. 4.68 ac. of land zoned R-3. Providence District. Tax Map 58-2 ((1)) 3, 3B.

Mr. Hammack disclosed that he is a member of the Mantua Swim and Tennis Club.

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. Heltzel, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the 4.68 acre property is located on the western end of Pentland Place. The property is in the R-3 District and is developed with swimming pools, tennis courts, bath house, and volley ball court. The boundary line between Fairfax County and Fairfax City traverses the western part of the property. The property adjoins single family detached dwellings in the R-3 district on the east and partially on the north. Vacant lots surround the property on the south, west and northwest which are in the R-1 District and Fairfax City's R-1, R-2, and R-P-C District, respectively.

Mr. Heine said the applicant was requesting to amend the special permit to allow construction of a 25 foot high pavilion containing 576 square feet of gross floor area, wooden decks, stairs and boardwalks. He said it was staff's position that by imposing the proposed development conditions, 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 4 Uses; therefore, staff recommended approval of SPA 81-P-089-2.

Mr. Pammel asked if the City of Fairfax had been notified of the applicant's request. Mr. Heine said staff had contacted the City and they had no comments.

John Heltzel, A.I.A. with Architectural Services, 9106 Battle Street, Manassas, Virginia, said the club would like to construct a covered area adjacent to the existing tennis courts, which would provide the users relief from the sun and thunderstorms. He used the viewgraph to point out the location of the courts and the paved area where players gather prior to a game. Mr. Heltzel said the addition would also be used for storage of maintenance equipment and water for the members, since the area is removed from the club house and it is too far for children to go for drinks. He said this will also provide an area for onlookers to sit during the games. Mr. Heltzel said the building is an open structure and is centrally located to all four courts and the roof is high enough not to obstruct the view from the observation decks onto the courts, as well as to deter children from climbing onto the roof. The pavilion is designed with a hip roof to reduce the visual scale and will be constructed of natural materials which will blend in with the surrounding setting. He briefly addressed the standards set forth in the Zoning Ordinance.

Vice Chairman Ribble called for speakers in support of the request, and hearing no reply called for speakers in opposition.

Richard Pfitzinger, 9321 Glenbrook Lane, Fairfax, Virginia, said he was not necessarily opposed to the structure but was concerned with the type of uses that might be proposed for the structure. He said because of the elevation of the club house above the residential properties, there is a carry over of the noise associated with the activities. Mr. Pfitzinger expressed concern that the noise level and the number of activities might increase, that the parking problem might be aggravated, and that the facility will be rented

out for commercial profit. He said if the proposed structure is to be used primarily for the tennis courts he had no objections, but that he would object if it were to be used for parties.

In rebuttal, Mr. Heltzel used the viewgraph to show the proximity of the proposed pavilion to the neighbor's property. He noted there are three mature pine trees that will serve as a buffer and the existing vegetation will remain intact. Mr. Heltzel said the pavilion will be more removed from the neighbor's property than the club house and pointed out that if the club violates the hours of operation, it would be in violation of the special permit.

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

Mr. Pammel made a motion to grant SPA 81-P-089-2 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 21, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-P-089-2 by MANTUA HILLS SWIMMING ASSOCIATION, under Section 3-303 of the Zoning Ordinance to amend SP 81-P-089, on property located at 9330 Pentland Place, Tax Map Reference 58-2((1))3, 3B, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 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 4.68 acres.
4. Although community pools can at times become somewhat of an inconvenience and nuisance, they are part of the lifestyle in Fairfax County, and the applicant is requesting an expansion of the use in order to provide a better service to the community.
5. The pavilion will serve a very useful function by providing shelter for the users of the tennis courts, and perhaps they do have some other uses in mind from which they are not restricted, provided the conditions under which the special permit was granted are not exceeded.

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 prepared by Paciulli, Simmons and Associates, Ltd. dated February 18, 1994, revised June 10, 1994 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. Ninety-five (95) parking spaces shall be provided for the swim and tennis club. All parking shall be on site and shown on the special permit plat.

6. The hours of operation shall be limited as follows:

Swimming Pools:	7:30 a.m. to 10:00 a.m. for swim practice only
	10:00 a.m. to 12:00 p.m. for swim lessons
	12:00 p.m. to 9:00 p.m. for full membership
Tennis Courts:	6:00 a.m. to 10:00 p.m.

These hours shall apply throughout the entire year.

7. After-hours parties for the Mantua Swim and Tennis Club shall be governed by the following:

Limited to twenty-four (24) per calendar year, limited to six (6) between Memorial Day and Labor Day, and all others between September and May shall be held indoors.

Limited to Friday, Saturday and pre-holiday evenings,

Weeknight parties limited to three (3) per year with written proof that all contiguous property owners have agreed,

Shall not extend beyond 12:00 midnight,

A written request at least ten (10) days in advance and receive prior written permission from the Zoning Administrator for each individual party or activity.

Requests shall be approved for only one (1) such party at a time and such requests shall be approved only after the successful conclusion of a previous extended-hour party or for the first one at the beginning of a swim season,

Requests shall be approved only if there are no pending violations of the conditions of the Special Permit,

Any substantiated complaints shall be cause for denying any future requests for extended-hour parties for that season; or, should such complaints occur during the end of the swim season, then this penalty shall extend to the next calendar year.

Other organizations such as the Scouts, women's clubs, etc., may be permitted to use the facilities for meetings, Monday through Friday from 7:00 p.m. to 10:00 p.m. and on Saturday from 9:00 a.m. to 5:00 p.m.

8. Lighting on the tennis courts adjacent to the western property line shall not to exceed 24 feet in height.

9. No loudspeakers shall be used between 7:30 a.m. and 10:00 a.m. and the use of loudspeakers shall be in accordance with the provisions of Chapter 108 of the Fairfax County Code. The maximum decibel level of the loudspeakers shall not exceed 55 dBA at the property line.

10. The existing vegetation shown on the plat shall be maintained and shall be deemed to fulfill the requirements for Transitional Screening 1 along all lot lines.

11. The barrier requirement shall be waived along all lot lines, and the fences shown on the plat that are located in the interior of the site shall be maintained.

12. The maximum number of family memberships shall be 560.

13. In order to mitigate potential negative impacts resulting from the discharge of chemicals existing in the swimming pool water during pre-season pool cleaning, the applicant shall ensure that the chemicals shall be neutralized prior to discharge into sanitary sewer drains by using the following guidelines for all pool discharge materials:

All waste water resulting from the cleaning and draining of the pool located on the property shall meet the appropriate level of water quality prior to discharge as determined by the Senior Sanitarian in the Consumer Services Section of the Environmental Health Division, Fairfax County Health Department. The applicant shall use the following procedure to ensure that pool waters are properly neutralized prior to being discharged during draining or cleaning operations; add sufficient amounts of line or soda ash to the acid cleaning solution to achieve a pH approximately equal to that of the receiving stream and as close to neutral (a pH of 7) as possible.

If the water being discharged from the pool is discolored or contains a high level of suspended solids that could effect the clarity of the receiving stream, it shall be allowed to stand so that most of the solids settle out prior to being discharged.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, 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 and Mr. Kelley seconded the motion which carried by a vote of 5-0-1 with Mr. Hammack abstaining. 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 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 296, July 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JAMES H. AND ELIZABETH A. BAILEY, VC 94-M-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lot 2 having lot width of 12 ft. and proposed Lot 3 having lot width of 56 ft. (80 ft. min. lot width req. by Sect. 3-306). Located at 3320 Wilkins Dr. on approx. 2.50 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-1 ((1)) 11A.

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.

Philip G. Yates, with the firm of Dewberry & Davis, 8401 Arlington Boulevard, Fairfax, Virginia, came forward and requested a one week deferral. He said this would allow neighbors who support the application to be present, and to allow the applicant time to address issues raised in the staff report.

The BZA said the case would have to be rescheduled for a date in September due to the upcoming August recess and the heavy caseload on August 2nd.

The applicant, James H. Bailey, 2905 Maplewood Place, Alexandria, Virginia, said out of the 11 surrounding property owners who were notified by certified mail of the pending application, 9 are residential property owners. He said 7 of the 9 responded favorably, and 6 have submitted letters in support of the request. Mr. Bailey supported the deferral request.

Vice Chairman Ribble asked the speaker if he was aware of any opposition and Mr. Bailey said he was not.

Following a discussion between the BZA and staff, Mr. Kelley made a motion to defer the case to September 13, 1994, at 10:00 a.m. Mr. Hammack seconded the motion. The motion passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 296, July 26, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PARKWOOD BAPTIST CHURCH & WEEKDAY EARLY EDUCATION CENTER, SPR 84-A-048 Appl. under Sect(s). 3-103 of the Zoning Ordinance to renew SP 84-A-048 for church and related facilities and child care center to permit three portable classrooms to remain. Located at 8726 Braddock Rd. on approx. 8.63 ac. of land zoned R-1. Braddock District. Tax Map 70-3 ((1)) 6.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The church's agent, Mr. Lawson, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said this 8.63 acre site is located on Braddock Road, northeast of its intersection with Rolling Road and Woodland Way. The subject property is zoned R-1, and is developed with the Parkwood Baptist Church and Weekday Early Education Center. To the north and west is the Holy Spirit Church and School, zoned R-1. To the south and east are lots developed with single family detached dwellings, zoned R-3. The site is currently developed with a 2 story church and classroom building, a 178 space paved parking area, a 3,200 square foot play ground, a prayer garden, and a driveway entrance/exit from Braddock Road.

Ms. Langdon said the applicant was requesting a special permit renewal for a church and child care center to permit the placement of three temporary portable classroom trailers on the site. These trailers will be for church use only and will not be used by the child care center. The applicant indicated that the portable classrooms will be used to teach Sunday School classes on Sunday mornings between the hours of 8:30 a.m. and 12:30 p.m. and possibly Wednesday evenings from 7:00 p.m. to 9:00 p.m. She said SPA 84-A-048-2 was approved on December 11, 1990 for the addition of three temporary trailers on the applicant's property. A term limit of five (5) years was approved for the trailers. One Additional Time was granted to establish the use of the temporary trailers on the church property, thus the special permit approval for the trailers will expire December 11, 1995, whether or not the trailers are ever brought on site since the trailers have not been established on site as yet. Rather than request another additional time, the applicant has requested a renewal of the special permit at this time since it would not be economically feasible to purchase the trailers with less than two years left on the special permit approval. The plat submitted by the applicant depicted two of the trailers located in the parking lot, and one trailer located to the east of the parking lot. Staff has requested that the applicant relocate the eastern-most trailer to the paved parking area so that mature hardwood trees will not be cleared to install this temporary use. The applicant has agreed to the relocation and the Revised Proposed Development Condition address this issue. Ms. Langdon said staff recommended approval of SPR 84-A-048.

Mr. Pammel asked if the relocation of the third trailer to the parking area would impact the parking. Ms. Langdon said the church has 73 parking spaces over the required number, thus the parking will be adequate.

In response to a question from Mr. Dively with regard to the Revised Development Conditions, Mr. Lawson said the applicant agreed with all Conditions.

Al Lawson, Minister of Education and Administration of the church, 8114 Ashton Birch Drive, Springfield, Virginia, said in 1990 the church was and is still in a situation that the size of the congregation requires that two services be held on Sunday. The church had believed the temporary trailers would provide a quick solution to the space needs while they planned ahead to construct a permanent structure. However, meeting the requirements of the Department of Environmental Management (DEM) and the Virginia Department of Transportation (VDOT) have been more than the church anticipated. Mr. Lawson said the church is still committed to the project and pointed out that they have spent nearly $20,000 in engineering fees and that they continue to work closely with the District Supervisor and DEM and VDOT. He said the church is currently raising funds to build the deceleration lane and reconstruct the intersection that VDOT has required, in addition to purchasing and installing the trailers. Mr. Lawson said this could be as much as $70,000 to $80,000 and the church does not really want to spend that type of capital without knowing what the future holds; therefore, the church decided to request a renewal of the special permit.

Vice Chairman Ribble asked if the construction had begun on the deceleration lane. Mr. Lawson said it had not. He added that the Comprehensive Plan required that the deceleration lane be constructed across the entire frontage of the property, but through negotiations the length was reduced to 160 feet.

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

Mrs. Thonen made a motion to grant SPR 84-A-048 for the reasons noted in the Resolution and subject to the Revised Development Conditions dated July 22, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 84-A-048 by PARKWOOD BAPTIST CHURCH AND WEEKDAY EARLY EDUCATION CENTER, under Section 3-103 of the Zoning Ordinance to renew SP 84-A-048 for church and related facilities and child care center to permit three portable classrooms to remain, on property located at 8726 Braddock Road, Tax Map Reference 70-3((1))6, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 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-1.
3. The area of the lot is 8.63 acres.

4. This use was approved before and the applicant has been very dedicated and moved ahead in trying to solve the engineering problems and reach a point where the trailers can be installed.

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 applicants only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by LBA Limited, dated September 15, 1992, revised June 14, 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, unless waived 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 hours of operation for the child care center shall be limited to 10:00 a.m. to 2:00 p.m., Monday through Friday.

6. There shall be a minimum of seventeen (17) parking spaces provided on site for the child care center; a minimum of eighty-eight (88) spaces for the church use; and a maximum of two-hundred and two (202) parking spaces for the combination of uses as shown on the special permit plat. All parking shall be on site.

7. Thirty-three (33) parking spaces shall be reserved on site Monday through Friday for commuter parking as requested by Fairfax County.

8. The maximum daily enrollment for the child care center shall not exceed eighty-five (85) children.

9. There shall be a maximum of three hundred and fifty (350) seats in the main area of worship.

10. The existing vegetation along the southern and eastern lot lines shall be deemed to satisfy the Transitional Screening 1 requirement. The existing vegetation along the western lot line shall be deemed to satisfy the Barrier H requirement. The barrier requirement along the remaining lot lines shall be waived.

11. In order to minimize clearing of existing vegetation and to minimize the amount of impervious surface on site, the eastern-most trailer, as shown on the plat dated September 15, 1992, revised June 14, 1993, shall be relocated to the parking spaces directly north of the other two trailers. If one or both handicapped spaces are affected by the relocation of the trailer, the handicapped spaces may be moved to another location on site as determined by the applicant in consultation with the Department of Environmental Management. No new plats shall be required for the relocation of the trailer or parking spaces.

12. Right-of-way along Braddock Road shall be dedicated to the Board of Supervisors for public street purposes in fee simple on demand or at the time of site plan approval if it is determined to be necessary by the Department of Environmental Management.

13. The trailer shall be skirted and finished in a color and with materials that are compatible with the existing building on site ad determined by the Department of Environmental Management.

14. Any new lighting on the site shall be in accordance with the following:

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

    The lights shall focus directly onto the subject property.

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

15. The approval of trailers on the site shall be limited to a term of (5) years beginning from the date of expiration of SPA 84-A-048-2, December 11, 1995. All development conditions shall be implemented prior to the issuance of a non-residential use permit for the first trailer.

16. The trailers shall be utilized for Sunday School uses only and shall not be utilized for the child care center.

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

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

Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Hammack 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 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 299, July 26, 1994, (Tape 1), Scheduled case of:

9:30 A.M. ARMANDO MENDOZA, SP 94-P-023 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 8.2 ft. from rear lot line and 4.2 ft. from side lot line. Located at 2817 Winchester Way on approx. 5,812 sq. ft. of land zoned R-4. Providence District. Tax Map 50-2 ((6)) 406.

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 son, Mr. Roman, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located on Winchester Way south of Lee Highway and north of Arlington Boulevard. The subject property is 5,812 square feet in size, is zoned R-4, and is developed with a single-family detached dwelling. Surrounding lots in the Mason Terrace subdivision are also zoned R-4 and are developed with single-family detached dwellings.

Mr. Hunter 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 allow an accessory structure measuring 15.2 feet in height to remain 8.2 feet from the rear lot line and 4.2 feet from the side lot line on the west. Section 8-914 requires a minimum 15.2 foot rear yard and Section 3-407 requires a minimum 10.0 foot side yard in the R-4 District; therefore, an error of 7.0 feet or 46.0 percent to the minimum rear yard requirement and 5.8 feet or 58.0 percent to the minimum side yard requirement was made at the time of construction. Staff noted that Section 10-102 states that a storage structure accessory to a single family dwelling shall not exceed 200 square feet of gross floor area. The special permit plat indicated that the accessory structure is a shed/workshop, and thus can exceed this limitation.

Mr. Dively asked if the structure had a concrete foundation. Mr. Hunter said the structure had a slab foundation and a note on the plat indicated that it was constructed this year and has a concrete ramp going up into it.

John Roman, 9051 Armendown Drive, Springfield, Virginia, said he was representing his father due to a language barrier and agreed with the staff report. He said his father had not been aware of the County regulations and it had not been his intent to be disrespectful to the laws since he has constructed other sheds that had not required permits. Mr. Roman said the shed sits on a concrete foundation, and because of the topography of the lot this is the only feasible location for the shed. He called the BZA's attention to the letters from each adjoining neighbor in support of the application.

Mr. Pammel asked if there was any electricity in the workshop. Mr. Roman said there was not.

Vice Chairman noted that the BZA had received two letters in support, and one in opposition. He provided a copy of the opposition letter to Mr. Roman.

In response to a question from Mrs. Thonen about the facade and height of the shed, Mr. Roman said it would match the materials on the dwelling. He said because the yard slopes his father tried to level the shed and it turned out to be higher than he anticipated.

Mr. Roman said if his father is given a chance to complete the shed, he believed it would be an asset and blend in nicely with the neighborhood.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mr. Pammel made a motion to grant SP 94-P-023 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report.

Mr. Dively asked that a new Condition be added to state: "The shed/workshop shall be architecturally compatible with the primary dwelling and the surrounding neighborhood." Mr. Pammel agreed.

Mrs. Thonen said she could not support the motion since there were two accessory structures on the property and the shed/workshop could be moved or reduced in height.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-P-023 by ARMANDO MENDOZA, 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 (shed/workshop) to remain 8.2 feet from rear lot line and 4.2 feet from side lot line, on property located at 2817 Winchester Way, Tax Map Reference 50-2((6))406, 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 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. The request is reasonable and with the granting of the special permit the setbacks will still be reasonable.

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 (shed/workshop) 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 Land Design Consultants, dated April, 1994, submitted with this application, as qualified by these development conditions.

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

4. The existing vegetation shall be maintained along the northern and eastern property lines inside the wire fence.

5. The shed/workshop shall be architecturally compatible with the primary dwelling and the surrounding neighborhood.

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

Mr. Kelley 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 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 301, July 26, 1994, (Tape 1), Scheduled case of:

9:30 A.M. BARBARA C. DONOHUE, SP 94-M-022 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 21.3 ft. from rear lot line on proposed Lot 2. Located at 3118 Patrick Henry Dr. on approx. 1.49 ac. of land zoned R-3, HC and SC. Mason District. Tax Map 51-3 ((1)) pt. 27; 51-3 ((23)) pt. B1.

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. Dunlap, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is 1.49 acres in size and is located on Patrick Henry Drive south of Route 7. Property to the north is zoned C-7 and developed with an office building. Property to the east is zoned R-20 and R-30 and developed with multi-family dwellings. Property to the south is zoned R-3 and developed with single family detached dwellings. The request for a special permit resulted from an error in building location to allow an existing dwelling to remain 21.3 feet from the rear lot line on proposed Lot 2. A minimum rear yard of 25 feet is required by the Zoning Ordinance on a lot zoned R-3.

Mr. Hunter outlined the background of the application by stating on May 3, 1994, the applicant submitted a subdivision plan for Donohue's addition to Ravenwood Park. This plan showed the subdivision of Parcels 27 and B1 into four lots, with the existing dwelling on Proposed Lot 2 located 21.3 feet from the rear lot line. According to the applicant, a note on the subdivision plan states that, if this special permit in error was not approved, the dwelling on Proposed Lot 2 would conform to the minimum rear yard requirement.

Mr. Pammel asked what standards staff had used to review the application since the house was constructed prior to the existence of a County Zoning Ordinance. Mr. Hunter said since the lots are being resubdivided proposed Lot 2 must conform with the Zoning Ordinance requirements. Jane Kelsey, Chief, Special Permit and Variance Branch, explained that the act of subdivision brings the property back into conformity with the Ordinance; therefore, the proposed lots and lot lines must then allow the house to meet the yard requirements for the zoning district.

The BZA questioned why the applicant had filed a special permit for a building in error when a variance might have been more appropriate.

Chuck Dunlap, with the firm of Walter L. Phillips, Inc., 207 Park Avenue, Falls Church, Virginia, addressed the BZA's question by saying that the original house was built in 1940 prior to the adoption of the Zoning Ordinance. In 1978, a building permit was issued for an addition to the house and the area in question was constructed as part of that addition in 1978; therefore, the applicant was requesting a special permit. Mr. Dunlap said the applicant was requesting a special permit to allow a reduction to the minimum yard to 21.3 feet. He said the house was constructed in 1940 and in 1978 an addition was constructed under permit on the north side of the house and a carport was constructed on the rear of the house. Approximately one year later, the applicant enclosed the carport which became a part of the house and has remained so until the present time. Mr. Dunlap said the error was discovered when the property entered the subdivision process. The applicant did not initially believe that a variance was required, but during research the two stage construction was discovered; thus, the need for the special permit. He said the applicant would like to subdivide the property into four lots and pointed out that three of the lots conform with the Ordinance in all respects, with the exception of the rear yard encroachment on proposed Lot 2. Mr. Dunlap addressed the statement of justification submitted with the application.

There were no speakers, either in support or in opposition, and Vice Chairman Ribble closed the public hearing.

Mr. Dively made a motion to grant SP 94-M-022 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated July 19, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-M-022 by BARBARA C. DONOHUE, 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 21.3 feet from rear lot line, on property located at 3118 Patrick Henry Drive, Tax Map Reference 51-3((1))pt. 27; 51-3((23))pt. B1, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on July 26, 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. This is a minimum variation from the requirements.

I. The structure is and has been unnoticed for approximately 16 years.

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

Page 303, July 26, 1994, (Tape 1), BARBARA C. DONOHUE, SP 94-M-022, continued from Page 302)

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 Walter L. Phillips, Inc., dated April, 1994, revised May 11, 1994, 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.

Mr. Hammack and Mr. Kelley seconded the motion which carried by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 3, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 303, July 26, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL & FAY MPRAS, APPEAL 94-B-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is occupying the subject property without valid site plan and Non-Residential Use Permit approval. Located at 7401 McWhorter Pl. on approx. 16,542 sq. ft. of land zoned C-3, HC and SC. Braddock District. Tax Map 71-1 ((1)) 40.

Vice Chairman Ribble noted that the appellant had submitted a request for a deferral. Jane Kelsey, Chief, Special Permit and Variance Branch, said the BZA had issued an intent to defer on July 19, 1994, to the morning of October 25, 1994.

Mrs. Thonen so moved. Mr. Hammack and 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 303, July 26, 1994, (Tape 1), Action Item:

Request for Reconsideration for
Blockbuster Children's Amusement Corporation, SP 94-P-018

Mrs. Thonen made a motion that the BZA reconsider Condition Number 6 with respect to the hours of operation for SP 94-P-018. Mr. Dively seconded the motion to reconsider which passed by a vote of 5-0-1 with Mr. Pammel abstaining since he was not present at the July 19th public hearing.

The applicant's agent came forward at Mr. Hammack's request and asked that the hours of operation be changed to 8:00 a.m. to 10:00 p.m. seven days a week. She said when presenting the case at the public hearing the agent had agreed to the hours in the staff report, but they had not been aware that the hours had changed between the time the application was submitted and the time of the public hearing.

Vice Chairman Ribble asked if the hours of operation coincided with the hours of the shopping center, and the speaker said they did.

Mr. Hammack said he believed the request was reasonable and made a motion to change the hours of operation in SP 94-P-018 to those requested by the applicant. Mrs. Thonen seconded the motion which passed by a vote of 5-0-1 with Mr. Pammel abstaining. Chairman DiGiulian was absent from the meeting.

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Page 304, July 26, 1994, (Tape 1), Action Item:

Approval of July 19, 1994 Resolutions

Mrs. Thonen made a motion to approve the Resolutions as submitted. 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 304, July 26, 1994, (Tape 1), Action Item:

Approval of June 14, 1994 Minutes

Mr. Pammel made a motion to approve the Minutes as submitted. 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 304, July 26, 1994, (Tape 1), Action Item:

Request for Date and Time for
Christopher E. Holland Appeal

Mrs. Thonen made a motion to schedule the appeal for the morning of October 11, 1994 as suggested by staff. Mr. Dively seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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Page 304, July 26, 1994, (Tape 1), Action Item:

Request for Out of Turn hearing for
Charles H. Wilson

Mrs. Thonen said she was in support of the request. Mr. Dively asked staff for a date. Jane Kelsey, Chief, Special Permit and Variance Branch, said since it was a yard variance and since it would not require staffing, it could be scheduled for a September date. Mrs. Thonen made a motion to schedule the application on September 13, 1994. Mr. Dively seconded the motion which passed by a vote of 6-0. Chairman DiGiulian was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:30 a.m.

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

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

SUBMITTED: August 15, 1994

APPROVED: September 8, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on August 2, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Robert Kelley; James Pammel; and John Ribble. Paul Hammack 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.

(NOTE: After the first scheduled case, the Board of Zoning Appeals ruled that because of the August recess, it would waive the eight-day waiting period for all the cases acted upon at the August 2, 1994 hearing.)

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Page 305, August 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. DAVID P. JR. & BARBARA A. JOHNSON, VC 94-B-080 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.5 ft. from rear lot line. Located at 9606 Sonjo Ct. on approx. 10,881 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-1 ((4)) 113.

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

Lori Greenlief, Staff Coordinator, presented the staff report. She said the applicants were requesting a variance to allow construction of an addition 21.5 feet from the rear lot line. The Zoning Ordinance requires a 25.0 foot minimum rear yard; therefore, the applicants were requesting a 3.5 foot variance to the minimum rear yard requirement.

David P. Johnson, Jr., 9606 Sonjo Court, Fairfax, Virginia, addressed the BZA. He stated the shape and shallowness of the lot has caused the need for the variance in order to construct a kitchen addition. Mr. Johnson noted other houses in the area have similar additions and explained that the addition would be aesthetically pleasing and the neighbors supported the request.

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

Mrs. Thonen made a motion to grant VC 94-B-080 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 26, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-080 by DAVID P. JR. AND BARBARA A. JOHNSON, under Section 18-401 of the Zoning Ordinance to permit construction of addition 21.5 feet from rear lot line, on property located at 9606 Sonjo Court, Tax Map Reference 69-1((4))113, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 2, 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 (C).
3. The area of the lot is 10,881 square feet.
4. The pie shaped lot is very small.
5. The house was placed in the middle of the lot and the addition cannot be located elsewhere on the lot 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 Bouma Architecture, dated April 27, 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. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Dively not present for the vote. Mr. Hammack 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 August 2, 1994. This date shall be deemed to be the final approval date of this variance.

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Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and asked if it intended to waive the eight-day waiting period.

Chairman DiGiulian noted that the BZA would recess during the month of August and suggested the eight-day waiting period be waived on all the cases.

Mr. Ribble made a motion to waive the eight-day waiting period for all the cases heard on August 2, 1994. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page_____, August 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ARTHUR A. VARELA, VC 94-V-064 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 23.3 ft. from front lot line and accessory structure to remain in front yard of lot containing less than 36,000 sq. ft. Located at 6008 Grove Dr. on approx. 13,800 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 83-3 ((14)) (2) 33.

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

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, introduced Julie Schilling, Staff Coordinator, with the Rezoning and Special Exception Branch, to the Board of Zoning Appeals. The BZA welcomed Ms. Schilling.

Ms. Schilling presented the staff report and said the applicant was requesting two variances. The first variance was to allow construction of a two story garage and bedroom addition 23.3 feet from the front lot line. The Zoning Ordinance requires a 30.0 foot minimum front yard; therefore, the applicant was requesting a 6.7 foot variance to the minimum front yard requirement. She said the applicant was also requesting a variance to allow a 11.5 foot high gazebo to remain 8.3 feet from the front lot line. The Zoning Ordinance requires a 30.0 foot minimum front yard; therefore, the applicant was requesting a 21.7 foot variance to the minimum front yard requirement.

The applicant, Arthur A. Varela, 6008 Grove Drive, Alexandria, Virginia, addressed the BZA. He stated the garage and gazebo were constructed when the house was built in 1938 and that he had bought the property in 1983. He said while other lots in the area have been regraded, his lot had not been regraded because the previous owner wanted to preserve five 200 years old oak trees. In summary, Mr. Varela said the only possible place for a bedroom addition would be over the existing garage.

In response to Mr. Dively's question as to whether a gazebo already existed when he purchased the property, Mr. Varela said yes. He explained that approximately fifteen years ago the original gazebo, which was in disrepair, was replaced.

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

Mr. Ribble made a motion to grant VC 94-V-064 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 26, 1994.

Chairman DiGiulian called for discussion.

Mr. Kelley said he had visited the site and agreed with the applicant's testimony.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-064 by ARTHUR A. VARELA, under Section 18-401 of the Zoning Ordinance to permit construction of addition 23.3 feet from front lot line and accessory structure to remain in front yard of lot containing less than 36,000 square feet, on property located at 6008 Grove Drive, Tax Map Reference 83-3((14))(2)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 August 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 and HC.
3. The area of the lot is 13,800 square feet.
4. Testimony has indicated an unusual situation exists. The garage has been in the present location since approximately 1938, and the gazebo is simply a rebuilt structure of the gazebo which existed prior to the Zoning Ordinance.
5. The photographs show the property has an exceptional topographic condition.

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

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

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

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

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

6. That:

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

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Bouma Architecture, dated April 27, 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. The addition shall be architecturally compatible with the existing dwelling.

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

Mr. Kelley seconded the motion which carried by a vote of 5-0 with Mr. Dively not present for the vote. Mr. Hammack 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 August 2, 1994. This date shall be deemed to be the final approval date of this variance.

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Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, addressed the Board of Zoning Appeals (BZA) and asked if it intended to waive the eight-day waiting period.

Chairman DiGiulian noted that the BZA would recess during the month of August and suggested the eight-day waiting period be waived on all the cases.

Mr. Ribble made a motion to waive the eight-day waiting period for all the cases heard on August 2, 1994. Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 308, August 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. STEPHEN W. & ELIZABETH S. KIDD, VC 94-M-067 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 14.6 ft. from rear lot line. Located at 3702 Sprucedale Dr. on approx. 10,560 sq. ft. of land zoned R-3. Mason District. Tax Map 60-4 ((16)) (I) 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. Kidd replied that it was.

Julie Schilling, Staff Coordinator with the Rezoning and Special Exception Branch, presented the staff report. She said the applicants were requesting a variance to allow construction of a screened porch addition 14.6 feet from the rear lot line. The Zoning Ordinance requires a 25.0 foot minimum rear yard; therefore, the applicants were requesting a 10.4 foot variance to the minimum rear yard requirement. Ms. Schilling noted that several letters of support had been received.

The applicant, Stephen Kidd, 3702 Sprucedale Drive, Annandale, Virginia, addressed the BZA. He stated when he purchased the house in 1977, a 12 by 18 foot concrete patio already existed. Mr. Kidd explained that the patio had a metal corrugated roof and was partially enclosed by a cinder block wall. It was not until he attempted to repair the roof and construct a more substantial structure that he was informed a variance would be needed. Mr. Kidd said the existing patio would be converted into a 12 by 12 screened porch with a small deck covering the remainder of the existing patio. He submitted photographs of the existing patio with the collapsed roof and noted the neighborhood architectural committee had approved the renovations. In summary, Mr. Kidd said the placement of the house towards the rear of the lot, as well as the steep topographical conditions, had caused the need for the variance.

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

Mr. Pammel made a motion to grant VC 94-M-067 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 26, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-067 by STEPHEN W. AND ELIZABETH S. KIDD, under Section 18-401 of the Zoning Ordinance to permit construction of addition 14.6 feet from rear lot line, on property located at 3702 Sprucedale Drive, Tax Map Reference 60-4((16))(I)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 August 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 10,560 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The unique topographical situation and the irregular location of the structure on the lot has caused the need for the variance.

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

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

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

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

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

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

1. This variance is approved for the location and the specified screened porch addition shown on the plat prepared by Payne Associates, dated May 16, 1994, 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 with Mr. Hammack 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 August 2, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 310, August 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. VICTOR & LINDA JOUBRAN, VC 94-D-066 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 1.0 ft. from side lot line with roof overhang 0.0 ft. from side lot line. Located at 2115 Reynolds St. on approx. 16,774 sq. ft. of land zoned R-2. Dranesville District. Tax Map 40-2 ((29)) 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. Mr. Wolf replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the applicants were requesting two variances. The first variance was to allow an accessory structure 1.0 foot from a side lot line. The Zoning Ordinance requires a 15 foot minimum side yard; therefore, the applicants were requesting a 14.0 foot variance to the minimum side yard requirement.

Ms. Langdon said the second variance was a request to allow a roof overhang 0.0 feet from a side lot line. The Zoning Ordinance allows the eve of a roof to extend 3 feet into a minimum side yard, but no closer than 2 feet to any lot line; therefore, the applicants were requesting a 12.0 foot variance to the minimum side yard requirement.

The applicants' architect, Jeffrey Wolf, 132 South Adams Street, Rockville, Maryland, addressed the BZA. He noted that an addition had already been constructed on the rear of the house and explained that the applicant would now like to build a two-car garage. Mr. Wolf said the topography and the utility easements preclude placing the garage elsewhere on the property. Continuing, he said the existing driveway could be extended to service the proposed garage. In summary, Mr. Wolf said a steep slope to the rear of the property precluded placing the garage in the backyard and asked the BZA to grant the request.

In response to questions from the BZA, Mr. Wolf said the proposed garage addition could not be relocated. He presented a photograph of the rear yard which depicted the constraint in terms of topography and explained where the proposed garage would be located. Mr. Wolf said the retaining wall was approximately five feet high and noted that if the garage were to be located in the backyard, a substantial amount of earth would have to be excavated.

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

The applicant, Victor Joubran, 2115 Reynolds Street, Falls Church, Virginia, addressed the BZA. He stated that he would like to build a garage on the property which he bought in 1971. Mr. Joubran said the placement and design of the house on the narrow lot has caused the need for the variance. He explained he has spent approximately $50,000 renovating the interior of the house, and $140,000 on the addition and improvements to the exterior of the house. In summary, Mr. Joubran said the neighbors supported the request, the two car garage is needed to protect the cars, and the garage could not be placed elsewhere on the lot. He asked the BZA to grant the request.

Mr. Kelley expressed his belief that to build a garage so close to the lot line would indeed intrude on the neighbor. Mr. Joubran said the proposed garage would be set far enough back on the property so that it would not intrude on the neighbor. He said although the garage would be so close to the lot line that he could not maintain the garage without accessing the neighbors' property, the materials which would be used for the garage would not have to maintained for at least 20 years. Mr. Joubran noted that a 6 foot solid wood fence existed along the lot line where the garage would be placed.

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

Mrs. Thonen stated that a garage is considered a convenience and the Zoning Ordinance does not suggest a variance be granted for a convenience. She expressed her belief that to place a garage so close to the lot line would have a detrimental impact on the neighbor.

Mr. Kelley made a motion to deny VC 94-D-066 for the reasons reflected in the Resolution. Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Dively stated that the BZA must make its decisions on land use issues and not economic issues.

Mr. Kelley added to the findings of fact by saying that the applicant could have planned for the garage before the construction of the addition; the garage could have been accommodated with a much lesser variance; and, the hardship was self imposed.

The motion carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

Mr. Kelley made a motion to waive the 12 month waiting period for the refiling of a new application. He noted that the applicant should request a lesser variance.

Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the hearing.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-066 by VICTOR AND LINDA JOUBRAN, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 1.0 foot from side lot line with roof overhang 0.0 feet from side lot line, on property located at 2115 Reynolds Street, Tax Map Reference 40-2((29))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 August 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 16,774 square feet.
4. The applicant has not satisfied the necessary requirement for the granting of a variance.
5. The accessory structure is much too close to the lot line and could not be maintained.
6. A one car garage may be appropriate; however, the application before the BZA does not meet the requirement.
7. The applicant could have planned for the garage before the construction of the addition.
8. The garage could be accommodated with a much lesser variance.
9. The hardship was self imposed.

Page 312, August 2, 1994, (Tape 1), VICTOR & LINDA JOUBRAN, VC 94-D-066, continued from Page 311)

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

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

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

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

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

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

The BZA waived the twelve month waiting period for the refiling of the same application.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1994.

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Page 312, August 2, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JAMES H. FORESMAN, III, VC 94-V-065 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 20.8 ft. from rear lot line. Located at 8310 Crown Court Rd. on approx. 10,507 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 102-3 ((20)) 20.

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

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicant was requesting a variance to construct an enclosed porch to be located 20.8 feet from a rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, the applicant was requesting a 4.2 foot variance to the minimum rear yard requirement

The applicant, James H. Foresman, III, 8310 Crown Court Road, Alexandria, Virginia, addressed the BZA. He stated that the placement of the house on the lot and the cul-de-sac has caused the need for the variance to build a screened porch. He explained that his house sits approximately 15 feet further back from the adjacent house and would cause no detrimental impact on the neighbors. In summary, he said the addition would be an improvement to the property, the request meets the Zoning Ordinance standards, and the neighbors supported the request.

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

Mr. Dively made a motion to grant VC 94-V-065 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 26, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-065 by JAMES H. FORESMAN, III, under Section 18-401 of the Zoning Ordinance to permit construction of addition 20.8 feet from rear lot line, on property located at 8310 Crown Court Road, Tax Map Reference 102-3((20))20, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 2, 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 10,507 square feet.
4. There clearly is a certain shallowness of the lot which is due to the cul de sac as it impinges on the left side of the property.
6. The request is for a minimal variance which will only cover the footprint of the existing patio.

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 O. Spencer, Inc., dated August 6, 1992, submitted with this application and is not transferable to other land.

Page 314, August 2, 1994, (Tape 1), JAMES H. FORESMAN, III, VC 94-V-065, continued from Page 313)

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

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

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

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

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on August 2, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 314, August 2, 1994, (Tape 2), Scheduled case of:

9:30 A.M. FRANK & ELINOR VISTED, SP 94-S-028 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 7.8 ft. from side lot line. Located at 8826 Applecross Ln. on approx. 8,624 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-4 ((3)) 229. (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. Visted replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the applicants were requesting a special permit for an error in building location to allow a garage addition to remain 7.8 feet from a side lot line for a total side yards of 17.8 feet. The Zoning Ordinance requires a 8.0 foot minimum side yard with a total of 20.0 feet; therefore, the applicants were requesting a modification of 0.2 feet to the side lot line and 2.2 feet to the total side yards requirements.

The applicant, Frank Visted, 8826 Applecross Lane, Springfield, Virginia, addressed the BZA. He stated that they wanted to enclose an existing carport which was built in error and would not intrude any farther into the side yard than the existing carport.

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

The applicants' contractor, Gary O'Neill, P.O. Box 459, Lorton, Virginia, addressed the BZA. He stated that he had obtained a building permit and had started construction when he was contacted by Zoning Administration and told the building permit was issued in error. He asked the BZA to grant the request.

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

Mr. Pammel made a motion to grant SP 94-S-028 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 26, 1994.

In response to questions from the BZA as to why the Building Permit was issued in error, Ms. Langdon said she did not know.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-S-028 by FRANK AND ELEANOR VISTED, 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 7.8 feet from side lot line, on property located at 8826 Applecross Lane, Tax Map Reference 88-4((3))229, 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 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;

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 request is for the enclosure of a carport which was originally built in error.

I. The current owners of the property bear no responsibility with respect to the location of the carport.

J. The building permit the applicants obtained to enclose the car was approved in error; therefore, they have appeared before the BZA to obtain relief.

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 Urban Engineering & Associates, dated July 25, 1972, 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.

Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack 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 August 2, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 316, August 2, 1994, (Tape 1), Scheduled case of:

9:30 A.M. LUCK STONE CORPORATION, SPA 81-S-064-6 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, processing, sales and accessory uses to permit building addition, change in hours of operation and stockpiling. Located at 15717 Lee Hwy. on approx. 212.47 ac. of land zoned R-C, WS and NR. Sully District. Tax Map 64-1 ((1)) 1, 4, 13, 14, 15, pt. 17, pt. 33, pt. 38, pt. 39; 64-1 ((4)) 7A.

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

Susan Langdon, Staff Coordinator, presented the staff report. She stated that the 212.47 acre property is located both north and south of Lee Highway, west of its intersection with Bull Run Post Office Road. The site is zoned R-C and is in a Natural Resource and Water Supply Protection Overlay District (WSPOD), and is currently developed with a stone quarry. To the north, south, and east the area is zoned R-C and WSPOD and developed with single family detached dwellings. To the west are lots zoned I-5 and I-6 and developed with concrete, asphalt, and trucking operations.

Ms. Langdon stated that the applicant was requesting approval of a special permit to allow a change in the hours of operation relating to sales, loading and hauling, to allow the construction of a screen bin and three (3) conveyors, and to allow stockpiling and recycling of concrete products. She noted that stockpiling and recycling of concrete is not a permitted use in the R-C district.

In January of 1994, the Board of Supervisors adopted an amendment to the Zoning Ordinance. Par. 9 of Sect. 8-105 was added regarding quarry operations, which states, "All operations shall be limited to the hours of 7 a.m. to 6 p.m. provided however the BZA may modify the hours to permit loading and delivery after 6 p.m., upon a determination that such modification will not adversely impact the surrounding area." The applicant states that the Virginia Department of Transportation (VDOT) has increasingly required highway construction jobs be done in the evenings and during nighttime hours and further requires nighttime deliveries of stone. The purpose of this part of the application would be to permit Luck Stone Corporation to expand the hours for sales and loading and hauling to meet VDOT requirements.

In addition to the regular hours of operation, which are 7:00 a.m. to 6:00 p.m. Monday through Saturday for sale of stone, the applicant would like to continue the sales operation from 6:00 p.m. to 7:00 a.m., Monday through Saturday. The applicant has made several commitments regarding the nighttime activities. All of the evening activity would take place in the part of the quarry to the south of Route 29. The applicant has agreed that during the hours of darkness, strobe lights rather than backup beepers would be used on the loaders to decrease noise levels. Additional lighting would be installed around the quarry entrance to Lee Highway and the nighttime sales activity would be limited to 100 week nights per year to be determined by the applicant. These restrictions are included in the proposed development conditions.

Ms. Langdon said the second request was a proposal to add new equipment in the form of a screen bin and connecting conveyors to allow better processing of greystone. These building additions are proposed to be located on the south side of Route 29 east of the quarry office.

She noted the applicant had also requested permission to stockpile selected broken up concrete which would be the product of the demolition and removal of existing concrete roads. Ms. Langdon explained that the trucks returning to the quarry after a delivery of stone could return with a load of recyclable concrete which would be screened for mud, dirt, trash and other construction debris. The stockpiled concrete would periodically be further crushed, screened, and sold.

Ms. Langdon stated that recycling is considered an industrially oriented commercial activity and consequently, the Zoning Ordinance restricts recycling centers to the I-5 and I-6 districts. This application property is zoned R-C and Natural Resource Overlay District (NR). The R-C District does not allow industrial uses by-right, by special permit, or special exception. The NR District was created specifically in recognition of the natural resources which exist in the County and in recognition that the sand and gravel industries and their related processing is a basic support industry in the County. Stone quarrying and crushing, and treating, washing and/or processing of materials resulting from the use, are a Group 1 Special Permit Use and are the only uses, in addition to the uses allowed in the underlying Zoning District which are allowed in the NR District. Therefore, the stockpiling and recycling of concrete products is not an allowed use on the site.

She said the staff believed that with the implementation of the proposed development conditions, the proposed change in the hours of operation and building addition would be in harmony with the Comprehensive Plan and in conformance with the applicable Zoning Ordinance provisions. Commitments that the applicant has made to mitigate adverse impacts from nighttime operations have been included in the proposed development conditions. Additionally, with the approval and implementation of a Public Improvement Plan as delineated in Development Condition 7 and as approved by the Department of Environmental Management, staff's concerns regarding most transportation issues will be addressed.

Ms. Langdon explained that the lighting of the roadway adjacent to the quarry entrance to make trucks leaving and entering the site more visible was the remaining staff issue and has been addressed in proposed Development Condition 11 with the requirement for the applicant to install street lights. Ms. Langdon noted that upon review of Development Condition 11, staff agreed with the applicant that the installation of eight (8) street lights would be sufficient lighting to commence nighttime activities as reflected in the revised development conditions. With the implementation of a term limitation as proposed in Development Condition 8, staff can review potential noise, light and air pollution impacts on nearby residential uses and can reduce 24-hour activity if the impacts prove to be too serious.

Continuing, Ms. Langdon said the proposed stockpiling and recycling of concrete products is a use that is allowed by-right only in the I-5 and I-6 Zoning Districts and is not a use that is allowed in the R-C or NR Districts. Therefore, staff could not support the applicant's request to stockpile and recycle concrete products, nor can the BZA approve the stockpiling and recycling of concrete products on the site.

In conclusion, Ms. Langdon said staff recommended approval-in-part of SPA 81-S-064-6 to allow a change in the hours of operation and building addition subject to the proposed development conditions and recommended denial of stockpiling and recycling of concrete products on site.

In response to Mr. Kelley's question as to why the BZA could not approve the stockpiling and recycling of concrete products on the site, Ms. Langdon said recycling is considered an industrial use and is allowed by-right only in the I-5 and I-6 Zoning District.

Chairman DiGiulian asked if a stone quarry would be considered an industrial use. Ms. Langdon explained that a stone quarry is a separate use as outlined in the Zoning Ordinance.

In response to questions from the BZA regarding the difference between the current activities conducted on site and the proposed recycling activities, Ms. Langdon said the Zoning Administrator has made a determination that this recycling request involves bringing material from off-site onto the site for treatment. A quarry involves treatment of material obtained on-site and taking it off-site. Therefore, recycling involves bringing material which contains other materials such as oils, dirt, etc., from off-site to the site for processing. She noted that recycling is an allowed use in the I-5 and I-6 District and there are no recycling operations conducted on properties zoned R-C within Fairfax County. Ms. Langdon further noted that recycling is not a use which is outlined in the Zoning Ordinance as a special permit or special exception use.

The applicant's attorney, Royce A. Spence, 7297-A Lee Highway, Falls Church, Virginia, was asked by the BZA to address the recycling and stockpiling issue. Mr. Spence explained that the applicant had concerns regarding some of the development conditions. He also noted that the applicant had met with the residents of Virginia Run and believed the citizens' concerns could be easily resolved.

Mr. Spence stated that the applicant did not believe staff's concerns regarding lighting and plantings should delay the operation of the grey stone plant. He explained that the grey stone products would be hauled during daylight hours.

In addressing Proposed Development Condition 7, Mr. Spence said the provisions outlined have already been met.

In response to Mr. Dively's question as to what modifications to Proposed Development Condition 7 should be made, Mr. Spence stated the first three paragraphs should be deleted.

Mr. Spence expressed his belief that the first paragraph of Proposed Development Condition 13 regarding landscaping and screening should also be deleted.

With regards to the first paragraph of Proposed Condition 8 regarding the hours of operation, Mr. Spence said the current method of operation was satisfactory and asked the provision which would require annual review by staff be deleted.

Mr. Spence explained that the applicant was actively pursuing the installation of the required lights and noted the applicant would receive a escrow refund of $1,400 dollar on each of the twenty required lights. Therefore, it would benefit the applicant to install the lights as quickly as possible. He expressed his belief that the applicant would operate the business in a safe and responsible manner.

In addressing the recycling issue, Mr. Spence said it was just a matter of semantics, and noted there would be no change in the operation which currently stockpiles, crushes, and sells stone products. He stated that when he corresponded with staff in October 1993, staff had determined that recycling would not be a problem. Mr. Spence noted that although staff has now determined that recycling would not be allowed, some staff members disagree with the current position and believe recycling would be a permitted use under the applicant's special permit. He expressed his belief that the site would be ideal for recycling.

Mr. Pammel asked if the concrete which would be hauled to the site for recycling would contain other materials such as metal and mesh. Mr. Spence said, although the concrete would contain foreign material, the facility would be equipped to properly handle it.

In response to Mr. Kelley's question as to whether material from other sites is processed at the quarry, Mr. Spence said no. Mr. Spence expressed his belief that such an operation would be allowed under the current special permit.

Mr. Pammel inquired as to why the required landscaping and screening addressed in Proposed Development Condition 13 had not been installed. Mr. Spence noted the summer was not a good time to install plantings and explained the applicant was waiting until fall to complete the landscaping.

In response to Mr. Kelley's question as to whether material was hauled across Route 29, Mr. Spence said the applicant used the tunnel to haul material from the north side of Route 29 to the south side of Route 29.

Mr. Dively inquired whether environmental issues which may evolve when materials are recycled had been researched. Mr. Spence introduced Mr. Wiseman who informed the BZA that the products would be cement, stone, and sand. He noted that the applicant currently collects scrap metal to sell to bidders. Mr. Wiseman explained that scrap metal was generated from the current operation and the scrap metal produced by the recycling would merely increase the amount already being processed on the site.

In answering Mr. Dively's question as to whether all recycling is limited to the I-5 and I-6 Zoning District, Ms. Langdon said yes it was inclusive. Mrs. Thonen noted that the applicant was requesting recycling of concrete only. Mr. Spence said the foreign debris would be screened and removed and only the concrete would be recycled.

Mr. Kelley asked staff whether recycling collection sites would be in violation. Ms. Langdon said she did not know the regulation regarding recycling centers. She explained that the issues involved in the applicant's operation would be the mud, dirt, trash, pollutants, and vehicular pollutants which may be in the concrete. Also, the location of the stockpiling and the runoff of pollutants on the property, which is in WSPOD, would be of concern.

In response to Mr. Kelley's question as to whether he was right in assuming because the applicant currently washes concrete products produced on the property, the washing of recycled concrete products would not create a problem, Mr. Spence said for the most part it would be clean material. Mr. Spence explained that any pollutants in the water running off the concrete stockpile would be deposited in a pond.

Mr. Dively expressed concern regarding environmental issues and noted the Board of Supervisors had enacted a statute regarding recycling. Ms. Langdon said the environmental staff had expressed concern because of the potential contaminants on the site which is in WSPOD. She noted the applicant had not specifically outlined the measures they will take regarding the vehicular traffic, trash, and the stormwater management. Ms. Langdon stated the Comprehensive Plan specifically recommends there be no industrial uses on Parcel 33 which is the proposed site for the stockpile of material. She explained that the request would require a Zoning Ordinance and Comprehensive Plan amendment to allow the recycling on the site.

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

After a brief discussion regarding a deferral, the BZA determined that the application could be granted-in-part and the recycling issue deferred to a future hearing.

Mr. Kelley asked staff to research the recycling issue and to establish whether recycling is taking place within Fairfax County in districts other than the I-5 or I-6 Districts.

Mr. Kelley made a motion to grant-in-part SPA 81-S-064 subject to the modified revised development conditions dated August 1, 1994, as reflected in the Resolution. All the items related to the stockpiling and recycling of concrete products are to be deferred. The BZA would hear further testimony from staff and the applicant to ascertain a legal position as to whether there would be a difference in the existing operation and the proposed stockpiling and recycling operation. Also, an investigation shall be conducted to determine the environmental issues associated with the proposed recycling and to determine where recycling is currently taking place within Fairfax County.

The revised development conditions were modified as follows:

Condition 6, the last sentence was deleted
Condition 7, the first three paragraphs were deleted.*
Condition 8, the first paragraph was deleted.
Condition 11, was deleted in its entirety.
Condition 13, the first paragraph was deleted.
Condition 40, was deleted in its entirety.

*(Further into the public hearing, the BZA reopened the case and revised Condition 6.)

Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel expressed his concern that the BZA was imposing upon staff a major analysis to be compiled within a short period of time and expressed his belief that it would be more appropriate to proceed through the Zoning Ordinance process. Mr. Kelley stated Mr. Spence's testimony had indicated there was considerable disagreement among staff and that staff had previously determined the stockpiling and recycling would be a permitted use on the site. Mr. Pammel noted the Zoning Administrator had made an "Interpretation." Mr. Kelley stated the Zoning Administrator should re-examine the "Interpretation."

Mr. Dively expressed concern regarding the recycling issue. He stated that, although there may not be any environmental problems, he did not believe the environmental issues had been adequately addressed. Mr. Dively said the issue should be determined by the Board of Supervisors. Chairman DiGiulian explained that the BZA was charged with interpreting the Zoning Ordinance.

The motion carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

Mr. Pammel said he had voted for the motion because the applicant had presented justification for the request granted by the BZA. He explained that he did not agree with the deferral of the aspect dealing with recycling.

In an effort to clarify the modifications to the development conditions, Marilyn Anderson asked Mr. Kelley for clarification. Mr. Kelley said he had deleted the first paragraph of Condition 8, and had deferred the part of the application relating to the stockpile and recycling of concrete.

Mr. Kelley made a motion to defer part of SPA 81-S-064-6 which involved the stockpiling and recycling of concrete to September 27, 1994 at 10:30 a.m.

Mrs. Thonen and Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack 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 81-S-064-6, by LUCK STONE CORPORATION, under Section 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, processing, sales and accessory uses to permit building addition, change in hours of operation and stockpiling, **(THE BZA GRANTED THE REQUEST TO PERMIT BUILDING ADDITION AND CHANGE IN HOURS OF OPERATION. THE BZA DEFERRED DECISION ON STOCKPILING AND RECYCLING OF CONCRETE PRODUCTS.)**, on property located at 15717 Lee Highway, Tax Map Reference 64-1((1))1, 4, 13, 14, 15, pt. 17, pt. 33, pt. 38, pt. 39; 64-1((4))7A, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 2, 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, WS and NR.
3. The area of the lot is 212.47 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 Section 8-105 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED-IN-PART (THE BZA GRANTED THE REQUEST TO PERMIT BUILDING ADDITION AND CHANGE IN HOURS OF OPERATION. THE BZA DEFERRED DECISION ON STOCKPILING AND RECYCLING OF CONCRETE PRODUCT.)** with the following limitations:

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

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Patton Harris Rust and Associates and dated April 1992, revised through June 1994, as qualified by these development conditions.

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

4. A grading plan for the 28.97 acre expansion area shall be submitted to DEM for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 2-603 of the Zoning Ordinance.

5. A landscape plan shall be submitted to the Urban Forestry Branch, DEM for review and approval for the 28.97 acre expansion area. This landscape plan shall provide for the following screening and landscaping on the berm located along the periphery of the expansion area.

   For the 400 foot long portion of the berm which directly abuts Bull Run Post Office Road, two (2) rows of staggered deciduous and evergreen trees planted ten feet on center shall be provided. Evergreen trees used to fulfill this requirement shall have a planted height of six (6) feet, and deciduous trees used to fulfill this requirement shall have a minimum caliper of two (2) inches at the time of planting. Specific species and location of plantings shall be as determined by the Urban Forestry Branch, DEM and shall reflect attempts to ensure continuity with the plantings on the existing berms north of the expansion area.

   The remainder of the berm shall be landscaped with natural grasses and with seedlings of a species and density to be determined by the Urban Forestry Branch, DEM. To ensure compatibility with surrounding low density development, emphasis shall be placed on using native species to fulfill this requirement.

6. A landscape plan shall be submitted to the Urban Forestry Branch, DEM for review and approval for the addition of shade trees adjacent to the entrance on the south side of Route 29 and evergreen trees on the eastern side of the entrance. These trees shall be a minimum of 6.0 feet in height at the time of planting and shall serve to soften the visual impact of the use. The number and type of trees shall be determined by the Urban Forestry Branch.

7. Ensure that the existing siltation pond located adjacent to the stockpiling operation on the south side of Lee Highway is designed to release runoff from the site in accordance with Best Management Practice (BMP) standards as determined by the Director of the Department of Environmental Management. The agreements reflected in the attached letter of September 25, 1992 may be used to fulfill this requirement as may be acceptable to DEM.

8. Special Permit Amendment, SPA 81-S-064-5, is granted for a period of five (5) years from the date of approval, December 9, 1992, with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.

9. The sales, loading and hauling of crushed stone shall be permitted 24 hours per day for not more than 100 week nights per year, Monday through Saturday. All activities between the hours of 6:00 p.m. and 7:00 a.m. associated with this use shall be confined to the south side of Lee Highway.

10. Strobe lights shall be used in place of back-up beepers on loaders during nighttime operating hours.

11. To accommodate the planned widening of Lee Highway, right-of-way shall be conveyed to the Board of Supervisors in a manner which provides a minimum uniform width of 112 feet along the site's entire frontage of Lee Highway. This right-of-way shall be dedicated in fee simple at such time as a road project requiring the right-of-way is designed and funded by the Virginia Department of Transportation (VDOT) or Fairfax County. Based on final design of future improvements to Lee Highway, or the design and or implementation of public improvements on adjoining property to the west, the required right-of-way dedication may be increased as may be shown to be necessary by the Office of Transportation in an amount not to exceed 158 feet. If shown to be necessary, the amount of any additional right-of-way over 112 feet shall be determined by the BZA in conjunction with the annual review of this use required by Sect. 8-104 of the Zoning Ordinance. Notwithstanding any notes on page 2 of SPA 81-S-064-1, in order to screen the quarry from Lee Highway all existing vegetation which lies north of the ultimate right-of-way line and associated improvements to Lee Highway shall be preserved to the maximum extent possible.

12. All landscaping and screening required in previous approvals of this use shall be maintained as follows:

    Landscaping and screening shall be maintained in accordance with the landscape plan submitted to the Urban Forestry Branch in conjunction with SPA 81-S-064-2 to ensure the use is adequately screened from the adjacent residentially zoned, planned, and used properties and Lee Highway.

    The existing vegetation between the access road to the asphalt plant and the proposed maintenance building shall be maintained at the level of Transitional Screening 3.

    To ensure quarry operations on the north side of Lee Highway are adequately screened, all existing vegetation south of the existing quarry pit shall be preserved and limits of clearing and grading shall not extend south of the existing quarry pit.

13. The total cost of enforcement services shall be absorbed by the applicant. As monitoring equipment is shared between Luck Stone Quarry and Vulcan Quarry, the applicant shall be responsible for 50% of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.

14. In order to ensure protection of the EQC, in the north pit, the limits of excavation shall not extend beyond the boundary of the EQC as delineated in accordance with the criteria contained in the Comprehensive Plan. Further, there shall be no clearing and grading and no structures located within the area designated as an EQC.

15. Berms on the portions of the site governed by the previous approval of SPA 81-S-064-4, shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains. The berms shall be landscaped with plantings in accordance with the landscape plan submitted and approved by the Urban Forestry Branch in SPA 82-V-064-2.

16. The design of the berm along the northern lot line on the north side of Rt. 29 shall be maintained so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site.

17. There will be no excavation access to and from the north excavation other than by the tunnel under Route 29-211.

18. In accordance with the provisions of Sect. 8-103 of the Zoning Ordinance, a bond of $2,000 per acre for the 134 unrestored acres shall be continued for the duration of this mining operation. Upon amendment or renewal of this application any agreements or performance guarantees shall be subject to review and approval by the Bonds and Agreements Branch, DEM.

19. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.

20. Blasting in the existing quarry and in the expansion area shall be regulated as follows:

    In the existing quarry millisecond delay caps or the equivalent shall be used in all blasting operations, with no blast to exceed 10,000 pounds. No single millisecond delay charge shall be loaded in excess of 1,000 pounds. Blasts not exceeding 15,000 pounds with a single millisecond delay charge of 1,500 pounds may be permitted in specific areas of the site when in compliance with the standard operating procedure approved under SPA 81-S-064-4.

    The above referenced blasting procedures, followed in the existing quarry, shall be followed in the expansion area subject to the following additional provisions:

    Trans Continental shall be notified prior to any blast occurring at a point 200 feet or closer to the pipeline.

    Each such notice shall be given at least 24 hours prior to the blast and shall be provided to individual(s) as designated by Trans Continental.

    Any blast within 200 feet of the pipeline shall adhere to the following minimum delays:

    17 milliseconds between decks in a hole
    25 milliseconds between holes

    The following information shall be forwarded to Trans Continental following each blast that occurs within 200 feet of the pipeline:

    A diagram or pattern of the shot
    Maximum pounds per delay of explosives in the shot
    Depth of the holes in the shot
    Type of explosives used
    Type of delays used
    Seismography reading and location

    Blasting records for the entire site shall be made available to County staff.

21. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.

22. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.

23. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring.

24. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.

25. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.

26. All present dust control equipment including the wet suppression system shall continue to be maintained and operated.

27. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.

28. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday only.

29. All blasting material shall be handled and stored in accordance with standards and regulations established by the State Mining Safety and Health Administration or other appropriate agencies.

30. There shall be no work performed other than sales of materials or maintenance activities on facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m. There shall be no work on Sundays.

31. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as available to them.

32. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.

33. Traffic control practices shall be detailed and rigidly enforced to ensure that public roads in the immediate vicinity of the quarry are closed to all traffic during blasting activities.

34. The Zoning Administrator or designated agent, shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.

35. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing and that shown on the special permit plat may be used to fulfill this requirement.

36. Water quality monitoring reports shall be provided by the applicant on an annual basis to the Office of Comprehensive Planning (OCP), Environment and Heritage Resources Branch. Parameters to monitor shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients, and alkalinity.

37. The existing entrance and exit shall be labeled as one-way to ensure safe circulation on the site.

38. Notwithstanding the approved special permit plat, the structure proposed to be constructed south of the existing shop building shall be located a minimum of 100 feet from the right-of-way line of Lee Highway.

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

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

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

Page 323, August 2, 1994, (Tape 1), LUCK STONE CORPORATION, SPA 81-S-064-6, continued from Page 322)

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 August 2, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 323, August 2, 1994, (Tape 2), Scheduled case of:

9:30 A.M. WAYNE S. BOBBY, SP 94-Y-030 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit deck 11.0 ft. from side lot line. Located at 6226 Martins Brandon Way on approx. 13,112 sq. ft. of land zoned R-C and WS. Sully District. Tax Map 53-4 ((8)) 511.

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. Bobby replied that it was.

Julie Schilling, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report. She said the applicant was requesting a special permit to allow construction of a deck less than 4.0 feet high to be located 11.0 feet from the side lot line on a R-C lot. The Zoning Ordinance requires a minimum 15.0 foot side yard for R-C lots; therefore, a reduction of 4.0 to the minimum side yard requirement was requested. The lot was rezoned to the R-C District before July 26, 1982. Prior to the rezoning the lot was zoned R-2 (Cluster); therefore, the minimum side yard requirement in effect prior to the rezoning was 8.0 feet with total side yards of 24 feet. The proposed minimum side yard is 11.0 feet with total side yards of 24.0 feet, which is not less than the minimum yard requirement of the zoning district which was applicable to the lot on July 25, 1982.

The applicant, Wayne Bobby, 6226 Martins Brandon Way, Centreville, Virginia, addressed the BZA. He stated that after receiving approval from the Virginia Run Homeowners Association, he hired a contractor and obtained the necessary permits from Fairfax County. Mr. Bobby explained it was only after construction had commenced that he was informed by Fairfax County Zoning Officials that the permits were issued in error. In summary, he asked the BZA to approve the request and noted the adjoining neighbor had submitted a letter of support.

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

Mr. Ribble made a motion to grant SP 94-Y-030 for the reasons reflected in the Resolution subject to the development conditions contained in the staff report dated July 26, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-Y-030 by WAYNE S. BOBBY, under Section 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit deck 11.0 feet from side lot line, on property located at 6226 Martins Brandon Way, Tax Map Reference 53-4((8))511, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 2, 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 13,112 square feet.
4. The application meets the necessary requirement for the granting of a special permit.

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

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-913 of the Zoning Ordinance.

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

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

Page 324, August 2, 1994, (Tape 2), WAYNE S. BOBBY, SP 94-Y-030, continued from Page 323)

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dewberry and Davis, dated March 8, 1991, finalized July 24, 1991, revised by Wayne S. Bobby, dated June 20, 1994, submitted with this application and not transferable to other land.

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

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mr. Hammack 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 August 2, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 324, August 2, 1994, (Tape 2), Scheduled case of:

9:30 A.M. FERGUSON ENTERPRISES, INC., APPEAL 94-Y-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that use limitations for I-4 District apply in underlying I-5 and I-6 Districts in the Sully Historic Overlay District and therefore outside storage is prohibited and retail sales in connection with warehousing establishment is limited to lesser of 25% of the Gross Floor Area or 5,000 square feet. Located W. of Centreville Rd. S. of Cain Branch on approx. 38.56 ac. of land zoned I-5, I-6, WS, AN & HD. Sully District. Tax Map 34-2 ((1)) 16A, 17D, 17E; 34-2 ((6)) 1, 3; 34-4 ((12)) 1.

Chairman DiGiulian noted that an intent to defer A 94-Y-021 had been issued on July 19, 1994.

Mr. Pammel made a motion to defer the appeal to the morning of September 13, 1994. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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The Board of Zoning Appeal recessed at 10:45 a.m. and reconvened at 10:55 a.m.

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Page 324, August 2, 1994, (Tape 2), Scheduled case of:

9:30 A.M. LUCK STONE CORPORATION, SPA 81-S-064-6

Chairman DiGiulian reopened the Luck Stone Corporation application.

Mr. Kelley stated that he would like to include the deletion of the last sentence of Condition 6 in the original motion.

"This vegetation shall be installed and in a healthy condition prior to the construction of the building addition and commencement of nighttime hours of operation approved in conjunction with SPA 81-S-064-6."

Mr. Ribble seconded the motion which carried by a motion 6-0 with Mr. Hammack absent from the meeting.

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9:30 A.M. EARL DONALD & HERMENCIA PROFFIT, CLINE J. PROFFIT & SUZANNE SCHWITZER-PROFFIT, APPEAL 94-V-019 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that use of appellant's property for the operation of a grading and paving business is not a lawful nonconforming use and is therefore in violation of Zoning Ordinance provisions. Located at 2409 Ross St. and 2418 Popkins Ln. on approx. 26,552 sq. ft. and 25,813 sq. ft. of land zoned R-3. Mt. Vernon District. Tax Map 93-3 ((11)) 2, 500.

William E. Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and said the subject properties are located at 2409 Ross Street and 2418 Popkins Lane, are identified as Tax Map 93-3((11))2, and 93-3((11))500, are zoned R-3 and contain an area of approximately 26,552 square feet on Lot 2 and 25,813 square feet on Lot 500.

In presenting the staff report, Mr. Shoup stated the case involved the appellants' operation of a grading and paving business on the property zoned R-3. He explained the operation involved an office established in one of the houses, and the storage of numerous vehicles and pieces of equipment associated with the business. Mr. Shoup said the issue was whether the activity was a nonconforming use. He said staff's research indicated that in order to be nonconforming, the use must have been established prior to March 1, 1941, and continued without expansion and without suspension of the activities for a period of two years.

Continuing, Mr. Shoup stated that although the business has existed for many years, no evidence has been presented to substantiate the use did lawfully exist prior to March 1, 1941. Accordingly, it was staff's position that the operation is not a lawful nonconforming use. Mr. Shoup explained that even if the operation had existed before March 1, 1994, circumstances have changed so that any nonconforming rights, which may have existed, would have been lost. He noted a portion of the original property has been subdivided or conveyed to others, structures have been built, and additional equipment has been added to the operation. Staff's position is that the changes constituted an expansion of the use which is not permitted under Article 15 of the Zoning Ordinance.

Mr. Shoup submitted copies of the 1941 Zoning Ordinance provisions. He noted that, although the applicant's statement suggested there were three possible uses under the 1941 Zoning Ordinance which could have allowed the activities, it was his belief that the appellants' use would not have been permitted under the cited uses. In conclusion, he stated it was staff's position that the appellants' use is in violation of Para. 5 of 2-302 of the Zoning Ordinance. Mr. Shoup noted the BZA was presented with a letter in opposition from Mr. Bloom, a contiguous property owner.

Mr. Dively asked what expansion had occurred since 1941. Mr. Shoup used the viewgraph to depict the property which was purchased by Cline H. Proffit in 1943. He also pointed out the section of the property which was conveyed to the Virginia Electric and Power Company (VEPCO) and the lots which were subsequently subdivided and resubdivided. Mr. Shoup explained the reduction of land area constituted an intensification or enlargement of the use. Furthermore, he said in about 1960 the dwelling in which the office was located and the garage were constructed on the property; and, there has been an increase in the amount of equipment stored on the property.

The appellants' attorney, David S. Bracken, with the law firm of Greenberg, Bracken, and Tran, 709 Prince Street, Alexandria, Virginia, addressed the BZA. He emphasized the fact that, although the appellant has operated the business for over fifty-three years, there has only been one complaint associated with the use. Mr. Bracken said several of the immediate neighbors were present to display their support for the appellant.

Mr. Bracken stated he disagreed with staff's determination. He addressed the history of the case and explained that when the Proffit family moved to Groveton Street in 1934, Popkins Lane was a half-mile long dirt road which ended at the Popkins' dairy farm. Mr. Bracken said that when Cline H. Proffit established the business in January 1941, he had rented space from Joseph Ramos to store equipment.

Continuing, he expressed his belief that the character of the business had not changed. He noted Mr. Proffit's son was now a partner and, although they do not engage in grading operations, paving and excavation was done. Mr. Bracken stated that, although occasionally they hire temporary employees, they have never employed anyone on site. In addressing the number of vehicles on site, he said older vehicles were merely replaced and the nature and number of the vehicles has remained constant since the inception of the operation.

Mr. Bracken stated, while the County officials acknowledged the business had operated for a very long time, they were hesitant to admit a nonconforming use has been established. In addressing the County's determination, he said while the aerial photographs of 1937 depicts no appreciable development, the 1953 aerial photographs show the equipment and buildings were present on the site. Mr. Bracken expressed his belief that the aerial photographs corroborate Mr. Proffit's recollections. He noted that in 1956, the County began issuing business licenses and Mr. Proffit duly applied for and was issued a business license for the use.

In conclusion, Mr. Bracken said neither the County official nor the appellant have any physical proof of exactly when the operation began and must rely on the appellant's word. He noted Mr. Proffit has been very forthright in his dealings with the County officials and there was no reason to dispute his testimony. In addressing staff's position regarding the

intensification of the use because of the subdivision of the parcel, Mr. Bracken said the subdivided parcel was never part of the use. He noted the area and location of the operation has remained constant. He contended that the operation was well screened, had been in existence for fifty years, and has no detrimental impact on the community. Citing the Supreme Count of Virginia case of Gilbert R. Knowlton vs. Browing-Ferris, Record No. 780109, Mr. Bracken said the Court ruled on the subject of nonconforming uses and stated that the use on the property does not have to remain static. He explained the Court decided the determination should be based on whether the character of the use had changed substantially. The Court recognized the mere increase in volume, intensity, or frequency is permissible and any increase in size or scope is merely a factor to consider. Mr. Bracken said, although there has been a slight increase in the number of vehicles associated with the use, a valid nonconforming use was established and the nature and character of the use is unchanged. He submitted a letter of support and three photographs for the BZA's examination.

In response to Mr. Dively's question as to the increase in use, Mr. Bracken said there was no substantial change in the character of the paving and excavating business. In addressing the quantum of the increase in vehicles, he said the appellant has increased the number of vehicles from four to ten as listed in the "Notice of Appeal", explaining that some were trailers, etc., and not ultimately vehicles. He said the buildings located on the property are: a garage, a barn, a chicken coop, and a tool implement shed; but, only the barn was used for storage in association with the use.

Mr. Pammel asked Mr. Bracken if he had any evidence or records to substantiate the business commenced on January 1941. Mr. Bracken said he did not, but again noted Mr. Proffit indicated that it had. Mr. Pammel said aerial photography may be available which would confirm the appellant's allegations. He stated one firm which might have the data was Air Photographs, Martinsburg, West Virginia.

Chairman DiGiulian called Mr. Proffit to the podium and asked him to address the issue. Mr. Proffit said it was his recollection that his father opened the business in January 1941 and had an arrangement with Mr. Ramos to store the equipment on Mr. Ramos's property. He contended that for all intents and purposes, the use has changed very little in the last fifty years. Mr. Proffit said the business was never very profitable and is very seasonable.

Chairman DiGiulian called for speakers to the request and the following citizens came forward.

Edward R. Mitchler, 2405 Ross Street, Alexandria, Virginia, addressed the BZA and noted that he has been a contiguous property owner for approximately thirty-two years. Mr. Mitchler said the character of the business has not changed and has had no detrimental impact on the neighborhood.

Daniel Bloom, 7118 Coventry Road, Alexandria, Virginia, addressed the BZA and noted that he too is a contiguous property owner. He explained the vehicles used in the operation were parked along the shared lot line and did have a negative impact on his property. Mr. Bloom expressed his belief that asphalt materials which may constitute a hazard are involved in the operation. He noted that runoff occurs and asphalt was cooked on the property. Mr. Bloom said a relative, who has a doctorate in chemistry, warned him about the dangers which can be associated with asphalt. He further noted the fumes from the asphalt has disfigured the paneling on his house. Mr. Bloom said the trucks are visible along Ross Street and also from his backyard and noted part of his backyard is unusable because of the fumes which are emitted from the trucks parked along the contiguous lot line. Mr. Bloom contended that the neighborhood had changed drastically since 1941 and is currently residential. He asked the BZA to uphold the determination of staff.

Mr. Kelley asked Mr. Bloom how long he has lived on his property. Mr. Bloom said he has lived on the property for five years. He explained that he became aware of the business when he removed the 30 foot weed line along the property line. Mr. Bloom said when he purchased the property from Mr. Proffit he was not told about the business.

Jack Rolls, 2413 Ross Street, Alexandria, Virginia, addressed the BZA. He said he has been a neighbor for fourteen years and the operation has been so low keyed that it has had no negative impact on the area.

Kenneth Blough, 2500 Popkins Lane, Alexandria, Virginia, addressed the BZA. Noting that he has been a neighbor since 1950, Mr. Blough said the business has caused no imposition on the neighbors, has not increased over the years, and is well screened.

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

Mr. Shoup said the appellant has provided no documentation that the use existed prior to March 1, 1941. Mr. Kelley expressed his belief that Mr. Proffit's testimony established the date when the business originated. Mr. Shoup explained staff relies on documentation which might even include affidavits. Mr. Kelley asked, since neither staff nor the appellant could provide documentation, whether the burden of proof would fall on staff to prove Mr. Proffit's statement was incorrect. Mr. Shoup said staff believed the appellants should provide collaborating evidence to authenticate his statement. He explained that staff had diligently tried to establish the business was started before March 1, 1941, but was unable to do so.

Chairman DiGiulian referred to another appeal and asked if staff had attempted to obtain aerial photographs. Mr. Shoup said although staff had looked at Fairfax County aerial photographs and other documents, outside sources were not contacted. He explained staff's position is that the burden of proof was on the appellant to establish that the use was a lawful nonconforming use.

Mrs. Thonen questioned whether the business could be considered a nonconforming use. Mr. Shoup said it was staff's position that if the use was established before 1941 and has not had substantial changes, it could be considered a nonconforming use.

Chairman DiGiulian called for rebuttal.

Mr. Bracken said he believed Mr. Kelley's statements were accurate. He explained that, although he would like to present more documentation, the testimony of Mr. Proffit should be accepted. Mr. Bracken noted the neighbors' support and expressed his belief that the business has been conducted in a satisfactory manner.

In response to Mr. Pammel's question as to whether asphalt was processed on the site, Mr. Bracken said no. He speculated that the neighbor might have been referring to adhesive which is applied before the asphalt is installed. Mr. Bracken said the appellant was willing to discontinue the process of boiling the adhesive. Mrs. Thonen asked about environmental issues and cited the discoloration of Mr. Bloom's house from the fumes generated from the business. Mr. Bracken said the property has been inspected numerous times by the appropriate County Officials and has been found to be in compliance with all the standards.

Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to overrule the determination of the Zoning Administrator on Appeal 94-V-019. He stated the evidence presented to the BZA has been that the business has been a continuous use since 1941. The appellant has affidavits going back to 1948, and there is no reason to disbelieve Mr. Proffit's testimony. Mr. Dively stated the issue was not whether there has been changes; but, whether there has been a substantial increase. He stressed that there has been no increase which changed the nature of the use.

Mr. Pammel said he believed the Zoning Administrator's interpretation was correct and he could not support the motion. He stated it was incumbent upon the appellant to present documentation, such as aerial photographs or tax records, to substantiate that the use had been established before March 1, 1941. Mr. Pammel said the character of the business has changed as it went from a grading operation to a paving operation with such activities as the boiling of adhesive being conducted on site.

Mr. Kelley seconded the motion. He said that the BZA does not have to rely only on documentary evidence to confirm when the use was established. Mr. Kelley stated, that since neither staff nor the appellant could produce the necessary evidence, the testimony of Mr. Proffit should be believed.

Mr. Pammel said his major concern was that the business had intensified.

Mr. Ribble said he would support the motion because Mr. Proffit's testimony was corroborated by the affidavits which go back to 1948. In regard to the increase, he said he did not believe it had been substantial.

Chairman DiGiulian said Mr. Proffit made a positive statement that he had been in operation since January 1941 and he would support the motion.

The motion carried by a vote of 4-2 with Mrs. Thonen and Mr. Pammel voting nay. Mr. Hammack was absent from the meeting.

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Page 327, August 2, 1994, (Tape 2), Scheduled case of:

10:00 A.M. MESSIAH PRESBYTERIAN CHURCH, SP 94-S-009 Appl. under Sect(s). 6-303 of the Zoning Ordinance to permit church and related facilities. Located at 8134 Old Keene Mill Rd. on approx. 0.8124 ac. of land zoned PRC and HC. Springfield District. Tax Map 79-4 ((11)) 1, 2, 3A, 3B, 3C, 3E, 4A, 4C, 5A, 5C, 6A and 6C. (DEF. FROM 5/24/94 FOR NOTICES. DEF. FROM 6/21/94 DUE TO POWER OUTAGE.)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. An unidentified woman who later said she was the minister's wife replied that it was.

Marilyn Anderson, Assistant Branch Chief, Special Permit and Variance Branch, addressed the BZA. She stated the property is more specifically located approximately 300 feet north of Old Keene Mill Road between the Irving Intermediate School and the Cary Office Building. Fernleigh Boulevard terminates in a stub at the northwest corner of the site. Thirty-five feet of existing vegetation along the entire northern property line buffers the existing office building from the single-family detached residences to the north. She further stated the applicant has submitted a Deed of Easement and Joint Driveway Agreement which provides access to the subject property by way of a travel aisle over and across adjacent parcel 1B.

Page 328, August 2, 1994, (Tape 2), MESSIAH PRESBYTERIAN CHURCH, SP 94-S-009, continued from Page 327)

Continuing, Ms. Anderson said the applicant was requesting approval of a special permit to allow a fifty (50) seat church and related facilities to be located within a 2,933 square foot condominium unit located on a 0.8 acre parcel of land. The applicant proposes to convene worship services on Sunday, from 8 a.m. to 9 p.m. and on Wednesday, from 7 p.m. to 9:30 p.m. with weekday office hours with two (2) full time employees.

Ms. Anderson noted that 13 parking spaces are required with a total of 85 parking spaces required for all uses in the existing office building. However, only 55 parking spaces are provided on site. The applicant has filed a request to the Department of Environmental Management (DEM) for a shared parking agreement between the church and office uses within the condominium building based on the different hours of operation. A waiver of the barrier requirement along the northern property line would also be necessary.

It was staff's belief that the application would meet the applicable Zoning Ordinance standards and would be in conformance with the recommendations of the Comprehensive Plan. Therefore, staff recommended approval of SP 94-S-009 subject to the proposed development conditions contained in the staff report.

The unidentified woman said her husband was minister of the church which was established in 1990. She said the Korean congregation would be very happy to have its own building.

Chairman DiGiulian called for speakers to the request and the following citizen came forward.

Darell March said he was one of the owners of the Cary Building which is adjacent to the church. He said, while there was no general opposition to the application, the permission to use parking spaces which was given to the church in a letter dated August 12, 1992 has been revoked as stated in the letter from Wilkes, Artis, Hedrick and Lane, dated June 21, 1994.

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

The minister's wife said the church has adequate parking spaces. She explained the Westwood Baptist Church would share parking with their church.

After a brief discussion with staff, it was the consensus of the BZA to defer SP 94-S-009 to allow the applicant the opportunity to resolve outstanding parking issues and obtain approval of shared parking by the Board of Supervisors.

Mr. Pammel made motion to defer SP 94-S-009 to September 13, 1994 at 9:30 a.m. The motion carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 328, August 2, 1994, (Tape 2 & 3), Scheduled case of:

10:00 A.M. BENJAMIN A. RIGGS, SP 94-D-015 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 shed to remain 4.0 ft. from side lot line (10 ft. min. side yard req. by Sect. 3-407). Located at 2025 Griffith Rd. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (M) 2. (Concurrent with VC 94-D-036). (DEF. FROM 6/21/94 DUE TO POWER OUTAGE.)

10:00 A.M. BENJAMIN A. RIGGS, VC 94-D-036 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structure in excess of 200 sq. ft. to remain (size limited by Sect. 10-102). Located at 2025 Griffith Rd. on approx. 10,400 sq. ft. of land zoned R-4. Dranesville District. Tax Map 40-1 ((5)) (M) 2. (Concurrent with SP 94-D-015). (DEF. FROM 6/21/94 DUE TO POWER OUTAGE.)

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. Riggs replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He said the applicant was 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 shed to remain 4.0 feet from the side lot line. The Zoning Ordinance requires a minimum 10 foot side yard; therefore, an error in building location for 6.0 feet was requested. The variance application was a request to allow a storage shed that contains approximately 431.25 square feet of gross floor area to remain in the rear yard. The Zoning Ordinance requires that a storage structure that is accessory to a single family detached dwelling not exceed 200 square feet in gross floor area; therefore, the applicant was requesting a variance of 231.25 square feet of floor area.

The applicant, Benjamin A. Riggs, 2025 Griffith Road, Falls Church, Virginia, addressed the BZA and stated he had built the shed in good faith. He explained that because other sheds in the neighborhood are within two feet of the property line, he did not realize the shed would be in violation. Mr. Riggs said the neighbors supported the request.

Mr. Riggs stated the narrow sloping lot and the existing trees precluded placing the shed elsewhere on the lot and to force compliance would create a hardship. He explained that the

shed, which has been in existence for twenty years, was well screened until a thunder storm felled a large walnut tree. In conclusion, Mr. Riggs said most of the neighbors had sheds within two feet of the lot line and asked the BZA to grant the request.

In response to Mrs. Thonen's question regarding the topographic conditions of the property, Mr. Riggs said the extremely narrow lot slants downhill toward the east so that, when viewed from the street, the shed appears to be smaller than it is.

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

Mrs. Thonen made a motion to grant SP 94-D-015 for the reasons reflected in the Resolution and subject to the modified development conditions contained in the staff report dated June 14, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-D-015 by BENJAMIN A. RIGGS, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to allow shed to remain 4.0 feet from side lot line, on property located at 2025 Griffith Road, Tax Map Reference 40-1((5))(M)2, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 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;

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 shed has been in existence for twenty (20) years.

I. The downhill slope of the land has produced a hardship.

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 storage 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 use(s) indicated on the special permit plat, entitled Variance Plat, Lot 2, Block M, Section 2, Pimmit Hills, prepared by Payne Associates, dated January 11, 1994, revised February 8, 1994, submitted with this application, as qualified by these development conditions.

3. The façade of the shed shall match the façade of the house.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Hammack 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 August 2, 1994. 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 94-D-036 for the reasons reflected in the Resolution and subject to the modified development conditions contained in the staff report dated June 14, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-036 by BENJAMIN A. RIGGS, under Section 18-401 of the Zoning Ordinance to permit accessory structure in excess of 200 square feet to remain, on property located at 2025 Griffith Road, Tax Map Reference 40-1((5))(M)2, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on August 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 10,400 square feet.
4. The shed has been in existence for twenty (20) years.
5. The topographical problems on the narrow lot has caused the need for the variance.
6. The downhill slope of the land has produced a hardship.

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

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

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

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

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

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

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

1. This variance is approved for the location and the specified storage shed shown on the plat prepared by Payne Associates, dated January 11, 1994, revised February 8, 1994, submitted with this application and is not transferable to other land.

3. The façade of the shed shall match the façade of the house.

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 variance shall not be valid until this has been accomplished.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Hammack 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 August 2, 1994. This date shall be deemed to be he final approval date of this variance.

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Page 331, August 2, 1994, (Tape 3), Scheduled case of:

10:30 A.M. VIRGINIA RUN COMMUNITY ASSOCIATION, SPA 87-S-045 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 87-S-045 for community swimming pool, tennis courts, and community center to expand hours of operation and amend conditions. Located at 15300, 15308 Lee Hwy. & 15355 Wetherburn Ct. on approx. 4.99 ac. of land zoned R-C and WS. Sully District. Tax Map 64-2 ((6)) M; 64-2 ((3)) 4, 5. (DEF. FROM 7/5 TO ALLOW STAFF TO PROVIDE ADDITIONAL INFORMATION AND THE APPLICANT TO WORK WITH CITIZENS. EACH SIDE HAS 10 MINUTES FOR COMMENTS.)

Chairman DiGiulian stated the application had been deferred from July 5, 1994 and the testimony would be limited to ten minutes.

Lori Greenlief, Staff Coordinator, stated the case was deferred to allow staff the opportunity to compile information from Zoning Enforcement and the Fairfax County Police department. She noted the applicant was also asked to respond to the concerns raised by the speakers at the previous public hearing.

Ms. Greenlief said the applicant has responded to the neighbors' concerns and has dropped both the request for the tennis courts to open at 8:00 a.m. and the request that the community center remain open to 11:00 p.m. on Friday, Saturday, and Sunday. She stated the request has been modified to allow the pool to open at 8:00 a.m. for swim team practice, to allow the community center to remain open to 10:00 p.m., to allow the community center to open at 6:00 a.m. for special events, and to allow an increase in the occupancy load of the community center. Ms. Greenlief said the applicant had also agreed that none of the five early openings would be for a yard sale.

Ms. Greenlief submitted the revised development conditions which incorporated the change in the hours of operations, as well as the concessions the applicant has made. She noted Condition 8 had been revised to reflect similar conditions imposed on recent applicants.

Continuing, Ms. Greenlief noted police records indicated that in 1993-1994, five calls to the property were made. Furthermore, since May 1992, Zoning Enforcement has had seven complaints regarding the facility. In summary, Ms. Greenlief said five additional letters were submitted to the BZA at the meeting.

Kirsten Weight, with the firm of Chadwick, Washington, Olters, Moriarty, and Lynn, P.C., 9990 Lee Highway, Suite 450, Fairfax, Virginia, addressed the BZA. She submitted approximately forty-five signatures in support of the request, as well as photographs depicting the screening between the Wetherburn Court properties and the site. Ms. Weight also submitted photographs of the swim team meet at another location.

In addressing the neighbors' concerns, Ms. Weight said the Association agreed to omit the request to close the facility at 11:00 p.m. on Fridays, Saturday, Sundays, and pre-holiday evenings. They also dropped the request for the 8:00 a.m. opening for tennis and the early openings for the purpose of yard sales. Ms. Weight said there were two outstanding issues, the first issue in disagreement was the request for an 8:00 a.m. pool opening for swim team only, the second issue was the request to allow the community center to be open from 8:00 a.m to 10:00 p.m. She explained the applicant would like the community center to be used for Board of Trustees approved functions which would give it the flexibility to allow community oriented activities to take place at the center. She noted the Board of Trustees would be responsible, and would answer to the residents of Wetherburn Court, for any activities which had a detrimental impact on the community.

Continuing, Ms. Weight submitted the action addressed by the Board of Trustees Resolution which set forth the measures adopted to resolve the neighbors' and the BZA's concerns. She said motion sensors would be installed on external spot lights, a chain barrier on the entrance and exit to the facility would be installed, a "Neighborhood Watch" to develop an on-call process for complaints and requests and responses from law enforcement would be initiated, and an information sheet explaining the new system would be made available to the Wetherburn Court residents. Ms. Weight said the Board of Trustees would take other action to coordinate an on-call process with law enforcement to obtain their support and to enhance the patrol of the Neighborhood Watch on the community center facility. Additionally, signs to cover operational hours, no trespassing signs, and no parking-towing enforced signs would be installed. Ms. Weight said the Association was still investigating blocking off Wetherburn Court when major functions occur at the facility. Additionally, the community center manager has been instructed to ask the appropriate County Officials to take measures to enforce the No-Parking signs and markings on Wetherburn Court. Also, additional equipment for the neighborhood watch control has been provided. Ms. Weight said the Association would periodically publish information in the "Horn" to inform the residents of the rules and regulations of the community center. She noted that speed bumps would be installed in the driveway and parking lot of the community center. In addition, the Association is investigating the feasibility of hiring off-duty Fairfax County police officers to monitor and issue parking tickets at large events.

Ms. Weight said the Virginia Department of Transportation (VDOT) is planning to re-engineer the intersection of Pleasant Valley and Lee Highway (Rt. 29). She explained that the Association has requested a meeting with VDOT to attempt to resolve some of the traffic and speed problems.

Ms. Weight also noted the two letters from the swim team members adequately addressed the swim team's response to the neighbors' concerns and the importance of the activities at the community center. She said approximately six hundred (600) signatures of support had been received for the request.

In addressing the Association's mandate, Ms. Weight said the Association represents a very large community. She noted that the community involvement was intense and some of the activities raised money for charity. In summary, Ms. Weight expressed her belief that the members of the Association have done, and will in the future do, all they can to cooperate with the neighbors on Wetherburn Court. She asked the BZA to approve the request.

Chairman DiGiulian called for speakers in opposition to the request and the following citizen came forward.

Donna Wilder, 15369 Wetherburn Court, Centreville, Virginia, addressed the BZA and said she represented the residents of Wetherburn Court. She expressed her belief that there has been a total lack of communication between the Association and the residents of Wetherburn Court. Ms. Wilder said some of Ms. Weight's testimony was unfounded and noted that all attempts to meet with the Association members to resolve outstanding issues have been ignored.

In response to Mr. Dively's question as to what were the specific issues of concern, Ms. Wilder explained that one of the BZA's directives to the Association was to meet with the residents of Wetherburn Court and resolve outstanding issues. Again she said, although the Wetherburn Court residents have tried to settle the matter, there has been no cooperation from the Association. Ms. Wilder stated there was no opposition to the opening of the community center until 10:00 p.m. for business meeting purposes. She noted that as soon as her group agreed to the proposal, the request has been changed to social functions. Ms. Wilder said she had not read the revised development conditions.

The BZA asked staff to provide Ms. Wilder with a copy of the revised development conditions. Ms. Greenlief explained the revised development conditions contained plans the Association proposed in its letter to the BZA. She noted the change of hours, the installation of the speed bumps, the installation of the signs, and the other measures which the Association proposed to resolve the citizens' concerns were the only changes in the revised development conditions.

Ms. Wilder expressed her exasperation with the situation and with her dealings with the Association. She asked the BZA to include no organized practice of cheers before 9:00 a.m. in the development conditions.

Mr. Dively expressed his belief that the BZA should defer decision so that Ms. Wilder could review the development conditions. He said he understood the two sides disagreed, but that he would like Ms. Wilder to voice the specific issues that were of concern.

The BZA had a brief discussion regarding the merits of a deferral. Ms. Wilder asked the BZA to make a decision on the case.

Mr. Kelley disagreed with proposed Development Condition 8. He suggested a substitute condition which would require all the residents on the affected lots be notified either prior to, or simultaneously to, any letter requesting permission from the Zoning Administrator to hold activities.

Ms. Wilder said the only problem which arose during the last month was on July 23, 1994, when the police ticketed cars of some of the swim team participants and the participants came on their property and harassed them. She expressed her belief that some swim team members do things to intentionally aggravate the property owners on Wetherburn Court. In conclusion, Ms. Wilder stated that if the Association had been responsive to the property owners' concern, the problems would have been resolved.

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

Mr. Pammel made a motion to grant SPA 87-S-045 for the reasons reflected in the Resolution subject to the revised development conditions dated August 2, 1994 with modifications to Conditions 7, 8, and 11 as reflected in the Resolution.

Mr. Kelley asked Mr. Pammel to delete the last part of the first sentence of Condition 7 "...with the hour of 8:00 a.m. to 9:00 a.m. reserved for swim team practice only.", be deleted from the condition. He noted the activity would be within the hours of operation and explained that he did not believe the BZA should attempt to manage the Association. Mr. Pammel agreed to the suggestion.

Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Dively stated he would have to abstain from the vote explaining that he believed both sides should be give the opportunity to review the revised development conditions.

The motion carried by a vote of 5-0-1 with Mr. Dively abstaining from the vote. Mr. Hammack was absent from the meeting.

In an attempt to clarify the issue of the date of the revised development conditions, Mr. Pammel confirmed the date to be August 2, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 87-S-045 by VIRGINIA RUN COMMUNITY ASSOCIATION, under Section 3-C03 of the Zoning Ordinance to amend SP 87-S-045 for community swimming pool, tennis courts, and community center to expand hours of operation and amend conditions, on property located at 15300, 15308 Lee Highway and 15355 Wetherburn Court, Tax Map Reference 64-2((6))M and 64-2((3))4, 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 August 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-C and WS.
3. The area of the lot is 4.99 acres.
4. The operators of the Community Association presented testimony to the Board of Zoning Appeals on August 2, 1994, and at the previous hearing on July 5, 1994, that they do comply with the standards and conditions as required for special use permits.
5. The Community Association has addressed the issues raised by the Board of Zoning Appeals, as well as the residents of Wetherburn Court.

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 by Dewberry & Davis and Greenhorne & O'mara, Inc., dated August 10, 1987 and approved with this application, as qualified by these development conditions.

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

4. The maximum number of employees on site at any one time shall be ten (10).

5. The maximum number of family memberships shall be 1,500.

6. There shall be 94 parking spaces provided as shown on the special permit plat. All parking shall be on-site.

7. The maximum hours of operation for the pool shall be from 8:00 a.m. to 9:00 p.m., daily. The hours of operation for the tennis courts shall be from 8:00 a.m. to 9:00 p.m., daily. The hours of operation for the community center routinely shall be from 8:00 a.m. to 10:00 p.m. daily, except to 11:00 p.m. for the administration of Association business and special events only as approved by the Board of Directors of the Association. The community center may open at 7:00 a.m. no more than five times a year for the set-up of special events, at which time no more than 20 persons may be on site between 7:00 a.m. to 8:00 a.m. and the special events shall not include yard sales.

8. 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 are notified simultaneously with the Zoning Administrator.

   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.

9. Maximum occupancy of the recreation center shall be 72 persons while the pool is open for use, except for the six after-hour parties as noted. At all other times, the maximum occupancy shall be 100 persons.

10. If lights are provided for pool and parking lot, they shall be in accordance with the following:

    - The combined height of the light standards and fixtures shall not exceed twelve (12) feet for the pool and parking lot.
    - The lights shall be of a design which focuses the light directly onto the facility.
    - Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

    The tennis courts shall not be lighted.

11. All noise shall be in accordance with the provision of Chapter 108 of the Fairfax County Code which shall not be waived, and there shall be no bullhorns, bells, whistles, loudspeakers, or amplified noise used in the outside areas of the site prior to 9:00 a.m. or after 9:00 p.m. There shall be no cheering activities at swim practice prior to 9:00 a.m.

12. Interior parking lot landscaping shall be maintained in accordance with Article 13 of the Zoning Ordinance.

13. Transitional Screening 1 shall be maintained along the northern and western lot lines. A modification of the transitional screening requirement is approved along

the southern and eastern lot lines to allow the existing plantings to satisfy the requirement as shown on the landscape plan by Dewberry & Davis, dated August 10, 1987. Dead or dying plantings shall be replaced in accordance with Article 13 of the Zoning Ordinance.

The barrier requirement shall be waived along the southern and eastern lot lines and shall be modified to allow the fencing around the pool and tennis court area to satisfy the barrier requirement along the northern and western lot lines. All fencing shall be maintained in good repair.

14. No vehicular access point shall be allowed onto Lee Highway.

15. Interparcel access to the parcels to the west shall be maintained.

16. Temporary grading and construction easements shall be provided for any road improvements along Lee Highway at such time as that road is improved.

17. All paved areas shall be maintained of pervious materials.

18. Best Management Practices (BMPs) shall be maintained in the areas shown on the special permit plat.

19. 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.

20. Bicycle racks shall be provided for a minimum of ten (10) bicycles.

21. Landscaping around the pool and bathhouse shall be maintained in accordance with Article 13 of the Zoning Ordinance as shown on the approved landscape plan by Dewberry & Davis dated August 10, 1987.

22. No trespassing signs shall be erected at the entrance to the property and along the northern lot line. A sign indicating the speed limit and a sign indicating the hours of operation shall be posted on the property.

23. Motion sensors shall be installed on the external spotlights at the facility.

24. A chain barrier shall be installed at the entrance and exit of the site and shall be locked at closing time.

25. Pool regulations, to include hours of operation, shall be periodically printed in the community newsletter.

26. Speed bumps shall be installed in the parking lot of the facility.

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

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established. 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 5-0-1 with Mr. Dively abstaining from the vote. Mr. Hammack 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 August 2, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 336, August 2, 1994, (Tape 3), Action Item:

Approval of Resolutions from July 26, 1994

Mrs. Thonen made a motion to approve the Resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 336, August 2, 1994, (Tape 3), Action Item:

Request for Date and Time
Hung K. Hoang

Mr. Pammel made a motion to schedule the appeal for the morning of October 4, 1994. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 336, August 2, 1994, (Tape 3), Action Item:

Change of Permittee
Heritage Academy and Child Care Center at Proctor Hatsell, Inc., S-11-79

Mr. Pammel made a motion to grant the request. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 336, August 2, 1994, (Tape 3), Action Item:

Change of Permittee
Heritage Academy and Child Care Center at Greendale Academy, Inc., S-81-L-004

Mr. Pammel made a motion to grant the request. Mr. Ribble seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 336, August 2, 1994, (Tape 3), Action Item:

Approval of Minutes from June 28, July 5, July 12 and July 19, 1994

Mrs. Thonen made a motion to approve the Minutes as submitted. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 336, August 2, 1994, (Tape 3), Action Item:

Request for Date and Time
Freeman G. Lee/Melodie S. Potter Appeal

Mrs. Thonen made a motion to schedule the appeal for the morning of October 25, 1994. Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Hammack absent from the meeting.

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Page 336, August 2, 1994, (Tape 3), Action Item:

Request for Approval of Revised Plat
Bradley W. and Nancy L. Johnson, VC 94-D-057

In response to Chairman DiGiulian's question as to whether staff had reviewed the plat, Jane C. Kelsey, Chief, Special Permit and Variance Branch, said staff had recommended approval. The Chair so ordered the approval of the plat.

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Page 336, August 2, 1994, (Tape 3), Action Item:

Request for Out-of-Turn Hearing
Phong Dong Nguyen, SP 94-B-038

Mr. Kelley said, although he did not have much sympathy with the applicant, an elderly lady would be put in financial straits if the property is not sold.

Mrs. Thonen said she would be receptive to the request but noted it would be difficult to grant an out-of-turn hearing because the applicant would appear before the Board of Supervisors in September 1994.

Page 337, August 2, 1994, (Tape 3), PHONG DONG NGUYEN, SP 94-B-038, continued from Page 336)

Mrs. Thonen made a motion to grant the request and schedule the hearing for October 11, 1994.

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Hammack 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.

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

John Ribble III
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: September 13, 1994

APPROVED: September 20, 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 September 8, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; and, James Pammel. Robert Kelley and John Ribble were absent from the meeting.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 339, September 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. BRUCE L. & GAIL F. CROCKETT, VC 94-D-072 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 18.79 ft. from side lot line. Located at 906 Frome Ln. on approx. 40,024 sq. ft. of land zoned R-1. Dranesville District. Tax Map 20-4 ((4)) 28.

Chairman DiGiulian noted that the applicants in VC 94-D-072 had requested that the application be withdrawn.

Mrs. Thonen made a motion to allow the withdrawal of VC 94-D-072. Mr. Dively seconded the motion which passed by a vote of 4-0. Mr. Hammack was not present for the vote. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 339, September 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES D. & HARRIET M. PARSONS, VC 94-P-074 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit seven and eight foot high fences to remain in front yard. Located at 7912 Sycamore Dr. on approx. 14,715 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8)) (1) 15.

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

David Hunter, Staff Coordinator, presented the staff report and said the subject property is located on Sycamore Drive and east of the Capital Beltway, is 14,715 square feet in size, is zoned R-3, and is developed with a single family detached dwelling. The variance request resulted from the applicants' request to allow a 7 and 8 foot high fence to remain in the front yard. Section 10-104 states that in any front yard on any lot, a fence or wall shall not exceed 4 feet in height; therefore, variances of 3 and 4 feet were required for the existing fences.

Doug Parsons, 7912 Sycamore Drive, Falls Church, Virginia, said the fence ranges from 7 to 8 feet in height and has been in place since 1966. Mr. Parsons said the fence has been an integral part of the landscaping over the years and has even influenced the interior decorating of the house. He added that the fence does not impinge upon the neighbors, and as it is offset from the street by more than 50 feet it does not impact either pedestrian or vehicular traffic along the road. Mr. Parsons noted that the neighbors who have lived on the street for more than a year signed a petition in support of the request.

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

Mr. Pammel questioned staff as to why the applicants had not filed a special permit for a building in error since the error occurred prior to their purchasing the property. Mr. Hunter said a fence is not a building, thus a variance was more appropriate.

Mr. Pammel made a motion to grant VC 94-D-072 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 1, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-074 by CHARLES D. AND HARRIET M. PARSONS, under Section 18-401 of the Zoning Ordinance to permit seven and eight foot high fences to remain in front yard, on property located at 7912 Sycamore Drive, Tax Map Reference 59-2((8))(1)15, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 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-3.
3. The area of the lot is 14,715 square feet.
4. This is an unusual situation in that the fence is an integral part of the entire environment on the property, and without the fence it would create a hardship upon the owners of the property. Obviously, they were not the ones involved in the construction since it occurred before they purchased the property.
5. The fence has been on the property for 28 years and is well behind the building restriction line.
6. Although the area from the building restriction line to the street is technically the front yard, the fact that the fence sets a substantial distance from the street does alter 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 of the specific addition shown on the plat prepared by William E. Ramsey, P.C. Land Surveyor dated May 31, 1994, and revised June 2, 1994, submitted with this application and is not transferable to other land.

Mr. Dively 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 September 16, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 340, September 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JOYCE & RON FULLER, SP 94-L-026 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit accessory structure to remain 1.6 ft. and eave 0.7 ft. from side lot line and structure 0.8 ft. and eave 0.0 ft. from rear lot line. Located at 6111 The Parkway on approx. 10,940 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((14)) (20) 17. (Concurrent with VC 94-L-069).

9:00 A.M. JOYCE & RON FULLER, VC 94-L-069 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 1.6 ft. and 7.0 ft. from side lot line and eave 1.1 ft. from side lot line. Located at 6111 The Parkway on approx. 10,940 sq. ft. of land zoned R-4. Lee District. Tax Map 82-4 ((14)) (20) 17. (Concurrent with SP 94-L-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. The applicants' architect, Dan Mueller, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said this 10,940 square foot property is located on The Parkway south of Telegraph Road. The surrounding lots in the Greenway Downs Subdivision are zoned R-4 and are developed with single family detached dwellings. This request involved concurrent special permit and variance applications. The request for a special permit resulted from an error in building location to allow an accessory structure to remain 1.6 feet from the southern side lot line and 0.8 feet from the rear lot line. Section 3-407 requires a minimum 10.0 foot side yard in the R-4 District and Sect. 8-914 requires a minimum 13.2 foot rear yard. Therefore, an error of 8.4 feet or 84.0% to the minimum side yard requirement and 24.2 feet or 96.8% to the minimum rear yard requirement was made at the time of construction. The accessory structure also contains an eave which is located 0.7 feet from the side lot line and 0.0 feet from the rear lot line. Section 2-412 permits eaves to extend 3 feet into a minimum required yard. In this case, an error of 6.3 feet or 90.0% to the minimum side yard requirement and 22.2 feet or 100.0% to the minimum rear yard requirement was made at the time of construction.

Mr. Hunter said the variance request resulted from the applicants' proposal to construct carport and bedroom additions to be located 1.6 feet and 7.0 from the side lot line. A 10 foot side yard is required by Sect. 3-407; therefore, the applicants were requesting variances of 8.4 feet and 3.0 feet from the minimum side yard requirement for the additions. The eave of the proposed carport addition was proposed to be located 1.1 feet from the side lot line. Section 2-412 permits eaves to extend 3 feet into a minimum required yard; therefore, a variance of 5.9 feet was requested for the proposed eave.

Dan Mueller, with Lifestyles Design Group, 5005 Ridgewood Road, Alexandria, Virginia, said the carport would protect the applicant's vehicles from inclement weather and the addition would be used as living space for Mr. Fuller's mother. Mr. Mueller said since the lot line is not parallel to the existing house it mandates that the addition would extend into the side yard setback.

Chairman DiGiulian asked if the width of the carport could be reduced. Mr. Mueller said it could possibly be reduced by a foot.

Mr. Dively asked when the shed had been constructed and Mr. Mueller said approximately 15 years ago by a contractor. He said there is a slight incline in the rear yard and there is really no other location for the shed.

Chairman DiGiulian called for speakers in support of the request.

Debra Dubbe, owner of Lot 26, said she has lived across the street from the applicants for approximately 4 years and that they have done a lot of things to their property to improve the neighborhood. She added that she also believed this request would also add to the property value.

Chairman DiGiulian then called for speakers in opposition to the request.

Justin Moul, 3604 Oakwood Lane, Alexandria, Virginia, said he believed he would be the most impacted by the applicants' request and noted that he and his wife were not in opposition to the request in principle, but that they did have some concerns. Mr. Moul expressed concern that the variance be tied specifically to a detailed structural and architectural design, for the carport in particular. He was also concerned with possible runoff onto his property and noted that he would oppose the addition being used for any unlawful purpose in the future.

Mr. Dively questioned what the speaker meant by "any unlawful purpose". Mr. Moul replied that he would not like to see the addition used as rental property.

Mr. Mueller waived rebuttal and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to deny SP 94-L-026 because she believed the lot would be difficult to maintain with the proposed additions and would be too congested. The motion died for the lack of a second.

Mr. Hammack made a motion to grant SP 94-L-026 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report. He added a condition to read as follows:

"3. The shed shall be maintained in good condition at all times."

Mr. Dively seconded the motion and said that he found Mrs. Thonen's arguments very persuasive and agreed that the shed is very close to the lot line, but noted that the shed has been on

the property for 15 years. He added that he believed that if the request were a variance it would be treated differently.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-L-026 by JOYCE AND RON FULLER, 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 1.6 feet and eave 0.7 feet from side lot line and structure 0.8 feet and eave 0.0 feet from rear lot line, on property located at 6111 The Parkway, Tax Map Reference 82-4((14))(20)17, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

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

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 8, 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. The applicant testified that a contractor constructed the shed 15 years ago and in applying the standards the error was through no fault of the applicants.

I. There have been no complaints about the shed during the 15 years.

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 special permit plat prepared by Kenneth W. White, Land Surveyor, dated March 7, 1994, revised May 5, 1994 submitted with this application, as qualified by these development conditions.

3. The shed shall be maintained in good condition at all times.

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. Dively seconded the motion which carried by a vote of 4-1 with Mrs. Thonen voting nay. 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 September 16, 1994. 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 deny VC 94-L-069 for the reasons noted in the Resolution.

Chairman DiGiulian supported the motion because he believed the 17 foot addition and carport could be built by right.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-L-069 by JOYCE AND RON FULLER, under Section 18-401 of the Zoning Ordinance to permit construction of additions 1.6 feet and 7.0 feet from side lot line and eave 1.1 feet from side lot line, on property located at 6111 The Parkway, Tax Map Reference 82-4((14))(20)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 September 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-4.
3. The area of the lot is 10,940 square feet.
4. There is too much built on the property and the impact on the neighbors has to be considered.
5. The neighbors have submitted letters in opposition and testimony noting the impact of the request.
6. The applicants do not meet any of the nine required 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 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 September 16, 1994.

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Page 344, September 8, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CHARLES S., JR. & HILDY C. PHALEN, VC 94-Y-070 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 5.0 ft. from rear lot line. Located at 13104 Wheeler Way on approx. 9,628 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-1 ((8)) 19.

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

Don Heine, Staff Coordinator, presented the staff report and said this 9,628 square foot property is located on the north side of Wheeler Way within the Ashburton Oaks II Subdivision. The subject property is surrounded by single family detached dwellings on the north, south, and west, with community open space on the east and northeast, all are zoned PDH-2. The applicant was requesting a variance to allow a screened porch addition to be located 5.0 feet from the rear lot line. The Zoning Ordinance allows a 25 foot minimum rear yard; therefore, a variance of 20 feet was requested.

A discussion took place between the BZA and staff as to the designation of the applicant's rear yard. Mr. Heine said the 25 foot setback was being used since after construction a PDH property must meet the most similar zoning category, which in this case was the R-2 (Cluster).

Charles Phalen, Jr., 13104 Wheeler Way, Herndon, Virginia, said he was proposing construction of a combination screened porch and open deck to the rear of the house. He said access would be directly from the main level of the house approximately 8 feet from the finished grade at the rear of the property. Mr. Phalen said both structures would extend 12 feet out from the house and the porch on the south side would come within 5 feet of the rear property line. He said the maximum distance of the rear yard is 18 feet and at the corners approaches 7 and 12 feet, respectively; therefore, it would not meet the R-2 zoning requirement. Mr. Phalen addressed the nine required standards for the granting of a variance. He pointed out that there is a 50 foot wide section of common area belonging to the Franklin Farms Homeowners Association. Mr. Phalen added that most of the neighbors have screened porches and by allowing him to construct a similar structure will allow him to enjoy the outdoors. In closing, he said the request will make the best use of the yard and asked that the eight day waiting period be waived, if the BZA was so inclined to grant his request.

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

Mr. Dively made a motion to grant VC 94-Y-070 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated August 26, 1994.

Mrs. Thonen supported the motion because the location of the house on the lot precludes constructing the addition in another location and it is very difficult to do anything with property that is zoned PDH.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-Y-070 by CHARLES S., JR., AND HILDY C. PHALEN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 5.0 feet from rear lot line, on property located at 13104 Wheeler Way, Tax Map Reference 35-1((8))19, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 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 9,628 square feet.
4. The back yard is very shallow.
5. All the houses surround a drainage flood area, it is all back yards and is a very large area, and none of the houses will be harmed or encumbered in any way by the granting of the request.
6. The request is a sensible use of the land.
7. Since the house sets back so far it is impossible for the applicant to have a back yard, and there is no other place for the construction.
8. When a property is in the PDH or cluster zoning district, it makes it very difficult to do anything with the property.

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

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

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

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

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

1. This variance is approved for the location of the specific screened porch addition shown on the plat prepared by Paciulli, Simmons and Associates, Ltd., dated May 27, 1994, 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 8, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 346, September 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. LAWRENCE SPIVACK, SP 94-S-027 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals to permit four dogs on a lot containing less than 12,500 sq. ft. Located at 9200 Dorothy Ln. on approx. 8,242 sq. ft. of land zoned R-5. Springfield District. Tax Map 88-4 ((12)) 21.

Chairman DiGiulian noted that SP 94-S-027 had been moved to the public hearing scheduled November 1, 1994.

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Page 346, September 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. EILEEN M. MCCREIGHT, VC 94-B-071 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.7 ft. from rear lot line. Located at 8624 Cromwell Dr. on approx. 11,010 sq. ft. of land zoned R-3. Braddock District. Tax Map 79-1 ((5)) 374.

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 husband, Mr. McCreight, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report and stated that the property is located in the Kings Park subdivision and is surrounded by properties zoned R-3 and developed with single-family detached dwellings. The applicant was requesting a variance to permit construction of an addition 21.7 feet from the rear lot line. The Zoning Ordinance requires a rear yard of 25 feet in this district; therefore, the applicant was requesting a variance of 3.3 feet.

Robert McCreight, 8624 Cromwell Drive, Springfield, Virginia, said it is typical of the homeowners in Kings Park to try and improve their houses by constructing similar porches. He said the house is sited well back on the lot which limits their options as to where the addition can be placed. Mr. McCreight asked that the eight day waiting period be waived, if the BZA chose to grant the variance.

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 VC 94-B-071 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 1, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-071 by EILEEN M. McCREIGHT, under Section 18-401 of the Zoning Ordinance to permit construction of addition 21.7 feet from rear lot line, on property located at 8624 Cromwell Drive, Tax Map Reference 79-1((5))374, 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 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 11,010 square feet.
4. The applicant has satisfied the nine required standards for the granting of a variance; in particular, the house is sited almost dead square in the middle of the lot.
5. The applicant is only enlarging a very small existing screened porch.
6. There is no place on the rear of the property for the construction of this size or even a smaller addition that would not require a variance.
7. The request for variance for 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 Alexandria Surveys, Inc., dated May 23, 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. 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.

Page 348, September 8, 1994, (Tape 1), EILEEN M. MCCREIGHT, VC 94-B-071, continued from Page 347)

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley 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 September 8, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 348, September 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. ALEXANDER CONG GIAP, SP 94-M-013 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 carport to remain 2.7 ft. from side lot line & deck to remain 2.0 ft. from side lot line. Located at 3720 Annandale Rd. on approx. 11,462 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((9)) 2. (Concurrent with VC 94-M-034). (DEF. FROM 6/14 FOR NOTICES)

9:30 A.M. ALEXANDER CONG GIAP, VC 94-M-034 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit accessory structures and 4.6 ft. high fence to remain in front yard. Located at 3720 Annandale Rd. on approx. 11,462 sq. ft. of land zoned R-3. Mason District. Tax Map 60-3 ((9)) 2. (Concurrent with SP 94-M-013). (DEF. FROM 6/14 FOR NOTICES)

Chairman DiGiulian informed the Board members that the applicant had not met the notice requirement for the second time for applications SP 94-M-013 and VC 94-M-034.

Lori Greenlief, Staff Coordinator, said staff had repeatedly tried to contact the applicant by telephone without success.

said that was correct.

Mrs. Thonen made a motion that staff inform the applicant in writing that the notices must be in order for the next scheduled case, or the BZA would dismiss the case for lack of interest.

The Chairman polled the audience to determine if there was anyone present in the Board Auditorium who was interested in the case. Following a show of hands from the audience, Mr. Dively made a motion that the BZA dismiss the case. Mr. Pammel seconded the motion.

Mrs. Thonen withdrew her motion to defer the application.

Chairman DiGiulian and Mrs. Thonen said they would rather have formal contact with the applicant before dismissing the application. Mr. Dively said the applicant had received notice packets for the two public hearings and staff had tried to contact him on several occasions. Mr. Hammack noted that a dismissal would put the applicant in violation and require him to remove the structure. He suggested that perhaps the citizens would like to be heard.

Mary Caliandro, 7412 Annawood Court, Annandale, Virginia, said she has lived in the neighborhood for 40 years and that she knew everybody on the court. She said the carport was built almost a year ago without any permits and that the applicant should be fined for back taxes on the structure.

Mr. Dively again made a motion to dismiss the applications. Mr. Pammel seconded the motion which passed by a vote of 3-2 with Chairman DiGiulian and Mr. Hammack voting nay. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 349, September 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. PROVIDENCE BAPTIST CHURCH, SPA 85-D-018 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 85-D-018 for church and related facilities and child care center to permit increase in enrollment. Located at 8980 Brook Rd. on approx. 6.84 ac. of land zoned R-1. Dranesville District. Tax Map 19-4 ((1)) 40; 19-4 ((4)) A1, A2.

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

Don Heine, Staff Coordinator, presented the staff report and stated that the property is a 6.84 acre parcel developed with a church and child care center which consists of a sanctuary with fellowship and educational wings, garage, outdoor recreation area, and parking area. The child care center uses the educational wing and the outdoor recreation area. The site is located on the triangular intersection formed by Leesburg Pike and Brook Road. The property is surrounded by single family detached dwellings in the R-1 District on the north, east and west. St. Thomas Episcopal Church and the National Wildlife Federation facility are located to the southeast and south of the property, respectively, and are also in the R-1 District.

Mr. Heine said the applicant was requesting an increase in enrollment of the child care center from 75 to 99 students with no physical changes proposed to the site. The applicant was also requesting that the previously approved waiver of transitional screening and barrier requirement be affirmed. The existing landscaping materials and on-site fences approved at the previous site plan review are proposed to meet the transitional screening and barrier requirements.

Mr. Heine said staff had concluded that for the reasons outlined in the staff report and subsequent addendum, the proposed application with the imposition of the proposed Development Conditions met the General Standards for special permit uses and would be in harmony with the Comprehensive Plan. Therefore, staff recommended approval of SPA 85-D-018 with the imposition of the Proposed Development Conditions contained in Attachment 1 of the staff Addendum. He noted that the previously imposed development conditions have been carried forward and there are no new development conditions.

Mr. Dively asked the speaker if he agreed with the development conditions. Mr. Strange said the only concern dealt with the right of way issue which the applicant has been discussing with the Office of Transportation for quite some time.

Eugene Strange, 107 St. Andrews Drive, Vienna, Virginia, said the applicant was only requesting to increase the daily enrollment of the Mother's Day Out Program from 75 to 99 children. He said the program has been operating at the present location for approximately 4 years under the special permit approved by the BZA in January 1986. Mr. Strange said the program operates from 9:30 a.m. to 1:30 p.m. during the school year to permit mothers to leave their small children at the center and allow them to have time to themselves. That the program has been well received can be attested to by the fact that the current enrollment of 75 is full with 58 children on a waiting list with 20 residing in the nearby neighborhoods. He said the space is more than adequate to accommodate the increase, the health and fire departments have no problem with the increase, and the increased enrollment will result in approximately 28 additional round trips. Mr. Strange said about 43 percent of the vehicles involved in the program transports more than one child to the center. The Woodside Citizens Association voted unanimously to approve the increase and called the BZA's attention to the letters submitted by neighbors on behalf of the request. Mr. Strange said the center has received no complaints about the program, with the exception that there is not enough students authorized.

Chairman DiGiulian called for speakers in support of the request and the following citizens came forward: David Holtiping 11678 Stockbridge Lane, Reston, Virginia; Dave Park, 10100 Alsace Court, Great Falls, Virginia; Sheldon Gutman, 1585 Regatta Lane, Reston, Virginia. The speakers said they believed the center was a positive influence on the children and asked the BZA to grant the request. The speakers said their children were on the waiting list.

The Chairman then called for speakers in opposition to the request.

Paul Westpheling, with the Wolf Trap Homeowners Association, 1444 Laurel Hill Road, Vienna, Virginia, said the Association is comprised of approximately 250 homeowners and although they applauded the church for its excellent efforts in trying to provide day care the Association had to strongly oppose the expansion. He said the reason for the opposition was based on the increased traffic that would be generated at the intersection of Lewinsville Road, Brook Road, and Route 7. Mr. Westpheling suggested the church should make improvements to the intersection before being granted an expansion of the use. (He submitted a letter into the record, and a copy is in the file.)

In rebuttal, Mr. Strange said the argument regarding the intersection has been ongoing for quite some time and emphasized that the additional traffic generated by the children will not occur during morning or evening rush hour as stipulated under the special permit.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to approve SPA 85-D-018 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 1, 1994 with the deletion of Conditions 4 and 5 with respect to site plan.

Chairman DiGiulian supported the motion and agreed that the proposed expansion did not generate the need for road improvements.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 85-D-018 by PROVIDENCE BAPTIST CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 85-D-018 for church and related facilities and child care center to permit increase in enrollment, on property located at 8980 Brook Road, Tax Map Reference 19-4((1))40; 19-4((4))A1, A2, 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 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-1.
3. The area of the lot is 6.84 acres.
4. Although there continues to be a traffic problem at the intersection and at some point the Virginia Department of Transportation (VDOT) is going to have to make some changes, the applicant should not be held hostage to these improvements.
5. The applicant is addressing a public need and the community, including the church, is going to have to continue to exert pressure on both VDOT and the County to make the required improvements that will provide for a safe situation.
6. The intersection is awkward and should be improved at some point in time.
7. The expansion does not generate the need for road improvements.

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 Brewer, Sinclair & Associates, P.C. dated January 1986, and approved with this application, as qualified by these development conditions.

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

4. The existing on-site vegetation shown on the Landscape Plan included as part of site plan SP 7243-SP-01 approved by DEM on March 23, 1998 shall be maintained and satisfy the transitional screening for all lot lines.

5. The barrier requirement shall be waived along all lot lines, provided that the chain link fence surrounding the outdoor recreation area, the 6 foot high stockade fence located adjacent to the northwestern side lot line, and the 6 foot high wood fence located southwest of the outdoor recreation are maintained.

6. Interior parking lot landscaping shall be maintained in accordance with Article 13.

7. The seating capacity in the main worship area shall not exceed four hundred and sixty (460).

8. There shall be a maximum of 171 parking spaces provided on-site and all parking shall be on-site as shown on the special permit plat.

9. The maximum daily enrollment for the child care center shall not exceed 99.

10. The maximum hours of operation of the child care center shall be from 9:30 A.M. to 1:30 P.M., with no one arriving prior to 8:30 A.M.

11. There will be no sound amplification connected with any outdoor activities, as agreed to by the applicant.

12. There shall be no direct entrance onto Leesburg Pike.

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. Dively 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 September 16, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 351, September 8, 1994, (Tape 1), Scheduled case of:

9:30 A.M. BURKE COMMUNITY CHURCH, SPR 77-S-269 Appl. under Sect(s). 3-103 of the Zoning Ordinance to renew SP 77-S-269 for church and related facilities to permit four trailers to remain on site. Located at 9998 Pohick Rd. on approx. 13.46 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((1)) 7A. (Concurrent with SPA 77-S-269-3 and VC 94-S-092).

9:30 A.M. BURKE COMMUNITY CHURCH, SPA 77-S-269-3 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 77-S-269 for church and related facilities to permit increase in parking spaces. Located at 9998 Pohick Rd. on approx. 13.46 ac. of land zoned R-1. Springfield District. Tax Map 88-1 ((1)) 7A. (Concurrent with SPR 77-S-269 and VC 94-S-092).

9:30 A.M. BURKE COMMUNITY CHURCH, VC 94-S-092 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking space closer than 10.0 ft. from front lot line. Located at 9998 Pohick Rd. on approx. 13.46 ac. of land zoned R-1. Sully District. Tax Map 88-1 ((1)) 7A. (Concurrent with SPA 77-S-269-3 and SPR 77-S-269).

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 church's architect, Donald Crigler, replied that it was.

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Jane Kelsey, Chief, Special Permit and Variance Branch, informed the Chairman that a quorum was not present.

The BZA recessed at 10:18 a.m. and reconvened at 10:20 a.m.

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Lori Greenlief, Staff Coordinator, presented the staff report and stated that the property is located at the intersection of Old Keene Mill Road and the Fairfax County Parkway, is zoned R-1, and contains 13.46 acres. The current request was threefold: 1) to amend the existing special permit for a church and related facilities to allow the addition of 98 parking spaces to be accomplished in two phases; 2) to renew a permit issued in 1989 for four trailers on the property; and 3) a variance to allow a parking space 5.42 feet from the front lot line where 10.0 feet is required. Ms. Greenlief noted that staff had indicated in the staff report that the applicant was requesting approval of the trailers for another five years. The applicant's statement requested five years plus three one year extensions to be approved by the Zoning Administrator

Mr. Greenlief said there were no major concerns with this application other than sufficient screening and landscaping which is taken care of in the proposed development conditions. She noted that staff had drafted a short addendum with attached revised conditions dated September 8, 1994 which was part of the BZA's package. Ms. Greenlief said staff had not received any letters regarding this application.

Donald Crigler, with D.F. Crigler Architects, 10201 Main Street, Fairfax, Virginia, agreed with the development conditions with three minor modifications as noted on the handout distributed to the BZA. He said the applicant was requesting that Condition 12 be revised to reflect the request for three one year extensions; revise Condition 13 to stipulate a five year time limit on any road improvements requested by the Virginia Department of Transportation; and, revise Condition 5 so that the applicant is not required to replant the vegetation along the southern lot line which was removed for the Parkway construction.

Mrs. Thonen asked if staff had received any complaints about the trailers on site. Ms. Greenlief there were no complaints on record.

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

Mrs. Thonen made a motion to grant SPR 77-S-269 for the reasons noted in the Resolution and subject to the Development Conditions dated September 8, 1994, with the modifications requested by the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Renewal Application SPR 77-S-269 by BURKE COMMUNITY CHURCH, under Section 3-103 of the Zoning Ordinance to renew SP 77-S-269 for church and related facilities to permit four trailers to remain on site, on property located at 9998 Pohick Road, Tax Map Reference 88-1((1))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 September 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-1.
3. The area of the lot is 13.46 acres.
4. If it's not "broke, don't fix it", and the applicant seems to be doing fine.

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 applicants only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by DFCrigler Associates, P.C., dated May 11, 1994, revised through July 20, 1994, 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, unless waived 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 existing vegetation along the northern, eastern, and western lot lines shall be deemed to satisfy the transitional screening requirement. The existing vegetation along the southern lot line shall be deemed to satisfy the transitional screening requirement except where the existing parking and building are located. In this area screening requirement shall be waived based upon Waiver Justification No. 7 on page 13-10 of the Zoning Ordinance. The barrier requirement shall be waived.

6. The maximum number of seats in the main area of worship shall be 500.

7. There shall be a maximum of 225 parking spaces provided on site. Construction of Phase Two parking as shown on the plat shall commence within five (5) years of the final approval date of this special permit amendment application.

8. Foundation plantings shall be maintained around the trailers to improve the visual appearance of the trailers.

9. Stormwater water Best Management Practices (BMPs) shall be provided if determined necessary by the Department of Environmental Management to control runoff from the proposed parking areas.

10. Two landscaped islands shall be provided in the Phase Two parking lot, centrally located along each side. One landscaped island shall be provided in the Phase One parking lot, centrally located along the eastern side.

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

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

12. The trailers are approved for a period of five (5) years commencing from the final approval date of this special permit amendment application. The Zoning Administrator may grant three (3), one-year extensions upon the completion of the five-year period.

13. Right-of-way up to fifty-six (56) feet from the existing centerline of Old Keene Mill Road shall be provided in fee simple to the Board of Supervisors at the time of site plan approval or upon the demand of the Virginia Department of Transportation, whichever occurs first. Ancillary easements, fifteen (15) feet in width, shall be provided along the new lot line to facilitate construction improvements to Old Keene Mill Road. If VDOT final design plans and funding are not complete within ten (10) years from the date of this approval, this condition will no longer be binding upon the church.

14. A pedestrian walkway, in the form of a concrete sidewalk or asphalt path, shall be provided between the Phase Two parking lot and the church building to provide an alternative access to walking through the existing parking lot.

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. Dively and Mr. Hammack 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 September 16, 1994. This date shall be deemed to be the final approval date of this special permit.

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Mr. Dively made a motion to grant SPA 77-S-269-3 for the reasons noted in the Resolution and subject to the Development Conditions dated September 8, 1994, with the modifications requested by the applicant.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 77-S-269-3 by BURKE COMMUNITY CHURCH, under Section 3-103 of the Zoning Ordinance to amend SP 77-S-269 for church and related facilities to permit increase in parking spaces, on property located at 9998 Pohick Road, Tax Map Reference 88-1((1))7A, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 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-1.
3. The area of the lot is 13.46 acres.
4. If it's not "broke, don't fix it", and the applicant seems to be doing fine.

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 applicants only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by DFCrigler Associates, P.C., dated May 11, 1994, revised through July 20, 1994, 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, unless waived 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 existing vegetation along the northern, eastern, and western lot lines shall be deemed to satisfy the transitional screening requirement. The existing vegetation along the southern lot line shall be deemed to satisfy the transitional screening requirement except where the existing parking and building are located. In this area screening requirement shall be waived based upon Waiver Justification No. 7 on page 13-10 of the Zoning Ordinance. The barrier requirement shall be waived.

6. The maximum number of seats in the main area of worship shall be 500.

7. There shall be a maximum of 226 parking spaces provided on site. Construction of Phase Two parking as shown on the plat shall commence within five (5) years of the final approval date of this special permit amendment application.

8. Foundation plantings shall be maintained around the trailers to improve the visual appearance of the trailers.

9. Stormwater water Best Management Practices (BMPs) shall be provided if determined necessary by the Department of Environmental Management to control runoff from the proposed parking areas.

10. Two landscaped islands shall be provided in the Phase Two parking lot, centrally located along each side. One landscaped island shall be provided in the Phase One parking lot, centrally located along the eastern side.

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

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

12. The trailers are approved for a period of five (5) years commencing from the final approval date of this special permit amendment application. The Zoning Administrator may grant three (3), one-year extensions upon the completion of the five-year period.

13. Right-of-way up to fifty-six (56) feet from the existing centerline of Old Keene Mill Road shall be provided in fee simple to the Board of Supervisors at the time of site plan approval or upon the demand of the Virginia Department of Transportation, whichever occurs first. Ancillary easements, fifteen (15) feet in width, shall be provided along the new lot line to facilitate construction improvements to Old Keene Mill Road. If VDOT final design plans and funding are not complete within ten (10) years from the date of this approval, this condition will no longer be binding upon the church.

14. A pedestrian walkway, in the form of a concrete sidewalk or asphalt path, shall be provided between the Phase Two parking lot and the church building to provide an alternative access to walking through the existing parking lot.

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

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

Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 16, 1994. 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 94-S-092 for the reasons noted in the Resolution and subject to the Development Conditions dated September 1, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-S-092 by BURKE COMMUNITY CHURCH, under Section 18-401 of the Zoning Ordinance to permit parking space closer than 10.0 feet from front lot line, on property located at 9998 Pohick Road, Tax Map Reference 88-1((1))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 September 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-1.
3. The area of the lot is 13.46 acres.
4. 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

approval is needed. In addi[illegible] staff [illegible]

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

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

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

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

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

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 parking space shown on the plat prepared by DFCrigler Associates, P.C., dated May 11, 1994, revised July 20, 1994, submitted with this application and not transferable to other land.

2. Any changes to the special permit use on the property that do not affect this parking space but which require a special permit amendment application shall not require an amendment to this variance.

Mr. Hammack 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 September 16, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 356, September 8, 1994, (Tape 2), Scheduled case of:

9:30 A.M. KENNETH HAAR AND DONALD E. CRUMP, APPEAL 94-S-022 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the addition of storage structures and display/storage areas related to the retail sale of plants, mulch and other related items is a violation of Zoning Ordinance provisions, to include the requirement that special exception approval is needed for such uses. Located at 7600 Clifton Rd. on approx. 126,062 sq. ft. of land zoned C-5 and WS. Springfield District. Tax Map 86-4 ((1)) 15.

Chairman DiGiulian pointed out that the BZA had received a letter questioning whether there had been adequate notice. William Shoup, Deputy Zoning Administrator, said the property was posted in accordance with the Zoning Ordinance provisions. He added that apparently one of the signs was removed, but that was something staff had no control over.

The appellants' attorney, Ken Sanders, said he could not add anything to staff's explanation and assured the BZA that the appellants had not removed the sign.

Mrs. Thonen made a motion to proceed with the public hearing. Mr. Pammel seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

Mr. Shoup said the property is located at 7600 Clifton Road, is zoned C-5, and contains 126,062 square feet in area. He said staff's position was set forth in the staff report dated August 30, 1994. The appeal involved a Notice of Violation that was issued to the appellants with regard to the expanded activities at their store known as Davis' General Store, which has operated on the site for a number of years. On February 1, 1988, the appellants obtained Non-Rup (Non-Residential Use Permit) approval to reflect their operation on this site and based on the size and nature of the operation the Non-Rup was issued for a quick-service food store and service station. Under the current Zoning Ordinance provisions, such uses are permitted in the C-5 District only subject to approval of special exception. However, under Par. 2 of Sect. 15-101 such a use, if it pre-existed that requirement for special exception approval, may continue but may not enlarge or expand. Mr. Shoup said the Notice of Violation identified numerous activities and structures that have been added to this site, including a U-Haul trailer and truck rental operation; the sale of plants, mulch, and other related items; and, the addition of structures and other outdoor storage and display areas. The appellants have acknowledged that the U-Haul trailer and truck rental operation is a use that is not permitted on the site, and as a result, that aspect of the Notice of Violation is not at issue in this appeal. What was at issue, was the addition of storage and display areas and structures for the plant sales component. Mr. Shoup said it was staff's judgment that such additions constitute an enlargement of the quick-service food store and service station use; therefore, under Par. 2 of Sect. 15-101 special exception

approval is needed. In addition, staff noted that the establishment of the storage and display areas was done without the required site plan approval, without obtaining the proper building permits for the structures, and the use of the land and structures is occurring without Non-Rup approval. Finally, there are portions of the storage display area and a plant shade structure that are located in a minimum required front yard, which constitutes a violation of the Zoning Ordinance.

Mr. Dively asked if it was staff's position that the issue dealt with an enlargement of a pre-existing use. Mr. Shoup said that was correct.

Mr. Sanders said he believed staff was arguing that the appellants had expanded a special exception use and the appellants did not agree. He outlined the background of the case by stating that the property is zoned C-5 neighborhood commercial and has been for many years, long before any of the citizens who plan to speak moved into the area. Mr. Sanders said a store has been on the site since the 1980's and this was established at the 1983 public hearing held by the BZA. He pointed out that since the site is zoned C-5 without restrictive proffers it could be developed into a 30,000 square foot shopping center or a four story office building. Mr. Sanders said the appellants have acknowledged the fact that the U-Haul operation is not allowed, and has requested that the Board of Supervisors review that section of the Ordinance for possible changes. He described the design of the store, the location of the plants, and the plant shade structure and said that any encroachments into the minimum required front yard can be corrected. The underlying question, Mr. Sanders said, is that the County wants "to put the property within its clutches" by saying that it is a special exception and anything that is done on the site requires a filing fee and a public hearing before the Board of Supervisors. He said in 1983 the BZA overruled the Zoning Administrator's determination that the use of the property as a service station and quick-service food store and replacement of gasoline tanks and relocation of pumps requires a special exception. Mr. Sanders said he believed that decision established that the store was determined not to be a quick-service food store based upon the fact that it had been on the site as a general store/grocery store for approximately 90 years at that time. He pointed out that Giant food stores sell plants on the sidewalks in front of their stores and according to the Zoning Administrator's logic Giant food would also need to file a special exception amendment or site plan. Mr. Sanders said the appellants previously stored the hay up against the store, but the Fire Marshal told them that it was a fire hazard and that it had to be stored in containers prior to sale, which he did not believe required a building permit. With respect to the concrete slab on the back of the store, Mr. Sanders said anyone can construct a patio in their rear yard without building permits or site plan approval. The appellants discussed the patio and plant shade structure with County staff and were told that building permits were not needed.

Mr. Pammel said it appeared that the speaker was basically saying that the appellants could do almost anything in the terms of intensifying the use of the property without getting approvals. Mr. Sanders agreed that site plan approval would be required at some point, but not for the concrete slab or for the placement of the plants.

In response to an inquiry from Mrs. Thonen, Mr. Shoup provided photographs of the property to the BZA.

Mr. Sanders said he believed the Zoning Administrator's decision is in error which addressed the special exception and building permit requirements and added that the use has not been expanded because the hay has always been on site. He said the U-Haul trailer rental operation will be removed from the site and was not a part of the appeal.

Chairman DiGiulian polled the audience to determine if there was anyone present in the Board Auditorium who wished to speak to the appeal. The following citizens came forward: Nick Gramenopoulos, 7340 Wolf Run Shoals Road, Clifton, Virginia; Marianna Laird, 7207 Wolf Run Shoals Road, Clifton, Virginia; and, Jesse Mealing, 7350 Wolf Run Shoals Road, Clifton, Virginia. The citizens were concerned with the expansion that has taken place on the subject property and the impact that it might have on the Water Supply Overlay District and on their wells.

Mr. Dively asked staff if the general store usage was governed by a pre-existing usage. Mr. Shoup said that was correct, but because the use has been expanded it was staff's position that special exception approval was needed. He added that the selling of plants occurred within the last two or three years.

Mr. Hammack asked why staff had issued a Non-Rup for a quick-service food store in 1988 when the BZA had ruled that it was not in 1983. Mr. Shoup said there was not a determination as to what the use really was in 1983; it was just determined that it was not a quick-service food store with the gas pumps requiring a special exception approval. He said in 1988 when the appellants came to staff for Non-Rup approval staff believed the 1983 decision related only to the relocation of the gas pumps. Mr. Shoup said based on the Zoning Ordinance definitions and the size of the structure staff, deemed the use a quick-service food store in 1988. He said the only alternative would be a retail sales establishment, and that would not need special exception approval but would need site plan approval and some building permits. However, he did not believe that alternative applied to the appellants' use.

In response to a question from Mr. Dively as to what on the site would require site plan approval, Mr. Shoup replied all of the uses would require site plan.

Chairman DiGiulian said he had been in the store and there are quite a few items for sale that do not have anything to do with food, and it was his perception that the use was a retail establishment. Mr. Shoup pointed out that 7-11's are classified as quick-service food stores and they sell items other than food.

Mr. Pammel said he also had been in the store and that he believed it was clearly a multi-purpose retail establishment. Mr. Shoup said when a store of that size adds an activity of selling food or food related items it moves them into a different category. He noted that there is nothing in the definition that addresses percentages. Chairman DiGiulian questioned how a department store with a snack bar was classed. Mr. Shoup believed that the overall nature of the use had to be taken into consideration.

Mr. Dively said no matter how the use was categorized, it appears that site plan approval or waivers were needed for the five distinct uses that were before the BZA.

Mr. Shoup reiterated it was staff's position that the use is a quick-service food store based on the size of the establishment and the items they are selling. In 1988, staff's determination was not challenged in 1988 when the appellants obtained a Non-Rup.

Mr. Hammack pointed out that the BZA's determination was not challenged in 1983. Mr. Shoup agreed.

Mr. Shoup said due to an amendment to the Virginia State Building Code that went into effect in April 1994 the two accessory storage sheds on the site did not need building permit approvals based on their size. However, a building permit is needed for the plant shade house, the office trailer, and the deck. He added that the additional use of the property needs site plan approval, as well as Non-Rup approval. Mr. Shoup pointed out that the plants being stored in the minimum front yard continues to be a violation. In summary, he said what began as a low-key general store operation has been changed to a more intense operation and for those reasons staff believed that special exception approval was needed.

During rebuttal, Mr. Sanders said the BZA established the use in 1983 and what the County tried to do later was contrary to that ruling. He said there has been no unlawful grading on the property and the only thing that differs from what was on the site in 1989 is the selling of plants which is a permitted use. With respect to the plant shade area, Mr. Sanders said he did not believe that site plan approval was needed.

Mr. Dively asked staff to address what section of the Zoning Ordinance staff used to make a determination that site plan approval was needed. Mr. Shoup called the BZA's attention to page 2 of the staff report which referenced Par. 2 of Sect. 4-405.

Mr. Sanders continued by saying that the use has not been expanded, the appellants have the option to stay open 24 hours, and the property could be developed with a much larger building. He said staff did not appeal the BZA's decision in 1983; therefore, the ruling was established for the property.

Chairman DiGiulian closed the public hearing.

Mr. Dively said there were five distinct issues before the BZA and asked if the issues could be separated. He agreed with the Zoning Administrator's determination with regard to the office trailer. Mr. Hammack also agreed.

Mr. Dively said he believed that the concrete pad, the four cargo storage containers, and wooden storage shed was probably all right, but the plant shade structure was not. Although he believed the Zoning Administrator's conclusions are correct, he also agreed with the appellants' attorney that the use does not come under the category used by the Zoning Administrator. Mr. Dively expressed concern that building permits might be needed, but more concerned that the site plan approvals or waivers have not been obtained.

Mr. Hammack agreed with Mr. Dively's comments.

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The BZA recessed at 11:43 a.m. and reconvened at 11:49 a.m.

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Mr. Hammack made a motion to overrule the Zoning Administrator's decision that the appellants' use of the property is a quick-service food store. He said that he had not heard any arguments to change his opinion from 11 years ago, and if staff had not agreed with the 1983 decision they should have pursued it through the courts. Since they did not, that determination is still a binding determination on the subject property at this time, which will resolve the basic issue and also in the motion that no special exception would be required and that it should be referred back to the Zoning Administrator for review if any of the other sections of the Zoning Ordinance are applicable with that determination having been made. The appellants have made some interesting arguments and the Deputy Zoning Administrator has been candid with the BZA in saying that he is not entirely sure that certain laws apply, and the appellants' attorney is not sure that all the laws apply. If the two interested parties are not sure, the BZA is certainly not in a position to rule that a site plan or building permits are required on each individual item. Mr. Hammack stated he

Page 359, September 8, 1994, (Tape 2), KENNETH HAAR AND DONALD E. CRUMP, APPEAL 94-S-022, continued from Page 358)

did believe that it was not a quick-service food store and a special exception is not required.

Mr. Pammel seconded the motion.

Chairman DiGiulian asked if the motion stated that the use was not a quick-service food store but a retail establishment and no special exceptions are required for the use. Mr. Hammack said he believed that was implicit but since that was not the narrow issue that the BZA was asked to decide, he would also leave that to the Zoning Administrator's review.

Mr. Dively said it was also understood that all building permits and site plan approvals or waivers would be referred back to the appropriate agencies. Mr. Hammack said that was correct, because he did not feel comfortable making a motion that things were or were not required and that staff and the appellants needed to resolve those issues based on the BZA's decision.

The motion carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 359, September 8, 1994, (Tape 1), Action Item:

Approval of Minutes from July 26, 1994 Meeting

Mr. Pammel made a motion to approve the minutes as submitted. Mrs. Thonen seconded the motion which carried by a vote 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 359, September 8, 1994, (Tape 1), Action Item:

Request for Additional Time for
Phyllis M. & David C. Benner, VC 90-L-066

Mr. Hammack noted that the application has been pending for quite some time. Mrs. Thonen pointed out that the applicants were going to be heard before the Board of Supervisors in October.

Jane Kelsey, Chief, Special Permit and Variance Branch, said this was a subdivision variance and normally staff would have recommended a condition that required the subdivision be recorded within a set time; however, in this case the condition stipulated that construction begin within a set time. She said it was an error on staff's part that the BZA unknowingly included the condition, but there was no room for correction since the BZA had approved the variance with the condition as written. The applicant has not yet recorded the subdivision, which is also part of the problem.

Mrs. Thonen made a motion to grant the applicant's request for additional time. Mr. Pammel seconded the motion which passed by a vote 3-2 with Mr. Dively and Mr. Hammack voting nay. Mr. Kelley and Mr. Ribble were absent from the meeting. The new expiration date will be December 24, 1996.

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Page 359, September 8, 1994, (Tape 1), Action Item:

Request for Out of Turn Hearing for
Laguna and Guzman, Inc./H. Douglas Smith, VC 94-Y-099

Jane Kelsey, Chief, Special Permit and Variance Branch, called the BZA's attention to their upcoming schedule and noted the days that they must vacate the Board Auditorium by 12:45 p.m. She said the application is currently scheduled for November 1, 1994.

Mr. Dively made a motion to deny the request. Mr. Pammel seconded the motion which carried by a vote 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 359, September 8, 1994, (Tape 1), Action Item:

Request for Out of Turn Hearing for
Roy D. & Joan L. Bridges, SP 94-L-040 & VC 94-L-098

Mr. Dively made a motion to deny the request. Mr. Pammel seconded the motion which carried by a vote 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting. The applications are currently scheduled for November 1, 1994.

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Page 360, September 8, 1994, (Tape 1), Action Item:

Request to do Intent to Defer for
Reston North Pointe Appeal Scheduled for September 27, 1994

Mrs. Thonen made a motion to defer the appeal to November 22 as suggested by staff. Mr. Hammack seconded the motion which carried by a vote 5-0. Mr. Kelley and Mr. Ribble were absent from the meeting.

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Page 360, September 8, 1994, (Tape 1), Action Item:

Request for Date and Time for
Jerry A. Ogden Appeal

Mr. Pammel moved to accept the appeal and schedule the public hearing for the morning of November 1, 1994 as suggested by staff. 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 360, September 8, 1994, (Tape 1), Action Item:

Request for date and time for
Robert D. Baily and Jason A. Robertson Appeal

Mr. Pammel moved to accept the appeal and schedule the public hearing for the morning of November 10, 1994 as suggested by staff. 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 360, September 8, 1994, (Tape 1), Action Item:

Request for date and time for
Exxon Corporation Appeal

Mr. Pammel moved to accept the appeal and schedule the public hearing for the morning of November 15, 1994 as suggested by staff. 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 360, September 8, 1994, (Tape 1), Action Item:

Request for date and time for
Ferguson Enterprises, Inc. Appeal

Mr. Pammel made a motion to issue an intent to defer the Ferguson Enterprises Appeal to the morning of November 29, 1994. 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 360, September 8, 1994, (Tape 1), Action Item:

Out of Turn Hearing Request for
William C. and Treva S. Tolley, VC 94-M-111

Mrs. Thonen made a motion to deny the request. Mr. Pammel 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 12:00 Noon.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: October 4, 1994

APPROVED: October 11, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 13, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; 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 361, September 13, 1994, (Tape 1), Scheduled case of:

9:00 A.M. F. SHEILD MCCANDLISH AND JOHN HOWZE, TRUSTEES, VC 94-P-075 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwellings on proposed Lots 1, 16 and 17 to vary the 200 ft. minimum distance between residential buildings and rights-of-way of interstate highways. Located in the N.E. quadrant of Sandburg St. and Cottage St. on approx. 8.85 ac. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 191.

9:00 A.M. F. SHEILD MCCANDLISH AND JOHN HOWZE, TRUSTEES, VC 94-P-076 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into seventeen lots, proposed Lot 9 having lot width of 12.0 ft. and proposed Lot 6 having lot width of 6.0 ft. Located in the N.E. quadrant of Sandburg St. and Cottage St. on approx. 8.85 ac. of land zoned R-3. Providence District. Tax Map 49-2 ((1)) 191.

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

Donald Heine, Staff Coordinator, presented the staff reports and stated that the 8.85 acre undeveloped property is located on the northwestern corner of the intersection formed by Interstates I-495 and I-66. He said single family detached dwellings surround the property on the north, west and south, while the ramp connecting Interstate I-495 and I-66 adjoins the property's east and southeast lot lines.

Mr. Heine stated that the applicants were requesting two variances. The first variance was a request to construct three dwellings on Lots 1, 16, and 17 within the proposed 17 lot subdivision and within the minimum required distance of 200 feet from interstate highways. The second variance was a request to subdivide the property into 17 lots with proposed Lots 6 and 9 having lot widths of 6.0 feet and 12.0 feet, respectively. The Zoning Ordinance requires a minimum lot width of 80 feet; therefore, the applicants were requesting variances of 74 feet and 68 feet for Lots 6 and 9, respectively.

In conclusion, Mr. Heine said it was staff's belief that the proposed variance applications did not meet several of the necessary standards for variances. He noted the applicants had indicated the variances would not be needed if the property were to be developed with fewer lots.

Mr. Heine introduced Samson Ukaegbo, Transportation Planner II, Office of Transportation, who was present to answer questions regarding transportation issues.

The applicants' attorney, Lynne J. Strobel, with the law firm of Walsh, Colucci, Stackhouse, Emrich, Lubeley, P.C., 2200 Clarendon Boulevard, 13th Floor, Arlington, Virginia, addressed the BZA. She said the property was currently planned for 3 to 4 dwelling units per acre. Ms. Strobel noted that the property was severely constrained by several features including the size and shape of the lot, as well as its proximity to Interstates 495 and 66. She stated that the applicants' development plan would be compatible with the area, would result in a marketable product, would be in harmony with the Comprehensive Plan, and would save the greatest number of existing trees.

Ms. Strobel referred to the staff report and expressed her belief that several issues, such as the preservation of the Environmental Quality Corridors (EQC), and the reference to a regional stormwater management pond, were not relevant to the cases. She explained the applicants would submit a subdivision plan and would have to meet all Fairfax County's technical requirements.

Ms. Strobel noted the Virginia State Supreme Court ruled that zoning regulations which unreasonably restrict development can be deemed a hardship that may be alleviated by the granting of a variance. She asked the BZA to take into consideration the location of the property which is near an interstate ramp where the travel speeds are slower and the noise levels are lower. Ms. Strobel referred to the applicants' noise study and analysis and expressed her belief that, for the lots outside of the 200 foot setback, noise would not be an issue. She stated the applications met all the requirements for variances emphasizing the unique shape, as well as the location of the property.

Noting the subdivision north of the applicants' lot which was developed in 1986 with several lots within the 200 foot setback, Ms. Strobel disagreed with the staff report which characterized the location restrictions as being shared by many properties. She explained there were few interstates that traverse Fairfax County, and few residential properties adjacent to the interstates. Ms. Strobel stated the strict application of the Zoning Ordinance would restrict the reasonable use of the property. She explained that, although the property could be developed by-right, the by-right plan would result in the construction

subdivision of one lot into seventeen of a second cul-de-sac which would cause the reduction in the number of trees preserved. Ms. Strobel referred to the lot size analysis prepared by William H. Gordon Associates, Inc., and noted the proposed density was substantially below the density permitted by the Comprehensive Plan and would be compatible with surrounding development. She said the variance would be in harmony with the Zoning Ordinance, and would not change the character of the zoning district.

In conclusion, Ms. Strobel addressed the development conditions for VC 94-P-075 and asked that the first sentence in Condition 3 be revised. In addressing the development conditions for VC 94-P-076, she asked that Conditions 3 and 7 be deleted. She further asked that paragraph B of Condition 6 be revised. Ms. Strobel again expressed her belief the applications met the Zoning Ordinance requirements and asked the BZA to grant the requests.

In response to Mr. Pammel's question regarding lot yield under the rezoning application, Ms. Strobel said it was initially proposed for a PDH-4 Zoning District with 33 lots.

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

Ann Grove, 8109 Timber Valley Court, Dunn Loring, Virginia; Curt Christensen, 8107 Timber Valley Court, Dunn Loring, Virginia; Brian McCormick, 2302 Avon Way, Dunn Loring, Virginia; Kyle Montanio, 2445 Sandburg Street, Dunn Loring, Virginia; addressed the BZA. They supported the developers application, but opposed the proposal to open Sandburg Street permitting through traffic from Cottage Street to Idylwood Road. They explained that the excessive traffic would create a safety hazard, increase noise, endanger bikers on the bike trail, and increase crime. Furthermore, the property values would drop and the quality of life would change. During the course of her testimony, Ms. Grove submitted five letters from neighbors supporting her views.

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

G. Ray Worley, President, Dunn Loring Improvement Association, 2537 Gallows Road, Dunn Loring, Virginia, expressed his belief that the developer did not listen to the community's concerns and the developer's plans could be restructured. Mr. Worley stated that if the variances were to be granted, the Public Facilities Manual requirements must be imposed; therefore, Sandburg Street would be opened. He explained that most of the community's opposition stemmed from the proposal to open Sandburg Street.

Joel Jacknow, 8110 Timber Valley Court, Dunn Loring, Virginia; John Robertson, 8019 Iliff Drive, Dunn Loring, Virginia; John Weis, 2457 Sandburg Street, Dunn Loring, Virginia; Dr. Rochelle Small, 2419 Sandburg Street, Dunn Loring, Virginia; Jane Porter, 2400 Sandburg Street, Dunn Loring, Virginia; Amy Coyle, 8008 Sandburg Court, Dunn Loring, Virginia; Marcia Wilson, 8101 Revatom Court Dunn Loring, Virginia; John Eltzruth, 8100 Revatom Court, Dunn Loring; and Mike Cochran, 8031 Idylwood Road, Dunn Loring, Virginia; addressed the BZA. The citizens stated they were almost unanimously in support of low density development, but were strongly opposed to the opening of Sandburg Street. They expressed their belief that the proposed development was not well planned and explained they would support the development if it were to be done aesthetically, the open space preserved, the storm water concerns resolved, and Sandburg Street remained closed. They said two notices were posted on the Timber Valley Court side of Sandburg Street and none on the Iliff Drive side of Sandburg Street, and expressed their belief that they were not given sufficient notification of the public hearing. The citizens stated the opening of Sandburg Street would destroy the uniqueness of the quiet rustic historic area, destroy the character of the community, and create a safety hazard for people using the park and the bike trail. They noted they would like to preserve the status quo of the street which has no curbs or gutters. The citizens also expressed concern regarding the setting of a precedent for pipestem lots in the area, the noise which would be generated because of the removal of trees along the beltway, and the possibility that further development would compound the existing drainage problems. In conclusion, they asked the BZA to deny the request. During the course of his testimony, Mr. Weis presented photographs to the BZA.

Mr. Worley returned to the podium and said that the Association has encouraged helpful constructive development. He presented a petition, letters, and a history of the area to the BZA. Mr. Worley used the viewgraph to depict the changes in the area and said, although they are sensitive to changes, they do not want the street to be opened. He expressed his belief the applications did not met the necessary criteria for the granting of variances and noted the parcel could be developed without the variances. Mr. Worley explained that the citizens did not approve of the proposed development and asked the BZA to deny the request.

In response to a question from Mr. Dively to the staff member representing the Office of Transportation regarding the opening of Sandburg Street, Mr. Ukaegbo stated staff agreed with the Virginia Department of Transportation (VDOT) that Sandburg Street would have to be connected to have greater access to the community. He explained that access problems currently exist with snow removal, school buses, ambulances, fire engines, etc. Mr. Ukaegbo expressed his belief that the opening of Sandburg Street was necessary to enhance circulation, that it would not have a detrimental impact on the community, nor would it create a safety hazard. He noted the street was originally planned as a through street and no room has been provided for a cul-de-sac.

Dr. Irving, who resides at the corner of Sandburg Street and Park Street, addressed the BZA and stated he lives in one of the most historic houses in the area and in the five years he has lived in the area, the parcel across the street has been developed and all the trees removed. He said the proposed development would further change the character of the area, create traffic problems, increase crime, and asked the BZA to deny the request.

Chairman DiGiulian called for rebuttal.

Ms. Strobel stated that since the property could be developed by-right, the opening of Sandburg Street should not be a concern. She emphasized that the layout, size, and number of the lots were not at issue. Ms. Strobel said the citizens' concern regarding the opening of Sandburg Street could be resolved by the deletion of proposed Development Condition 7 in VC 94-P-076. Ms. Strobel reiterated the request to modify the development conditions and relinquished the remainder of her time to Mr. Doll.

The Contract/Purchaser, Lawrence K. Doll, 10606 Kitty Pozer Drive, Fairfax, Virginia, addressed the BZA and stated that there were three possible development scenarios. He said the property could be developed by-right with 16 dwelling units and two cul-de-sacs. Another was the option before the BZA to obtain the variances for two lots inside the 200 foot setback, and two pipestem lots in lieu of the second cul-de-sac. The third scenario was to develop a 33 dwelling unit, PDH-4, which would allow for no tree save on the property. He explained that to achieve this, he would have to go through the rezoning process and provide a regional stormwater facility. Mr. Doll suggested that Sandburg Street remain closed and a gate be provided for the access of emergency vehicles. In conclusion, he expressed his belief the development before the BZA was the best plan and asked for approval of the variances.

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

Mr. Hammack made a motion to deny both VC 94-P-075 and VC 94-P-076.

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

Mrs. Thonen made a motion to grant VC 94-P-075 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 8, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-075 by F. SHEILD MCCANDLISH AND JOHN HOWZE, TRUSTEES, under Section 18-401 of the Zoning Ordinance to permit construction of dwellings on proposed Lots 1, 16 and 17 to vary the 200 foot minimum distance between residential buildings and rights-of-way of interstate highways, on property located in the N. E. quadrant of Sandburg Street and Cottage Street, Tax Map Reference 49-2((1))191, 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 13, 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 8.85 acres.
4. The application meets the necessary standards for the granting of a variance.
5. The testimony indicated the opposition concerns the installation of a road that probably will have to be built whenever the land is developed and over which the BZA has no authority.
6. The odd shape of property presents some drawbacks as far as development goes.

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

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

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

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

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the construction of three dwellings less than 200 feet from the interstate rights-of-way as shown on the plat prepared by William H. Gordon, Associates, Inc., dated March 9, 1994, revised August 22, 1994, submitted with this application and is not transferable to other land.

2. A building permit shall be obtained prior to any construction.

3. To achieve a maximum exterior noise level of 65 dBA Ldn, an 8.0 foot high acoustical fence or wall shall be placed along the southeastern lot lines of the lots abutting I-495 and I-66 and shall be wrapped around the side yards of two outside lots: north Lot line of Lot 17, and the south lot line of Lot 1. This 8.0 foot high acoustical fencing shall be designed in accordance with the applicant's noise study dated March 23, 1994 entitled "Pritchard's Corner, Traffic Noise Analysis," supplemented by the FAX dated August 9, 1994 from Polysonics, Inc. The proposed dwellings that are within 270 feet of the centerline of I-66 or 440 feet of the centerline of I-495 shall achieve maximum protection from the high levels of exterior highway noise by incorporating the following acoustical design guidelines into the construction of the dwellings:

A. Exterior walls shall have a laboratory STC rating of at least 45.

B. Doors and windows shall have a laboratory STC rating of at least 37. If windows constitute more than 20% of any facade they shall have the same laboratory STC as walls.

C. Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless 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 4-3 with Chairman DiGiulian, Mrs. Thonen, Mr. Kelley, and Mr. Ribble voting aye; and, Mr. Dively, 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 September 21, 1994. 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 VC 94-P-076 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 8, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-076 by F. SHEILD MCCANDLISH AND JOHN HOWZE, TRUSTEES, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into seventeen lots, proposed Lot 9 having lot width of 12.0 feet and proposed Lot 6 having lot width of 6.0 feet, on property located in the N. E. quadrant of Sandburg Street and Cottage Street, Tax Map Reference 49-2((1))191, 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 13, 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 8.85 acres.
4. The property is in a residential district zoned for 3 to 4 dwelling units per acre.
5. The application is in accordance with the Comprehensive Plan.
6. There would be no adverse impact on the community.
7. The only way the applicant can fully utilize the land is by subdivision of the property.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical

difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is GRANTED with the following limitations:

1. This variance is approved for the subdivision of one lot into seventeen (17) lots as shown on the plat prepared by William H. Gordon Associates, Inc., dated March 9, 1994, revised August 22, 1994, submitted with this application and these development conditions and is not transferable to other land.

2. Stormwater management Best Management Practices (BMPs) shall be provided as determined by the Director, DEM, to meet the requirement of the Chesapeake Bay Preservation Ordinance. The applicant shall use best efforts to work with the Department of Public Works concerning the provision of a regional stormwater detention facility on this property.

3. At the time of subdivision review, a floodplain study and wetlands study shall be prepared by a qualified wetlands specialist and the Environmental Quality Corridor (EQC) shall reflect both the 100 year floodplain and wetlands area. No lot lines or road crossing shall be located in the EQC, even if this results in the loss of lots, no clearing and grading shall occur within the EQC.

4. A landscape plan which preserves tree save areas located outside of the EQC to the maximum extent feasible shall be reviewed and approved by the Urban Forestry Branch.

5. A geotechnical engineering study shall be provided, if deemed necessary for review and approval by DEM and shall be implemented as required by DEM.

6. To achieve a maximum exterior noise level of 65 dBA Ldn, an 8.0 foot high acoustical fence or wall shall be placed along the southeastern lot lines of the lots abutting I-495 and I-66 and shall be wrapped around the two outside lots: north Lot line of Lot 17, and the south lot line of Lot 1. This 8.0 foot high acoustical fencing shall be designed in accordance with the applicant's noise study dated March 23, 1994 entitled "Pritchard's Corner, Traffic Noise Analysis," supplemented by the FAX dated August 9, 1994 from Polysonics, Inc. The proposed dwellings that are within 270 feet of the centerline of I-66 or 440 feet of the centerline of I-495 shall achieve maximum protection from the high levels of exterior highway noise by incorporating the following acoustical design guidelines into the construction of the dwellings:

   A. Exterior walls shall have a laboratory STC rating of at least 45.

   B. Doors and windows shall have a laboratory STC rating of at least 37. If windows constitute more than 20% of any facade they shall have the same laboratory STC as walls.

   C. Measures to seal and caulk between surfaces shall follow methods approved by the American Society for Testing and Materials to minimize sound transmission.

7. The following transportation improvements shall be provided:

   Frontage improvements along the entire frontage on Sandburg Street which include the full section of the unimproved section.

Pursuant 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 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 4-3 with Chairman DiGiulian, Mrs. Thonen, Mr. Kelley, and Mr. Ribble voting aye; and, Mr. Dively, 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 September 21, 1994. This date shall be deemed to be the final approval date of this variance.

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The Board of Zoning Appeals recessed at 10:20 a.m. and reconvened at 10:30 a.m.

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9:00 A.M. CHARLES H. WILSON, VC 94-L-091 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 10.2 ft. from side lot line. Located at 6808 Ruskin St. on approx. 21,745 sq. ft. of land zoned R-3 and R-4. Lee District. Tax Map 90-4 ((6)) 163. (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. Wilson replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He stated a mistake was made in the advertisement and the applicant was actually requesting a 10.2 foot variance to allow an enclosed porch addition and an 8 foot high deck to be located 10.2 feet from the side lot line. Mr. Heine explained that the proposed addition would be located in both the R-3 and R-4 Districts. The Zoning Ordinance requires a minimum side yard of 12 feet in the R-3 District and a minimum side yard of 10 feet in the R-4 District; therefore, the applicant was requesting a 1.8 foot variance to the minimum side yard requirement for the addition. Since the proposed deck would be located entirely in the R-4 District, a variance was not needed.

The applicant, Charles H. Wilson, 6808 Ruskin Street, Springfield, Virginia, addressed the BZA. He stated that he was in the process of adding a sunroom addition onto the back of his house. Mr. Wilson explained that he was requesting the variance in order to extend and enclose the back half of the existing carport. He noted an open deck would be added to the back of the enclosure and said the addition would not protrude any closer to the lot line than the existing carport. Mr. Wilson said he needed additional living space in order to accommodate his children and grandchildren. In conclusion, he stated the application met the necessary requirements for the granting of a variance, the neighbors supported the request, the addition would be aesthetically pleasing, and would be in harmony with other houses in the community. He 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 94-L-091 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 8, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-L-091 by CHARLES H. WILSON, under Section 18-401 of the Zoning Ordinance to permit construction of additions 10.2 feet from side lot line, on property located at 6808 Ruskin Street, Tax Map Reference 90-4((6))163, 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 13, 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 and R-4.
3. The area of the lot is 21,745 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The unusual narrowness of the lot has caused the need for the variance.
6. The complicating factor is that the property is in both the R-3 and R-4 zoning districts. The R-4 zoning district would probably have permitted the addition as proposed with the existing side yard dimension. However, the R-3 imposes a greater requirement, thus has caused the need for the variance.
7. At least two-thirds of the property is in the R-4 zoning district; but, the small portion of the lot where the structure is located is in the R-3 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 enclosed porch addition and deck shown on the plat prepared by Payne Associates, dated June 21, 1994, 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 enclosed 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 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 with Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 368, September 13, 1994, (Tapes 1 and 2), Scheduled case of:

9:00 A.M. MARGUERITE WOLF OLIVER, VC 94-D-077 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2 having lot width of 100.6 ft. and permit dwelling to remain 13.9 ft. from side lot line and 12.9 ft. from street line of a corner lot. Located at 600 Walker Rd. on approx. 5.32 ac. of land zoned R-E. Dranesville District. Tax Map 7-4 ((1)) 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. Rust replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated the applicant was requesting a variance to the minimum lot width requirement to allow subdivision of one lot into two lots with proposed Lot 2 having a lot width of 100.6 feet. The Zoning Ordinance requires a minimum lot width of 225.0 feet; therefore, the applicant was requesting a variance of 124.4 feet to the minimum lot width requirement.

Ms. Langdon said the applicant was also requesting a variance for the dwelling on proposed Lot 2 to remain 13.9 feet from the side lot line and 12.9 feet from a front lot line of a corner lot. The Zoning Ordinance requires a minimum side yard of 20 feet and a minimum front yard of 50 feet; therefore, the applicant was requesting a modification of 6.1 feet to the minimum side yard and 37.1 feet to the minimum front yard.

Continuing, Ms. Langdon explained the property was currently developed with two single family detached dwellings, a shed, and an accessory structure which is used as a carport. She noted that gas pipelines traverse both the eastern and western portion of the site. One septic drainfield and one well serve both residences which front on Walker Road and are served by a common driveway. Ms. Langdon stated that it was staff's belief that the proposed lot line between Lots 1 and 2 should be reconfigured, if feasible, to provide a uniform lot in keeping with the configuration of the surrounding lot in the area.

In conclusion, Ms. Langdon submitted a "FAX" letter received only this morning from the Columbia Gas Company concerning the gas easements across the subject property. She said to alleviate staff's concerns regarding the prevention of erosion, sedimentation, and tree fall from undermining the dam, the applicant should contact the Northern Virginia Soil and Water Conservation District Office to seek information on appropriate pond maintenance. The applicant may also need to contact a professional engineer to evaluate the need to repair or reinforce the embankment.

The applicant's representative, Thomas D. Rust, an engineer with Patton Harris Rust and Associates, P.C., P.O. Box 901, Fairfax, Virginia, addressed the BZA. He stated that he was before the BZA to correct a situation which has been in existence for over forty years. Mr. Rust explained a single dwelling existed on the property when it was purchased by the applicant's parents, and a second dwelling was constructed in about 1950. He said the applicant lived in the dwelling on Lot 1 and her son lived in the dwelling on proposed Lot 2. Mr. Rust expressed his belief the application would be in conformance with the Comprehensive Plan, and would meet the requirements of the Zoning Ordinance.

In addressing the development conditions, Mr. Rust asked the BZA to delete proposed Development Condition 5. He explained that the condition would require reconfiguration of the lot line between proposed Lots 1 and 2 and expressed his belief that a reconfiguration would not be feasible. In summary, Mr. Rust said the neighbors supported the application and asked the BZA to grant the request.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Richard Peters, a member of the Executive Committee of the Great Falls Citizens Association, P. O. Box 27, Great Falls, Virginia, addressed the BZA. He presented a statement of support for the application, and asked the BZA to grant the request with the deletion of proposed Development Condition 5.

Mr. Hammack asked staff why building permits were not recommended in the staff report and the reasons why the lot line should be reconfigured. Ms. Langdon explained staff would like to straighten out the lot line between the two existing dwellings so that it would be in conformance with other lots in the area.

Jane Kelsey, Chief, Special Permit and Variance Branch, addressed the BZA. She stated the BZA had previously expressed concern as to whether a structure built prior to 1941 could meet the current building codes. Ms. Kelsey explained that it appeared that one of the applicant's dwellings was constructed prior to the inception of the Zoning Ordinance requirements and prior to the requirement for issuing of building permits. The other dwelling was constructed about 1950, prior to the current Zoning Ordinance and prior to the current building codes. Mr. Ribble expressed his belief that staff was wise in its decision not to include the development condition. Mr. Hammack asked if structures could be required to meet the building codes which were in effect when the dwelling was built. Ms. Kelsey said she did not know if it would be possible for staff to enforce the 1950's building codes that were implemented by the Department of Environmental Management.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 94-D-077 for the reasons reflected in the Resolution and subject to the proposed development conditions as contained in the staff report dated September 8, 1994 with the following modification: Development Condition 5 shall be deleted.

Mr. Dively seconded the motion.

Mr. Hammack said he could not support the motion. He expressed his belief that the lot line should be reconfigured and the dwelling constructed in 1950 undergo inspections. Mr. Dively said he would support the motion because the lot line has been in existence for over 40 years. Mr. Hammack expressed his concern regarding future development because one lot would have a large building envelope, and the other lot a small building envelope, and there is nothing which says the existing houses won't be torn down and new ones constructed.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-077 by MARGUERITE WOLF OLIVER, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 2 having lot width of 100.6 feet and permit dwelling to remain 13.9 feet from side lot line and 12.9 feet from street line of a corner lot, on property located at 600 Walker Road, Tax Map Reference 7-4((1))30, 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 13, 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-E.
3. The area of the lot is 5.32 acres.
4. The application meets the necessary standards for the granting of a variance.
5. The testimony indicated there are two dwellings on the property. One dwelling was built about 1941 and the other about 1950.
6. The reasons for the configuration of the lot was explained by the engineer. He noted the drain field and the location of the existing dwellings precluded reconfiguration of the lot line.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of Lot 30 as shown on the plat prepared by Patton Harris Rust & Associates, dated April 18, 1994 and revised at the time of subdivision review to meet the following conditions. These conditions shall be recorded among the land records of Fairfax County for these lots.

2. The subdivision plat and any other plats submitted for the subdivision on Lot 30 shall include delineation of the Environmental Quality Corridor as depicted on the EQC Delineation Map attached. A note shall be included on the plats committing to the preservation of the EQC.

3. A tree preservation plan showing limits of clearing and grading for the proposed septic fields on both Lots 1 and 2 shall be reviewed and approved by the Urban Forestry Branch, DEM. The septic fields shall be located and their limits of clearing and grading accomplished to minimize the amount of clearing and grading required to the maximum extent feasible, as determined by the Urban Forestry Branch, DEM.

4. The applicant, in coordination with the Office of the Northern Virginia Soil and Water Conservation District, shall develop and implement a pond maintenance plan to prevent erosion, sedimentation and tree fall from undermining the pond embankment located on the southwestern section of proposed Lot 1.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively seconded the motion which carried by a vote of 5-1 with Mr. Hammack 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 September 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 371, September 13, 1994, (Tape 2), Scheduled case of:

9:00 A.M. FREDERICK S. MITTELMAN AND DIANE M. PAGE, VC 94-D-079 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 7.6 ft. from side lot line. Located at 5179 37th Rd. North on approx. 31,218 sq. ft. of land zoned R-2. Dranesville District. Tax Map 41-1 ((22)) 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. Mittelman replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated the applicants were requesting a variance to construct an addition for the expansion of a garage to be located 7.6 feet from a side lot line. The Zoning Ordinance requires a 15 foot minimum side yard; therefore, the applicants were requesting a modification of 7.4 feet to the minimum side yard requirement.

The applicant Frederick S. Mittelman, 5179 37th Road North, Arlington, Virginia, addressed the BZA. He explained that although the postal address was for Arlington County, the property was located in Fairfax County. He said the neighbors supported the request, and the application met the necessary requirements for the granting of a variance. Mr. Mittelman said the topographic condition and the pie shape of the lot precluded placing the house elsewhere on the lot and has caused the need for the variance. In summary, he said there would be no detrimental impact on the community, and asked the BZA to grant the request. He also asked the BZA to waive the eight-day waiting period.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant VC 94-D-079 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 8, 1994.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

Mr. Ribble made a motion to waive the eight-day waiting period. Mrs. Thonen seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-079 by FREDERICK S. MITTELMAN AND DIANE M. PAGE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 7.6 feet from side

lot line on property located at 5179 37th Road North, Tax Map Reference 41-1((22))8, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 13, 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 31,218 square feet.
4. The rear of the property has a severe topographical problem.
5. The trapezoidal shaped lot is narrow and shallow in the front where the house was constructed.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 May 11, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0 with Mr. Kelley not present for the vote.

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 September 13, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 373, September 13, 1994, (Tape 2), Scheduled case of:

9:30 A.M. FLORIS UNITED METH. CHURCH/FLORIS CHRISTIAN CHILDREN'S CNT., SPA 88-C-057 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 88-C-057 for church and related facilities to permit child care center and nursery school, increase in FAR, increase in seating capacity, increase in parking and increase in Gross Floor Area. Located at 2730 Centreville Rd. on approx. 4.22 ac. of land zoned R-1. Hunter Mill District. Tax Map 25-1 ((1)) 37.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Dr. Almond replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He stated the site is located on the west side of Centreville Road approximately 300 feet south of its intersection with Floris Street. The site is developed with the Floris United Methodist Church which is located on the northern portion of the site. He noted that access is via an existing commercial entrance on Centreville Road which is aligned with a median break at the southern end of the site. An existing 79 space parking lot is located south of the church building adjacent to Centreville Road and the pick-up/drop off area is located between the parking lot and the church building. Maverick Lane ends in the cul-de-sac to the rear of the site. Continuing, Mr. Hunter noted an existing stormwater management pond is located in the southeast corner of the property and a landscape berm is located along the southwest property line.

Mr. Hunter said the applicant was proposing to amend SP 88-C-057 for church and related facilities to permit a child care center and nursery school with a maximum daily enrollment of 82 children, an increase in the Floor Area Ratio from 0.06 to 0.084, an increase in church seating capacity from 200 to 270, and an increase in the number of parking spaces from 79 to 135. He noted that with the exception of the expanded parking lot, no new construction was proposed. He explained that because of a miscalculation, the applicant was requesting an increase in the Gross Floor Area from 14,800 to 15,500 square feet.

Mr. Hunter stated that church services are held on Sunday mornings at 8:15 a.m., 9:30 a.m., and 11:00 a.m., and the church office was open Monday through Friday from 9:00 a.m. to 4:30 p.m. Various meetings and church activities occur at the church Monday through Friday evenings from 6:30 p.m. to 10:00 p.m. The child care center and nursery school would employee a maximum of 12 persons and are proposed to operate from 9:15 a.m. to 12:00 noon with afternoon classes for the pre-school children from 12:45 p.m. to 3:30 p.m.

Continuing, Mr. Hunter stated that, although 84 parking spaces are required for the church and child care center use, the applicant was proposing to provide 135 spaces. He noted that in order to limit the amount of impervious surface on site and to provide a wider buffer area between the parking and the residential area to the west, staff believed the proposed row of parking spaces adjacent to the rear property line should not be installed. He said staff recommended Transitional Screening 2 be provided in the area and the number of parking spaces be reduced to 104.

Mr. Hunter noted that the maximum daily enrollment would include a parents morning out program which would commence with 61 students and eventually be expanded to accommodate 81 students. He explained staff had concerns with the location of the play area and noted the applicant would provide a board-on-board fence along the western property line in order to mitigate any visual or noise impacts which may be generated by the increased parking and the play area. In conclusion, Mr. Hunter stated that subject to the revised development conditions dated September 8, 1994, staff believed the application would be in harmony with the Comprehensive Plan and would be in conformance with the Zoning Ordinance.

In response to Mr. Hammack's question regarding staff's determination that on site parking should be reduced, Mr. Hunter said yes. He said, although the applicant believed all 134 parking spaces were necessary, staff was concerned with the impact the additional parking would have on the adjacent properties.

The applicant's representative, Reverend Keith Almond, Pastor of Floris United Methodist Church, 2730 Centreville Road, Herndon, Virginia, addressed the BZA. He introduced both Darcy Jennings, Director, Floris Methodist Church Children's Center, and James L. McCormack, an engineer with Bengtson, DeBell and Elkin, Ltd., 5900 Centreville Road, Centreville, Virginia, to the BZA. He said the church was established 104 years ago and was a rapidly growing church. Dr. Almond said that during the current year, approximately 200 new members

would be added to the congregation. He explained that the average member was 34 years of age with two children. Dr. Almond said one year ago the congregation moved to the new facility and the church has expanded and grown both in its ministries, and in its outreach to the community.

In addressing the development conditions, Dr. Almond said, although they concurred with most of the conditions, they were concerned with Condition 8. He explained the reasons why the 134 parking spaces were necessary and expressed his belief that there would be no detrimental impact on the neighbors. Dr. Almond addressed Condition 10 and asked the BZA to revise the condition to require Transitional Screening 1. He further asked that Condition 11 be modified to require the board-on-board fence be placed along the property line.

Dr. Almond stated that the church would like to be a good neighbor and explained that they were constantly keeping the community abreast of the church's plans, and the only inquiries have been about preschool accommodations. He relinquished a portion of his time to Ms. Jennings.

Ms. Jennings addressed the BZA and informed them about the child care and nursery school program. She expressed her belief that the service was vital to the community. In addressing the fence, she said the area was presently under construction and the fence was not necessary at this time. Ms. Jennings asked the BZA to waive the eight-day waiting period.

In closing, Dr. Almond said the church was very concerned about its services to the community and asked the BZA to grant the request with modifications to the development conditions. He also asked the BZA to waive the eight-day waiting period.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SPA 88-C-057 for the reasons reflected in the Resolution and subject to the revised development conditions contained in the staff report dated September 8, 1994 with the following changes:

8. The maximum number of parking spaces shall be 135 in the location shown on the special permit plat that was filed with the application. All parking shall be on-site.

10. Transitional Screening 1 shall be provided along the northern, and southern lot line. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Urban Forestry Branch. Along the northern portion of the western lot line, in the area of the building, additional plantings shall be included in the transitional screening yard to create a heavier screen than normally produced by the plantings utilized in Transitional Screening 1.

    Transitional Screening 1 shall be provided along the southern portion of the western property line between the parking lot and the residential property to the west.

11. A six foot high board on board fence shall be provided along the southern portion of the western property line. The barrier requirement along all other property lines shall be waived.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley not present for the vote.

Mr. Hammack made a motion to waive the eight-day waiting period. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 88-C-057 by FLORIS UNITED METHODIST CHURCH/FLORIS CHRISTIAN CHILDREN'S CENTER, under Section 3-103 of the Zoning Ordinance to amend SP 88-C-057 for church and related facilities to permit child care center and nursery school, increase in FAR, increase in seating capacity, increase in parking and increase in Gross Floor Area, on property located at 2730 Centreville Road, Tax Map Reference 25-1((1))37, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 13, 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 4.22 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 Amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by LeMay Associates, dated December 31, 1990, revised through August 18, 1994 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 Amendment is subject to the provisions of Article 17, Site Plans as may be determined by the Director, Department of Environmental Management (DEM). Any plan submitted pursuant to this special permit shall be in conformance with the approved Special Permit Amendment plat and these development conditions.

   Since an application for a building permit is not required for the child care center and nursery school, approval of a site plat shall not be required for the child care center and nursery school.

5. The maximum seating capacity of the sanctuary shall be limited to 270 seats.

6. The maximum daily enrollment for the child care center and nursery school shall be 82.

7. The hours of operation for the child care center and nursery school shall be limited to 9:15 am to 3:30 pm, Monday through Friday.

8. The maximum number of parking spaces shall be 135 in the location shown on the special permit plat that was filed with the application. All parking shall be on-site.

9. Construction of the additional parking spaces and transitional screening shall not be required for the issuance of a Non-Residential Use Permit (Non-RUP) for the child care center and nursery school, although the board-on-board fence between the play area and the western property line is required for the issuance of the Non-RUP.

10. Transitional Screening 1 shall be provided along the northern, and southern lot line. The existing vegetation may be used to satisfy this requirement if the vegetation is supplemented to be equivalent to Transitional Screening 1 to the satisfaction of the County Urban Forestry Branch. Along the northern portion of the western lot line, in the area of the building, additional plantings shall be included in the transitional screening yard to create a heavier screen than normally produced by the plantings utilized in Transitional Screening 1.

    Transitional Screening 1 shall be provided along the southern portion of the western property line between the parking lot and the residential property to the west.

11. A six foot high board on board fence shall be provided along the southern portion of the western property line. The barrier requirement along all other property lines shall be waived.

12. Storm water management shall be provided in order to meet the requirements of the Chesapeake Bay Preservation Ordinance, as approved by the Director, DEM.

13. Interior parking lot landscaping shall be provided in accordance with provisions of Sect. 13-106 of the Ordinance.

14. There shall be no illumination of the expanded parking lot. Any proposed lighting of the existing parking areas shall be in accordance with the following:

The combined height of the light standards and fixtures shall not exceed twelve (12) feet.

The lights shall be a low-intensity design which focuses the light directly onto the subject property.

Shields shall be installed, if necessary, to prevent the light from projecting beyond the facility.

15. There shall be no church parking on Maverick Lane or in the driveway to the dumpster.

16. A maximum of twenty (20) children at any one time shall use the outdoor play area.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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 September 13, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 376, September 13, 1994, (Tape 2), Scheduled case of:

9:30 A.M. DAVID ROBERTSON, APPEAL 94-D-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that more than one dwelling unit has been established on appellant's property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 1138 Spring Hill Rd. and 8230 Alvord St. on approx. 4.84 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 20 and 20A.

Chairman DiGiulian stated the staff had indicated the notices were not in order. He had a brief discussion with Jane C. Kelsey, Chief, Special Permit and Variance Branch, regarding the case load for the suggested deferral date.

William Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and expressed staff's willingness to complete the appellant's notification requirements.

Chairman DiGiulian asked staff to inform the appellant that if he were not present to testify at the next public hearing, the BZA would still go forward with the case.

Mr. Pammel made a motion to defer A 94-D-024 to October 25, 1994 at 9:30 a.m. Mr. Hammack and Mr. Dively seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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Page 376, September 13, 1994, (Tape 2), Scheduled case of:

9:30 A.M. FERGUSON ENTERPRISES, INC., APPEAL 94-Y-021 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that use limitations for I-4 District apply in underlying I-5 and I-6 Districts in the Sully Historic Overlay District and therefore outside storage is prohibited and retail sales in connection with warehousing establishment is limited to lesser of 25% of the Gross Floor Area or 5,000 square feet. Located W. of Centreville Rd. S. of Cain Branch on approx. 38.56 ac. of land zoned I-5, I-6, WS, AN & HD. Sully District. Tax Map 34-2 ((1)) 16A, 17D, 17E; 34-2 ((6)) 1, 3; 34-4 ((12)) 1. (DEF. FROM 8/2 AT APPELLANT'S REQUEST)

Chairman DiGiulian stated that staff had indicated the notices were not in order. He had a brief discussion with Jane C. Kelsey, Chief, Special Permit and Variance Branch, regarding the case load for the suggested deferral date.

Page 377, September 13, 1994, (Tape 2), FERGUSON ENTERPRISES, INC., APPEAL 94-Y-021, continued from Page 376)

Mr. Pammel made a motion to defer A 94-Y-021 to November 29, 1994 at 9:30 a.m. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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Page 377, September 13, 1994, (Tape 2), Scheduled case of:

9:30 A.M. MESSIAH PRESBYTERIAN CHURCH, SP 94-S-009 Appl. under Sect(s). 6-303 of the Zoning Ordinance to permit church and related facilities. Located at 8134 Old Keene Mill Rd. on approx. 0.8124 ac. of land zoned PRC and HC. Springfield District. Tax Map 79-4 ((11)) 1, 2, 3A, 3B, 3C, 3E, 4A, 4C, 5A, 5C, 6A and 6C. (DEF. FROM 5/24/94 FOR NOTICES. DEF. FROM 6/21/94 DUE TO POWER OUTAGE. DEF. FROM 8/2 TO ALLOW BOS TO HEAR REQUEST FOR SHARED PARKING AGREEMENT.)

Chairman DiGiulian said the applicant had requested deferral. He had a brief discussion with Jane C. Kelsey, Chief, Special Permit and Variance Branch, regarding the deferral request. She explained that the applicant was compiling additional information so that the Department of Environmental Management could make a recommendation to the Board of Supervisors on the shared parking agreement. David Hunter, Staff Coordinator, confirmed that the applicant would agree to the suggested deferral date.

Mr. Hammack made a motion to defer SP 94-S-009 to November 29, 1994, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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Page 377, September 13, 1994, (Tape 2), Scheduled case of:

10:00 A.M. JAMES H. AND ELIZABETH A. BAILEY, VC 94-M-053 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lot 2 having lot width of 12 ft. and proposed Lot 3 having lot width of 56 ft. (80 ft. min. lot width req. by Sect. 3-306). Located at 3320 Wilkins Dr. on approx. 2.50 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-1 ((1)) 11A. (DEF. FROM 7/26 AT APP.'S REQUEST)

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Yates replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the property consists of 2.56 acres and is located on Wilkins Drive north of its intersection with Vista Drive.

Ms. Langdon stated the applicant was requesting a variance to the minimum lot width requirement to allow subdivision of Lot 11A into three lots with proposed Lot 2 having a lot width of 12.0 feet and proposed Lot 3 having a lot width of 56.0 feet. The Zoning Ordinance requires a minimum lot width of 80 feet; therefore, the applicants were requesting variances of 68.0 feet and 24.0 feet to the minimum lot width requirement.

In response to Mr. Dively's question regarding the maximum development by-right on the property, Ms. Langdon said the applicant had indicated they could develop the property into 6 lots.

The applicant's representative, Philip G. Yates, Planner/Landscape Architect, with Dewberry and Davis, 8401 Arlington Boulevard, Fairfax, Virginia, addressed the BZA. He explained the original application had been amended to reflect that Anne and Donald Wilkins had sold the property to James and Elizabeth Bailey.

Mr. Yates said, although the parcel could be subdivided into five or six lots by-right, the applicants did not believe it would be in the best interest of the community. He explained a three lot subdivision, served by a common driveway, would better conform with the area. In conclusion, Mr. Yates stated the application meets the necessary standards, and would be in conformance with the Comprehensive Plan.

In response to Mr. Dively's question as to whether a variance would be needed in order to subdivide the property into six lots, Mr. Yates said no. He noted though, that a cul-de-sac would have to be installed.

Mr. Yates expressed his belief that the creation of a cul-de-sac would be more intrusive to the community. He enumerated the reasons the application met the nine standards required by the Zoning Ordinance and asked the BZA to grant the request so that a reasonable subdivision could be developed on the property. Mr. Yates yielded the remainder of his time to Mr. Bailey.

The applicant, James Bailey, 3320 Wilkins Drive, Falls Church, Virginia, addressed the BZA. He said he would like the property to be developed with minimal alteration, and to be compatible with the neighborhood. He stated the neighbors supported the application and asked the BZA to grant the request.

Chairman DiGiulian called for speakers in support and the following citizens came forward.

Donald Giffhorn, 3318 Wilkins Drive, Falls Church, Virginia, addressed the BZA. He expressed his belief the development would be an asset to the neighborhood and took issue with the staff report saying there were no traffic or drainage problems. Mr. Giffhorn said there were very few trees worth preserving along the eastern border and expressed his belief there would be no substantial tree loss. He noted that when the lots were developed, the owners would add plantings. Mr. Bailey submitted a list of the neighbors who had indicated their support for the application.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 94-M-053 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated July 19, 1994.

Mr. Hammack and Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Dively said, although he had concern regarding the BZA's authority for granting a variance when the property could be developed by-right, he would support the motion. He explained that the fact the existing structure would be maintained probably shifted in favor of allowing the variance.

Mr. Ribble expressed his support for the motion. He noted that if the land is developed by right, the cul-de-sac, along with the clearing for six lots, would destroy all the existing vegetation. Mr. Ribble stated the BZA also had to consider the financial burden the installation of a cul-de-sac would impose on the applicant.

Mr. Hammack said the application was quite extraordinary. He explained that he could not remember another application which requested a fifty percent reduction in density over what might be permitted by right. Mr. Hammack noted the property's proximity to high density development, and said the utilization of the existing dwelling further made it an unique case.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-053 by JAMES H. AND ELIZABETH A. BAILEY, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into three lots, proposed Lot 2 having lot width of 12 feet and proposed Lot 3 having lot width of 56 feet, on property located at 3320 Wilkins Drive, Tax Map Reference 61-1((1))11A, 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 13, 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 and HC.
3. The area of the lot is 2.50 acres.
4. The application meets the necessary standards for the granting of a variance.
5. The application is not the typical variance for the creation of pipestem lots with limited road frontage and that in itself is unique.
6. The structure has been in existence for many years.
7. The property could be developed by-right. But, much of the area surrounding the existing dwelling would be used for the residential development associated with the subdivision and would be a great loss and a great tragedy.
8. The residents of the area deserves the special surroundings and if the vegetation were to be eliminated, it would create a hardship to the community and the 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 subdivision of Lot 11A as shown on the plat prepared by Dewberry and Davis, dated April 4, 1994, revised through June 28, 1994. All development shall be in conformance with this plat.

2. The pipestem driveway to the proposed lots shall be constructed in accordance with the Public Facilities Manual.

3. The applicant shall dedicate in fee simple to the Board of Supervisors 26 feet of right-of-way from the centerline of Wilkins Drive for public street purposes upon request or at time of subdivision review, whichever occurs first. Ancillary easements shall be provided if necessary to facilitate any improvements.

4. Limits of clearing and grading shall be the minimum necessary to provide for the development as determined by the Urban Forestry Branch, Department of Environmental Management.

5. Prior to subdivision plat approval, a tree save plan showing limits of clearing and grading for the proposed dwellings and reflecting efforts to preserve existing vegetation to the greatest extent possible shall be reviewed and approved by the Urban Forestry Branch, DEM.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Hammack and Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 21, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 379, September 13, 1994, (Tape 2), Action Item:

Approval of Resolutions from September 8, 1994

Mr. Ribble made a motion to approve the Resolutions as submitted. The Chair so ordered.

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Page 380, September 13, 1994, (Tape 2), Action Item:

Request for Additional Time
George M. Neall, II, Trustee, SP 91-V-065

Mr. Ribble made a motion to grant the request. The Chair so ordered. The new expiration date will be February 18, 1996.

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Page 380, September 13, 1994, (Tape 2), Action Item:

Request for Additional Time
Patrick W. and Josephine H. Arnold, VC 91-V-063

Mr. Ribble made a motion to grant the request. Mr. Dively seconded the motion which carried by a vote of 4-0 with Mrs. Thonen, Mr. Kelley and Mr. Dively not present for the vote. The new expiration date will be September 11, 1995.

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Page 380, September 13, 1994, (Tape 2), Action Item:

Request for Intent to Defer
Michael and Fay Mpras Appeal, A 94-B-014

Mr. Pammel made a motion to issue an intent to defer the appeal for the morning of December 6, 1994. The Chair so ordered.

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Page 380, September 13, 1994, (Tape 2), Action Item:

Request for Date and Time
Joseph B. Hyman Appeal

Mr. Pammel made a motion to schedule the appeal for November 29, 1994. He explained that the BZA would limit the scope of the appeal to the determination that the violation must be cleared within 30 days of the July 14, 1994 Notice and what actions would constitute the resolution of the violation. The Board scheduled the public hearing for November 29, 1994, at 9:30 a.m. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mrs. Thonen and Mr. Kelley not present for the vote.

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Page 380, September 13, 1994, (Tape 2), Action Item:

Approval of Meeting Dates for 1995

Mr. Ribble said neither he nor Mr. Kelley have had an opportunity to review the meeting dates and asked that action on approval of the meeting dates for 1995 be held over until the next scheduled meeting. The Chair so ordered.

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Page 380, September 13, 1994, (Tape 2), Action Item:

Intent to Defer
Ourisman Dodge Appeal, A 93-V-023

In response to a question from Mr. Pammel, William Shoup, Deputy Zoning Administrator, stated the appeal involved a Notice of Violation. However, the appellant has recently filed a Special Exception application which would address the issues cited in the Notice of Violation.

Mr. Pammel made a motion to issue an intent to defer A 93-V-023 to the morning of November 22, 1994. The Chair so moved.

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As there was no other business to come before the Board, the meeting was adjourned at 12:20 p.m.

Helen C. Darby
Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John Ribble
John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: October 25, 1995

APPROVED: November 4, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 20, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; Robert Kelley; and John Ribble. James Pammel was absent from the meeting.

Chairman DiGiulian called the meeting to order at 8:10 p.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 381, September 20, 1994, (Tape 1), Scheduled case of:

8:00 P.M. CORNELL GREEN, VC 94-L-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.4 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-407). Located at 6712 Morning Ride Ci. on approx. 5,546 sq. ft. of land zoned PDH-4. Lee District. Tax Map 99-2 ((7)) 283.

David Hunter, Staff Coordinator, advised the Board that the notices were not in order and that all attempts to reach the applicant had failed. He recommended a deferral until November 1, 1994, to allow time to re-advertise and meet all legal requirements.

The applicant, Cornell Green, of 6712 Morning Ride Circle, came forward and a discussion ensued regarding the notices. Although Mr. Green advised the Board that he had mailed the notices via certified mail, Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that he had not delivered the white receipts to the Clerk for validation. Mr. Green said he did not have the white receipts.

Mrs. Thonen asked staff to work with Mr. Green to facilitate notification and moved to defer the hearing until November 1, 1994 at 9:30 a.m. Ms. Kelsey asked, since staff had been unable to reach Mr. Green by telephone, if he could contact staff so that they could assist him in meeting the notice requirements.

Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 381, September 20, 1994, (Tape 1), Scheduled case of:

8:00 P.M. CHINESE CHRISTIAN CHURCH, SP 94-M-025 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit church and related facilities. Located at 6071 Leesburg Pi. on approx. 3.10 ac. of land zoned R-3 and HC. Mason District. Tax Map 61-2 ((1)) 3; 61-2 ((9)) 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, Peter W. Stephens, 7369 McWhorter Place, Annandale, Virginia, replied that it was, as amended the previous week.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located at the intersection of Route 7 and Glenmore Drive; multi-family and office uses are located north and east of the site and single family detached residences lie to the south and west. He said that the existing church use was established by right in 1952. The church contains 200 seats and services are held on Sundays from 10:00 a.m. to 1:00 p.m. Mr. Hunter said the applicant was requesting approval to increase the parking from 44 spaces to 70 spaces; no additions to the existing church building were proposed. He said that access to the site will be by way of an approximately 18-foot wide asphalt driveway from the service drive on Route 7; a gravel driveway entrance is located at the corner of the service drive and Glenmore Drive and the applicant had committed to removing that entrance. Mr. Hunter said that the applicant had also committed to pave the two existing gravel parking lots which are located along the Route 7 frontage. He said that mature trees line the property's frontage on Glenmore Drive and are scattered across the northwestern portion of the site. Mr. Hunter said that the applicant would dedicate right-of-way and provide Transitional Screening 1 along the Route 7 frontage. He said staff concluded that the application was in harmony with the Comprehensive Plan and in conformance with the Zoning Ordinance provisions with the implementation of the Proposed Development Conditions contained in the staff report and that staff recommended approval of the application.

Mr. Stephens presented the statement of justification, previously submitted in writing and incorporated into the record. He said that the church had recently grown to 150 people and an increase to approximately 200 people is anticipated by the end of this year; thus, the need for additional parking. Mr. Stephens advised that the applicant agreed to all the Proposed Development Conditions, with the exception of two items which would be considered at the Site Plan stage. One is the five-foot wide concrete trail that is on the plat at the request of the County Engineer with a notation that the applicant has applied for a waiver from the Planning Division and expects to receive same in the near future. He said construction of the trail would be very expensive for a church of this size, and a service road already exists. The other item is the request for dedication for a potential eight-lane highway; whereas, most indications are that Route 7 probably will be increased to only six lanes, for which the applicant has already made a commitment. Mr. Stephens said they believe that any further dedication for this purpose would be illegal under Board of Supervisors v. Cupp; however, he understood this matter would be addressed by the Department of

Environmental Management (DEM). Mr. Stephens said the lot is large enough to allow sufficient space for the small parking addition. He said he was impressed when looking at the staff report at how much the lot exceeds the Ordinance requirements for R-3 zoning.

Jack Smith, 3306 Culmore Court, Falls Church, Virginia, manager of the Culmore and Old Salem Village Apartments, spoke in opposition,, citing a stormwater and drainage problem.

Mr. Hunter advised that staff had been in contact with the Department of Public Works (DPW) and had spoken with the Virginia Department of Transportation (VDOT) regarding the stormwater runoff, stating it was staff's understanding that the issue would be addressed at the time of site plan review. Mr. Hunter said that there is a stormwater runoff problem because there is no curb and gutter; however, DEM will make a determination on that issue at the time of site plan review.

Mr. Hammack asked Mr. Stephens about the specific Proposed Development Conditions that the applicant might find objectionable, one of them being Condition 10. Mr. Hammack said he did not see a specific condition concerning trails and Mr. Stephens said that was correct; by virtue of it being on the plat, the County had reserved its position that it needs to be included or that it would be required later and, by stating that they request a waiver, they had reserved their right before the Office of Comprehensive Planning (OCP) to have the waiver granted. Regarding Condition 10, Mr. Stephens said it was his understanding that staff acknowledged the dedication has been committed for a six-lane highway, but that the condition really refers to the possibility of an eight-lane expansion at that point on Route 7. He said that, while he understood that may not happen, in principle the applicant objected to any dedication because they believed, under the Cupp case and a recent United States Supreme Court case, that requiring dedication that is not shown as being required by the use requested, it cannot be used as a condition to permit the use.

Mr. Hammack said he agreed with Mr. Stephens on the Cupp case and a brief discussion ensued in which Mr. Stephens referenced a recent statute relevant to roadway, in effect since 1980, which did not include churches, only developments, etc. Mrs. Thonen said she believed the statute should include churches because of the traffic and water runoff they generate, the same as other property owners. Mr. Stephens said he did not believe the church use only for a short period of time on Sundays impacted sufficiently to warrant additional dedication.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant SP 94-M-025 for the reasons stated in the Resolution, subject to the Proposed Development Conditions, as amended. Mr.Hammack modified Condition 10. The motion was seconded by Mrs. Thonen. Mr. Kelley and Mr. Ribble said they believed that Condition 10 should be deleted entirely. Mrs. Thonen disagreed with deleting Condition 10. Mr. Hammack amended his motion by deleting Condition 10 and the motion carried by a vote of 5-1. Mrs. Thonen voted nay. Mr. Pammel was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-M-025 by CHINESE CHRISTIAN CHURCH, under Section 3-303 of the Zoning Ordinance to permit church and related facilities, on property located at 6071 Leesburg Pike, Tax Map Reference 61-2((9))1 and 61-2((1))3, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 20, 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 and HC.
3. The area of the lot is approximately 3.1 acres.
4. It would be appropriate to delete Condition 10.

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 8-305 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 Fai Seto dated February 3, 1994, certification stamp dated August 1, 1994, 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. There shall be 70 parking spaces provided as shown on the Special Permit Plat. The parking areas shall be paved and all parking for the use shall be provided on-site.

6. The maximum number of seats shall be 200.

7. Transitional Screening 1 shall be provided along the northern property line adjacent to Leesburg Pike in the location shown on the Special Permit Plat. Transitional screening shall be waived along all other lot lines.

8. The barrier requirement shall be waived along all lot lines.

9. Interior parking lot landscaping shall be provided and maintained in accordance with Article 13 as determined by the Department of Environmental Management (DEM).

10. Signs shall be permitted in accordance with Article 12, signs.

11. The existing gravel driveway entrance shall be scarified and planted with grass and transitional screening as shown on the Special Permit Plat.

12. Any proposed lighting of the parking areas shall be in accordance with the following:

    The combined height of any new light standards and fixtures shall not exceed twelve (12) feet.

    The lights shall focus directly onto the subject property.

    Shields shall be installed, if necessary, to prevent the light from projecting beyond the subject property.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless 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 5-1. Mrs. Thonen voted nay. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 28, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 383, September 20, 1994, (Tape 1), Scheduled case of:

8:00 P.M. KIMBERLY GLASER, SP 94-V-016 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals to allow three dogs on a lot containing less than 12,500 sq. ft. Located at 2500 Byrd Ln. on approx. 8,778 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((9)) (7) 13. (DEF. FROM 6/21/94 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. Kimberly Glaser, 2500 Byrd Lane, Alexandria, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Fairhaven Subdivision; surrounding lots are also zoned R-4 and developed with single family detached dwellings. She said that the applicant was requesting approval to keep three dogs on a lot zoned for only two dogs. Ms. Langdon said that the applicant's statement indicated that the dogs are an Akita, an English mastiff and a Cocker Spaniel mix. She said that the entire yard is fenced, with a 4-foot tall chain link fence in the front yard and 5-foot and 6-foot tall chain link and wood fences in the year yard. Ms. Langdon said the applicant advised that the animals' feces is cleaned up every other day, so there is no smell or unhealthy environment; the applicant is a day care provider, licensed by Fairfax County, with regular inspections by the Health Department, Fire Department and the Office for Children.

Ms. Glaser said the reason she had the three dogs was that she was not aware of the law limiting the number of dogs on the lot. She said she used to have four dogs and never had a problem obtaining licenses for all four, nor has she had any problem with getting the remaining three dogs licensed. Ms. Glaser said that, subsequently, someone from Zoning Enforcement visited her and said that she would have to give up one of her dogs and explained the Ordinance to her. She said she was advised to apply for a special permit to keep all three dogs. She said she keeps her yard clean and maintains the fencing. Ms. Glaser submitted Fire and Health certificates, effective until 7/7/95 and said she never has had a problem in the four years during which she has conducted a day care center. She stated that her dogs are not vicious, do not emit any odor and do not bark excessively; a neighbor was present to attest to that, and she submitted seven letters of support from surrounding neighbors also attesting to those statements. Ms. Glaser submitted a letter from Fairfax County Animal Control who had done a check on her name and address and found that no complaints had been lodged against her in the eight years she has lived at this location.

Ms. Glaser submitted photos of the dogs interacting with the family and said the neighborhood is not safe and she and her children felt safer having the dogs there when they were alone, such as when her fiance' had to work late. Ms. Glaser said she believed there were no other reasons for complaint, except that she exceeded the number of dogs allowed. She presented the dogs' veterinary records stating that the dogs' shots were up-to-date and a letter from the veterinarian attesting to the nature of the dogs. She said there was an Animal Welfare Officer present who had visited her home and would support her claims as to the condition of the dogs, the yard and the fencing: the dogs are in good condition, the condition of the yard is not bad at all, and the fencing is in place. Ms. Glaser said the dogs are not allowed out past 9:00 p.m. unless they arrive home late, when they walk them out to use the yard and bring them right back in, always under supervision; the dogs do not leave the house and yard.

Mrs. Thonen asked Ms. Glaser if she had seen the letters of opposition and she said she had not. The two letters were given to Ms. Glaser for her review. Ms. Glaser stated that the people who signed one letter did not live close to her and she did not know who they were; she said their addresses were quite far away from hers and that they had not known she had the dogs until the complaint was lodged. She said she had letters from the people who actually lived in her area, including one from Randy Herbst, the landlord of the neighbor who was there to speak in support.

Mrs. Thonen asked Ms. Glaser if her dogs had ever been loose and picked up and Ms. Glaser said they never had.

Mr. Dively referenced the letter from the across-the-street neighbor and Ms. Glaser said Mr. and Mrs. Royston were the only ones who had not signed the petition which she had circulated on both sides of her street.

Mrs. Thonen referenced Ms. Glaser stating that the neighborhood is not safe and that the dogs alerted her when someone was around, but she said that two dogs could do that as well as three. Ms. Glaser agreed but said that she would not have acquired the third dog if she knew about the restriction; she believed that she would not have been allowed to license the third dog if she was in violation and Mrs. Thonen told her it did not work that way, licensing is a separate issue.

Mr. Hammack asked Ms. Glaser if there was anywhere that she could find a home for one of the dogs and she said no. In answer to a question from Mr. Hammack, Ms. Glaser said the dogs were aged 18 months, 2 years and 4 years.

David Andrew of Ms. Glaser's address stated that two of the dogs were "rescue" dogs and that they would not have acquired them if they had known about the restriction; however, it is very difficult to lose them because they are attached to them.

Ms. Glaser said she has lived at her present address for 8 years and has had 3 dogs before, she has also had 4 dogs at a time. She said there are other people in the neighborhood who keep 3 and 4 dogs and yet, she was the only one before the Board.

Mr. Dively said he was satisfied that the dogs did not roam but he asked the applicant to comment about the complaints of excessive barking. Ms. Glaser said her neighbor would attest to the fact that the dogs went out to relieve themselves at 8:00 a.m., after lunch, and once again before bedtime, and returned to the house immediately after relieving themselves. Ms. Glaser referenced the photos she had submitted of the yard, the dogs, and the fencing, and said that few of those photos showed the dogs outside because they slept inside and stayed inside at all times, other than to relieve themselves.

Howard Bonce, 3809 Datenut Court, Mount Vernon District, and his wife, Dorothy, came to the podium. Mr. Bonce said he is the Mount Vernon Representative on the Advisory Commission for the Animal Control Department of Fairfax County. He also had served for 14 years on the Board of Directors of the Animal Welfare League of Alexandria, which operates the Animal Shelter. Mr. Bonce said that he personally visited Ms. Glaser at her home and saw the dogs; they are in good health, well behaved, and have been well taken care of. He said that, in all the time he was there, they did not bark and were on the other side of the screen door from him; the lot is adequately fenced in; he spoke with the neighbors on either side and neither one had any complaints whatsoever to having the dogs remain. Mr. Bonce said that, to his knowledge, the Animal Control Office had no record of any complaints filed against Ms. Glaser's dogs.

Laura Godfried, 2426 Byrd Lane, the neighbor to whom Ms. Glaser had referred in her presentation, stated that she and the applicant are not friends, having seen each other approximately 10 times in the last 5 months. She said the dogs that she heard barking did not belong to Ms. Glaser, but resided two doors away, where they have 4 to 5 animals in their yard. Ms. Godfried said that Mr. Herbst, who owns the property she rents, had attempted several time to purchase the house occupied by Ms. Glaser but was unable to do so because the owner is happy with the occupants; however, there are some people in the community who are not happy with the occupants and she believed they were responsible for the complaints. Ms. Godfried said her baby daughter was around Ms. Glaser's dogs and, at 11 months of age, they have never harmed her. She said the animals are well-kept; they had several parties in their yard over the summer and there was no complaint about any odor from the Glaser yard. She said the dogs also made her feel safer when she was home alone with her child.

There were no other speakers in support and Chairman DiGiulian called for speakers in opposition.

The following people spoke in opposition:

Vi Taylor, President of the Fair Haven Civic Association; Clay Cameron, 3243 Highland Lane, Fairfax, Virginia, owner of the home at 2504 Byrd Lane; Donald Thomas, 5933 Bangor Drive; and Ronald L. Carls, 6023 Rixey Drive.

Comments of those speaking in opposition were: The applicant is not a homeowner and the homeowner failed to respond when members of the neighborhood tried to contact him by Certified Mail; Mrs. Royson, across-the-street neighbor of the applicant, is ill and could not attend, but others spoke on her behalf, stating that she is the Treasurer of the Association, and her letter was read to the Board and incorporated into the record; referring to Mrs. Royson, it was said that, because of the barking dogs, she could not watch television and could not leave her doors open; the yard is not cleaned every other day, as claimed; the neighborhood is not a bad neighborhood, as claimed; the dogs are large and there are also other animals in the house...cats and birds, which should not be allowed because the applicant is a child care provider; regarding being alerted by the dogs when home alone, the applicant is seldom alone; the applicant should not be given a privilege not afforded to others in the community; the community is in the midst of a revitalization project by HUD and allowing a special permit of this type would be at odds with the proposed project; the house is too small to accommodate all of the animals and people using the space; the community consists of close to 300 homes and 300 extra dogs would be the result if everyone were allowed to exceed the limited number of dogs.

Mrs. Thonen asked the first speaker if she was sure the barking dogs were in the applicant's yard and not another neighbor's yard and she said she was sure because, when she or her husband deliver newsletters, the dogs run up and down the fence and bark.

Ms. Glaser came back to the podium for rebuttal. She said she had called Ms. Royston and asked her what would make her happy and keep her from considering the dogs a problem. She said Mrs. Royston told her not to allow the dogs in the front yard and to put up a 6-foot privacy fence on both sides of the house. Ms. Glaser said she spent $100 to put up the fencing to keep the dogs in the back yard and they no longer go out in the front yard. She said the mailman had remarked to her about her lovely dogs; he said it is the only house with dogs that he can go to without being barked at. Regarding her statement about the neighborhood not being safe, which was challenged by the opposing speakers, Ms. Glaser said she had been robbed in 1987, when her daughter was a year old, on a Sunday, in broad daylight, and her house was torn to pieces. Mr. and Mrs. Royston had been home at the time. Ms. Glaser went to their house and they said they had seen nothing. Ms. Glaser questioned her neighbors on both sides; one was not home and the other saw nothing.

Ms. Glaser said she does run a day care center and said all of her children are new, having started within the past month. She said she believed that, if the parents had any doubt

about the quality of care, they would not have placed their children in her care. She said the parents considered the dogs to be a joy, as well as the birds and cats. The birds and cats never leave the house.

Ms. Glaser said she had been before the Civic Association and they had agreed to stay out of the situation and were not even supposed to be present because she was the only one cited and there are people who have as many and more dogs than she has. Ms. Glaser said that, if her yard were as bad as the neighbors claim, she would not have passed the Health Department inspection in July, which was done in a surprise visit.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen moved to deny SP 94-V-016 for the reasons stated in the Resolution. Mr. Ribble seconded the motion.

Mr. Hammack said that in some ways the decision is close; however, two of the dogs are fairly large and the photographs show some impact upon the exterior of the property itself and the lawn shows some wear. He said the area of the residential lot is 8,700 square feet, which is substantially less than the 12,500 square feet required for 3 dogs, it is not even close.

The motion carried by a vote of 4-2. Mr. Dively and Mr. Kelley voted nay. Mr. Pammel was absent from the meeting.

Mr. Hammack moved to request that staff allow the applicant a reasonable amount of time to find a suitable home for the third dog before forcing the issue. Jane Kelsey, Chief, Special Permit and Variance Branch, advised that the Zoning Enforcement Branch was in another Division and staff would let them know of the Board's motion. Mr. Ribble seconded the motion which carried unanimously. Mr. Pammel was absent from the meeting.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-V-016 by KIMBERLY GLASER, under Section 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals to allow three dogs on a lot containing less than 12,500 square feet, on property located at 2500 Byrd Lane, Tax Map Reference 83-3((9))(7)13, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 20, 1994; 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-4.
3. The area of the lot is approximately 8,778 square feet.
4. This type of decision is always difficult because citizens love their animals; however, in consideration of the pictures of the yard, the number of dogs, cats and birds, and the child care aspect, the impact is too great for such a small house and lot.
5. The Ordinance clearly states that "...two dogs only..." are allowed on a lot of this size.
6. No information came forth to indicate that the application should be approved.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 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 4-2. Mr. Dively and Mr. Kelley voted nay. Mr. Pammel was absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 28, 1994.

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8:00 P.M. WILLIAM A. & MARY L. OWENS/EASTWOOD DEVELOPMENT CO., VC 94-P-078 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of two lots into four lots, proposed Lots 7B and 8B having lot widths of 6.0 ft. Located at 3909-3913 Skyview Ln. on approx. 4.02 ac. of land zoned R-1. Providence District. Tax Map 58-4 ((9)) 7 and 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. H. Kendrick Sanders, Esquire, 3905 Railroad Avenue, Fairfax, Virginia, attorney for the applicant, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the applicant was requesting variances of 144.0 feet for two of the four lots involved in the subdivision. She said the site is currently developed with a single family detached dwelling; surrounding lots to the north, east, south and west are also zoned R-1 and developed with single family detached dwellings; also to the west is Lot 50 which is developed with the Fairfax Y.M.C.A. Ms. Langdon said it was staff's judgement that 8 of the 9 required standards for variances had not been met, as outlined in the staff report. She said that the applicant had not addressed several of staff's issues also outlined in the staff report; staff had requested that the layout of the site be redesigned to save several large trees in the center of the property and that proposed limits of grading and clearing be delineated. Ms. Langdon said that, though the applicant had stated that a grading plan would be submitted to the Urban Forestry Office, that does not address preservation of the large trees on site which cannot be saved as the site is now designed. She said staff also believed that the applicant had not demonstrated that there is adequate room on the site to provide stormwater management Best Management Practices, if required by the Department of Environmental Management (DEM). If DEM requires these facilities on site, the applicant may have to submit an amendment to the application. Ms. Langdon said that, though the Office of Transportation had requested the extension of Okla Drive onto the subject property, staff had not included that request as a Development Condition. Proposed Development Condition 2 requires only that the 3 proposed driveways be consolidated to provide one access to Skyview Lane.

Mr. Sanders noted that he previously had submitted letters of support to the Clerk, and Chairman DiGiulian acknowledged that the Board was in receipt of them; Mr. Sanders submitted 3 additional letters of support. He said he believed that many of the people who had written letters were present and that the rather large number of people present were supportive of the applicant's proposal.

Mr. Sanders said that, after reviewing the staff report, he filed a supplemental submission. He said the proposal included two pieces of property, Lots 7 and 8, both owned by Mr. and Mrs. Owens, who were present, as was Eastwood Development's Peter Tamburello who would build the proposed homes on the site. Mr. Sanders said each parcel has about 180 feet of frontage; theoretically, a variance application could have been filed on each parcel and it would be a classic case of a long, narrow lot needing a variance to stack a pipestem lot on the rear of each one. He said that there is a pipestem lot immediately to the rear of the property, Lot 12B; however, the property is owned by Mr. and Mrs. Owens who occupy the home on the one lot. Mr. Sanders said that, in 1985, a rezoning application was filed on the property that originally showed 8 dwellings which conformed to the specific recommendations of the Comprehensive Plan, 1-2 units per acre, having been down-planned from a previous, denser designation. He said the plan was eventually amended to specify 7 dwelling units on the site. Mr. Sanders said that the rezoning application was denied by the Board of Supervisors and the record reflects that the reason was primarily that the neighbors on Pixie Court, immediately to the north, vehemently objected to a public street being extended across Okla Drive into the site, and constructing that street is still the desire of VDOT at this point. He said the reason the neighbors object is obviously because the homes on Pixie Court would then have a street in both their front and back yards. The lot on the corner of Pixie Court would then have a street on 3 sides of the property. Mr. Sanders said another reason the neighbors objected to the street was that it provided a large swathe of impervious surface in the area; there also was objection to the number of homes, even though it fell within the range of the Comprehensive Plan.

Mr. Sanders further stated that the Owens ultimately were left with the property as previously described and, knowing what the neighborhood concerns historically had been related to development on the site, the builder worked closely with the neighborhood to come up with a plan that would address the concerns and issues of environment, the public street, and placing homesites towards Skyview Lane, with the two pipestem lots to the rear; but the neighbors to the rear preferred having the homes moved forward as much as possible, away from their property. Mr. Sanders said he believed they had satisfied the concerns of the neighbors to the rear and the neighbors on Pixie Court. He said this is not a case of a pipestem variance application being used artificially to "shoehorn" inappropriate lots into a site and pointed out that the lots are comparatively larger than others in the community, ranging from 51,000 to 52,000 square feet, down to the two at 36,000 feet.

Mr. Sanders referenced his supplemental statement and addressed the soils issue which was raised in the staff report and said he had provided a soils map and was somewhat surprised at the generalized statements by staff that there is some sort of soils problem at the site. He said they did not know of any; the site has silt loam soil which is rated "good" for building

and does not require a geotechnical study under DEM requirements. Mr. Sanders said he believed the soils issue may have been raised because the property had been farmed by the Owens; however, he said the previously plowed and furrowed fields would be stabilized and grass and shrubbery would be planted, which would solve any problem. He said the engineers had found no runoff problems or problems of that nature. Mr. Sanders further said they would like the driveway from Lot 8A to be combined with the pipestem drive for Lots 8B and 7B, creating only two entrances, but leaving the driveway for 7A with some flexibility because the developer had determined that it may be best to try to preserve the existing Owens' home and just remodel and expand it. He requested that a condition be added to provide for the alternatives of building a new home or expanding the existing home.

Mrs. Thonen asked to have the tax map but back on the screen and a discussion ensued between her and Mr. Sanders about the existence of dwellings on adjacent lots.

Mr. Dively asked Mr. Sanders to address the issue of undue hardship and reasonable use, stating that it appeared that two lots could be reasonably used. Mr. Sanders said they disagreed with that. He said he believed the correct reading of the State law was that the denial of the variance would unreasonably restrict the utilization of the property. Mr. Sanders referenced his earlier preface to his comments when he stated that the alternative to utilization of the property had been foreclosed; that alternative was: The property is planned for 1-2 units per acre; there would be a presumption that, all things being equal, this property could develop at up to 8 houses per acre; attempts to develop through the rezoning process failed; absent the variance, the applicant would be left with two houses. He said he did not believe that restricting this property to 2 houses, each on a 2-acre lot which would be the largest in the entire neighborhood, would be giving the owner reasonable utilization of the land; he believed the owner would be unreasonably restricted and the only practical approach would be through the pipestem variation.

Mr. Ribble asked Mr. Sanders how this plan was environmentally better and Mr. Sanders said that was one of the three issues they had to address. He said that, if a public street was forced in to serve four homes, there would be a 52-foot right-of-way with huge swathes of asphalt; the calculations by their engineers of stormwater runoff shows it would go up geometrically because the site is small and the street would be large; in addition, the area requiring grading and clearing would be monstrous; also, it is not fair to put a street behind the residents who live on Pixie Court, although VDOT would not allow it anywhere else.

The following people spoke in support of the application: J. R. Ellison, 3828 Chantel Lane; George Caldwell, 3306 Parkside Terrace; and Emmett E. Forsyth, 3901 Skyview Lane. The comments made by the people in support are as follows: They had lived in the area for many years; everyone who moved into the area knew that the site would be developed at some future time; the applicants' proposed plan makes sense and the VDOT proposal does not make sense; the trees that staff wants to save are dying; other construction in the area places houses extremely close together and the proposed homes will be much further apart; a neighbor across from the Owens property has two driveways; every other house in the development has a driveway, so the Owens should be entitled to a driveway per house; neighbors are concerned about attempts to stop this particular development.

Mr. Dively referenced a possible incorrect statement in the forms for variance requirements. Ms. Langdon advised that the language on the forms came directly from the Fairfax County Zoning Ordinance. Mr. Dively asked whether the State Statute had been amended since the County Ordinance was put into effect and whether the County Ordinance had been updated when the State Code was amended. Jane Kelsey, Chief, Special Permit and Variance Branch, advised that the current County Zoning Ordinance was adopted in 1978; shortly after that time, Sect. 18-404 was amended to bring it more in line with the State Code and there is one word in the County Zoning Ordinance, which may not be specifically spelled out in the State Code, and that is the word "all" in 6a; however, it was the belief of the County Attorney's Office, as borne out by recent Virginia Supreme Court cases, that the absence of a variance would have to preclude all reasonable use of the land before the applicant could meet the standards.

Mr. Hammack noted that the County Attorney's Office had written the motions which the Board of Zoning Appeals used and they would be properly stated if an applicant were to appeal a decision. Ms. Kelsey noted that several of the Board's decisions had been litigated when they denied a variance request and the decisions had been upheld in each case.

Mr. Sanders said that the County Ordinance does not conform to the enabling legislation of the State in this regard and never has. He said, however, that the issue of the word "all" was not the only issue on which the application would be decided and Mr. Dively said he believed the issue was important.

Ardith Lewis Cavalla, 3908 Skyview Lane, directly across the street from the Owens' property, spoke in favor of the construction, but said that she had been diagnosed by 7 different doctors as having hydrocarbon poisoning as a possible result of contamination of her property by the Pickett tank farm and she requested that testing be done on the Owens site to check on possible contamination. Her attorney, Mark Hayes, 912 Prince Street, Alexandria, Virginia, reiterated that there was no objection to the project; the information they had was limited and it showed just a potential for an elevated hydrocarbon product on the property; they could not say that it affects any other property and they could not attribute it directly or indirectly to anything. He said they raised the issue to the extent that it would be appropriate to have the subject property checked.

Stan Leroy, 3826 Skyview Lane, submitted a written presentation which was incorporated by reference into the motion later made by Mr. Ribble. Highlights of his presentation, were: The history of the case; paperwork generated between the residents and the Planning Commission and the presentation to the Board of Supervisors of RZ 89-P-017 which lasted from 2/89 to 1/91 and was denied because of the placement of the extension of Okla Drive and the proposed number of dwelling units per acre. The first concern was addressed by Comprehensive Plan changes a couple of years ago, but the second concern raised by staff found the residents still vehemently opposed to increased traffic on the existing substandard Okla Drive; extending Okla Drive would create a peninsula on the Forsyth property, not generally recommended by the County; an alternate plan was submitted by the residents to aid the developer in arriving at some compromise if a road were required, placing the roadwork on the south side of the property, rather than extending Okla Drive. Mr. Leroy pointed out the advantages of the alternate Eastwood plan, stating that the pipestem plan has great advantages: There would be no property bounded by roads on three sides, limited increase of driveways, no additional traffic onto Okla Drive, minimum impervious surface to cause runoff. He noted that any curved road on the property, such as the staff report offered in opposition, would create irregular-shaped lots. In that sense, he said, the pipestem is a better plan because it affords some regularity in lot shape.

Additional speakers in favor of the application were: Margaret Sharkey, 9035 Pixie Court; Charlotte Hossmaster, 3812 Skyview Lane; Fran Wallingford, Zoning and Land Use Chair, Mantua Citizens Association. Potentially favorable results of the proposed plan were stated to be: Improvement of stormwater management and sedimentation runoff created by the applicant's proposal would result in less erosion; the proposal is tasteful and well-thought-out; maximum safety and simplicity would be achieved by the applicant's proposal versus County staff's complicated and problematic recommendations; some of the stormwater runoff attributed to the applicant's property might be caused by underground springs on other people's property; the applicant's plan will maintain the current R-1 zoning and is supported by the Mantua Citizens Association; the irregular shape of the proposed lots does not adversely impact the community and can probably be landscaped to mitigate configuration; the Comprehensive Plan does not list any requirements for lot shapes; concurrence with Mr. Leroy's statements was expressed; the property will be in better shape after the applicant's plan is implemented and plants and shrubbery will improve the current situation;

It was noted by the speakers that stormwater runoff from the subject property onto adjacent properties could be eliminated through development; many adjacent properties are wooded and have streams with major stream-bank erosion and loss of trees due to the impact of upstream development; the staff report states that runoff will eventually be channeled into Crooks Branch but the environmental assessment did not address the conditions of Crooks Branch and what, if any, impact would result.

There were no speakers in opposition and Chairman DiGiulian closed the public hearing.

Mr. Ribble referenced the comments regarding soil contamination and air quality. Chairman DiGiulian reopened the hearing and asked Mr. Sanders if he wished to respond to any of the comments.

Mr. Sanders said they had investigated the oil spill and hydrocarbon issue and nothing was found on the subject property; however, if any problem did exist, it would be uncovered in site review and they would not be before the Board if they knew of such a problem.

Further, Mr. Sanders referenced the Proposed Development Conditions and, because the plat shows very specific house locations and driveways and is almost a site plan as drawn, asked if some provision could be made in the conditions in the event that minor modifications are necessary, so that the applicant would not be required to come before the Board again if the application is approved.

Mr. Ribble moved to grant VC 94-P-078 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions, as modified. Condition 1 - the last sentence shall read: "...shall be in substantial conformance with the plat submitted, with only possible minor engineering modifications as qualified by these Development Conditions." Condition 2 shall be deleted in its entirety and appropriate renumbering of conditions shall result. Condition 6 shall become 5 and shall remain as stated, except for the addition of "...unless a waiver is granted." A new condition shall be added, numbered Condition 6, and shall read: "This development may provide a plan to preserve and expand the existing home located on proposed Lot 7A."

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-078 by WILLIAM A. & MARY L. OWENS/EASTWOOD DEVELOPMENT CO., under Section 18-401 of the Zoning Ordinance to permit subdivision of two lots into four lots, proposed Lots 7B and 8B having lot widths of 6.0 ft., on property located at 3909-3913 Skyview Lane, Tax Map Reference 58-4((9))7 and 8, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 20, 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 approximately 4.02 acres.
4. The Board was satisfied with testimony relating to environmental and public street issues.
5. Testimony indicated that the plan was in harmony with the neighborhood.
6. To develop the property in any other way would adversely impact adjacent property.
7. Testimony regarding the advantages of the plan, given by Stanley Leroy and submitted in writing, is incorporated by reference.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Lots 7 and 8 as shown on the plat prepared by Huntley, Nyce & Associates, Ltd., dated April 18, 1994, revised through June 8, 1994. All development shall be in substantial conformance with the plat submitted, with only possible minor engineering modifications as qualified by these Development Conditions.

2. The applicant shall dedicate in fee simple to the Board of Supervisors 26 feet of right-of-way from the centerline of Skyview Lane for public street purposes upon request or at time of subdivision review, whichever occurs first. Ancillary easements shall be provided upon demand if necessary to facilitate any future improvements to Skyview Lane.

3. Limits of clearing and grading shall be the minimum necessary to provide for the development as determined by the Urban Forestry Branch, Department of Environmental Management

4. Prior to subdivision plat approval, a tree save plan showing limits of clearing and grading for the proposed dwellings and reflecting efforts to preserve existing vegetation to the maximum extent possible, in particular the individual tulip trees, walnuts and hickory, if deemed healthy by the Urban Forestry Branch, shall be reviewed and approved by the Urban Forestry Branch, DEM.

5. Stormwater Management/Best Management Practices and adequate outfall shall be provided to the satisfaction of Site Review Branch, DEM, unless a waiver is granted.

6. This development may provide a plan to preserve and expand the existing home located on proposed Lot 7A.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mrs. Thonen seconded the motion which carried by a vote of 5-0-1; Mr. Hammack abstained. Mr. Pammel was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on September 28, 1994. This date shall be deemed to be the final approval date of this variance.

Mr. Hammack abstained because of his relationship with the Mantua Citizens Association.

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Page 391, September 20, 1994, (Tape 2), Action Item:

Request for Reconsideration
F. Shield McCandlish & John Howze, Trustees
VC 94-P-075 and VC 94-P-076
Heard and granted September 13, 1994

The Board was in receipt of a request for reconsideration from Jo Ann and Frazier Worley. Mrs. Thonen moved to deny the request for lack of sufficient basis. Mr. Hammack seconded the motion, which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 391, September 20, 1994, (Tape 2), Action Item:

Approval of Resolutions from September 13, 1994 Hearing

Mrs. Thonen so moved and the motion carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 391, September 20, 1994, (Tape 2), Action Item:

Approval of Minutes from August 2, 1994

Mrs. Thonen so moved and the motion carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 391, September 20, 1994, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Capital Kids, Inc., SP 94-S-047

Mr. Dively moved to deny this request because of the Board's heavy schedule. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 391, September 20, 1994, (Tape 2), Action Item:

Request for Out-of-Turn Hearing
Patricia Thompson, VC 94-M-122

Mr. Dively moved to deny this request because of the Board's heavy schedule. Mr. Ribble seconded the motion which carried by a vote of 6-0. Mr. Pammel was absent from the meeting.

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Page 392, September 20, 1994, (Tape 2), Action Item:

Approval of Meeting Dates for 1995

Mrs. Thonen moved to approve the 1995 schedule. The Board unanimously voted to approve. Mr. Pammel was absent from the meeting.

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As there was no other business to come before the Board, the meeting was adjourned at 10:00 p.m.

Geri B. Bepko
Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John F. Ribble III
John DiGiuliani, Chairman
Board of Zoning Appeals

SUBMITTED: October 25, 1994

APPROVED: November 1, 1994

* Note: No Page 393-394

393 + 394

are missing

were not used

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394

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on September 27, 1994. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mary Thonen was absent from the meting.

Chairman DiGiulian called the meeting to order at 9:07 a.m. and Mr. Pammel 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 395, September 27, 1994, (Tape 1), Scheduled case of:

9:00 A.M. COMBINED PROPERTIES LIMITED PARTNERSHIP, VC 94-M-056 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing parking spaces to remain less than 10.0 ft. from front lot line. Located at 6200 Little River Trnpk. on approx. 22.65 ac. of land zoned C-6 and HC. Mason District. Tax Map 72-4 ((1)) 3.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's attorney, William Thomas, replied that it was.

Lorrie Kirst, Staff Coordinator with the Special Exception and Rezoning Branch, presented the staff report and said the subject property is the existing plaza at Landmark Shopping Center, which is located west of the Little River Turnpike and I-395 interchange, zoned C-6. The shopping center is located on both sides of Beauregard Street with commercial uses generally located to the south and west; high rise apartments, commercial uses, and a post office are located to the east, which is in the City of Alexandria; a church, several vacant parcels, and an existing residential subdivision zoned R-3 are located to the north. Ms. Kirst said the shopping center was originally built in the early 1960's and has undergone several renovations. In July, the Board of Supervisors approved a special exception application which permitted some additional modifications, with one condition requiring the applicant to obtain variance approval for parking spaces located 6.5 to 0 feet from the front lot line to remain adjacent to Franconia Road and Beauregard Street. Section 11-102 of the Zoning Ordinance requires a minimum 10 foot setback between right-of-way and parking spaces. Ms. Kirst pointed out that the BZA cannot approve parking spaces which are located in the Virginia Department of Transportation (VDOT) right-of-way.

Mr. Dively asked how long the parking spaces had been on the site. Ms. Kirst deferred to the applicant's attorney.

William Thomas, with the law firm of Fagelson, Schonberger, Payne & Daichmiester, 1733 King Street, Suite 300, Alexandria, Virginia, said the parking spaces in question have been in the same configuration since the building of the shopping center in the 1960's. Mr. Thomas added that the special exception heard by the Board of Supervisors in July was primarily to improve the quality of the shopping center. He said the seven parking spaces in question were constructed in the 1960's and are located within the 10 foot setback, which is required under the parking ordinance. Mr. Thomas noted there are parking spaces located in a triangle section of land that is detached from the shopping center and the surrounding neighbors and the Board of Supervisors have requested that the parking spaces be removed and landscaping be provided.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 94-M-056 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 20, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-056 by COMBINED PROPERTIES LIMITED PARTNERSHIP, under Section 18-401 of the Zoning Ordinance to permit existing parking spaces to remain less than 10.0 feet from front lot line, on property located at 6200 Little River Turnpike, Tax Map Reference 72-4((1))3, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 27, 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-6 and HC.
3. The area of the lot is 22.65 acres.

4. The applicant has satisfied 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 parking spaces shown on the plat, with the exception of those located within the Virginia Department of Transportation's rights-of-way of Beauregard Street and Lincolnia Road, prepared by Walter L. Phillips dated August 8, 1994 submitted with this application and is not transferable to other land.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble 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 5, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 396 September 27, 1994, (Tape 1), Scheduled case of:

9:00 A.M. HENRY VAN LOOY, VC 94-Y-083 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 12.3 ft. from side lot line such that side yards total 18.3 ft. Located at 3012 Gatepost Ln. on approx. 9,759 sq. ft. of land zoned PDH-2. Sully District. Tax Map 35-2 ((8)) (7) 12.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's daughter, Elise Van Looy, replied that it was.

David Hunter, Staff Coordinator, presented the staff report and said the subject property is zoned PDH-2 and is located west of Gatepost Lane and south of West Ox Road. The surrounding lots in the Franklin Farms subdivision are also zoned PDH-2 and are developed with single-family detached dwellings. The variance request resulted from the applicant's proposal to construct a garage addition 12.3 feet from the northern side lot line such that side yards total 18.3 feet. The Zoning Ordinance requires a minimum side yard of 8 feet and a total minimum side yard of 24 feet.

Mr. Dively asked if the addition could have been built by right when the house was constructed. Jane Kelsey, Chief, Special Permit and Variance Branch, said if the addition had been shown on the approved development plan, a variance would not be needed.

Elise Van Looy, 9908 Fairfax Square, Fairfax, Virginia, said when her father bought the house in 1989 he raised the question of a garage and he was assured by the owner and the real estate agent that there would not be a problem with constructing a garage at a later date. She said all the neighbors have either a single or double car garage.

Ms. Kelsey pointed out that Ms. Van Looy was not on the affidavit. The BZA did not believe there was a problem since the speaker was the applicant's daughter.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 94-Y-083 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 20, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-Y-083 by HENRY VAN LOOY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 12.3 feet from side lot line such that side yards total 18.3 feet, on property located at 3012 Gatepost Lane, Tax Map Reference 35-2((8))(7)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 September 27, 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 PDH-2.
3. The area of the lot is 9,759 square feet.
4. This particular case is unusual in that the house is situated on the lot at this time 6.0 feet from the southern lot line, and the applicants are requesting a variance 12.0 feet from the northern lot line.
5. It is a clear cut example of a variance request justification.
6. The house is located in an unusual fashion on the lot and the lot is irregularly shaped.
7. The applicant has presented testimony on this date that he complies with the specified criteria that is the basis for granting a variance.
8. The garage could have been built on the property without a variance had it been shown on the development plan for the PDH-2 zoning when it was approved.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

Page 398, September 27, 1994, (Tape 1), HENRY VAN LOOY, VC 94-Y-083, continued from Page 397)

7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specified addition shown on the plat prepared by Coldwell, Sikes & Almirall, dated May 16, 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. 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 with Mr. Ribble 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 5, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 398, September 27, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT MONTGOMERY, VC 94-Y-082 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.41 ft. from rear lot line. Located at 12823 Willow Glen Ct. on approx. 23,709 sq. ft. of land zoned PDH-2 and WS. Sully District. Tax Map 35-3 ((9)) 415.

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, Mr. Montgomery, replied that it was.

Don Heine, Staff Coordinator, presented the staff report and said the 23,709 square foot property is located on the southwest side of Willow Glen Court within the Franklin Farm Subdivision. The subject property adjoins a Transcontinental Gas Pipeline Easement on the north and west and a single family detached dwelling on the east, all of which are in the PDH-2 District. On the south, there is a vacant lot in the R-1 District. The applicant was requesting a variance to allow a screened porch addition and deck to be located 10.41 feet from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, a variance was requested for 14.59 feet.

Robert H. Montgomery, 12823 Willow Glen Court, Herndon, Virginia, said he bought the property in 1984 and noted that the house is sited within 25 feet of the rear lot line. Mr. Montgomery said he was proposing to construct a screened porch and deck to the rear of the house which he believed would enhance the property. He submitted an architectural drawing depicting the proposed addition to the BZA and noted there is open space to the rear of his property belonging to the Franklin Farms Foundation, which has no objections to the request.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant VC 94-Y-082 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 20, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-Y-082 by ROBERT MONTGOMERY, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.41 feet from rear lot line, on property located at 12823 Willow Glen Court, Tax Map Reference 35-3((9))415, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 27, 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 PDH-2 and WS.
3. The area of the lot is 23,709 square feet.
4. The applicant has met the required standards, in particular there is an easement on one side of the lot.
5. The lot is irregularly shaped.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific screened porch addition and deck shown on the plat prepared by Susan Woodward Notkins, AIA, dated January 23, 1992, revised June 6, 1994, 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 has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble 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 5, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 399, September 27, 1994, (Tape 1), Scheduled case of:

9:00 A.M. RICHARD LUBOW, VC 94-H-081 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 21.0 ft. Located at 12630 Holkein Dr. on approx. 10,849 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 25-2 ((6)) 601.

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, Mr. Lubow, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the 10,849 square foot property is located on Holkein Drive in the Fox Mill Estates. The subject property and the surrounding lots are zoned R-2 (Cluster) and developed with single-family detached dwellings. Ms. Langdon said the variance request resulted from the applicant's proposal to construct a garage addition with a second story bedroom to be located such that total side yards equal 21 feet. A minimum side yard of 8 feet with total side yards of 24 feet is required in the R-2 (Cluster) zoning district; therefore, a total side yard variance of 3 feet was requested. She said the existing dwelling on Lot 600 is located approximately 18 feet from the shared lot line.

Richard E. Lubow, 12630 Holkein Drive, Herndon, Virginia, referenced the architectural drawing contained in the BZA's package and pointed out that only the northwest corner of the addition required the variance.

Mr. Hammack asked if bedrooms would be added over the existing garage and the addition. Mr. Lubow said he anticipated adding another bedroom over the garage at a later date.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 94-H-081 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 20, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-H-081 by RICHARD LUBOW, under Section 18-401 of the Zoning Ordinance to permit construction of addition such that side yards total 21.0 feet, on property located at 12630 Holkein Drive, Tax Map Reference 25-2((6))601, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 27, 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 10,849 square feet.
4. The applicant has met the standards required for the granting of a variance, in particular the narrowness of the lot and the placement of the house on the lot.
5. Only a small portion of the addition requires the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Arencibia Architects Inc., dated May 25, 1994, 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. 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 5, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 401, September 27, 1994, (Tape 1), Scheduled case of:

9:30 A.M. LUCK STONE CORPORATION, SPA 81-S-064-6 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, processing, sales and accessory uses to permit building addition, change in hours of operation and stockpiling. Located at 15717 Lee Hwy. on approx. 212.47 ac. of land zoned R-C, WS and NR. Sully District. Tax Map 64-1 ((1)) 1, 4, 13, 14, 15, pt. 17, pt. 33, pt. 38, pt. 39; 64-1 ((4)) 7A. (DEFERRED TO DETERMINE IF ZO AMENDMENT REQUIRED TO GRANT RECYCLING USE IN RC DISTRICTS)

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, Roy Spence, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report and said the public hearing for this application was held on August 2, 1994. The request was to permit a building addition, change in hours of operation, and stockpiling and recycling of concrete products. The BZA granted the application in part by approving the request for building addition and change in hours of operation. A copy of the approved resolution and development conditions was included as Attachment 2 of the staff report addendum.

The BZA deferred decision on the portion of the request relating to stockpiling and recycling of concrete products and requested that the Zoning Administrator reconsider her previous decision that recycling is not allowed on this R-C and NR zoned property. The BZA also requested staff to investigate the environmental issues which may occur in connection with the proposed recycling and determine where recycling is currently taking place in the County. Ms. Langdon called the BZA's attention to Appendix 5 of the addendum which listed the recycling businesses located within the County and noted that all private recycling businesses are located within the I-5 and I-6 Districts, which is required by the Zoning Ordinance. She said attached as Appendix 3 is a memorandum from the Zoning Administrator wherein she had determined that, based on the finding that recycling of spent concrete products has become an accepted component of quarry operations, and given the specifics of the proposed recycling by the applicant, this recycling may be permitted with BZA approval as an accessory use to the quarry operation. Ms. Langdon said in light of the Zoning Administrator's determination that the proposal may be considered an accessory use to the quarry, locating the stockpile of concrete for recycling on Parcel 33 may be determined consistent with the Comprehensive Plan.

However, Ms. Langdon said environmental issues have been raised related to the location of the concrete stockpile on Parcel 13, which has not been addressed by the applicant. She said these issues involved potential noise impacts on the adjacent residential area located off Bull Run Post Office Road, contaminants contained in the concrete including construction debris and vehicle pollutants, and whether the runoff from the stockpile will be controlled by Stormwater Best Management Practices (BMP). Ms. Langdon said staff believed that the relocation of the stockpile for concrete to the northwest section of Parcel 17 could address these issues. The proposed location on Parcel 17 is adjacent to Lee Highway and an entrance to a concrete batching plant. Several large stockpiles are presently located in this area. Large berms and mature vegetation are already in place to screen the use from Lee Highway and residential lots west of the batching plant. In addition, runoff from the stockpile area has been reviewed by the Department of Environmental Management (DEM) under previous special permit applications and it has been determined that the runoff is controlled by BMP facilities. Ms. Langdon said staff had included revised Proposed Development Conditions attached as Appendix 1 to the Addendum, with Conditions 12 and 13 addressing the location of the stockpile and the Zoning Administrator's determination.

Mr. Dively asked what prompted the Zoning Administrator to change her determination. Ms. Langdon said she believed this took place following discussions between the Zoning Administrator and the applicant, and based on the fact that similar uses are being allowed in other jurisdictions. She pointed out that the Zoning Administrator had indicated that this determination dealt with only the recycling of the spent concrete obtained from customers of the quarry.

In response to a question from Mr. Pammel, Ms. Langdon pointed out the location that staff was recommending for the stockpiling on the viewgraph.

Roy Spence, 7297-A Lee Highway, Falls Church, Virginia, said he had no objections to Condition 13 and the majority of Condition 12. He objected to the location staff was proposing for the stockpiling and pointed out that the location proposed by the applicant was the most isolated. (Mr. Spence used the viewgraph to point out the location proposed by the applicant.)

Mr. Dively asked how he was proposing to rewrite Condition 12. Mr. Spence suggested deleting Condition 12 and allow the applicant to put the stockpiling in the location that he chose.

Mr. Spence said the homeowner who would be most impacted by staff's suggestion is a long-term resident who had sold the parcel to the applicant. He did not believe there would be any pollution from the stockpiling and noted that the applicant must meet the BMP's for the entire site.

Mr. Hammack asked if the plat depicted the location proposed by the applicant and Mr. Spence said that was correct. He added there would not be any permanent equipment associated with the stockpiling.

In response to a question from Mr. Hammack regarding what type of pollutants staff was concerned with, Ms. Langdon said staff was particularly concerned with the vehicular pollutants that come off the concrete since it will be removed from roads.

Mr. Hammack discussed with staff if there were similar operations being conducted in Fairfax County and Ms. Langdon said not at the present time.

Mr. Spence said the area proposed by the applicant will be enclosed by a berm with a sediment pond. He said the hauling will be done on interior roads and will be dust controlled.

Following further discussion between Mr. Hammack and staff regarding the environmental concerns, Mr. Spence said the applicant would have no objections to the BZA adding a condition addressing the pollutant issue.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant SPA 81-S-064-6 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 20, 1994. He deleted the first sentence of Condition Number 12.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 81-S-064-6 by LUCK STONE CORPORATION, under Section 3-C03 of the Zoning Ordinance to amend SP 81-S-064 for stone quarrying, crushing, processing, sales and accessory use to permit building addition, change in hours of operation and stockpiling (**THIS RESOLUTION ADDRESSES THE STOCKPILING ISSUE ONLY; CONDITIONS 12 AND 13 WERE ADDED**), on property located at 15717 Lee Highway, Tax Map Reference 64-1((1))1, 4, 13, 14, 15, pt. 17, pt. 33, pt. 38, pt. 39; 64-1((4))7A, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 27, 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, WS, and NR.
3. The area of the lot is 212.47 acres.
4. The Zoning Administrator has determined that the use is a customary usage that goes on at businesses of this sort.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Section 8-105 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This special permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Patton Harris Rust and Associates and dated April 1992, revised through June 1994, as qualified by these development conditions.

3. A copy of this Special Permit and the Non-Residential Use Permit SHALL BE POSTED in a conspicuous place on the property of the use and be made available to all departments of the County of Fairfax during the hours of operation of the permitted use.

4. A grading plan for the 28.97 acre expansion area shall be submitted to DEM for review and approval. This grading plan shall address the erosion and sedimentation requirements contained in Sect. 2-603 of the Zoning Ordinance.

5. A landscape plan shall be submitted to the Urban Forestry Branch, DEM for review and approval for the 28.97 acre expansion area. This landscape plan shall provide for the following screening and landscaping on the berm located along the periphery of the expansion area.

   For the 400 foot long portion of the berm which directly abuts Bull Run Post Office Road, two (2) rows of staggered deciduous and evergreen trees planted ten feet on center shall be provided. Evergreen trees used to fulfill this requirement shall have a planted height of six (6) feet, and deciduous trees used to fulfill this requirement shall have a minimum caliper of two (2) inches at the time of planting. Specific species and location of plantings shall be as determined by the Urban Forestry Branch, DEM and shall reflect attempts to ensure continuity with the plantings on the existing berms north of the expansion area. The remainder of the

berm shall be landscaped with natural grasses and with seedlings of a species and density to be determined by the Urban Forestry Branch, DEM. To ensure compatibility with surrounding low density development, emphasis shall be placed on using native species to fulfill this requirement.

6. A landscape plan shall be submitted to the Urban Forestry Branch, DEM for review and approval for the addition of shade trees adjacent to the entrance on the south side of Route 29 and evergreen trees on the eastern side of the entrance. These trees shall be a minimum of 6.0 feet in height at the time of planting and shall serve to soften the visual impact of the use. The number and type of trees shall be determined by the Urban Forestry Branch.

7. Ensure that the existing siltation pond located adjacent to the stockpiling operation on the south side of Lee Highway is designed to release runoff from the site in accordance with Best Management Practice (BMP) standards as determined by the Director of the Department of Environmental Management. The agreements reflected in the attached letter of September 25, 1992 may be used to fulfill this requirement as may be acceptable to DEM.

8. Special Permit Amendment, SPA 81-S-064-5, is granted for a period of five (5) years from the date of approval, December 9, 1992, with annual review by the Zoning Administrator or designee in accordance with Sect. 8-104 of the Zoning Ordinance.

9. The sales, loading and hauling of crushed stone shall be permitted 24 hours per day for not more than 100 week nights per year, Monday through Saturday. All activities between the hours of 6:00 p.m. and 7:00 a.m. associated with this use shall be confined to the south side of Lee Highway.

10. Strobe lights shall be used in place of back-up beepers on loaders during nighttime operating hours.

11. To accommodate the planned widening of Lee Highway, right-of-way shall be conveyed to the Board of Supervisors in a manner which provides a minimum uniform width of 112 feet along the site's entire frontage of Lee Highway. This right-of-way shall be dedicated in fee simple at such time as a road project requiring the right-of-way is designed and funded by the Virginia Department of Transportation (VDOT) or Fairfax County. Based on final design of future improvements to Lee Highway, or the design and or implementation of public improvements on adjoining property to the west, the required right-of-way dedication may be increased as may be shown to be necessary by the Office of Transportation in an amount not to exceed 158 feet.

    If shown to be necessary, the amount of any additional right-of-way over 112 feet shall be determined by the BZA in conjunction with the annual review of this use required by Sect. 8-104 of the Zoning Ordinance. Notwithstanding any notes on page 2 of SPA 81-S-064-1, in order to screen the quarry from Lee Highway all existing vegetation which lies north of the ultimate right-of-way line and associated improvements to Lee Highway shall be preserved to the maximum extent possible.

12. The applicant shall screen the recyclable concrete for mud, dirt, trash and other construction debris. No loads shall be accepted if found to be contaminated with the aforementioned material.

13. Stockpiling and recycling of concrete on this site shall be approved for spent concrete obtained only from customers of the quarry and hauled by the same vehicles which deliver stone products to the customer.

14. All landscaping and screening required in previous approvals of this use shall be maintained as follows:

    Landscaping and screening shall be maintained in accordance with the landscape plan submitted to the Urban Forestry Branch in conjunction with SPA 81-S-064-2 to ensure the use is adequately screened from the adjacent residentially zoned, planned, and used properties and Lee Highway.

    The existing vegetation between the access road to the asphalt plant and the proposed maintenance building shall be maintained at the level of Transitional Screening 3.

    To ensure quarry operations on the north side of Lee Highway are adequately screened, all existing vegetation south of the existing quarry pit shall be preserved and limits of clearing and grading shall not extend south of the existing quarry pit.

15. The total cost of enforcement services shall be absorbed by the applicant. As monitoring equipment is shared between Luck Stone Quarry and Vulcan Quarry, the applicant shall be responsible for 50% of the cost of the maintenance of all seismographic and noise monitoring equipment and all air quality monitoring equipment required in previous approvals of this use.

16. In order to ensure protection of the EQC, in the north pit, the limits of excavation shall not extend beyond the boundary of the EQC as delineated in accordance with the criteria contained in the Comprehensive Plan. Further, there shall be no clearing and grading and no structures located within the area designated as an EQC.

17. Berms on the portions of the site governed by the previous approval of SPA 81-S-064-4, shall be twenty (20) feet in height with the exception of the berm constructed to the south of Lee Highway which shall be allowed to remain at its present height in order to allow the adjacent property to retain its view of the Bull Run Mountains. The berms shall be landscaped with plantings in accordance with the landscape plan submitted and approved by the Urban Forestry Branch in SPA 82-V-064-2.

18. The design of the berm along the northern lot line on the north side of Rt. 29 shall be maintained so as to permit uninterrupted flow from drainage areas off-site to the existing pond on site.

19. There will be no excavation access to and from the north excavation other than by the tunnel under Route 29-211.

20. In accordance with the provisions of Sect. 8-103 of the Zoning Ordinance, a bond of $2,000 per acre for the 134 unrestored acres shall be continued for the duration of this mining operation. Upon amendment or renewal of this application any agreements or performance guarantees shall be subject to review and approval by the Bonds and Agreements Branch, DEM.

21. Blasting vibrations shall be limited to a maximum resultant peak particle velocity of 1.5 inches per second in the earth at any occupied structure not on quarry property. Within these limits the operator shall continue to diligently oversee all loading and blasting so as to minimize to the extent possible any justifiable complaints of residents.

22. Blasting in the existing quarry and in the expansion area shall be regulated as follows:

    In the existing quarry millisecond delay caps or the equivalent shall be used in all blasting operations, with no blast to exceed 10,000 pounds. No single millisecond delay charge shall be loaded in excess of 1,000 pounds. Blasts not exceeding 15,000 pounds with a single millisecond delay charge of 1,500 pounds may be permitted in specific areas of the site when in compliance with the standard operating procedure approved under SPA 81-S-064-4.

    The above referenced blasting procedures, followed in the existing quarry, shall be followed in the expansion area subject to the following additional provisions:

    Trans Continental shall be notified prior to any blast occurring at a point 200 feet or closer to the pipeline.

    Each such notice shall be given at least 24 hours prior to the blast and shall be provided to individual(s) as designated by Trans Continental.

    Any blast within 200 feet of the pipeline shall adhere to the following minimum delays:

    17 milliseconds between decks in a hole
    25 milliseconds between holes

    The following information shall be forwarded to Trans Continental following each blast that occurs within 200 feet of the pipeline:

    A diagram or pattern of the shot
    Maximum pounds per delay of explosives in the shot
    Depth of the holes in the shot
    Type of explosives used
    Type of delays used
    Seismography reading and location

    Blasting records for the entire site shall be made available to County staff.

23. Signs shall be permitted in accordance with Article 12 of the Zoning Ordinance.

24. Earth vibration produced by the quarry from sources other than blasting shall not exceed 0.05 inches per second at any occupied structure not on quarry property.

25. The Zoning Enforcement Branch of the Office of Comprehensive Planning shall be notified at least four (4) hours prior to each blast to allow unscheduled monitoring.

26. Airborne noises produced by the quarry from sources other than blasting shall not exceed the following at any occupied structure not on quarry property: 10 decibels above the background in residential areas and 16 decibels in commercial or industrial areas.

27. Roads or other areas subject to traffic within the confines of the quarry shall be watered as often as necessary to control dust.

28. All present dust control equipment including the wet suppression system shall continue to be maintained and operated.

29. No drilling or crushing shall be performed other than during the hours of 7:00 a.m. to 6:00 p.m., Monday through Friday.

30. Blasting shall be limited to a maximum of five (5) blasts per week with a maximum of two (2) blasts per day, between the hours of 10:00 a.m. and 4:00 p.m., Monday through Friday only.

31. All blasting material shall be handled and stored in accordance with standards and regulations established by the State Mining Safety and Health Administration or other appropriate agencies.

32. There shall be no work performed other than sales of materials or maintenance activities on facilities and equipment on Saturday between the hours of 7:00 a.m. and 6:00 p.m. There shall be no work on Sundays.

33. In the event any feasible equipment or means of controlling dust during blasting activities becomes available to the industry, the quarry operators shall install and use this equipment as soon as available to them.

34. Discipline of personnel and supervision during blasting and loading shall be diligently exercised to prevent flying rock.

35. Traffic control practices shall be detailed and rigidly enforced to ensure that public roads in the immediate vicinity of the quarry are closed to all traffic during blasting activities.

36. The Zoning Administrator or designated agent, shall periodically inspect the premises to determine that the quarry is being operated in compliance with all conditions and restrictions.

37. Fencing shall be provided around the site to secure the site from unauthorized entry. Existing fencing and that shown on the special permit plat may be used to fulfill this requirement.

38. Water quality monitoring reports shall be provided by the applicant on an annual basis to the Office of Comprehensive Planning (OCP), Environment and Heritage Resources Branch. Parameters to monitor shall be the following: water flow, sediment transport, dissolved oxygen (DO), pH, temperature, nutrients, and alkalinity.

39. The existing entrance and exit shall be labeled as one-way to ensure safe circulation on the site.

40. Notwithstanding the approved special permit plat, the structure proposed to be constructed south of the existing shop building shall be located a minimum of 100 feet from the right-of-way line of Lee Highway.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless the use has been established or construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the special permit. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 5, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 407, September 27, 1994, (Tape 1), Scheduled case of:

9:30 A.M. LEON M. & LUCILLE C. ROBERTS, SP 94-P-029 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 3.2 ft. from side lot line. Located at 5550 Scotchpine Ct. on approx. 7,479 sq. ft. of land zoned R-5. Providence District. Tax Map 38-3 ((42)) 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. The applicant's agent, Ms. Witherspoon, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report and said the property is located in the Pine Glen Subdivision, is surrounded on the south and west by single-family detached dwellings, and on the north and east by open space. The special permit request was for a deck to remain 3.2 feet from a side lot line. The minimum side yard in this district is 8 feet; therefore, the amount of error is 4.8 feet or 60 percent.

Ann Witherspoon, 8406 Cross Lake Drive, Fairfax Station, Virginia, said when the previous owner of the property, Mrs. Bell, became a resident of an assisted living arrangement last year she asked the speaker to list the property for sale. After several people had viewed the property, Mrs. Bell decided that a deck would enhance the property and obtained the name of a contractor from a resident in the facility in which she lived. Ms. Witherspoon said Mrs. Bell had believed that the contractor would obtain the appropriate permits and proceed in accordance within the required setbacks. She said the deck does not adversely impact the neighbor and enhances the neighborhood.

There were no speakers, either in support or in opposition, and Chairman DiGiulian closed the public hearing.

Mr. Hammack asked the Chairman to reopen the public hearing and call the speaker back to the podium.

Mr. Hammack asked why the deck could not be brought into compliance. Ms. Witherspoon said she had discussed that possibility with a contractor and his thoughts were that the entire deck would have to be rebuilt to bring it into compliance with the setback requirements.

There were no further questions and Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant SP 94-P-029 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated September 20, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-P-029 by LEON M. AND LUCILLE C. ROBERTS, 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 3.2 feet from side lot line, on property located at 5550 Scotchpine Court, Tax Map Reference 38-3((42))16, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on September 27, 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. The former owner placed her confidence in a builder who she believed was complying with the County Ordinance, and obviously he did not.

I. The structure was constructed through no fault of the previous owner or the current owner.

J. There is no adverse impact on the adjacent property since it is open space.

K. The structure enhances the neighborhood.

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 Rice Associates, P.C., dated November 19, 1993, revised June 7, 1994, submitted with this application, as qualified by these development conditions.

3. Within thirty (30) days of the final approval date of this special permit, a building permit shall be obtained for the deck along with any other approvals as required by the Director, Department of Environmental Management and final inspections approved within 12 months or this special permit shall be null and void.

This approval, contingent upon the above-noted conditions shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations or adopted standards.

Mr. Pammel seconded the motion which carried by a vote of 6-0. 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 5, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 408, September 27, 1994, (Tapes 1-2), Scheduled case of:

9:30 A.M. MARTIN B. JARVIS, APPEAL 94-V-027 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator determination that the construction of a stable in 1983 constituted an enlargement of appellant's existing boarding stable use which requires special permit approval and that the failure to obtain such special permit is in violation of Par. 2 of Sect. 2-303 of the Zoning Ordinance. Located at 10808 Harley Rd. on approx. 20.00 ac. of land zoned RE. Mt. Vernon District. Tax Map 118-2 ((1)) 11V.

William Shoup, Deputy Zoning Administrator, said at issue in the appeal was the appellant's operation of a boarding stable and the effect of the construction of a riding stable barn structure in 1983 and 1984. He said the appellant had a grandfathered boarding stable established on the property prior to the current Zoning Ordinance, which requires special permit approval for a boarding stable. Mr. Shoup said Par. 2 of Sect. 15-101 of the Ordinance provides that such a grandfathered use may continue, but cannot expand nor can any building for such use be constructed beyond that which existed on the effective date of the Ordinance. In November 1983, the appellant obtained building permit approval for and subsequently constructed the riding stable barn. Mr. Shoup said there was no indication on the building permit that a boarding stable existed on the property, and that he believed it was presumed that the structure was going to be for the appellant's personal use and was approved as an accessory use. He said an inspection revealed that the structure is used in conjunction with the stable operation and as a result of the construction of the structure, which was beyond the extent that existed on the effective date of the current Zoning

Ordinance, it was staff's position that the use is subject to special permit approval and since none was obtained, it was staff's position that the appellant is in violation of Par. 2 of Sect. 3-303.

The appellant's agent, George M. O'Quinn, with Alexandria Surveys, Inc., 6343 South Kings Highway, Alexandria, Virginia, addressed the BZA and said the appellant acquired the property in 1962 and has kept his own horses and boarded horses on the property since that time. Mr. O'Quinn said in 1964, 1974, and 1976, the appellant obtained building permits to either construct a stable or enlarge existing stables. In 1983, the appellant did what he had done on prior occasions when he planned to make improvements, he approached Fairfax County, applied for and obtained a building permit. Mr. O'Quinn said the permit was obtained and the appellant built the stable and has enjoyed it for 11 years. He said over a decade later the appellant received a Notice of Violation, with the first Notice being for the property which indicated that the property was in violation since the Zoning Ordinance requires that this type of boarding stable obtain a special permit. Mr. O'Quinn said the appellant filed an appeal and provided information indicating that the boarding use existed and the Notice was rescinded on June 1, 1994 and a new Notice was issued indicating that the 1983 riding stable barn that was constructed constituted an expansion of the existing use. The appellant believed that he acted with the same standard of care that any reasonable person would show in the same situation, and that an unfair burden was being placed on him to comply with the current Ordinance. Mr. O'Quinn said the appellant was not opposed to applying for a special permit, but the problem was trying to retrofit an existing situation into current standards. He said staff has indicated that the stable is closer to the side lot line than the required 100 feet, and authority may not exist to vary that standard. Mr. O'Quinn said the cost associated with the special permit application posed an unfair economic hardship on the appellant.

Mr. Kelley asked if the appellant has continuously had a business license since the beginning of the operation of the stable. Mr. O'Quinn said the appellant obtained a license in 1970 and has renewed it annually since that time. Mr. Kelley questioned why staff had not been aware that the appellant was operating a business on the property. Mr. Shoup said the Office of Assessments knew but the zoning office does not routinely cross-reference the information with Assessments. He added that the burden was on the applicant when applying for a building permit to accurately represent what they are requesting.

Chairman DiGiulian said the appellant had done so. He asked if staff had notified the citizens who were operating a grandfathered use of the changes in the Zoning Ordinance in 1978. Mr. Shoup said they had not. He added that it was just one of those unfortunate situations where a Zoning Ordinance changes and people are presumed to know the law. Chairman DiGiulian said based on that argument then staff should also be presumed to know what type of use is on the property.

Mr. Dively asked the appellant how many horses were on the site prior to 1983. Mr. Jarvis said approximately 35 to 38 with 28 to 30 now.

Mr. Hammack asked staff to clarify what type of expansion had taken place since the appellant was now boarding a fewer number of horses. Mr. Shoup noted that the appellant has added a structure. He said staff had determined in the past that when a permitted use is added to a grandfathered site, that requires the property owner to obtain a special permit or special exception. Mr. Hammack asked if the appellant would be in violation if all the horses were his, and Mr. Shoup said he would not.

Mr. Kelley said he did not understand why this issue was before the BZA. He said the appellant has fewer horses on the premises now than he did in 1983, and that he believed the appellant was being treated unfairly.

A discussion took place between Mr. Hammack and staff regarding if it would be a violation if the appellant had added a room for breeding purposes. Mr. Shoup said if a structure is added to a grandfathered use it requires special permit approval, and the Ordinance is very clear on that issue. In response to a question from Mr. Hammack as to whether there is a statute of limitations on enforcement, Mr. Shoup said he did not believe so.

Mr. Hammack asked what had generated the complaint. Mr. Shoup said the appellant requested a renewal of his agricultural and forestral district designation and the stable was noted during that review. Chairman DiGiulian said the staff report had indicated a complaint had been filed. Mr. Shoup said staff had filed the complaint. Chairman DiGiulian and Mr. Kelley said the staff report was misleading.

Mr. Hammack asked how many stalls were in the addition that was constructed in 1983. Mr. Jarvis said the structure is an indoor riding arena with nine stalls. Mr. Ribble asked if there had been an outdoor riding area prior to the construction of the indoor arena. Mr. Jarvis replied in the affirmative.

Chairman DiGiulian asked the appellant if he was doing anything differently than he had in the past. Mr. Jarvis said the operation was the same.

In closing remarks, Mr. Shoup said he did not believe it was incumbent upon staff to know what the intent is for every building permit that is filed. He said he did not know what occurred in 1983, but staff had no reason to believe that the request was associated with a boarding stable, therefore it was processed as an accessory use.

Mr. Kelley asked what type of information would be listed on the computer screen when someone comes in to file a building permit. Mr. Shoup said unfortunately any information is not available on computer; it is contained in a street file.

Following a discussion between Mr. Hammack and Mr. Shoup as to staff's responsibility during the review of a building permit, Mr. Hammack suggested that the building permit application form be amended to ensure that all the pertinent information is included. He asked if the structure would be legal had it been built for the appellant's personal use and Mr. Shoup said that it would.

Chairman DiGiulian asked the appellant's representative if he had any closing remarks, and Mr. O'Quinn said he did not. The Chairman closed the public hearing.

Mr. Pammel said he was concerned with the lack of a nexus between the business aspect of what the County does, that is the issuance of professional and business licenses to operate businesses, and the zoning department. He said it is unfortunate and the situation has to be corrected immediately and that the County cannot continue to proceed down the path with the zoning office not knowing what the Assessment Office is doing in terms of business licenses. Mr. Pammel requested staff prepare a memorandum on behalf of the BZA to the Board of Supervisors informing them of this dilemma and suggested that it direct attention to solving the problem and creating a nexus between the Assessments Office and the zoning office.

Mr. Pammel said this is an unfortunate situation and the appellant probably did act in good faith and in applying for a building permit he was asking for an accessory use to improve the services that he was offering his clientele. He was operating a business, and there is no question about that, but the zoning office was not aware that a business was being conducted at the site. He supported the Zoning Administrator's position on this issue and believed that staff's interpretation was correct that a business use has been expanded because a building was added to the operation. Mr. Pammel made a motion to uphold the Zoning Administrator's determination in A 94-V-026. Mr. Hammack seconded the motion for purposes of discussion.

Mr. Dively said if it was a special permit there would be no issue whatsoever, and that he believed the Zoning Administrator was technically correct but that he believed this issue was frivolous and foolish. He said if the BZA did uphold staff's position, which required the appellant to file a special permit, the request should be expedited.

Chairman DiGiulian agreed with Mr. Dively's arguments, but noted that the filing of a special exception would place a economic hardship on the appellant.

Mr. Kelley believed the County has an obligation to let the citizens know that they might need something in addition to a building permit. Chairman DiGiulian agreed.

Mr. Pammel made a motion that the County on its own motion initiate a special permit and agreed that the appellant should not bear the burden of the expense. Chairman DiGiulian said he had seen a number of these special exceptions or special permits for riding and boarding stables, and if the appellant proceeded in that direction he would come out with a totally different operation with many restrictions. He believed it bordered on confiscation and that he would not support the motion.

Mr. Ribble expressed concern with the fact that the complaint was initiated by staff.

Mr. Dively said he agreed with the comments, but Section 15-101 did give him cause for concern.

Mr. Hammack agreed with Mr. Pammel's interpretation of the Ordinance, but that he was not sure that there was not some statute of limitations that applied to enforcement. He said he was extremely reluctant to support the Zoning Administrator's position, since he believed it was the County who had totally "botched" everything up.

Mr. Kelley said since the staff found a way in 1994 to find a problem with this without benefit of an application being filed, they could have found it in 1983. He said this borders on harassment.

Mr. Ribble said the building permits have changed in recent years to state that applicants have to comply with all other ordinances and setbacks, but in 1983 that was not the case. He noted that several staff members signed off on the permit in 1983.

Mr. Pammel said this has been a continuing problem in the County as far back as 1970 when he worked at the County. Staff has been trying to get the County to approve a computer program that would coordinate zoning with business licenses and other permits.

Mr. Dively said he would not support the motion on the grounds that he believed it was very clear that the spirit of the Ordinance is not for the harassment of citizens.

Mr. Hammack suggested that perhaps the County Attorney should be contacted with regard to a statute of limitations as the BZA did not know how this would impact the appellant in other areas, such as his agricultural renewal.

Page 411, September 27, 1994, (Tape 1), MARTIN B. JARVIS, APPEAL 94-V-027, continued from Page 410)

Mr. Kelley said he would rather dispose of the case as he believed the appellant has been treated unfairly by the County.

The motion failed by a vote of 2-4 with Mr. Hammack and Mr. Pammel voting aye; Chairman DiGiulian, Mr. Dively, Mr. Kelley, and Mr. Ribble voting nay.

Mr. Dively made a motion to overturn the Zoning Administrator as he believed the appellant had been treated unfairly. He added that this was an extremely "nit picky" sort of case to come before the BZA, and it was clear that the spirit of the Zoning Ordinance was not being served.

Mr. Kelley seconded the motion.

Mr. Hammack said he realized there were errors made on both sides, but the building is very large and there is no evidence to suggest that the Zoning Ordinance cannot be enforced 10 years later.

Mr. Ribble said in 1964 the appellant could have built a much larger building because there were no dimensions shown on the plat.

Mr. Pammel said the appellant has added a building and the BZA was overlooking that point.

Mr. Dively said the spirit of the Ordinance addresses an enlargement, and that is the key issue.

The motion carried by a vote of 4-2 with Chairman DiGiulian, Mr. Dively, Mr. Kelley, and Mr. Ribble voting aye; Mr. Hammack and Mr. Pammel voting nay.

Mr. Pammel again stated for the record that he would like staff to prepare a memorandum to the Board of Supervisors expressing the BZA's concern with regard to the lack of coordination.

Chairman DiGiulian asked Jane Kelsey, Chief, Special Permit and Variance Branch, to prepare a memorandum for his signature. Ms. Kelsey agreed.

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The BZA recessed at 10:45 a.m. and reconvened at 10:58 a.m.

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Page 411, September 27, 1994, (Tape 2), Information Item:

Change in November 22, 1994 Meeting Date

Chairman DiGiulian said the November 22nd public hearing had to be moved due to a conflict in the Board Auditorium and asked staff how many cases were scheduled to be heard by the BZA on that day. Jane Kelsey, Chief, Special Permit and Variance Branch, informed the BZA there were 5 yard variances and 2 subdivision variances scheduled. She said November 23rd and December 1st were available. Mr. Pammel moved that the November 22nd public hearing be moved to Wednesday, November 23rd, commencing at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 411, September 27, 1994, (Tape 2), 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, 2/8 AND 3/22 AT APP.'S REQUEST.)

Chairman DiGiulian said the BZA had issued an intent to defer to November 22nd at its September 27, 1994 public hearing.

Mr. Pammel asked if applicant had filed the appropriate applications. William Shoup, Deputy Zoning Administrator, said they had and noted that the case would not be heard by the Board of Supervisors until February of March 1995. Based on that information, Mr. Pammel made a motion to defer A 93-V-023 to the morning of March 14, 1995. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 412, September 27, 1994, (Tape 1), Scheduled case of:

9:30 A.M. BRUCE L. HECOX, APPEAL 94-L-002 Appl. under Sect(s). 18-301 of the Zoning Ordinance to appeal the Zoning Administrator's determination that appellant's use of property at 5520 Franconia Rd. as a towing service is in violation of Par. 5 of Sect. 2-302 and Sect. 18-701 of the Zoning Ordinance. Located at 5520 Franconia Rd. on approx. 19,194 sq. ft. of land zoned C-6. Lee District. Tax Map 81-4 ((1)) 70. (DEF. FROM 3/1/94 TO ALLOW APP. AN OPPORTUNITY TO RESOLVE OUTSTANDING ISSUES. DEF. FROM 6/2 TO RESOLVE OUTSTANDING ISSUES)

Mr. Dively said it was his understanding that in a short time the whole basis of the appeal would be rendered moot.

William Shoup, Deputy Zoning Administrator, said the appellant has filed a special exception application in order to re-establish the use and has now secured financing. He added that the Board of Supervisors will probably not hear the special exception request until March or April 1995.

Mr. Pammel pointed out that he believed the appellant had been granted an out of turn hearing for the special exception. Mr. Shoup agreed that the hearing could be expedited and be scheduled for February.

Chairman DiGiulian suggested deferring the appeal until the first meeting in January.

Mr. Pammel made a motion to defer A 94-L-002 to the morning of January 3, 1995. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 412, September 27, 1994, (Tape 2), Scheduled case of:

9:30 A.M. RESTON NORTH POINT VILLAGE LIMITED PARTNERSHIP, APPEAL 94-H-006 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has erected a second freestanding sign identifying the North Point Village Center in violation of Zoning Ordinance provisions. Located on the W. side of Reston Pkwy. N. of Newport Rd. on approx. 17.047 ac. of land zoned PRC. Hunter Mill District. Tax Map 11-4 ((12)) 1A, 1B, 1C, 1D. (MOVED FROM 6/21 TO 10/25 AT APPLICANT'S REQUEST)

Chairman DiGiulian said the BZA had issued an intent to defer A 94-H-006 to the morning of November 23, 1994. Mr. Dively so moved. Hearing no objection, the Chair so ordered.

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Page 412, September 27, 1994, (Tape 2), Action Item:

Reconsideration Request for
Kimberly Glaser, SP 94-V-016

Mr. Hammack made a motion to deny the request since no new information had been presented. Mr. Dively seconded the motion which carried by a vote of 4-0-1 with Mr. Pammel abstaining as he had not been present at the September 20th public hearing. Mr. Ribble was not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 412, September 27, 1994, (Tape 2), Action Item:

Approval of September 20, 1994 Resolutions

Mr. Hammack made a motion to approve the resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 4-0-1 with Mr. Pammel abstaining as he was not present at the September 20th public hearing. Mr. Ribble was not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 412 September 27, 1994, (Tape 2), Action Item:

Request for Change in Name for
Gunston Baptist Church, SPA 73-V-121

Mr. Hammack made a motion to grant the applicant's request to change the name from Gunston Baptist Church to Gunston Bible Church. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 413, September 27, 1994, (Tape 2), Action Item:

Request for Change in Permittee for
Virginia Run Community Association, SP 89-Y-035

Mr. Pammel made a motion to grant the applicant's request from Kettler & Scott to Virginia Run Community Association, Inc. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 413, September 27, 1994, (Tape 2), Action Item:

Request for Additional Time for
Washington Sae Han Presbyterian Church, SP 90-M-090

Mr. Hammack made a motion to grant the applicant's request. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting. The new expiration date is December 18, 1995.

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Page 413, September 27, 1994, (Tape 2), Action Item:

Request for Additional Time for
Larrie and Mirna Ferreiro, VC 93-B-113

Mr. Hammack asked why the applicant was requesting additional time until 1998. Jane Kelsey, Chief, Special Permit and Variance Branch, said the applicants have indicated that they were being transferred.

Mr. Kelley made a motion to defer action on the request until October 4th. Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 413, September 27, 1994, (Tape 2), Action Item:

Intent to Withdraw Gatehouse Appeal, A 94-P-023

Mr. Pammel made a motion to grant the appellant's request to withdraw the appeal. Hearing no objection, the Chair so ordered.

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Page 413, September 27, 1994, (Tape 2), Action Item:

Intent to Defer
John E. and Kathryn M. Clark Appeal, A 94-V-015

Mr. Pammel made a motion to defer to the morning of March 14, 1995. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 413, September 27, 1994, (Tape 2), Action Item:

Request for Out of Turn Hearing for
Breakers Billard Cafe, Inc., SPA 93-H-043

Jane Kelsey, Chief, Special Permit and Variance Branch, said this was an application that the BZA recently approved; however, the plat reflected the square footage as 8,200 on the top floor of the Clock Building but a mezzanine has been added to the top of the building which brings the square footage to 11,000 square feet. The applicant needs to amend the application to reflect the additional square footage.

Mr. Kelley said this was not a very complex application. Ms. Kelsey suggested November 10th. Mr. Pammel made a motion to grant the applicant's request for an out of turn hearing and schedule the application for November 10th. Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 413, September 27, 1994, (Tape 2), Action Item:

Request for Additional Time for
Larrie and Mirna Ferreiro, VC 93-B-113

(The BZA discussed this case earlier in the public hearing.)

Jane Kelsey, Chief, Special Permit and Variance Branch, said after reading the applicants' letter it appeared that they were being unexpectedly transferred out of the country until June 1998.

Mr. Hammack said after reading the request it appeared the applicants' have already completed the room, shed, and carport additions and only need to complete the deck. He suggested that the BZA reconsider the request and grant the additional time. Hearing no objection, the Chair so ordered. The new expiration date is June 22, 1998.

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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 DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: October 25, 1994

APPROVED: November 1, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 4, 1994. The following Board Members were present: Chairman John DiGiulian; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble. Mrs. 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 416, October 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. BERNARD J. & MYRIAM B. TRESCAVAGE, VC 94-M-084 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.8 ft. from street line of a corner lot. Located at 6113 Brook Dr. on approx. 12,720 sq. ft. of land zoned R-3 and HC. Mason District. Tax Map 51-3 ((19)) (H) 12.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Trescavage replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report prepared by David Hunter, Staff Coordinator. She stated the applicants were requesting a variance to construct an addition 15.8 feet from the front lot line on Olin Drive. The Zoning Ordinance requires a minimum 30 foot front yard; therefore, the applicants were requesting a 14.2 foot variance to the front lot line.

The applicant, Bernard J. Trescavage, 6113 Brook Drive, Falls Church, Virginia, addressed the BZA and stated he would like to enclose the existing porch which was built in the 1940's. He added that a second story addition would be constructed above the garage.

Mr. Trescavage explained that the enclosure and addition would provide much needed living and storage space to the small cape cod house. He said the shape of the lot, as well as the placement of the house on the lot, precluded placing the addition elsewhere on the property. Mr. Trescavage stated that the property is well screened and the addition would not be detrimental to the community. He noted that during the renovation, the drainage problem which has resulted in a wet basement would be corrected. In summary, he said the enclosure would allow full utilization of the porch and asked the BZA to grant the request.

In response to Chairman DiGiulian's question as to whether the addition would extend any farther into the front yard than the existing porch, Mr. Trescavage said it would not. Mr. Trescavage explained that houses in the area were very small and many of the neighbors had made similar renovations.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 94-M-084 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 27, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-084 by BERNARD J. AND MYRIAM B. TRESCAVAGE, under Section 18-401 of the Zoning Ordinance to permit construction of addition 15.8 feet from street line of a corner lot, on property located at 6113 Brook Drive, Tax Map Reference 51-3((19))(H)12, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 4, 1994; and

WHEREAS, the Board has made the following findings of fact:

1. The applicants are the owner of the land.
2. The present zoning is R-3 and HC.
3. The area of the lot is 12,720 square feet.
4. The application meets the necessary standards for th granting of a variance.
5. The applicant is not extending the existing dwelling in any way.
6. The existing porch will merely be enclosed and a room built over what was constructed at a time, in the early 1940's, when it probably could have been done as a matter of right.
7. The property is impacted by Olin Drive.
8. The property has converging lot lines.
9. The variance would have no detrimental impact on the community.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific porch with room above shown on the plat prepared by Kephart & Company, dated May 12, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Ribble 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 12, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 416, October 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WOLF TRAP FOUNDATION, SP 94-H-032 Appl. under Sect(s). 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit structure to remain 13.2 ft. from side lot line. Located at 1632 Trap Rd. approx. 43,561 sq. ft. of land zoned R-1. Hunter Mill District. Tax Map 28-2 ((3)) 20.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mr. Eckert replied that it was.

Otis L. Robinson, Staff Coordinator, Special Exemption and Rezoning Branch, presented the staff report. He stated the applicant was requesting approval of a special permit for an

error in building location to allow an existing dwelling to remain 13.2 feet from the side lot line. Mr. Robinson said, during background research conducted for SEA 81-C-027, staff found that the outbuilding and the dwelling did not satisfy the side yard requirements. He noted the height of the outbuilding has been more accurately determined and the plat now depicts an 8.4 foot high outbuilding, which is permitted in any part of any side or rear yard.

Continuing, Mr. Robinson stated a house location plat within Fairfax County records depicted an addition to the existing house and the provision of a 20.0 foot side yard setback. When the building addition was constructed in 1968, however, the sideyard setback provided was actually 13.2 ft; therefore, the applicant was requesting a modification of 6.8 feet to the minimum side yard requirement, a 34.0 percent error. He noted the house would be used as office space for the Wolf Trap Foundation.

The applicant's representative, Christopher J. Eckert, Director of Administration, Wolf Trap Foundation, 1624 Trap Road, Vienna, Virginia, addressed the BZA. He stated that when the Foundation purchased the property, it was not informed that the existing structures did not conform to the Zoning Ordinance requirements. Mr. Eckert explained that, although the previous owners had obtained a building permit, the addition was placed 13.2 feet from the lot line. Since the zoning was changed from residential to non-residential use, the applicant was requesting a variance so that the structure will comply with current Zoning Ordinance provisions. In conclusion, Mr. Eckert asked the BZA to approve the application.

There being no speakers to the case, Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant SP 94-H-032 subject to the development conditions contained in the staff report dated September 27, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-H-032 by WOLF TRAP FOUNDATION, under Section 8-914 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit structure to remain 13.2 feet from side lot line, on property located at 1632 Trap Road, Tax Map Reference 28-2((3))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 October 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 building 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 William H. Gordon Associates, Inc., dated May 13, 1994, revised July 1, 1994, 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.

Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble 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 12, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 418, October 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MARCENA J. CAIN D/B/A K&D REALTY, SP 94-V-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 structure to remain 2.0 ft. from rear lot line. Located at 3115 Sherwood Hall Ln. approx. 69,750 sq. ft. of land zoned C-8, R-3 and HC. Mt. Vernon District. Tax Map 101-2 ((1)) 68. (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. Moran replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He sated that the 69,750 square foot subject property is located on the south side of Sherwood Hall Lane. The lots to the north and west are zoned C-8 and developed in highway commercial and a parking lot, respectively. The lot to the east is developed in townhouses in the R-8 District while the lots to the south and southwest are zoned R-3 and are vacant and developed in a single family detached dwelling, respectively. Route 1 is located west of the property.

Mr. Heine said the applicant was requesting a special permit for an error in building location to allow an existing building to remain 2.0 feet from the rear lot line which is the boundary line between the C-8 and R-3 Districts. The Zoning Ordinance requires a 20.0 foot minimum rear yard; therefore, the applicant was requesting a modification of 18.0 feet to the minimum rear yard requirement.

In conclusion, Mr. Heine noted a typographic error on Page 2 of the staff report and said it should be corrected to reflect, "...the boundary line separating the C-8 and R-3 Districts."

Chairman DiGiulian asked staff how it arrived at the decision that the setback to the structure should be taken from the zoning line, not the property line. He further asked staff to identify the section of the Zoning Ordinance which supported staff's determination. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that for a number of years, staff has consistently taken the position that under the definition of lot, all setback requirements for the particular lot must be met. Since a commercial use is not allowed in a residential district, the zone line, for purposes of definition, becomes the lot line.

In response to Mr. Kelley's question as to whether staff had reinterpreted the Zoning Ordinance, Ms. Kelsey said no.

Chairman DiGiulian stated that, although he had been involved with the site plan process over the last thirty years, he had never been advised of the interpretation. He explained that he had searched through the Zoning Ordinance and could not find any reference to the issue before the BZA. He expressed support for the application and his belief that the applicant did not need a special permit.

Ms. Kelsey explained that staff has consistently required the floor area ratio be determined only on the commercial area of the lot, not the entire lot, and expressed her belief that it was the same principle.

Mr. Kelley said he would approve the application provided that it in no way increases parking on the site. He noted the applicant had filed an application requesting an increase in parking.

The applicant's attorney, George LeRoy Moran, with the law firm of Kellogg, Krebs, and Moran, 3141 Fairview Park Drive Suite 640, Falls Church, Virginia, addressed the BZA. He stated

that there would be no change in the parking on the subject lot. He explained that the site plans were prepared based on Fairfax County's recommendations.

Mr. Kelley expressed support for the applicant. He said he did not believe the case should have come before the BZA and expressed concern that the BZA acceptance and approval of the application would set a precedent. Chairman DiGiulian stated that he did not think it would. Mr. Kelley said the only reasons he would consider the case was that he did not want to inconvenience the applicant.

Mr. Pammel noted that, although the County staff has indicated the interpretation has been consistent for many years, in 1988 a building permit was approved for the structure to be placed 2.0 feet from the zoning line. Ms. Kelsey suggested the BZA defer the case for one week so that staff could research the issue.

Otis L. Robinson, Staff Coordinator, Special Exception and Rezoning Branch, addressed the BZA. He stated he was the Staff Coordinator for the Special Exception Application for parking on the adjacent lot. He explained that during research he found the structure had been constructed by-right and the Department of Environmental Management (DEM) had not realized the parcel was split zoned. Mr. Pammel stated that Zoning Administration must review all building permits before they are approved by DEM. Mr. Dively expressed concern regarding the breakdown of the review process when building permits are issued.

Mr. Moran expressed his belief the application met the necessary requirements, and agreed with the BZA's concerns regarding the interpretation. He stated that the maximum distance in the triangular portion of the lot is 110 feet from the back portion, and the closest dwellings on either side are 87 feet and 73 feet, respectively. In conclusion, Mr. Moran asked the BZA to grant the request.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Joseph J. Ballato, PE, Project Manager, Springfield Engineering Corporation, P.C., 1308 Devils Reach Road, Suite 100, Woodbridge, Virginia, addressed the BZA. He stated that approximately seven years ago his firm had prepared the original application for which the building permit was issued. Mr. Ballato noted that the zone line was clearly shown on all plans, and the building permit was correctly issued because the parcel is a single contiguous ownership and the rear lot line was taken as the ownership line as shown on the plat as 30 feet. At that time, the rear yard requirement was 20 feet. In conclusion, he expressed his belief that in order to preclude creating a variance on a parcel which does not require one, the BZA should dismiss the case.

There being further speakers to the request, Chairman DiGiulian closed the public hearing.

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The BZA recessed at 9:40 a.m. and reconvened at 9:50 a.m.

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Mr. Kelley asked for assurance from staff and the applicant that the application was not a back door attempt to provide additional parking on the site. Jane C. Kelsey, Chief, Special Permit and Variance Branch, said she could not comment because she was not familiar with the application on the adjoining lot. Mr. Moran said the application before the BZA would not increase parking. He explained the proposed additional parking would be on another parcel owned by the applicant.

In response to Mr. Dively's question as to whether approval of the application before the BZA would increase parking, Mr. Moran said no. He noted that the proposed parking would be by-right on the property zoned C-8.

In an attempt to clarify the issue, Mr. Robinson stated that when the applicant filed a special exception for parking in a residential district, it was found the lot had split zoning. Staff recommended that instead of going forth with the special exception for parking in a residential district, the applicant put the entire site under one site plan. It was understood that the parking on the adjacent lot would only be provided on the commercial portion, and with the appropriate setbacks between the residential lot lines. Mr. Robinson said the applicant would be able to provide additional parking on the commercial portion, by-right.

In response to Mr. Kelley's question as to why the applicant needed the variance, Mr. Robinson explained that the applicant would be required to clear-up any zoning violations prior to bringing the property under one site plan.

Mr. Pammel made a motion that the application should not be before the BZA at this date and the BZA has made the decision and determination that there is nothing in the Zoning Ordinance that specifically requires setbacks from zoning lines. Therefore, it was not necessary that the application, for the reasons indicated by the staff, be before the BZA. The testimony presented today indicated that when the building permit was approved in 1988, the matter was researched, the zoning line was clearly shown, and DEM, with the sign-off of the Zoning

Office, did approve the application. There is no record to indicate there was an appeal of the decision; therefore, Mr. Pammel's motion was that the application is not relevant and should be dismissed.

Chairman DiGiulian called for discussion.

Mr. Dively offered an amendment to the motion ruling that the interpretation of the zoning line be that the actions of the Zoning Enforcement Agency comport with the BZA's interpretation.

Mr. Pammel accepted the amendment and stated that the BZA had ruled that the setbacks are determined from the property line, not the zoning line.

Mr. Hammack seconded the motion which carried by a vote of 5-0 with Mr. Ribble not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 420, October 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. GUM SPRINGS VILLAGE LIMITED PARTNERSHIP, VC 94-V-087 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 18.8 ft. and 15.3 ft. from street lines of a corner lot and lot width of 75.5 ft. Located at 7808 Fordson Rd. on approx. 8,064 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 102-1 ((42)) C.

9:00 A.M. GUM SPRINGS VILLAGE LIMITED PARTNERSHIP, VC 94-V-086 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit lot width of 77.2 ft. and construction of a dwelling 19.2 ft. from street line of a corner lot. Located at 7816 Fordson Rd. on approx. 9,054 sq. ft. of land zoned R-4 and HC. Mt. Vernon District. Tax Map 102-1 ((42)) A1 (formerly 102-1 ((42)) pt. 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. Mr. Bedford replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He identified the properties and stated VC 94-V-086 is for a 9,054 square foot lot and VC 94-V-087 is for a 8,064 square foot lot located on the west side of Fordson Road at the intersection with Gum Springs Village Drive. The subject properties and the vacant parcel on the south are in the R-4 and H-C Districts. The single family detached dwelling on the north is in the R-2 District while those dwellings to the east are in both the R-2 and R-5 Districts. The single family townhouses on the west are in the R-20 District. Route 1 is located to the west.

Mr. Heine explained that the subject properties are part of a Redevelopment Plan approved by both the Board of Supervisors and the Fairfax County Redevelopment Authority. On November 5, 1990, the Board of Supervisors approved rezoning application RZ 90-V-029 for 11.58 acres which placed the subject lots in the R-4 District. The rezoning implemented the Gum Springs Redevelopment Plan which proposed single family detached dwellings for the frontage along Fordson Road.

Mr. Heine stated that VC 94-V-086 was a request to construct a dwelling on a corner lot located 19.2 feet from a front lot line, with a lot width of 77.2 feet. The Zoning Ordinance requires a minimum 30 foot front yard and a minimum lot width of 95 feet; therefore, the applicant was requesting a 10.8 foot variance to the minimum front yard requirement, and a 17.8 foot variance to the minimum lot width requirement.

Mr. Heine said that VC 94-V-087 was a request to construct a dwelling on a corner lot 18.8 feet from a front lot line, 15.3 feet from the other street line, with a lot width of 75.5 feet. The Zoning Ordinance requires a 30 foot minimum front yard and a minimum lot width of 95 feet; therefore, the applicant was requesting variances of 11.2 feet and 14.7 feet, respectively, to the minimum front yard requirement, and a 19.5 foot variance to the minimum lot width requirement.

The applicant's attorney, Barry K. Bedford, 2441 Chatelain Road, Annandale, Virginia, addressed the BZA. He explained that, at the time the property was rezoned, the residents in the Gum Springs community asked the developer to build single family homes on the subject properties. Mr. Bedford said in order to cooperate with the citizens and build single family homes, the applicant must obtain the variances. He noted that as a result of additional street dedication for Fordson Road, the lots are nonconforming. In conclusion, Mr. Bedford said the applicant met the necessary standards and asked the BZA to grant the request.

In response to Mr. Pammel's question as to definition of an outlot, Jane C. Kelsey, Chief, Special Permit and Variance Branch, stated that in the cases before the BZA, the lots do not meet all the Zoning Ordinance requirements absent the variances. She noted the lots were shown on the development plan.

There being no speakers to the requests, Chairman DiGiulian closed the public hearing.

Mr. Dively made a motion to grant VC 94-V-086 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 27, 1994. Mr. Kelley seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel expressed concern regarding the outlot and asked if any records indicated the outlot was tied to the open space requirement for the development. Ms. Kelsey stated, since no problems regarding the open space had surfaced during staffing, she believed the property was not designated as open space. Mr. Heine said that the evaluation submitted by the Planning Division did not indicate open space was an issue.

In response to Mr. Dively's question as to why the term "outlot" was used, Ms. Kelsey said because the lot did not meet the Zoning Ordinance requirements, it cannot be developed without a variance and is considered an outlot.

Mr. Hammack stated that most outlots are a self-inflected hardship and expressed his belief that in most cases variances should not be granted.

The BZA had a brief discussion regarding the outlot issue with staff and the applicant during which Ms. Kelsey noted the development plans indicated Parcels B and C were to be retained by the owner for future development and were zoned R-4. The BZA reviewed the plats and the development plans which satisfied its concerns regarding the open space.

Mr. Dively made a motion to grant VC 94-V-086 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 27, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-086 by GUM SPRINGS VILLAGE LIMITED PARTNERSHIP, under Section 18-401 of the Zoning Ordinance to permit lot width of 77.2 and construction of a dwelling 19.2 feet from street line of a corner lot, on property located at 7816 Fordson Road, Tax Map Reference 102-1((42))A1 (formerly 102-1((42))pt. B), Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 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-4 and HC.
3. The area of the lot is 9,054 square feet.
4. The applicant has made a good point in that the request would not be of a recurring nature.
5. The need for the variance was caused by road dedications involved.
6. The proposal would allow an effective utilization 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 of the specific dwelling shown on the plat prepared by Holland Engineering, dated May 5, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 4-1-1 with Mr. Kelley voting nay and Mr. Ribble abstaining from the vote. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 12, 1994. This date shall be deemed to be the final approval date of this variance.

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Mr. Dively made a motion to grant VC 94-V-087 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 27, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-V-087 by GUM SPRINGS VILLAGE LIMITED PARTNERSHIP, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 18.8 feet and 15.3 feet from street lines of a corner lot and lot width of 75.5 feet, on property located at 7808 Fordson Road, Tax Map Reference 102-1((42))C, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 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-4 and HC.
3. The area of the lot is 8,064 square feet.
4. The applicant has made a good point in that the request would not be of a recurring nature.
5. The need for the variance was caused by road dedications involved.
6. The proposal would allow an effective utilization 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 of the specific dwelling shown on the plat prepared by Holland Engineering, dated May 2, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 5-0-1 with Mr. Ribble abstaining from the vote. Mrs. Thonen was absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 12, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 423, October 4, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WILLIAM JUDSON & MARGARET SEITER VAUGHN, VC 94-D-085 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 10.3 ft. from rear lot line. Located at 12455 Plowman Ct. on approx. 8,453 sq. ft. of land zoned R-3 (Cluster). Dranesville District. Tax Map 11-1 ((5)) 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. William Judson Vaughn, 12455 Plowman Court, Herndon, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She stated the applicant was requesting a variance to construct an enclosed porch 10.3 feet from the rear lot line. The Zoning Ordinance requires a 25 foot minimum rear yard; therefore, the applicant was requesting a 14.3 foot variance to the minimum rear yard requirement

The co-applicant, Margaret Seiter Vaughn, 12455 Plowman Court, Herndon, Virginia, addressed the BZA and said they had purchased the property in 1991. She stated that, although they had indicated to the Realtor and the previous owner their intentions of building the addition, they had not been advised of the setback requirements. Ms. Vaughn said it was only when they attempted to build the addition that they were informed of the need for the variance. She noted that they also had to apply for an administrative variance because the side yards did not meet the Zoning Ordinance requirements.

Continuing, Ms. Vaughn explained that her daughter had allergies and they were constructing the screen porch at the advice of her doctor. She stated the placement of the house on the exceptionally shallow and narrow lot had caused the need for the variance. Ms. Vaughn said the addition would be aesthetically pleasing, would be in harmony with other structures in the area, would enhance the value of the surrounding properties, and the homeowners association supported the variance. She said the application met the necessary requirements and asked the BZA to grant the request.

In conclusion, Ms. Vaughn mentioned the letter of opposition from Leonard and Barbara Murray, and noted that the Murrays were in the process of moving. She said in contrary to the Murray's statement, the addition would not be unsightly and would be screened by five maple trees.

In response to Mr. Dively's question as to whether the addition could have been built by-right during the original construction, Ms. Langdon said no it was zoned R-3. Mr. Dively stated the property had been zoned PDH; therefore, it could have been constructed by-right.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to grant VC 94-D-085 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated September 27, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-085 by WILLIAM JUDSON AND MARGARET SEITER VAUGHN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 10.3 feet from rear lot line, on property located at 12455 Plowman Court, Tax Map Reference 11-1((5))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 October 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-3 (Cluster).
3. The area of the lot is 8,453 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The skewed lot line, the shallowness of the lot, and the placement of the house on the lot has caused the need for the variance.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specified enclosed porch addition shown on the plat prepared by Alexandria Surveys, Inc., dated June 6, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use or to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Kelley seconded the motion which carried by a vote of 6-0 with Mrs. Thonen absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 12, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 426, October 4, 1994, (Tape 1 and 2), Scheduled case of:

9:30 A.M. SHEKAR AND CHARU NARASIMHAN, SP 94-P-031 Appl. under Sect(s). 3-303 of the Zoning Ordinance to permit school of special education. Located at 8100 Cedar St. on approx. 21,826 sq. ft. of land zoned R-3. Providence District. Tax Map 39-4 ((1)) 33B.

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. Narasimhan replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the property is located on Cedar Street, northwest of its intersection with Sandburg Street. The property to the north and south of the site are zoned R-3 and developed with single family detached dwellings. To the west is a lot zoned R-3 which is developed with the Holy Cross Episcopal Church, and to the east are R-3 zoned lots developed with single family detached dwellings and a lot containing the Iliff Nursing Home and Child Care Center.

Continuing, Ms. Langdon said the house, which fronts on an unimproved section of Cedar Street and is accessed via a driveway from Sandburg Street, was built in 1989. The applicant purchased the property in the fall of 1993, and began teaching dance classes in December 1993. On January 10, 1994, the Zoning Enforcement Branch of the Office of Comprehensive Planning issued a Notice of Violation to the applicants for conducting a school of special education without the approval of a special permit. On July 6, 1994, the applicants submitted a request for a special permit.

Ms. Langdon stated that the applicants were requesting approval of a special permit to operate a private school of special education for Indian classical dance in the existing single family residence. The hour long dance classes would be comprised of one to eight students and would be held Monday through Friday from 4:00 p.m. to 8:30 p.m. The classes would be conducted in the 588 square foot basement studio of the applicants' residence.

Addressing the renovations made to the property, Ms. Langdon said the original garage was enclosed to serve as the dance studio, and a new two car garage and breezeway were added.

She noted that the driveway has been enlarged and three parking spaces added for a total of five parking spaces on site. Ms. Langdon stated the applicants were also requesting a modification of transitional screening and a waiver of the barrier requirement along the northern, eastern and southern lot lines in order to allow existing vegetation on site to satisfy the screening requirements.

Ms. Langdon said staff believed that, with the limitation of no more than eight students per class with a weekly total of no more than 90 students, classes restricted to Monday through Friday afternoons from September to June, and all parking limited to on-site, the request would be harmonious with the adjacent area. She stated that staff also believed a term limitation should be imposed so that the use can be reviewed for potential noise and parking impacts on nearby residential uses, and so that the activity could be reduced or terminated if the impacts proved to be too serious. Ms. Langdon further stated staff recommended approval of the modification of transitional screening and waiver of the barrier requirement along the northern and eastern lot lines provided the existing vegetation remained undisturbed and two rows of evergreen trees were provided along the southern lot line.

In conclusion, Ms. Langdon said staff believed the application would be in harmony with the Comprehensive Plan and would be in conformance with the Zoning Ordinance provisions; therefore, staff recommended approval of the application subject to the development conditions contained in the staff report dated September 27, 1994.

The applicant, Shekar Narasimhan, 8100 Cedar Street, Dunn Loring, Virginia, addressed the BZA. He said he and his family have lived in the area for many years and his wife has taught Indian classical dance since 1982. Mr. Narasimhan said in each of their homes within Fairfax County, they had obtained business licenses and operated dance studios. He explained that the parents of the students wanted to expose their young daughters to Indian dance and culture. Mr. Narasimhan said approximately twenty students have attended the classes for eight years or more and nine have had a traditional solo performance noting that over 25,000 area residents have been exposed to Indian classical dance as a result of the endeavors of Mrs. Narasimhan and her students.

Continuing, Mr. Narasimhan said they have renovated the property both to meet their personal needs and to create a dance studio with a separate entrance. He noted the driveway was expanded to include internal parking with a turnaround area. Mr. Narasimhan explained they were unsuccessful in their attempts to contact the neighbors to discuss the community's concerns; but, they had taken measures to resolve parking concerns by expanding the driveway and forming car pools.

Mr. Narasimhan addressed the location of the one-half acre lot and said it was bounded on two sides by churches and the entrance faces the Iliff Nursing Home. He mentioned the various development taking place in the area and expressed his belief that the dance studio would have minimal impact on the area while contributing a great service to the community.

In addressing the proposed development conditions, Mr. Narasimhan said they would concur with the conditions, but asked that Condition 8, which limited the approval for a period of two years, be deleted. Again, he stressed that they would cooperate with the community and promptly resolve any difficulties which may arise from the use. Mr. Narasimhan thanked staff for its cooperation and noted their help has been invaluable. He asked the BZA to grant the request.

Chairman DiGiulian called for speakers in support of the request and the following citizens came forward.

Shvetha Murthy, 908 Peacock Station Road, McLean, Virginia, and Shivani Kacker, 110 Patrick Street, S.E., Vienna, Virginia; addressed the BZA and said they were students at the dance studio. They said the lessons exposed them to Indian dance and culture, and asked the BZA to grant the request.

In response to Mr. Hammack's question, Ms. Kacker said the annual day performances were held at the Montgomery College Performing Arts Center in Maryland.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizens came forward.

The representative of the Dunn Loring Improvement Association, Amy Coyle, 8008 Sandburg Court, Dunn Loring, Virginia; Jack Purcell, 8012 Sandburg Street, Dunn Loring, Virginia; Peter Salta, 2419 Sandburg Street, Dunn Loring, Virginia; Tera Barnes, 8003 Iliff Drive, Dunn Loring, Virginia; John Eltzruth, 8100 Revatom Court, Dunn Loring, Virginia; and John Indellicate, 8000 Sandburg Place, Dunn Loring, Virginia; addressed the BZA and stated the applicants' commercial dance studio would have a detrimental impact on the neighborhood, and expressed their belief the residential character of the community should be maintained. They noted that many church and community center facilities were available for dance classes, and asked the BZA to deny the request.

In response to Mr. Hammack's question as to the definition of a private school for special education, Ms. Langdon said it was a school primarily devoted to giving instruction in vocational, professional, musical, dramatic, artistic, linguist, scientific, religious, or

other special subjects; but, did not include a child care center, family day care center, or a riding school. She confirmed the instructors would not have to obtain special certification.

G. Ray Worley, President, Dunn Loring Improvement Association, 2537 Gallows Road, Dunn Loring, Virginia, stated the Association opposed the commercial use in the stable residential community. He expressed his belief the dance studio would create a detrimental impact on the neighbors and asked the BZA to deny the request.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Mr. Narasimhan said, although they had investigated numerous sites, they were unable to find a facility which could accommodate the operation. He stated that his wife was a professional dancer and the studio was installed for her personal use. He noted that because the adjoining property is currently being developed and much of the screening has been removed, he and the developer were working together to resolve the issue. Mr. Narasimhan said, although the operation was not an accredited institution, they do have a curriculum and students do graduate. He expressed his belief that the dance studio would be an asset to the rapidly developing community. Mr. Narasimhan asked the BZA to grant the request.

In response to Mr. Hammack's question as to whether the operation had a business license, Mr. Narasimhan said yes. He explained that, because most of the eighty-eight students either attend school or work, the classes were held at night. Mr. Narasimhan noted that there were no classes held on the weekends. The co-applicant, Charur Narasimhan, 8100 Cedar Street, Dunn Loring, Virginia, addressed the BZA. She explained that in order to accommodate many of the students who live in Maryland or are enrolled in other enrichment classes, she holds her classes in the evening.

In response to questions from the BZA regarding the granting of business licenses, Ms. Langdon said that she did not know the exact process an applicant must go through to obtain a business license. She explained that, although she did not do a thorough research of the entire County, she researched the subject area and could not find any similar type operations.

Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to deny SP 94-P-031 for the reasons reflected in the Resolution. Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel said although he sympathized with the applicants, the operation would be too intense for the neighborhood.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-P-031 by SHEKAR AND CHARU NARASIMHAN, under Section 3-303 of the Zoning Ordinance to permit school of special education, on property located at 8100 Cedar Street, Tax Map Reference 39-4((1))33B, 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 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-3.
3. The area of the lot is 21,826 square feet.
4. The BZA is not categorically opposed to schools of special education in residential neighborhoods; but, the BZA has consistently opposed anything of this intensity in a residential neighborhood.
5. The hours of operations would have a detrimental impact on the residential neighborhood. The BZA has opposed day care centers, schools of education, and home professional offices which operate beyond the normal business day.
6. A school with ninety students is a commercial activity, and the size and intensity would detrimentally impact the residential neighborhood.
7. Ballet schools and many other schools which operate in commercial space would have missed a real big opportunity if they could operate in a residential district.
8. Some of the reasons the applicant cites for supporting the application are also concerns. The area is already impacted by the institutional uses which exist in the residential neighborhood.

9. The additional traffic generated by the use would have a detrimental impact on the community.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-307 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED**.

Mr. Pammel seconded the motion which carried by a vote of 5-0 with Mr. Kelley 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 12, 1994.

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Page 428, October 4, 1994, (Tape 2), Scheduled case of:

9:30 A.M. CHEROKEE, L.L.C., SPA 79-A-164 Appl. under Sect(s). 5-603 of the Zoning Ordinance to amend SP 79-A-164 for racquetball court to permit health club. Located at 5505 Cherokee Ave. on approx. 0.56 ac. of land zoned I-6. Mason District. Tax Map 80-2 ((1)) 52. (Concurrent with VC 94-M-108).

9:30 A.M. CHEROKEE, L.L.C., VC 94-M-108 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot lines. Located at 5505 Cherokee Ave. on approx. 0.56 ac. of land zoned I-6. Mason District (formerly Annandale District). Tax Map 80-2 ((1)) 52. (Concurrent with SPA 79-A-164).

Chairman DiGiulian noted that the applicant had requested withdrawal of both applications.

Mr. Ribble made a motion to allow the withdrawal of SPA 79-A-164 and VC 94-M-108. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mrs. Thonen was absent from the meeting.

In response to Mr. Ribble's question regarding whether the applicant's request for a total or partial refund of the filing fees could be arranged, Jane C. Kelsey, Chief, Special Permit and Variance Branch, said yes.

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Page 428, October 4, 1994, (Tape 2), Scheduled case of:

9:30 A.M. GATEHOUSE CENTRE LIMITED PARTNERSHIP, APPEAL 94-P-023 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has not properly maintained a six (6) foot high screening fence as required by Par. 1 of Sect. 13-106 of the Zoning Ordinance. Located at 8051 Gatehouse Rd. on approx. 4.07 ac. of land zoned I-3. Providence District. Tax Map 49-4 ((1)) 61A. (TO BE ADMINISTRATIVELY DEFERRED DUE TO INCORRECT NOTICE OF VIOLATION)

Chairman DiGiulian noted the information on the Notice of Violation was incorrect.

William E. Shoup, Deputy Zoning Administrator, addressed the BZA. He explained that the original Notice of Violation was rescinded and a new Notice of Violation issued.

Chairman DiGiulian said action had been taken at the September 27, 1994 public hearing to dismiss the appeal.

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Page 428, October 4, 1994, (Tape 2), Scheduled case of:

9:30 A.M. GULICK GROUP, INC., APPEAL 94-Y-025 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is operating a subdivision sales office without an approved Temporary Special Permit. Located at 12541 Manderley Way on approx. 39,787 sq. ft. of land zoned R-1. Sully District. Tax Map 35-2 ((13)) 2.

Chairman DiGiulian noted that the appellant had requested withdrawal of the appeal.

Mr. Pammel made a motion to allow the withdrawal of A 94-Y-025. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 429, October 4, 1994, (Tape 2), Scheduled case of:

9:30 A.M. HUNG K. HOANG, APPEAL 94-L-029 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that a fence erected in appellant's front yard is in excess of four (4) feet in height and is therefore in violation of Par. 3B of Sect. 10-104 of the Zoning Ordinance. Located at 6219 Gum St. on approx. 28,277 sq. ft. of land zoned R-3 and HC. Lee District. Tax Map 81-4 ((4)) 3B.

Chairman DiGiulian noted that the appellant had requested withdrawal of the appeal.

Mr. Pammel made a motion to allow the withdrawal of A 94-Y-025. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 429, October 4, 1994, (Tape 2), Action Items:

Approval of Resolutions from September 27, 1994

Mr. Pammel made a motion to approve the Resolutions as submitted. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 429, October 4, 1994, (Tape 2), Action Item:

Request for Date and Time
Golf Park, Inc. Appeal

Mr. Pammel made a motion to schedule the appeal for the morning of December 13, 1994. Mr. Ribble seconded the motion which carried by a vote of 5-0 with Mr. Kelley not present for the vote. Mrs. Thonen was absent from the meeting.

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Page 429, October 4, 1994, (Tape), Action Item:

Request for Intent to Defer
LXR, Inc., The Music Store Appeal
A 94-Y-026

Mr. Ribble made a motion to defer A 94-Y-026 to December 13, 1994. Mr. Dively seconded the motion which carried by a vote of 5-0 with Mr. Kelley 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 11:30 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 4, 1994

APPROVED: November 10, 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 October 11, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:15 a.m and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 431, October 11, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JOSEPH TAYLOR AND ELIZABETH S. BRONAUGH, VC 94-S-094 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from rear lot line. Located at 6612 Saddlehorn Ct. on approx. 9,358 sq. ft. of land zoned R-3 (Cluster). Springfield District. Tax Map 88-1 ((11)) 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. Joseph Taylor Bronaugh, 6612 Saddlehorn Court, Burke, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Orange Hunt West Subdivision are also zoned R-3 and developed under the Cluster provisions of the Zoning Ordinance. He said the request for a variance resulted from the applicant's proposal to construct a sunroom addition.

Mr. Bronaugh presented the statement of justification, formerly submitted in writing and incorporated into the record. He said that he and his wife wished to construct an 18' by 10' sunroom addition in the space currently occupied by a 16' by 10' deck; the sunroom will be no closer to the rear lot line than the existing deck. Mr. Bronaugh said their goal was to expand the existing space from the adjacent family room at the north end of the house so that it will be more usable. He said that, because the lot is pie-shaped and on a cul-de-sac, it was necessary for the house to be placed close to the rear lot line; for that reason, there is no other reasonable location to place the addition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Hammack moved to grant VC 94-S-094 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 4, 1994.

The applicant requested a waiver of the eight-day waiting period and the motion to grant is also reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-S-094 by JOSEPH TAYLOR AND ELIZABETH S. BRONAUGH, under Section 18-401 of the Zoning Ordinance to permit construction of addition 21.0 ft. from rear lot line, on property located at 6612 Saddlehorn Court, Tax Map Reference 88-1((11))11, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 11, 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 (Cluster).
3. The area of the lot is approximately 9,358 square feet.
4. The lot is pie-shaped.
5. The dwelling was set back a considerable distance from the front lot line so that side yard requirements could be met, resulting in the house being located quite a bit to the rear of the lot.
6. The depth of the addition requires a very minimal variance.
7. There is no other place on the property where the addition could be reasonably 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 of the specific addition shown on the plat prepared by The Architect's Perspective and N.V.S. Contractors, Inc. dated July 20, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

Mr. Hammack moved to waive the eight-day waiting period. Mr. Dively 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 October 11, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 432, October 11, 1994, (Tape 1), Scheduled case of:

9:00 A.M. PETER J. AND CAROLE L. EWENS, SP 94-S-036 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 6.5 ft. from side lot line. Located at 11217 Silverleaf Dr. on approx. 42,084 sq. ft. of land zoned R-C and WS. Springfield District. Tax Map 86-4 ((5)) 30B.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Peter Ewens, 11217 Silverleaf Drive, Fairfax Station, Virginia, replied that it was.

David Hunter, Staff Coordinator, presented the staff report, stating that the property is located south of Clifton Road and east of Wolf Run Shoals Road; surrounding lots in the Rainbow Subdivision are also zoned R-C and developed with single family detached dwellings. He said the applicant's request resulted from an error of 13.5 feet or 68.5% to the minimum rear yard requirement.

Mr. Ewens presented the statement of justification, previously submitted in writing and incorporated into the record. He said he had purchased the property in August 1993 and, during the home inspection, it was noted that the timbers surrounding three sides of the perimeter of the garage were termite-infested and rotting out. Mr. Ewens said a concession was made by the seller to the applicant at the time of settlement to have the problem resolved. He said they also discovered that there really was no foundation for the structure and the 6' by 6' timbers were merely acting as a retaining wall to contain the gravel base beneath a poured 6" slab to stop the gravel from spilling out at the side. Mr. Ewens said that, as the timbers have rotted, some of the gravel has started to erode from under the pad and he was fearful that air pockets would form beneath the pad and cause it to crack. He said they negotiated a concession to have the timbers replaced by a concrete footer/foundation, which would adequately support the structure. Mr. Ewens said, shortly after the purchase, he hired a contractor who came to the County to apply for a building permit, only to discover that there never was a building permit obtained to construct the original garage; it was also discovered at that time that the structure was in violation of the minimum yard requirement, so he proceeded to file an application for a special permit.

Mr. Ewens said his adjacent neighbor had no objection to his plans and the closest point to the neighbor's house is somewhere between 75' and 85' with a lot of woods in between.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Pammel moved to grant SP 94-S-036 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 4, 1994.

The applicant requested a waiver of the eight-day waiting period and the motion to grant is also 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 94-S-036 by PETER J. AND CAROLE L. EWENS, 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 6.5 feet from side lot line, on property located at 11217 Silverleaf Drive, Tax Map Reference 86-4((5))30B, 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 11, 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 accessory structure (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/or use(s) indicated on the Special Permit Plat prepared by Terry Land Measurement, Inc., dated August 17, 1993, submitted with this application, as qualified by these development conditions.

3. A Building Permit shall be obtained and final inspections shall be approved for the shed/workshop.

4. The existing vegetation shall be maintained along the eastern property line.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

Mr. Pammel moved to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 434, October 11, 1994, (Tape 1), Scheduled case of:

9:00 A.M. OREST KACZMARSKYJ, SP 94-Y-037 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to allow deck to be constructed 12.0 ft. from side lot line. Located at 6615 Pelhams Trace on approx. 13,000 sq. ft. land zoned R-C and WS. Sully District. Tax Map 53-3 ((4)) (5) 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. Orest Kaczmarskyj, 6615 Pelhams Trace, Centreville, Virginia, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report, stating that the property is located in the Weltman Estates and is surrounded on all sides by property also zoned R-C and WS and developed with single family detached dwellings. She said the request was filed to allow construction of an 8'9" high deck. She noted that the property was previously zoned R-2 Cluster and the construction of the deck would meet the requirements of the R-2 Cluster District. Ms. Greenlief said that the dwelling on adjacent Lot 27, to the south, is located approximately 17.0 feet from the shared side lot line.

Mr. Kaczmarskyj presented the statement of justification, previously submitted in writing and incorporated into the record, stating that one of the reasons he purchased the land was the public land behind his property, on which he and his neighbors had spent several thousand dollars to maintain, for their own pleasure. At the time of purchase, the applicant said, the builder said a deck was an option and he built an exit from the family room on the second level. The applicant said that, when he eventually hired a contractor who applied for a building permit to build the deck, he was disappointed to find out that the building permit was denied because a variance was required. He said his adjacent neighbor has no objection to the proposed deck and there are several similar situations in the neighborhood.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mrs. Thonen moved to grant SP 94-Y-037 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 4, 1994.

The applicant requested a waiver of the eight-day waiting period and the motion to grant is also 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 94-Y-037 by OREST KACZMARSKYJ, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit deck to be constructed 12.0 feet from side lot line, on property located at 6615 Pelhams Trace, Tax Map Reference 53-3((4))(5)26, 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 ; 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 13,000 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 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 Patton Harris Rust & Associates, dated December 5, 1989, revised by the applicant on July 28, 1994, submitted with this application and not transferable to other land.

3. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required permits through established procedures, and this special permit shall not be legally established until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date* of approval unless 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 7-0.

Mr. Pammel moved to waive the eight-day waiting period. Mr. Hammack seconded the motion which carried by a vote of 7-0.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on October 11, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 436, October 11, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MILLARD A. PALMER, VC 94-B-088 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 13.0 ft. from side lot line. Located at 4600 Guinea Rd. on approx. 20,086 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-2 ((6)) 49.

Chairman DiGiulian called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Millard A. Palmer, 4600 Guinea Road, Fairfax, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located within the Rutherford Subdivision and is surrounded on three sides by single family detached dwelling also zoned R-2 and on the northeast by a vacant lot zoned R-1. He said that the applicant was requesting the variance to build a two-car garage.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Palmer presented the statement of justification, previously submitted in writing and incorporated into the record, stating that the builder had created a lot with extreme narrowness on the north side, making it necessary for him to request a variance to build a 22' by 26', 14'-high two-car garage. Mr. Palmer said strict application of the Ordinance would create a severe hardship as his wife is handicapped and requires some extra room to get in and out of a car; there is a chimney which also must be accommodated in the garage. Mr. Palmer spoke to the neighbor who would be directly affected by the garage and he indicated that he had absolutely no objection and encouraged the applicant to go forward with his proposal.

Mr. Ribble asked Mr. Palmer if it was true that it was really because of the chimney that he required the variance and Mr. Palmer said yes. Mr. Ribble further asked the applicant if it was not true that there really was no other place where it would make any sense for the garage to be placed on the lot and he said yes.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Ribble moved to grant VC 94-B-088 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 4, 1994.

The applicant requested a waiver of the eight-day waiting period and the motion to grant is also reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-088 by MILLARD A. PALMER, under Section 18-401 of the Zoning Ordinance to permit construction of addition 13.0 feet from side lot line, on property located at 4600 Guinea Road, Tax Map Reference 69-2((6))49, 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 11, 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 approximately 20,086 square feet.
4. The applicant requires a variance because of the nature of the placement of the dwelling and driveway on the lot and the location of the chimney.

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 xxx of the Zoning Ordinance.

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 two-car garage addition shown on the plat prepared by Greenhorne, O'Mara, Dewberry and Nealon, Civil Engineers and Land Surveyors, dated July 1, 1965, and revised and recertified by Cevat Kaya Biron, Architect, dated July 13, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The garage addition 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. Thonen seconded the motion which carried by a vote of 6-0. Mr. Kelley was not present for the vote.

Mr. Ribble moved to waive the eight-day waiting period. Mr. Dively 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 October 11, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 437, October 11, 1994, (Tape 1), Scheduled case of:

9:00 A.M. DAVID J. FISHER, VC 94-B-095 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit addition 13.0 ft. from side lot line such that side yards total 33.6 ft. Located at 6305 Heritage Landing Ct. on approx. 25,499 sq. ft. of land zoned R-1 (Cluster). Braddock District. Tax Map 77-4 ((12)) 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. David J. Fisher, 6305 Heritage Landing Court, Burke, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Burke Center Subdivision and is surrounded on the north, east and west by lots also zoned R-1 Cluster and developed with single family detached dwellings; to the south is Homeowner Association open space. She said that the request for a variance of 6.4 feet resulted from the applicant's proposal to expand an existing garage.

Mr. Fisher presented the statement of justification, previously submitted in writing and incorporated into the record, stating that they were the original occupants of the house, having occupied the house since 1980. He said that, at the time the house was built, they were not able to afford a two-car garage. Since that time, they have had several children and now wished they had built the garage in the beginning. He said that all the other houses in the neighborhood have two-car garages; in terms of converting from a one-car garage to a two-car garage, he said there is a wooded buffer in the area and none of their adjacent neighbors have any problem with the addition.

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively moved to grant VC 94-B-095 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 4, 1994.

The applicant requested a waiver of the eight-day waiting period and the motion to grant is also reflected in the Resolution.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-B-095 by DAVID J. FISHER, under Section 18-401 of the Zoning Ordinance to permit addition 13.0 feet from side lot line such that side yards total 33.6 feet, on property located at 6305 Heritage Landing Court, Tax Map Reference 77-4((12))24, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 11, 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-1 (Cluster).
3. The area of the lot is approximately 25,499 square feet.
4. The variance requested is very minimal.
5. The lot is pie-shaped, which is a unique configuration.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific addition shown on the plat prepared by Arencibia Architects Inc., dated July 15, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Kelley as not present for the vote.

Mr. Dively moved to waive the eight-day waiting period. Mrs. Thonen 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 October 11, 1994. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. CHANG KIM, SP 94-S-033 Appl. under Sect(s). 3-C03 of the Zoning Ordinance to permit commercial golf course and golf driving range. Located at 11475 Braddock Rd. on approx. 47.72 ac. of land zoned R-C and WS. Springfield District. Tax Map 56-4 ((1)) 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. Lynne J. Strobel, attorney with the firm of Walsh, Colucci, Stackhouse, Emrich and Lubeley, P.C., 2200 Clarendon Blvd., Arlington, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the site is vacant and heavily wooded; across Braddock Road to the north is a vacant 85-acre parcel owned by George Mason University; east of the property is a large lot cluster subdivision and a vacant 15-acre parcel; to the south is a large lot residential development accessed from Popes Head Road; and to the west are five large lots, four of which contain dwellings. She said that the applicant was requesting approval of a nine-hole golf course with an average hole length of 136 feet and a 50-tee, lighted golf driving range; 20 tees are proposed to be covered and 30 tees are proposed to be open. Ms. Langdon said that the applicant was also proposing to be open year round, with operating hours of 6 a.m. to 9 p.m. during May through October, and 7 a.m. to 8 p.m. during November through April. She said that the driving range is proposed to be lighted for evening use, as will the 90 space parking lot and entrance drive. A 6,200 square foot, two-story, combination clubhouse, pro shop, snack bar, and maintenance building is proposed in the center of the site, served by public water and a private septic system. Ms. Langdon said that private on-site well water would be used for the irrigation of the golf course. She said that limits of an Environmental Quality Corridor (EQC) have been identified and are shown on the plat; three stormwater detention ponds and two stormwater retention ponds, one of which is located in the EQC, are proposed; a 50-foot buffer area has been delineated along the eastern, southern and western lot lines, except in the location of the drainfield and entrance drive. Ms. Langdon said that two rows of evergreen trees and berms are proposed along Braddock Road. She said the applicant was also requesting a modification of the Transitional Screening requirement along a portion of the eastern lot line adjacent to the proposed drainfield and along the northern lot line, and a waiver of the barrier requirement along the western and northern lot lines. Ms. Langdon said that the site is planned for residential use of 0.1 to 0.2 dwelling units per acre, or one dwelling for every five to ten acres and it was staff's opinion that the proposed uses in combination would create an intensity that would not be in harmony with the very low density residential character of the area envisioned in the Plan, nor with the environmental recommendations of the Plan.

Ms. Langdon further stated that the land use and density had been established in the area to help protect water quality in the Occoquan Basin. She said that this application utilized a large percent of the property and, although buildings are not a significant part of the development, land disturbance is extensive. Ms. Langdon said that development of the property at the proposed intensity, with structural Best Management Practices (BMPs), undermines the two-thirds non-urban and one-third urban ratio that is central to meeting the water quality goal that was established in the Occoquan Basin Study. She said that outdoor lighting of the driving range and parking area is also a significant aspect of the proposed development that is an inappropriate impact, given the low density use envisioned by the Plan for this area.

Ms. Langdon said that this property is environmentally sensitive because of its location within the Popes Head Creek Water Shed of WSPOD, the two tributaries on the site and their associated EQC and wildlife habitats that abound there. She said that numerous precautions are required to protect the environmental quality of the property, especially the water quality and wildlife habitat. Ms. Langdon said that, under the applicant's proposal, up to 60% of the site will be cleared, a structural BMP is proposed in the EQC, which is not regional in aspect, and stormwater management facilities are constructed where large lot development is a preferred BMP. She noted that, in addition to not being in harmony with the Comprehensive Plan, it was staff's opinion that the proposal did not meet the required standards of the Zoning Ordinance and, therefore, staff recommended denial of the application. She noted that staff was including Proposed Development Conditions in the staff report; however, even with the conditions, staff continued to recommend denial.

Ms. Langdon further stated that, subsequent to the publication of the staff report, the applicant submitted a revised plat dated September 22, 1994. She said that staff only had time to make a cursory review of the revised plat and, while approximately 5% additional tree save was shown, the plat did not appear to address the majority of staff's issues. She said that it did not show a minimum of 60% undisturbed open space as envisioned by the Plan.

Ms. Langdon said that, if the BZA intended to approve SP 94-S-033, staff recommended that the BZA condition approval to the proposed conditions with a change to Condition 2 to reflect the date of the revised plat.

Ms. Strobel came to the podium and said that the applicant wished to request a brief deferral of the application and she apologized because she said she knew there were people present who would have liked to address the application; however, the decision to request a deferral had not been finalized until the previous day.

Ms. Strobel poceeded to explain why the applicant wished to request a deferral and then, hopefully, bring a revised plan back to the Board as soon as possible. She said the property

was the subject of an application that was presented to the BZA in September 1992, it underwent a number of deferrals, and ultimately was denied in 1993. Ms. Strobel said that the applicant is the contract/purchaser, has no affiliation with the prior applicant, and has proposed a plan which is very different from the previous submission. The applicant proposed a nine-hole golf course and a driving range; the previous applicant requested an eighteen-hole golf course and driving range. Ms. Strobel said that the nine par-three holes are longer in distance and offer greater challenge in an effort to encourage more serious play and to eliminate party crowds which might adversely impact the neighbors. She said the applicant had also included a number of features which would minimize the impact on the EQC; they have moved the location of the entrance road and minimized disturbance on the area. Ms. Strobel said the applicant had increased the proposed buffers around the property and the revised plan proposes preserving 45% minimum undisturbed treed area with 93% open space.

Ms. Strobel said the applicant is confused because the staff report contains discussion about acquiring or requesting 60% undisturbed open space because it conflicts with her review of recent golf course approvals by the BZA.

Mr. Ribble asked if the BZA was hearing the case or considering the deferral. Chairman DiGiulian asked Ms. Strobel if she was requesting a deferral or if she wanted the BZA to hear the case. Ms. Strobel said she wanted to explain why the deferral was being requested so late was that they initially thought the use was reasonable. She said she would end her explanation if the BZA so wished.

Mr. Ribble suggested that Ms. Strobel probably wanted the BZA to take a look at the plan and take out one of uses or something of that nature and Ms. Strobel said that was exactly what the applicant contemplated. Chairman DiGiulian instructed her to proceed.

Ms. Strobel said the material she had distributed to the Board had shown that there had been a number of golf courses and driving range facilities approved in the R-C , WS District. She said there were very few references to undisturbed open space and the applicant was proposing 93%, which she said she believed to be consistent with prior approvals. Ms. Strobel said that, in the cases cited, undisturbed open space ranged from 25.9% to 42%; however, she could find no examples of approvals with as high as 60% undisturbed space; for that reason, they believed their proposal to be reasonable.

Ms. Strobel said that the applicant was interested in having the application approved and did not wish to experience a denial after a long, drawn out process; for that reason, they wished to have the case deferred and present a revised plan to the staff, probably by Wednesday of the following week. She said she would like to return to the BZA as soon as possible with a more limited request.

Chairman DiGiulian asked if there was anyone present who would like to address the deferral and the suggested time of the morning of December 13, 1994. Douglas McIntosh, 11330 Lafferty Lane, spoke against the deferral and in favor of disapproval. He said that the neighborhood and three Homeowners Associations were unequivocally opposed to the application. Chairman DiGiulian asked Mr. McIntosh to please limit his comments to the deferral and the suggested date. Mr. McIntosh wished to offer reasons for denial and Chairman DiGiulian said that the applicant wished to have the application deferred so that it might be modified. Mr. McIntosh said that, even if it were modified, it would not be acceptable to the Homeowners Associations. Chairman DiGiulian asked Mr. McIntosh to limit his comments to addressing the deferral or he would have to call him out of order.

Mr. McIntosh said the reason he was against the deferral was that the applicant had the previous applicant's experience in the deferral and denial process and they did not come in with an application that addressed the opposition to the original application. He said the applicant submitted a very weak application which represented a bad faith effort.

Also addressing the deferral was Joseph Wheeler, Lot 13D, bordering on the eastern and southeastern part of the proposed applicant's driving range. He opposed the deferral because this was the fifth or sixth time that a number of the neighbors had to take off from work to come to the Board Room and he could see no changes in the latest proposed application compared to the earlier submissions, which seemed to be a waste of time for all concerned. He said he agreed with Mr. McIntosh that the neighbors would not concur with the applicant's modified proposal and that the original concerns had not been addressed. Mr. Wheeler said they would like to have the application heard and voted down.

Mr. Hammack said that an applicant has a right to have his application heard and, while it is true that the original application could have been different, a deferral had been requested to allow the applicant to modify the application so that the Board could then act upon the revised application. Mr. Hammack said he sympathized with the neighbors who believe that the application had not addressed issues that were raised in the original application which was denied two years ago, but it is a new applicant, it is a new application, with a new deferral request. He said he realized the staff report strongly recommended denial and, even with the Proposed Development Conditions, staff continued to recommend denial. Mr. Hammack said he believed the Board should grant a deferral at least one time so that the applicant would be able to submit a new application aimed at addressing concerns of the neighborhood and he so moved. Mr. Ribble seconded the motion and the case was deferred until the evening of December 20, 1994.

Mrs. Thonen expressed a desire for the applicant to submit an appropriately revised application which would not require further delay.

The motion carried unanimously. Mr. Kelley was not present for the vote. Mrs. Thonen noted that those in opposition would not have to take time off from work to attend the evening hearing.

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Page 441, October 11, 1994, (Tape 1), Scheduled case of:

9:30 A.M. PHONG DONG NGUYEN, SP 94-B-038 Appl. under Sect(s). 3-203 of the Zoning Ordinance to permit a home professional office. Located at 5430 Backlick Rd. on approx. 0.34 ac. of land zoned R-2 and HC. Braddock District. Tax Map 80-2 ((5)) (2) 2. (OUT OF TURN HEARING GRANTED)

Chairman DiGiulian advised that he had a note stating that withdrawal had been requested by the applicant. Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised that a letter requesting withdrawal had been received from the applicant the previous day.

Mr. Hammack moved to allow the applicant to withdraw the application. Mr. Ribble seconded the motion which carried unanimously. Mr. Kelley was not present for the vote.

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Page 441, October 11, 1994, (Tape 1), Scheduled case of:

9:30 A.M. CHRISTOPHER E. HOLLAND, APPEAL 94-Y-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination of the Director of the Zoning Evaluation Division that the use and improvements of an existing tennis court for tennis, basketball and volleyball is in substantial conformance with Special Permit SP 88-C-021. Located W. of Emerald Chase Dr. on approx. 38,198 sq. ft. of land zoned R-3. Sully District. Tax Map 25-3 ((7)) E.

Christopher E. Holland, 2996 Emerald Chase Drive, came to the podium to acknowledge his presence.

Don Heine, Staff Coordinator, presented the staff report dated October 4, 1994, stating that the lot is located within the Emerald Chase Subdivision, southwest of Emerald Chase Drive and east of Cedar Run; the property is zoned R-3 and developed with a tennis court adjoining single family detached dwellings on the south and east and public park land on the south and west, also zoned R-3. He said that the appellant's property is located to the east on adjoining Lot 63. Mr. Heine said that the use of the subject court for basketball, volleyball and other recreational uses had been part of every Board of Supervisors and Board of Zoning Appeals decision impacting the recreational land use component of the Emerald Chase Subdivision. He said that Proffer 7, accepted by the Board of Supervisors on January 31, 1977, in conjunction with approval of RZ 75-2-011, established that the multi-purpose court on the subject property could be used for basketball, volleyball, etc.; the verbatim restatement of the proffer was incorporated into the accepted proffers on December 3, 1984, as part of RZ 84-C-052 and Proffer Condition Amendment PCA 75-2-011-1. Mr. Heine said that special permit SP 88-C-021 was filed by the Emerald Chase Homeowners Association to enlarge the court and to allow community recreation, tennis, basketball and volleyball. On June 3, 1988, the Board of Zoning Appeals approved SP 88-C-021 and notations on the approved plat clearly illustrate an existing multi-purpose asphalt court and proposed tennis court; the heading in the Resolution states that the approval requested was to allow community recreation, tennis, basketball and volleyball. Mr. Heine said that, for the reasons cited, the improvement and use of the tennis court for basketball and volleyball, in addition to tennis, is in conformance with the approved special permit; therefore, the determination of the duly authorized agent of the Zoning Administrator should be upheld.

Mr. Holland came forward and submitted written material for the Board's review. He stated that he had received a letter from the Homeowners Association sometime in April of this year regarding the expansion of the existing tennis court to include the activities previously mentioned. He said he sincerely believed the permit for the tennis court did not allow for basketball; he believed the Board expressly prohibited anything other than tennis for that location. Mr. Holland said the tennis court is located about 20 feet from the back of his property, not set back from the street by 40 yards of parkland as stated in the application; nor is it in the middle of the community as stated in the application, rather it is to one side. He said the tennis court backs up to a thin strip of parkland which in turn borders on the Franklin Farms community. Mr. Holland said that the application for SP 88-C-021 stated that roaming adolescents abuse the court; the activities of those individuals on the tennis court cannot be seen from the road and the court already serves as a hangout for late night drinking. He said he believed the inclusion of a basketball stanchion would exponentially exaggerate the situation. Mr. Holland said he had expressed those sentiments at the Homeowners meeting, including his belief that the permit did not allow basketball hoops, but was told that the Emerald Chase Homeowners Association had the authority to install basketball hoops if it chose to.

Mr. Holland said that he wrote a letter dated May 3, 1994, to Jane C. Kelsey, Chief, Special Permit and Variance Branch, which included many of the same arguments he planned to make at the hearing. Mr. Holland said he had received a response to his letter from Barbara A. Byron, Director, Zoning Evaluation Division, dated June 9, 1994, stating that SP 88-C-021 did allow for the construction of a basketball stanchion. He said that, having only a few days

to file an appeal, he did so. Mr. Holland said that, since that time, the Emerald Chase Homeowners Association, had temporarily dropped plans to erect basketball stanchions due to a lack of support; however, it was made clear that they could do so at any time. Mr. Holland said that Ms. Byron had also sent him a copy of a memorandum dated October 4, 1994, in which she reiterated her determination that the improvement and use of the tennis court for basketball and volleyball, in addition to tennis, is in conformance with the approved special permit which proposed expanding the existing 60' by 90' multi-purpose asphalt court to a 60' by 120' court, enclosed by a ten-foot high fence; neither the plat nor any of the supporting material indicated that the multi-purpose court would be eliminated. Mr. Holland said he took issue with Ms. Byron's position. He said he did not argue with the fact that the site was once used as a multi-purpose court; rather he contended that the pre-existing multi-purpose court was replaced with a tennis court by special permit SP 88-C-021, not expanded to accommodate one.

Mr. Holland further said that the heading for the Emerald Chase Homeowners Association's application for SP 88-C-021 clearly described it as an application to the Fairfax County Board of Zoning Appeals for a special permit to allow the construction of a tennis court in lieu of a multi-purpose court on the same site previously approved for the multi-purpose court in the proffers. He said that it further stated that the community had voted to accept Winchester's donation for the purpose of building a tennis court in lieu of the multi-purpose court. Mr. Holland referenced the finding-of-fact in the Resolution stating that the use would be less intense with tennis courts, which would not be the case if the tennis court represented an expansion of pre-existing uses. Mr. Holland said he believed the approval of the application had a specific limitation and quoted: "This approval is granted for the buildings and uses indicated on the plat submitted on the application except as qualified below. Any additional structures of any kind, changes in use, additional uses, or changes in the plans approved by this Board, other than minor engineering details, whether or not these additional uses or changes require a special permit, shall require approval of the Board. It shall be the duty of the permittee to apply to this Board for such approval. Any changes, other than minor engineering details, without this Board's approval, shall constitute a violation of the conditions of this permit." Mr. Holland said he would be hard-pressed to find language any more definitive of the extent and limits of the approval and the plat indicates only the tennis court was being proposed and is entitled, "Special Permit Plat for Tennis Court."

Mr. Holland referenced Ms. Byron's letter of August 16, 1988, in which she stated that, "It is my determination that the substitution of a tennis court for the proffered multi-purpose court is in substantial conformance with the proffered GDP and Proffer 7 for RZ 75-2-011. He also referenced the Emerald Chase Tennis Rules, included in his package to the Board. They had previously been included in his package from the Emerald Chase Homeowners Association which he received at the time of the purchase of his home. In addition to making no reference to sports other than tennis on the tennis court, the rules expressly forbade the use of basketballs. Mr. Holland contended that was not a rule normally imposed upon a basketball court, nor a multi-purpose court.

Mr. Holland noted that he had submitted two letters to the Board, one from Mr. and Mrs. O'Mara, 3013 Emerald Chase Drive, who strongly opposed any action to modify the rules of use for the existing tennis court; and one from Sarah Henry and Michael Modrak of 2994 Emerald Chase Drive, stating that they were in full support of the appeal. Mr. Holland and the other two property owners adjacent to the court are against the basketball hoops on what has always been a tennis court.

Mr. Holland asked that Ms. Byron's determination be overturned.

Speaking in favor of the appeal was Raymond Cox, 2998 Emerald Chase Drive (adjacent to the court). He said there are no street lights in the neighborhood and the court sits down behind the houses where people party until 2:00 a.m.; he had the window of his truck shot out by a pellet gun nine times and his tail gate was hit four times. Mr. Cox did not believe the use should be expanded.

Speaking in opposition to the appeal was Robert Porko from the property management company that handles the Emerald Chase Homeowners Association. He said the members of the Association had asked him to speak on their behalf to defend the use of the basketball court and to indicate that they believe the special permit issued to them for the tennis court gave them permission to use the court as a basketball and volleyball court, as well. He said the membership believed it would only enhance the neighborhood. Mr. Porko said the membership believed no additional traffic would be generated by the expanded use because the court is not lighted. He said they had expressed their opinion with Mr. Holland and indicated to him that they would construct temporary basketball hoops to see what increase in traffic might occur; they said they would monitor the noise and traffic and, if there were numerous complaints from neighbors, they would remove the temporary basketball courts. The Association told Mr. Holland that, because there are no lights, the Board and its committees would monitor the use of the courts and would enforce the rules and regulations now in existence for the tennis courts; no changes in the rules are planned. Mr. Porko said that, at this time, the Association did not wish to spend the money to construct basketball stanchions and nets but it would like the BZA to keep the special permit active so that, when there is enough interest by the community, they could then construct the basketball courts.

Mr. Ribble noted that the speakers in favor of the appeal had indicated that a problem already exists on the tennis courts late at night and, if the adverse activity cannot not be controlled on the existing courts, any expansion of the use could result in and expansion of a problem which is already out of control. Mr. Porko said that, without lights, there would not be any basketball or volleyball played at night, after hours. Mr. Ribble reiterated that there are presently no lights and nighttime activity has been reported to be out of hand. Mr. Porko said that was true of any recreational facility.

Mr. Holland returned to the podium, stating he could not envision anyone playing night tennis, but that certainly could occur with basketball hoops and a full moon, with kids drinking and shooting hoops. He said there is a lock on the fence which is consistently broken and is not now working; the President of the Association said they do not intend to repair it because they cannot keep up with the adolescents.

There were no other speakers and Chairman DiGiulian closed the public hearing.

Mr. Dively said that, on a strictly interpretive basis, he believed that the Zoning Administrator was correct in her determination. He said that did not mean that the Homeowners Association was adequately policing the area or doing its job, only that a review of briefs and memoranda reflected that, based upon the nature of the special permit request, the appellant was relying almost exclusively upon the title of the request for the permit; however, the body of the request and the plat did not justify restricting the court only to tennis court use. He said, therefore, that the Zoning Administrator took the most well-thought-out and comprehensive position; the title of the request does not define what the permit allows and the permit and the plat do, and they incorporate the other uses. Mr. Dively moved to uphold the Zoning Administrator's determination.

Mr. Pammel said he would second the motion for the purpose of discussion.

In the ensuing discussion, Chairman DiGiulian said he had a problem with the motion; he believed the plat could be interpreted to indicate that the proposed tennis court would replace the multi-purpose court. He said the interpretative letter from Ms. Byron in 1988 also says that the substitution of the tennis court for the multi-purpose court is in compliance with one of the proffers. Chairman DiGiulian said he got the impression that, in 1988, the intent was that there be a tennis court only; now, the Association is coming back six years later and saying they want the multi-purpose court. Mr. Ribble referenced the way the request was granted when Mr. Hammack made the motion in 1988 and Mr. Hammack said that he believed it boiled down to the Board having considered a multi-purpose court and being asked to approve a tennis court in lieu of a multi-purpose court; there were some parking requirements imposed that were not applicable to a multi-purpose court, although he did not understand why. Mr. Hammack said there were certain requirements imposed when the use was limited to a tennis court and, while he did not have any real problem with Ms. Byron's interpretation because that might be the way the problem ultimately would resolve itself, he believed the special permit limited the use to a tennis court use. Mr. Hammack further stated that, in a technical sense, the Association should come back before the Board if it wishes to expand the use and, while he could appreciate Ms. Byron's position, and there is certainly a lot of history which supports it, the actual special permit limited the use to a tennis court. For these reasons, Mr. Hammack said he would oppose Mr. Dively's motion, although he could understand the reasons behind it.

Mr. Ribble said that, if the recreational facility was set apart, as some recreational facilities are, it would not impact the adjacent properties to this degree; however, the use is in close proximity to the property owners' lot lines.

A discussion ensued in which it was concluded that both tennis and basketball could be played year-round.

Mrs. Thonen said she believed this would be an expansion of use and she believed that should require BZA approval; however, she would regret the court not having full utilization.

Mr. Pammel said that the Zoning Administrator relied on the fact that the special permit application filed in 1987, which was granted in 1988, was to allow the construction of a community recreation tennis, basketball, volleyball court and open space, and noted that neither the plat nor any of the supporting material indicated that the multi-purpose court would be eliminated; neither is that mentioned in the Board's Resolution. He said that normally, if something is specified in lieu of something else, it is clearly indicated that one is substituted for one which is eliminated; in this case, there is nothing to show that the multi-purpose court was eliminated.

Mr. Dively said he was sorely tested to vote against his own motion for policy reasons; however, he based his motion solely upon interpretation. He said there clearly are problems, but his motion was strictly interpretative. Mr. Pammel said he agreed with Mr. Dively's analysis.

Mr. Hammack asked staff if, when the tapes were reviewed, there was any mention of deletion of the multi-purpose court. He said his position was based solely on the Resolution and the statement that, with tennis courts, the use would be less intensive; it is clearly a limitation and implies that the multi-purpose court is smaller but generates more intensity. Mr. Heine said staff did not review the tapes, only the minutes which were enclosed in the

package. Mr. Hammack said he would like to have the tapes reviewed to know what actually was said about deleting the multi-purpose court.

Mr. Ribble referenced the memorandum dated August 16, 1988, wherein the Zoning Administrator made a determination that the substitution of a tennis court for the proffered multi-purpose court is in substantial conformance with the proffered GDP and Proffer 7 for RZ 75-2-011, and now the determination was different.

Mr. Dively said the Resolution itself said the request was to allow tennis, basketball and volleyball court and stated that the approval was granted to the applicant. It was stated that the Resolution itself was at issue and required interpretation.

Mrs. Thonen asked whether the GDP changed the size of the court. Mr. Ribble said that, if there was any question at the time the special permit was granted, the Zoning Administrator clarified it by determining that it could be a tennis court in lieu of a multi-purpose court. Mrs. Thonen asked what document carried the legal interpretation; was it the GDP?

Mr. Dively said he did not believe the August letter was relevant whether correct or incorrect; what was relevant as far as the BZA was concerned was the reading of SP 88-C-021 now. Mr. Hammack said he considered finding-of-fact 5, stating that the use would be less intensive with tennis courts as a limitation. He also referenced paragraph 6, dealing with parking; there was no parking requirement associated with a multi-purpose court; therefore, the BZA asked the requirement to be waived for tennis. He said he believed there was a substitution at that point. Mr. Hammack said he was uneasy about making a decision.

Chairman DiGiulian called for a vote and the motion failed for lack of 4 affirmative votes. The vote was 2-4, with Mr. Dively and Mr. Pammel voting in the affirmative. Mr. Kelley was not present for the vote.

Mr. Hammack said he still would like to have the tapes researched to expand on the dialogue which transpired, at least for purposes of further discussion. He moved to overrule the determination of the Zoning Administrator in favor of the actual granting contained in SP 88-C-021. Mr. Ribble seconded the motion.

Mr. Hammack said he still would like to have the decision deferred for a week to research the tapes for any revealing dialogue of what was argued. Mr. Ribble remarked that any new evidence developed could assist the Board in their decision.

It was noted that the next meeting would be in two weeks. Mr. Pammel made a substitute motion that the decision to not uphold the Zoning Administrator be deferred until the next scheduled meeting on October 25, 1994. Mr. Dively seconded the motion which carried unanimously. Mr. Kelley was not present for the vote.

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Page 444, October 11, 1994, (Tape 1), Scheduled case of:

9:30 A.M. LXR, INC. (TRADE NAME) THE MUSIC STORE, APPEAL 94-Y-026 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant's use of property as a retail sales establishment and for live band performances and dancing is in violation of Par. 5 of Sect. 2-302 of the Zoning Ordinance. Located at 14210-A Sullyfield Ci. on approx. 1,711 sq. ft. of land zoned I-5, WS and AN. Sully District. Tax Map 34-4 ((16)) 4210-A.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, advised the Board that they had issued an Intent to Defer to the morning of December 13, 1994 at its meeting on October 4, 1994.

Mrs. Thonen so moved. The motion carried unanimously. Mr. Dively and Mr. Kelley were not present for the vote.

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Page 444, October 11, 1994, (Tape 1), Scheduled case of:

9:30 A.M. JOHN E. & KATHRYN M. CLARK, APPEAL 94-V-015 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant has constructed a garage in a front yard in violation of Par. 11C of Sect. 10-104 of the Zoning Ordinance. Located at 11429 Potomac Rd. on approx. 16,000 sq. ft. of land zoned RE. Mt. Vernon District. Tax Map 119-4 ((2)) (14) 16, 17, 18.

Chairman DiGiulian noted that the Board had issued an Intent to Defer to the morning of March 14, 1995, at its September 27, 1994 meeting.

Mrs. Thonen so moved. The motion carried unanimously. Mr. Dively and Mr. Kelley were absent from the meeting.

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Page 445, October 11, 1994, (Tape 1), Action Item:

Request for Reconsideration
William Judson & Margaret Seiter Vaughn, VC 94-D-085

Mr. Hammack moved to deny the request. Mr. Pammel seconded the motion which carried unanimously. Mr. Dively and Mr. Kelley were not present for the vote.

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Page 445, October 11, 1994, (Tape 1), Action Item:

Approval of Resolutions from October 4, 1994 Hearing

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried unanimously. Mr. Dively and Mr. Kelley were not present for the vote.

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Page 445, October 11, 1994, (Tape 1), Action Item:

Request to Consider Acceptance of
Rocks Engineering Company Appeal

Mr. Pammel said he had reviewed the documents and concurred with the opinion of the Zoning Administrator that a decision had not been rendered with respect to this case; therefore, the appeal was not germaine. Mr. Hammack seconded the motion which carried unanimously. Mr. Dively and Mr. Kelley were not present for the vote.

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Page 445, October 11, 1994, (Tape 1), Action Item:

Request for Additional Time
Tom V., Kimberly W., Joan J. & Tom V. III Richardson, SPA 91-Y-035-1
New expiration date: May 13, 1996

Mr. Hammack moved to grant and Mr. Pammel seconded the motion which carried unanimously. Mr. Dively and Mr. Kelley were not present for the vote.

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Page 445, October 11, 1994, (Tape 1), Action Item:

Request for Additional Time
Hacor, Inc., SP 91-Y-028
New expiration date: April 9, 1997

Mr. Hammack so moved. Mr. Pammel seconded the motion which carried unanimously. Mr. Dively and Mr. Kelley were not present for the vote.

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Page 445, October 11, 1994, (Tape 1), Action Item:

Approval of Minutes for September 8, 1994 Meeting

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried unanimously. Mr. Dively and Mr. Kelley were not present for the vote.

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Page 445, October 11, 1994, (Tape 1), Action Item:

Boehlert v. Board of Zoning Appeals

At the end of the Action Items, the Chairman asked if there were any other items to be brought before the Board. Jane C. Kelsey, Chief, Special Permit and Variance Branch, noted that the Board members were in the process of receiving copies of the Brief in Opposition which Mr. Patrick Taves, Senior Assistant County Attorney, filed with the Supreme Court of Virginia on behalf of the BZA in the case of Boehlert v. Board of Zoning Appeals. She reminded the Board that it involved a subdivision type variance which the BZA had denied and Mr. Boehlert challenged that decision in the Circuit Court. The Circuit Court upheld the BZA's denial and Mr. Boehlert was appealing that decision to the Virginia Supreme Court.

Ms. Kelsey stated that Mr. Taves' brief was a very good document in her opinion. She said that, after the Board members have read this document, if anyone had questions, Mr. Taves would be glad to talk with them.

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Page 446, October 11, 1994, (Tape 1), ADJOURNMENT:

As there was no other business to come before the Board, the meeting was adjourned at 10:40 a.m.

Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 10, 1994

APPROVED: November 15, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on October 25, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; 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 447, October 25, 1994, (Tape 1), Scheduled case of:

9:00 A.M. CARL L. SCHMITZ, VC 94-P-116 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 31.4 ft. from front lot line. Located at 8526 and 8530 Leesburg Pi. on approx. 1.03 ac. of land zoned C-8, HC and SC. Providence District. Tax Map 29-3 ((1)) 52. (IN CONJUNCTION WITH SE 94-P-045).

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. Martin, replied that it was.

Jane Kelsey, Chief, Special Permit and Variance Branch, introduced Phyllis Wilson, Staff Coordinator with the Rezoning and Special Exception Branch, to the BZA.

Ms. Wilson presented the staff report and said the subject property is located at 8526 and 8530 Leesburg Pike in the southeast quadrant of the intersection of Leesburg Pike and Spring Hill Road. The parcel is 1.3 acres in size, is zoned C-8, and is developed with a service station, a use that began in the 1930's. The applicant was requesting a variance to allow the primary service station building to remain 31.4 feet from the front lot line. The Zoning Ordinance requires a minimum front yard of 40 feet; therefore, a variance was requested for 8.6 feet. The need for the variance resulted from the past widening of Leesburg Pike, which brought the road closer to the existing service station building. Ms. Wilson said the variance application is in association with Special Exception application SE 94-P-045 which is scheduled to be heard by the Board of Supervisors on Monday, October 31, 1994.

Keith C. Martin, with the firm of Walsh, Colucci, Stackhouse, Emrich & Lubeley, P.C., 2200 Clarendon Boulevard, Arlington, Virginia, addressed the BZA. He said the service station has been in existence for approximately 60 years at the present location and was probably constructed at a time when there were no setback requirements from Leesburg Pike. Mr. Martin said with the widening of Leesburg Pike the service station is now situated 31.4 feet from the edge of right of way. He said the applicant is merely relocating and adding new vapor recovery pumps on the side of the building in conformance with the November 1, 1994 deadline of the Environmental Protection Agency (EPA). Mr. Martin said the special exception will be heard by the Planning Commission on October 27 and the Board of Supervisors on November 1. He believed the variance met the nine required standards for the granting of a variance, in particular that the property has an unusual condition in that it is an older building and the widening of Route 7 over the past 60 years has brought the road closer to the building. Mr. Martin added that the staff had been very creative and added a condition limiting the special permit to a four year term which will allow the applicant to completely demolish and reconstruct the station in order to bring it into compliance with the current Zoning Ordinance.

There were no speakers to the application and Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to grant VC 94-P-116 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 11, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-116 by CARL L. SCHMITZ, under Section 18-401 of the Zoning Ordinance to permit structure to remain 31.4 feet from front lot line, on property located at 8526 and 8530 Leesburg Pike, Tax Map Reference 29-3((1))52, 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 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 C-8, HC, and SC.
3. The area of the lot is 1.03 acres.
4. These conditions exist due to the prior taking of the applicant's land for a right of way by the Virginia Department of Transportation.

5. The building is located this distance from the front lot line through no fault of 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 and the specified structures shown on the variance plat prepared by The Plan Source, Consulting Engineers, dated July 11, 1994, revised through September 16, 1994, 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, 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. Kelley seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 2, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 448, October 25, 1994, (Tape 1), Scheduled case of:

9:00 A.M. FRED K. HINES AND CYRIL T. VERNON, VC 94-L-093 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed lot 5B having lot width of 75.0 ft. and to permit existing dwelling to remain 26.5 ft. from front lot line. Located at 6415 South Kings Hwy. and 6428 Pickett St. on approx. 59,363 sq. ft. of land zoned R-2 and HC. Lee District. Tax Map 83-3 ((5)) (3) 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. The applicant's agent, Mr. Thomas, replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the subject property is 59,363 square feet in size and is located between South Kings Highway and Pickett Street west of Route 1. Surrounding residential lots to the south, east, and west are zoned R-2 and are developed with single family detached dwellings. Property to the north is zoned R-5 and is developed with single family attached dwellings. The property is developed with two single family detached dwellings, and the applicant was requesting approval of a variance to subdivide one lot into two lots, with proposed Lot 5B having a lot width of 75.0 feet, where a lot width of 100 feet is required for an interior lot in the R-2 District. The applicant was also requesting to allow the existing dwelling on proposed Lot 5B to remain 26.5 feet from the front lot line, and to permit a reduction in the minimum lot area of proposed Lot 5B, where 15,000 square feet is required, and only 10,500 square feet is provided.

Mr. Hunter outlined the history of the subject property as follows: In March of 1952, Lots 1, 2, 3, and 4 were subdivided with new Lots 2, 3 and 4 measuring 75 feet by 140 feet, totaling 10,500 square feet.

On May 11, 1976, the BZA approved Variance V-67-76 to permit the subdivision of the subject property (Lot 5) into 2 Lots, with one lot having less area than allowed by the Ordinance and to permit less frontage on one lot than allowed by the Ordinance. This variance expired on May 11, 1977.

Staff could not establish when the house on proposed Lot 5A was constructed, since the Zoning Administration Division's files do not contain a building permit for this house. Building Permit No. 1062 was issued on March 17, 1952 for the construction of single family homes on Lots 2, 3, 4, and 5, which includes the dwelling on proposed Lot 5B fronting Pickett Street. However, no Building Permit has been found for the dwelling on proposed Lot 5A which fronts on South Kings Highway.

William Thomas, with the firm of Fagelson, Schonberger, Payne, & Deichmeister, P.C., 1733 King Street, Suite 300, Alexandria, Virginia, addressed the BZA. He said the applicant was only asking to establish a lot line to reflect the existing character and situation of the property. Mr. Thomas said the original house was built prior to 1948 and the other houses and the lot that would be created on Pickett Street were permitted in 1952, but for some reason the subject lot was not subdivided at that time. In 1976, the BZA granted a similar variance but unfortunately because the applicants did not proceed with the recordation process, the variance expired. He said the applicants would like at some future date to sell the house that fronts on Pickett Street. With respect to Development Condition Number 3 which required the dedication of right of way on South Kings Highway, Mr. Thomas asked that the Condition be deleted.

There were no speakers in support of the application and Chairman DiGiulian called the speakers in opposition.

Linda Windman, 6416 Pickett Street, Alexandria, Virginia, owner of Lot 3, said she was not opposed to the request but that she was confused as to where the lot line would be. She said there is a reservation that runs across Lots 3 and 4 and then the lot line goes back out to the full extension on Lot 2. Ms. Windman said the present owners have indicated that they would try to resolve the land issue, but as of this date the land has not been given back to her.

Chairman DiGiulian asked the purpose for the reservation. The speaker said it was done to allow the previous owner to construct a circular driveway.

In rebuttal, Mr. Thomas said when all the lots were under single ownership a 35 foot drainage easement was created and inside that easement is where the fence line has been established. He said the lot line being proposed by the applicants would be consistent with the others in the neighborhood. Mr. Thomas pointed out that the applicant would like to eliminate the easement since they have the responsibility of paying the taxes on the property and for the maintenance. He said the reservation was established in the '60's and runs for approximately 50 years.

Chairman DiGiulian asked if it was correct that the proposed division line was an extension of the rear lot line of Lots 2, 3 and 4. Mr. Thomas said that was correct.

Mr. Hammack questioned how the lot could be shown as a 10,500 square foot lot if the applicants paid taxes on the property. Mr. Thomas said the tax money was paid directly to the property owners.

Mr. Pammel expressed concern that the property owners were prevented from using at least 25 percent of their land and pointed out that Lot 5B was going to experience the same problem. He added that the BZA was being asked to reduce the lot size of the zoning district and that he did not find that acceptable.

Mr. Thomas said the applicants were proposing an egress/ingress easement to allow the continuation of the garage driveway. He pointed out there were no other alternatives.

Mr. Hunter said it was staff's understanding that the applicants have agreed to rescind the agreement on parcels 3 and 4 in order for the encumbrance to be done away with. Mr. Thomas said the drainage easement issue was totally unrelated to the applicants' proposal before the BZA and indicated that the applicant did not plan to rescind the easement.

There was no further discussion and Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant VC 94-L-093 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 18, 1994.

Following a discussion with the agent regarding his request to delete the right of way dedication condition, Mrs. Thonen agreed to delete the condition.

Mr. Hammack opposed the motion. He said the applicants were requesting relief from something that was done years ago to their benefit, and they do not seem to want to cooperate with removing other restrictions on the lot that affect other property owners.

Chairman DiGiulian said the applicants have indicated that they plan to remove the driveway from Lots 3 and 4. Mr. Hammack said they were not doing anything about the drainage easement. Chairman DiGiulian said he did not believe they had the power to do so. Mr. Hammack added that he would like additional information on the issue.

Mr. Pammel agreed with Mr. Hammack's comments.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-L-093 by FRED K. HINES AND CYRIL T. VERNON, under Section 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 5B having lot width of 75.0 feet and to permit existing dwelling to remain 26.5 feet from front lot line and permit reduction in minimum lot area of proposed Lot 5B, on property located at 6415 South Kings Highway and 6428 Pickett Street, Tax Map Reference 83-3((5))(3)5, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on October 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-2 and HC.
3. The area of the lot is 59,363 square feet.
4. It is true that the lot does not meet the bulk regulations and involves three different issues.
5. It appears that when the lot was subdivided in 1948 part of the lot was accidentally dropped from the application.
6. The houses have been on the property for years and are nicely developed.
7. The people are getting older and cannot sell their property because they cannot get individual ownerships on the properties.
8. The applicants should not be penalized for things that have occurred in the past.
9. The problem involving the setback requirement is going to have to be settled by someone else and does not come under the Board of Zoning Appeals' jurisdiction.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the subdivision of Lot 5 as shown on the plat prepared by Kenneth W. White, dated March 22, 1994, revised through July 6, 1994. All development shall be in conformance with this plat.

2. These conditions shall be recorded among the land records of Fairfax County with the subdivision plat and with the covenants, running with the land, to assure that future owners are aware of these restrictions.

3. The driveway to serve the garage on Lot 5A shall not encroach onto adjacent Lots 3 or 4.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless the subdivision has been recorded among the land records of Fairfax County. The Board of Zoning Appeals may grant additional time to record the subdivision if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Dively and Mr. Kelley seconded the motion which carried by a vote of 4-2 with Mr. Hammack and Mr. Pammel voting nay; Mr. Ribble was not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 2, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 451, October 25, 1994, (Tape 1), Scheduled case of:

9:30 A.M. PETER PIPER PRESCHOOL-LINDA K. O'BRYAN, SPA 75-D-081-2 Appl. under Sect(s). 3-103 of the Zoning Ordinance to amend SP 75-D-081 for nursery school to amend conditions to permit installation of a sanitary sewer line. Located at 1351 Scotts Run Rd. on approx. 2.20 ac. of land zoned R-1. Dranesville District. Tax Map 30-1 ((9)) 1. (Concurrent with VC 94-D-123)

9:30 A.M. PETER PIPER PRESCHOOL, VC 94-D-123 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot line. Located at 1351 Scotts Run Rd. on approx. 2.20 ac. of land zoned R-1. Dranesville District. Tax Map 30-1 ((9)) 1. (Concurrent with SPA 75-D-081-2).

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 attorney, Mr. Lawson, replied that it was.

Lori Greenlief, Staff Coordinator, presented the staff report. She said the property is located on the north side of Lewinsville Road, east of the Beltway and west of Rt. 123. It is zoned R-1 and contains 2.2 acres. Single family dwellings and open space surround the property.

The applicant made two requests: first, an amendment to an existing special permit for a nursery school to allow a sanitary sewer line and easement to cross the property. The use was originally approved on the site in 1970 and amended several times over the years. The last amendment, in 1992, was approved with a condition that the Environmental Quality Corridor (EQC) remain undisturbed with no clearing or grading. Ms. Greenlief called the BZA's attention to the viewgraph where she pointed out the proposed clearing and grading line for the sanitary sewer line and lateral which is contained wholly within the EQC. Staff's main concern with this proposal was the resultant disturbance to the EQC. With the implementation of proposed Condition 9 which requires a tree inventory be conducted and a

landscape plan devised which restores the areas disturbed, staff believed that the integrity of the EQC can be maintained.

The second request was a variance to allow the existing parking lot to remain less than the required minimum 10 foot distance to the front lot line.

Staff believed that with the implementation of the proposed development conditions mailed to the BZA dated October 25, 1994, the changes to the existing use would be in harmony with the Comprehensive Plan and in conformance with the applicable provisions of the Zoning Ordinance. Therefore, staff recommended approval of SPA 75-D-081-2.

William B. Lawson, Jr. with the firm of Lawson & Frank, Plaza Suite Five, 4141 North Henderson Road, Arlington, Virginia, addressed the BZA. He said during past applications when he has worked with the firm of Dewberry & Davis it has been their policy that whenever a commitment is made to preserving an area by whatever means, language is added reserving the right to install needed public easements. Unfortunately, in this case Mr. Lawson said this was not done. He said there is a project upstream from the subject property that needs to have sanitary sewer in order to serve the houses that will eventually be constructed on the property. The developer has contacted the applicant, in addition to three others, and worked out an agreement in order to get the necessary easements. Mr. Lawson said the Comprehensive Plan strives to preserve areas of sensitive environmental quality, but also strives to serve the public with the needed utilities. He added that the only alternative would be to construct a separate pumping system, which would not be the best solution. During this process, staff discovered that the parking lot is too close to the road and while researching the title it was became apparent that the need for the variance was due to the widening of Lewinsville Road. (His assistant distributed copies of the title to the BZA.)

There were no speakers and Chairman DiGiulian closed the public hearing.

Mr. Kelley made a motion to grant SPA 75-D-081-2 subject to the Revised Development Conditions dated October 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 75-D-081-2 by PETER PIPER PRESCHOOL-LINDA K. O'BRYAN, under Section 3-103 of the Zoning Ordinance to amend SP 75-D-081 for nursery school to amend conditions to permit installation of a sanitary sewer line, on property located at 1351 Scotts Run Road, Tax Map Reference 30-1((9))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 October 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-1.
3. The area of the lot is 2.20 acres.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-303 and 8-305 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This approval is granted to the applicant only and is not transferable without further action of this Board, and is for the location indicated on the application and is not transferable to other land.

2. This Special Permit is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dewberry & Davis dated September 19, 1994, revised October 11, 1994 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 hours of operation shall be limited to 9:00 a.m. to 3:30 p.m., Monday through Friday.

5. The maximum daily enrollment shall be limited to 64 children, ages 3 through 5, with a maximum of 32 on site at any one time.

6. Thirteen (13) on site parking spaces shall be provided for the nursery school use as shown on the special permit plat.

7. A modification to the transitional screening requirement is approved to allow the existing vegetation to satisfy the requirement along the western, eastern and northern lot lines. The barrier requirement shall be waived along the northern, western and eastern lot lines.

8. The applicant shall commit to the preservation of the Environmental Quality Corridor (EQC) as shown on the special permit plat. There shall be no clearing of any trees or shrubs in the EQC except for dead or dying ones and no grading except as may be required for the installation of the sanitary sewer line in which case the clearing and grading shall be subject to a tree inventory conducted in conjunction with the Urban Forestry Branch, DEM to maximize tree preservation within the limits of clearing and grading shown on the special permit plat. All construction debris (and other sizable objects which are visible) shall be removed from the EQC adjacent to the play area. A landscape plan, designed to restore the cleared and graded area to its pre-cleared condition through the use of similar species and ultimate canopy coverage, shall be submitted to and approved by the Urban Forestry Branch, DEM at the time that the grading plan is submitted and the landscape plan shall be implemented accordingly.

9. Sediment control in form of redundant and/or oversized siltation fencing during all grading and construction activities shall be provided . Such measures should be designed to achieve the highest possible sediment trapping efficiencies in substantial accordance with the methods recommended by the Virginia Soil and Water Conservation Commission in the 1980 Virginia Erosion and Sediment Control Handbook. All such activities shall be coordinated with the Department of Environmental Management at the time of the submission of the grading plan.

10. The installation of the sanitary sewer line and lateral shall be completed as quickly as practicable, and to the extent practicable the area between the easement and Lewinsville Road shall be used for construction related activities.

This approval, contingent on the above-noted conditions, shall not relieve the applicant from compliance with the provisions of any applicable ordinances, regulations, or adopted standards. The applicant shall be responsible for obtaining the required Non-Residential Use Permit through established procedures, and this special permit shall not be valid until this has been accomplished.

Pursuant to Sect. 8-015 of the Zoning Ordinance, this special permit shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and been diligently prosecuted. The Board of Zoning Appeals may grant additional time to establish the use 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 and Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 2, 1994. This date shall be deemed to be the final approval date of this special permit.

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Mr. Kelley made a motion to grant VC 94-D-123 for the reasons noted in the Resolution and subject to the Development Conditions contained in the staff report dated October 18, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-D-123 by PETER PIPER PRESCHOOL, under Section 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 feet from front lot line, on property located at 1351 Scotts Run Road, Tax Map Reference 30-1((9))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 October 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-1.
3. The area of the lot is 2.20 acres.
4. There was testimony pointing out the situation was caused by the taking of a portion of the applicant's property for the widening of Lewinsville Road.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 parking spaces shown on the plat prepared by Dewberry & Davis, dated September 19, 1994, submitted with this application and not transferable to other land.

Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Dively with Mr. Ribble not present for the vote.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 2, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 454, October 25, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL CONLON, SHURGARD STORAGE CENTERS, APPEAL 94-Y-004 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that the storage of rental vehicles and new vehicles at 11334 Lee Highway without site plan approval and a Non-Residential Use Permit is in violation of Zoning Ordinance provisions. Located at 11334 Lee Hwy. on approx. 231,587 sq. ft. of land zoned I-5. Sully District. Tax Map 56-2 ((1)) 37A. (DEF. FROM 3/8 AT APP.'S REQ. CHAIRMAN LIMITED TO 5 MINUTES. DEF. FROM 4/12 - APPELLANT MUST BE PRESENT. DEF. FROM 6/7 AT APPELLANT'S REQUEST))

Mr. Dively asked staff if it would be appropriate to grant the appellant's request for a deferral.

Page 455, October 25, 1994, (Tape 1), MICHAEL CONLON, SHURGARD STORAGE CENTERS, APPEAL 94-Y-004, continued from Page 454)

William Shoup, Deputy Zoning Administrator, said the appellant was now diligently pursuing site plan approval, but staff was concerned that the violation is still ongoing.

Mr. Dively made a motion to defer the appeal to April 28, 1995. Mrs. Thonen seconded the motion which carried by a vote of 5-0. Mr. Kelley and Mr. Ribble were not present for the vote.

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Page 455, October 25, 1994, (Tape 1), Scheduled case of:

9:30 A.M. FREEMAN G. LEE AND MELODIE S. POTTER (DAUGHTER), APPEAL 94-V-030 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is keeping 3 adult dogs on a lot containing 2,455 sq. ft. in violation of Par. 2A of Sect. 2-515 of the Zoning Ordinance. Located at 9545 Saluda Ct. on approx. 2,455 sq. ft. of land zoned R-8. Mt. Vernon District. Tax Map 107-4 ((8)) 7.

Mrs. Thonen made a motion to grant the appellants' request to withdraw A 94-V-030. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

James Williams, 9547 Saluda Court, Lorton, Virginia, came forward and asked for a clarification with regard as to what steps would now be taken.

Chairman DiGiulian explained to the speaker that the appellants had indicated their intentions of filing a special permit to obtain approval for keeping three adults.

Mrs. Thonen added that as long as the appellants' were proceeding in the proper channels, staff could take no further action.

Chairman DiGiulian asked staff how long the appellants would have to file the special permit application. William Shoup, Deputy Zoning Administrator, said the Zoning Inspector would do a follow up within fifteen days to determine if an application has been filed. He said if not, staff would have to proceed through with litigation.

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Page 455, October 25, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MICHAEL & FAY MPRAS, APPEAL 94-B-014 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is occupying the subject property without valid site plan and Non-Residential Use Permit approval. Located at 7401 McWhorter Pl. on approx. 16,542 sq. ft. of land zoned C-3, HC and SC. Braddock District. Tax Map 71-1 ((1)) 40. (DEF. FROM 7/26 AT APP.'S REQUEST)

Chairman DiGiulian noted that the Board of Zoning Appeals had issued an intent to defer A 94-B-014 to December 6, 1994, at its September 13, 1994 public hearing. Mrs. Thonen so moved.

Mr. Pammel pointed out that the appellants had indicated that they could not be present for the December 6th public hearing.

Chairman DiGiulian said this was the second deferral request. Mr. Hammack said the appellant had stated the same reason the first time. Chairman DiGiulian suggested that the appellants' request for indefinite deferral be denied, that the case be scheduled for December 6th, and that the appellant be informed the BZA was not inclined to grant any further deferrals.

Mr. Pammel accepted the Chairman's language as a motion. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 455, October 25, 1994, (Tape 1), Scheduled case of:

9:30 A.M. DAVID ROBERTSON, APPEAL 94-D-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that more than one dwelling unit has been established on appellant's property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 1138 Spring Hill Rd. and 8230 Alvord St. on approx. 4.84 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 20 and 20A. (DEF. FROM 9/13 FOR NOTICES).

William Shoup, Deputy Zoning Administrator, informed the BZA that the appellant was not present. He added that the appellant had informed staff that he would be represented by Ken Sanders, an attorney in Fairfax. Mr. Shoup said he had contacted Mr. Sanders late last week, but at that time Mr. Sanders had not made a decision if he would represent the appellant.

Page 456, October 25, 1994, (Tape 1), DAVID ROBERTSON, APPEAL 94-D-024, continued from Page 455)

Mr. Kelley suggested that the BZA pass over the case until later in the day to allow the appellant or his attorney an opportunity to be present. Mrs. Thonen seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 456, October 25, 1994, (Tape 1), Action Item:

9:30 A.M. CHRISTOPHER E. HOLLAND, APPEAL 94-Y-028 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal determination of the Director of the Zoning Evaluation Division that the use and improvements of an existing tennis court for tennis, basketball and volleyball is in substantial conformance with Special Permit SP 88-C-021. Located W. of Emerald Chase Dr. on approx. 38,198 sq. ft. of land zoned R-3. Sully District. Tax Map 25-3 ((7)) E.

Chairman DiGiulian said this case was deferred from October 11, 1994 for decision only.

Mr. Hammack said he had listened to the tape from the public hearing as he did not want to do a disservice to the Zoning Administrator or the appellant. He said in looking at the history of the case it appeared that the multi-purpose court was in existence at the time they applied for the tennis courts. The association had placed money into escrow to fence in and provide improvements for the use of a tennis court, in addition to the multi-purpose court. Mr. Hammack said it was not entirely clear from listening to the tape what the applicant was asking for but he believed it was for the use of a tennis court in addition to the multi-purpose uses that was already on site. He was concerned that he had used the words "in lieu" which implied that the homeowners could use the tennis court in lieu of the multi-purpose court, but that he had not meant to approve a tennis court to the total exclusion of all other uses. The Zoning Administrator had ruled that the homeowners could use the courts as tennis or multi-purpose and the appellant appealed that decision. Mr. Hammack said that the BZA had not approved or denied in part, but there had not been any intent to exclude all other uses on the site. Therefore, he made a motion to uphold the interpretation of the Zoning Administrator.

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 456, October 25, 1994, (Tape 1), Action Item:

Appoval of October 11, 1994 Resolutions

Chairman DiGiulian noted that the BZA had waived the eight-day waiting period on all the cases heard on that date.

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Page 456, October 25, 1994, (Tape 1), Action Item:

Approval of September 13, 1994 Minutes

Mr. Pammel made a motion to approve the minutes as submitted. Mr. Dively seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 456, October 25, 1994, (Tape 1), Action Item:

Addition Time for Groveton Baptist Church, SP 88-V-079

Mrs. Thonen made a motion to grant the applicant's request. Mr. Pammel seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote. The new expiration date is September 30, 1995.

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Page 456, October 25, 1994, (Tape 1), Action Item:

Out of Turn Hearing Request for
Frederick L. Byrne, Jr., SP 94-V-053 and VC 94-V-135

Mr. Pammel said it appeared that the building was located in error and the applicant has complied with all the County requests relative to information. He asked staff for a date to schedule the out of turn hearing.

Jane Kelsey, Chief, Special Permit and Variance, said staff had been holding December 15th as an "if needed" date. She pointed out that there were four controversial cases scheduled on December 20th with 10 cases scheduled for December 13th.

Mr. Pammel made a motion to schedule the case on December 15th at 9:00 a.m. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 457, October 25, 1994, (Tape 1), Action Item:

Request for Date and Time for David L. Hunter Appeal

Mr. Dively said it appeared that the issue may be rendered moot, and asked why the appellant was requesting a May 1995 date since they are scheduled to be heard by the Board of Supervisors in January 1995.

William Shoup, Deputy Zoning Administrator, said it was to allow time for the possibility of a deferral.

Mr. Dively made a motion to defer the appeal to March 28, 1995, as suggested in staff's memorandum. Mr. Hammack seconded the motion which carried by a vote of 6-0. Mr. Ribble was not present for the vote.

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Page 457, October 25, 1994, (Tape 1), Action Item:

Intent to Defer Robert F. Raspen, VC 94-Y-096

Mrs. Thonen made a motion that the case be scheduled for November 23rd to allow the application to be amended to reflect the land dedication that had been inadvertently overlook during the review. Hearing no objection, the Chair so ordered. Mr. Ribble was not present for the vote.

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Page 457, October 25, 1994, (Tape 1), Action Item:

Request for Withdrawal of Exxon Appeal
Scheduled for November 15, 1994

Mrs. Thonen so moved. Hearing no objection, the Chair so ordered. Mr. Ribble was not present for the vote.

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Page 457, October 25, 1994, (Tape 1), Action Item:

David Robertson Appeal, 94-D-024

(The BZA had passed over this case earlier in the public hearing.)

William Shoup, Deputy Zoning Administrator, said the appellant was now present in the Board Room.

The appellant, David Robertson, 1138 Spring Hill Road, McLean, Virginia, informed the BZA that his attorney would not be present until 10:30 a.m.

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The BZA recessed at 10:12 a.m. and reconvened at 10:30 a.m.

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Upon returning to the Board Auditorium, the BZA was informed that the appellant's attorney was still not present. Chairman DiGiulian asked if staff had verified that Ken Sanders was representing the appellant. Mr. Shoup said he had not discussed the case with Mr. Sanders since last week.

Mrs. Thonen asked if staff would agree to a one week deferral. Mr. Shoup said staff was concerned that the case was being prolonged unnecessarily. Mrs. Thonen and Mr. Dively agreed.

Mr. Hammack suggested that the BZA hear any interested parties testimony. Mr. Kelley disagreed. He added that the attorney should be privy to all discussion. Mr. Hammack said he believed that Mr. Sanders would have handled the situation differently if he was representing the appellant.

The appellant made comments form the audience which were inaudible. Mr. Hammack suggested that the speaker come to the podium and make a statement.

Mr. Robertson said he had retained Ken Sanders as his attorney and that he was to be present at the public hearing by 11 o'clock and had asked that the BZA defer the case if he did not appear.

In response to a question from Mr. Kelley, Mr. Robertson said he had retained Mr. Sanders approximately one week ago.

Mr. Kelley said it all probability the attorney himself would have requested a deferral to allow him to "get up to speed" on the case. Mrs. Thonen expressed concern with granting a long deferral, but that she would support a one week deferral. Mr. Hammack pointed out that this case had been deferred from September 13th.

Mr. Kelley made a motion to defer the case for one week. Mr. Dively seconded the motion which carried by a 6-1 with Mr. Hammack voting nay. Mr. Kelley informed the appellant that he would not support another deferral.

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As there was no other business to come before the Board, the meeting was adjourned at 10:35 a.m.

Betsy S. Hurtt, Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 22, 1994

APPROVED: November 29, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 1, 1994. The following Board Members were present: Chairman John DiGiulian; Mary Thonen; Robert Dively; Paul Hammack; Robert Kelley; James Pammel; and John Ribble.

Chairman DiGiulian called the meeting to order at 9:12 a.m. and Mrs. Thonen gave the invocation. There were no Board Matters to bring before the Board and Chairman DiGiulian called for the first scheduled case.

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Page 459, November 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. LAGUNA AND GUZMAN, INC.,/H. DOUGLAS SMITH, ET. AL., VC 94-Y-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 16.0 ft. from front lot line. Located at 4004 Walney Rd. on approx. 0.50 ac. of land zoned C-8, AN, HC and WS. Sully District. Tax Map 34-4 ((1)) 44.

Chairman DiGiulian requested that the applicant come to the podium and a man from the audience said the applicant was not present.

Mr. Kelley made a motion to move the case to the end of the scheduled agenda. Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 459, November 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. THE CHURCH OF THE ASCENSION, VC 94-Y-068 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit existing church to remain 16.0 ft. from front lot line. Located at 13941 Braddock Rd. on approx. 23,068 sq. ft. of land zoned R-1, HD, SC, HC and WS. Sully District. Tax Map 54-4 ((1)) 44. (IN ASSOCIATION WITH RZ 94-Y-023).

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. Mays replied that it was.

David Hunter, Staff Coordinator, presented the staff report. He said the 23,068 square foot property is located on the west side of Braddock Road, north of Route 29, and east of Route 28 in the Centreville Historic District. The site is developed with the Church of the Ascension, which is an historic structure known as The Old Stone Church. Mr. Hunter noted that the applicant's statement of justification detailed the history of the Old Stone Church, which was originally constructed in 1855, was destroyed during the Civil War, and was subsequently rebuilt in 1870.

Continuing, he stated that the applicant was requesting a variance to allow the existing church to remain 16.0 feet from the front lot line. The Zoning Ordinance requires a 25.0 foot minimum front yard; therefore, the applicant was requesting a 9.0 foot variance.

Mr. Hunter said that on October 31, 1994, the Board of Supervisors approved RZ 93-Y-023 to allow construction of a 1,300 square foot addition to the existing historic structure. He explained that because a place of worship is a by-right use in the C-2 district, a special permit was not required.

The applicant's attorney, Michael A. Mays, 4117 Chain Bridge Road, Suite 310, Fairfax, Virginia, addressed the BZA. He stated that the applicant would like to construct a small addition to the rear of the existing church. Mr. Mays explained that the rezoning approval had resolved, not only the Floor Area Ratio, but the lot size and width issues, and the only remaining issue was the front yard setback requirement. He expressed his belief that the application met the necessary requirements and asked the BZA to grant the request.

There being no speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Hammack made a motion to grant VC 94-Y-068 for the reasons reflected in the Resolutions and subject to the development conditions contained in the staff report dated October 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-Y-068 by THE CHURCH OF THE ASCENSION, under Section 18-401 of the Zoning Ordinance to permit existing church to remain 16.0 feet from front lot line, on property located at 13941 Braddock Road, Tax Map Reference 54-4((1))44, 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 1, 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-1, HD, SC, HC, and WS.
3. The area of the lot is 23,068 square feet.
4. The application meets the necessary standards for the granting of a variance.
5. The church is an old church which predates the Zoning Ordinance.
6. The road improvements in the area has caused the need for the variance.
7. There will be no changes other than the location of the church with respect to the road.
8. There will be no change to the zoning district or any detrimental impact to the zoning category.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or 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 Delta Consultants, Inc., dated December 16, 1993, revised through August 12, 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.

Pursuant to Sect. 18-407 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 November 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 461, November 1, 1994, (Tape 1), Scheduled case of:

9:00 A.M. ROBERT F. & PAULA M. RASPEN, VC 94-Y-096 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit subdivision of one lot into two lots, proposed Lot 12B having lot width of 102.6 ft. Located at 2832 Fox Mill Rd. on approx. 3.30 ac. of land zoned R-1. Sully District. Tax Map 36-1 ((1)) 12.

Chairman DiGiulian noted that the applicant had requested a deferral.

Mrs. Thonen made a motion to defer VC 94-Y-096 to the morning of November 23, 1994 at 9:30 a.m.

Mr. Dively seconded the motion which carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 461, November 1, 1994, (Tape 1), Action Item:

Approval of Resolutions from October 25, 1994

Mrs. Thonen made a motion to approve the Resolutions as submitted. 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 461, November 1, 1994, (Tape 1), Action Item:

Approval of Minutes from September 20 and September 27, 1994 Hearings

Mrs. Thonen made a motion approve the minutes as submitted. Mr. Hammack seconded the motion. The motion to approve the September 20, 1994, minutes carried by a vote of 5-0-1 with Mr. Pammel abstaining from the vote and Mr. Ribble not present for the vote. The motion to approve the September 27, 1994, minutes carried by a vote of 6-0 with Mr. Ribble not present for the vote.

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Page 461, November 1, 1994, (Tape 1), Action Item:

Change in Hearing Date for the
Shurgard Storage Centers Appeal, A 94-Y-004

Mr. Pammel made a motion to change the scheduled date of the appeal to April 25, 1995. 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 461, November 1, 1994, (Tape 1), Action Item:

Request for Intent-to-Withdraw
Robert D. Bailey, Jason A. Robertson, Appeal, A 94-B-033

Mr. Pammel made a motion to issue an Intent-to-Withdraw A 94-B-033 scheduled for November 10, 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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The Board of Zoning Appeal recessed at 9:20 a.m. and reconvened at 9:30 a.m.

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Page 461, November 1, 1994, (Tape 1), Scheduled case of:

9:30 A.M. MARY C. MAYO, SP 94-M-039 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 6.2 ft. from side lot line. Located at 4030 Estabrook Dr. on approx. 17,000 sq. ft. of land zoned R-2. Mason District. Tax Map 59-4 ((5)) 58.

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. Mayo replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report. She said the applicant was requesting a special permit to allow an existing accessory structure to remain 6.2 feet from a side lot line. The Zoning Ordinance requires a 15.0 foot minimum side yard; therefore, the applicant was requesting a modification of 8.8 feet to the minimum side yard requirement which is a 58.6 percent error.

The applicant's agent, Nelson A. Mayo, 4030 Estabrook Drive, Annandale, Virginia, addressed the BZA. He stated that his parents purchased the property in 1950, and he has resided in

the house ever since. Mr. Mayo explained that, because of a misunderstanding on his behalf, the accessory structure was built in error and said it would be a hardship to dismantle the building. He expressed his belief that the existing septic tank and field precluded placing the structure elsewhere on the lot, there has been no detrimental impact on the neighbors, the structure was in harmony with the neighborhood, and the property was well screened. Mr. Mayo submitted a plat depicting the vegetation and used the viewgraph to show the area where some trees were removed in order to accommodate the neighbor's six foot stockade fence. He explained that, although the actual fence was on the neighbor's property, the fence posts were on his property.

In response to Chairman DiGiulian's question regarding the lack of a building permit, Mr. Mayo said he did not obtain a building permit because he had been misinformed. He explained that he had been led to believe that if a slab was not installed and the building was erected on footers, a building permit would not be necessary.

In response to Mrs. Thonen's question as to whether the trees had been removed from his property, Mr. Mayo yes. The BZA examined the pictures submitted by the applicant.

Chairman DiGiulian called for speakers in support of the application and the following citizens came forward.

Mike O'Neil, 4028 Estabrook Drive, Annandale, Virginia, addressed the BZA. He stated that he was the contiguous neighbor most affected by the structure and expressed his belief there was no detrimental impact on the area. Mr. O'Neil said he had even helped construct the building which provided privacy for his property.

In response to Mrs. Thonen's question regarding the size of the structure, Ms. Langdon said the building would meet the standards because it had been partitioned into a workshop and a storage area.

Debbie O'Neil, 4028 Estabrook Drive, Annandale, Virginia, addressed the BZA. She said she would be one of the first to complain if the structure destroyed the character of the wonderful neighborhood with its old distinguished homes and expressed her belief that the well-built structure was beneficial to the area.

There being no further speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

David H. Bier, 4021 Hirst Drive, Annandale, Virginia, addressed the BZA. He stated he was a contiguous property owner and expressed his belief that the error was not done in good faith. Mr. Bier explained that because Mr. Mayo has been in the construction trade, has worked as a carpenter's helper, and was currently employed by Mr. O'Neil in his air-conditioning installation and repair business, he should have been aware of the Fairfax County permit process. He further explained that he also had concerns regarding the fact the project, which was so well planned and thought out, could have been constructed without the appropriate Fairfax County permits.

Addressing the fence issue, Mr. Bier said the fence had been erected by one of the neighbors in an attempt to mask the accessory structure. He expressed his belief that the structure was not in harmony with the area and noted that the building, which resembles a small house, has storm windows and a storm door.

Continuing, Mr. Bier stated that another contiguous neighbor, with the encouragement of Mr. Mayo, was in the process of constructing a similar structure on his property. He said that the applicant's family had indicated the structure would be used as a recreation area with a pool table and bar. Mr. Bier referred to the layout of the building and expressed concern that the structure had only one entrance when it was intended for both a workshop and a storage area. In conclusion, he said it was his belief the applicant built the structure over the Memorial Day weekend so that she could circumvent Fairfax County inspections.

In response to Mrs. Thonen's question as to the name of Mr. O'Neil's company, Mr. Bier said he did not know.

As there were no further speakers, Chairman DiGiulian called for rebuttal.

Mr. Mayo said the structure was in conformance with the neighborhood. He stated he did not believe the neighbor's fence was installed to screen the structure because the nine trees, which were removed, had provided adequate screening. In addressing the impact issue, Mr. Mayo said the structure was eighty feet from Mr. Bier's property. In conclusion, he stated the shed and the accessory building used 11.66 percent of the backyard.

Chairman DiGiulian closed the public hearing.

Mr. Pammel made a motion to deny SP 94-M-039 for the reasons reflected in the Resolution.

Mrs. Thonen seconded the motion noting her concern regarding the setting of a precedent for other neighbors to construct large buildings. She further noted the applicant did not prove a hardship.

Page 463, November 1, 1994, (Tape 1), MARY C. MAYO, SP 94-M-039, continued from Page 462)

Chairman DiGiulian called for discussion.

Mr. Kelley opposed the motion explaining that he could not find fault with the applicant constructing the building over the long holiday weekend as it was an ideal time for the applicant's friends to help build the structure. Mr. Kelley stated that had the applicant applied for a variance for the structure, he would have been inclined to grant the request.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-M-039 by MARY C. MAYO, 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 6.2 feet from side lot line, on property located at 4030 Estabrook Drive, Tax Map Reference 59-4((5))58, 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 1, 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 17,000 square feet.
4. The way the application was done has caused considerable concern.
5. The size of the structure, which is almost 500 square feet in size, is of concern.
6. It is hard to imagine that the applicant made the decision that the construction did not require any permits from Fairfax County. She may have been misinformed about the slab, but this is not the typical work shed, and it's not the typical size structure that someone would think did not require some sort of permit.
7. The fact that the structure was built over the weekend is also of concern. When you look at the diagram of the interior of structure it is suggestive of uses other than storage and a workshop.
8. There are many things that don't focus in clearly as to the intent of the applicant.
9. The application does not meet the necessary requirements for the granting of a special permit.
10. The testimony has indicated the project was well thought out, but the applicant avoided one major aspect of obtaining the appropriate Fairfax County permits.
11. The applicant would like the BZA to sanction a structure even though when constructed, they did not even bother to obtain the necessary permits.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has not presented testimony indicating compliance with the general standards for Special Permit Uses as set forth in Sect. 8-006 and the additional standards for this use as contained in Sections 8-903 and 8-914 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Thonen seconded the motion which carried by a vote of 5-2 with Mr. Dively and Mr. Kelley voting nay.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1994.

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Page 463, November 1, 1994, (Tape 1), Scheduled case of:

9:30 A.M. CORNELL GREEN, VC 94-L-046 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 15.4 ft. from rear lot line (25 ft. min. rear yard req. by Sect. 3-407). Located at 6712 Morning Ride Ci. on approx. 5,546 sq. ft. of land zoned PDH-4. Lee District. Tax Map 99-2 ((7)) 283. (DEFERRED FROM 9/20 FOR NOTICES)

Chairman DiGiulian stated that the applicant had submitted a letter requesting withdrawal.

Mrs. Thonen made a motion to allow the withdrawal of VC 94-L-04. Mr. Dively seconded the motion which carried by a vote of 7-0.

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9:30 A.M. ROY D. & JOAN L. BRIDGES, VC 94-L-098 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 ft. from side lot line and 10.0 ft. from rear lot line. Located at 6126 Hillview Ave. on approx. 10,822 sq. ft. of land zoned R-3. Lee District. Tax Map 82-4 ((14)) (25) 29. (Concurrent with SP 94-L-040).

9:30 A.M. ROY D. & JOAN L. BRIDGES, SP 94-L-040 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 carport to remain 6.0 ft. from side lot line. Located at 6126 Hillview Ave. on approx. 10,822 sq. ft. of land zoned R-3. Lee District. Tax Map 82-4 ((14)) (25) 29. (Concurrent with VC 94-L-098).

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. Bridges replied that it was.

Donald Heine, Staff Coordinator, presented the staff report. He referred to an error in the staff report noting that Page 1 of the staff report should have indicated a building permit had been obtained.

The applicants were requesting approval of concurrent special permit and variance applications. The special permit request was for an error in building location to allow an existing carport addition to remain 6.0 feet from the side lot line. The Zoning Ordinance requires a minimum 7.0 foot side yard; therefore, an error in building location for 1.0 foot was requested.

The variance request was to allow a detached garage to be located 5.0 feet from a side lot line and 10 feet from a rear lot line. The Zoning Ordinance requires a minimum 12.0 foot side yard and a minimum 14.5 foot rear yard; therefore, the applicants were requesting variances of 7.0 feet from the side yard and 4.5 feet from the rear yard requirements.

The applicant, Joan L. Bridges, 6126 Hillview Avenue, Alexandria, Virginia, addressed the BZA and stated they had obtained a building permit and a final inspection for the carport. She explained that the support post for the carport which should have been installed 7.0 feet from the side lot line had been erroneously installed 6.0 feet from the lot line. Ms. Bridges expressed her belief that the error has had no detrimental impact on the neighborhood and met the necessary requirements for the granting of a special permit. She said to require removal of the post would cause an undue hardship and asked the BZA to grant the request.

Addressing the variance request, Ms. Bridges stated they would like the garage to house their antique car. She also noted the existing dilapidated shed would be removed and the garage would provide much needed storage space. Ms. Bridges said the steep four and one-half foot slope in the backyard precluded placing the garage elsewhere on the lot, and explained that the topographic conditions in the area had caused other neighbors to apply for variances to make improvements to their properties. Ms. Bridges expressed her belief that the application met the necessary standards, and asked the BZA to grant the request.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Beverly Anderson, 6200 Hillview Avenue, Alexandria, Virginia, addressed the BZA and expressed her support for the applications. She said the applicants have made many improvements to the house since it was purchased approximately two years ago.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mrs. Thonen made a motion to grant SP 94-L-040 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-L-040 by ROY D. AND JOAN L. BRIDGES, 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 6.0 feet from side lot line, on property located at 6126 Hillview Avenue, Tax Map Reference 82-4((14))(25)29, 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 1, 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. The compliance was done in good faith

I The applicants obtained a building permit.

J. There will be no detrimental impact on the neighborhood.

K. The reduction will not result in an increase in density.

L. Due to problems which exist on the property, there is no other site for the carport.

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 carport 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, Lot 29, Block 25, Section 15, Virginia Hills, prepared by Terry Land Measurement, Inc., revised July 13, 1994, submitted with this application, as qualified by these development conditions.

3. Within sixty (60) days of the final approval date of this special permit, a building permit or such other approvals as may be required by the Director of Department of Environmental Management shall be obtained for the carport, and final inspections approved within 12 months or this special permit shall be null and void.

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. Ribble seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1994. 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 94-L-098 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 25, 1994. Mr. Ribble seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Pammel stated that he could not support the motion explaining that the structure was too large. He said the 400 square foot garage with a 25.4 foot depth along the property line would be too substantial to be located so close to the side lot line. He also expressed his belief the proposed garage could be relocated to require a minimal variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-L-098 by ROY D. AND JOAN L. BRIDGES, under Section 18-401 of the Zoning Ordinance to permit construction of accessory structure 5.0 feet from side lot line and 10.0 feet from rear lot line, on property located at 6126 Hillview Avenue, Tax Map Reference 82-4((14))(25)29, 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 1, 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 10,822 square feet.
4. The application meets the necessary requirements for the granting of a variance.
5. The property has exceptional topographical conditions.
6. The backyard has a slope which drops four and one half feet.
7. The contiguous neighbor on the left has a garage and the lot to the rear has a six foot fence and bamboo landscaping.
8. There will be no change in the character of the zoning district.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location and the specified detached garage shown on the plat prepared by Terry Land Management, Inc., revised July 13, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date of approval* unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Ribble seconded the motion which carried by a vote of 5-2 with Mr. Hammack and Mr. Pammel voting nay.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 467, November 1, 1994, (Tape 1), Scheduled case of:

9:30 A.M. SHARON LOUISE GARRIGAN, SP 94-D-041 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals to permit five dogs on a lot containing less than 20,000 sq. ft. Located at 7108 Thrasher Rd. on approx. 10,500 sq. ft. of land zoned R-3. Dranesville District. Tax Map 21-3 ((4)) 35.

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. Garrigan replied that it was.

Don Heine, Staff Coordinator, presented the staff report stating that the 10,500 square foot lot is located on the east side of Thrasher Lane and is surrounded on three sides by single family detached dwellings, and on the east by Churchill Road Elementary.

Mr. Heine stated that the applicant was requesting a special permit to keep five dogs on the 10,500 square foot property. The Zoning Ordinance requires a minimum lot size of 20,000 square feet for five dogs and a maximum of two dogs are allowed on lots that are less than 12,500 square feet.

In conclusion, Mr. Heine said it was staff's belief that, subject to the proposed development conditions contained in the staff report, the proposed use would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the necessary standards.

In response to Mr. Ribble's question as to how the application would be in harmony with the Zoning Ordinance, Jane C. Kelsey, Chief, Special Permit and Variance Branch, said that staff took no position. She explained that should the BZA approve the application, staff recommended approval subject to the proposed development conditions contained in the staff report.

The applicant, Sharon Louise Garrigan, 7108 Thrasher Road, McLean, Virginia, addressed the BZA and submitted pictures of the dogs. She stated that she had considered finding homes for the puppies, but had grown attached to them and had decided to keep them. Ms. Garrigan said the dogs had their shots and were well cared for.

In addressing the neighbors' concerns, she emphasized that she had complied with all of their requests noting among other thing, dog signs had been posted, training had been initiated, and the yard kept clean. Ms. Garrigan explained that she had been aware of the Zoning Ordinance requirements, but wanted to keep the dogs so she was preparing to move to West Virginia. In conclusion, she said the dogs provided much needed security to the neighborhood and asked the BZA to grant the request.

There being no speakers in support, Chairman DiGiulian called for speakers in opposition and the following citizen came forward.

Joseph Chopp, an attorney at 1300 Chain Bridge Road, McLean, Virginia, representing Senator and Mrs. John Chafee, of 7108 Thrasher Road, McLean, Virginia; and Howard and Ritz Gamertsfelder, of 7112 Thrasher Road, McLean, Virginia; said the neighbors were opposed to the application based on their concern regarding the noise nuisance, and the safety of the children in the adjacent school yard. Mr. Chopp noted that the applicant's contract to purchase land in West Virginia was a land installment contract which would not require settlement until July 31, 1999.

There being no further speakers to the request, Chairman DiGiulian called for rebuttal.

Ms. Garrigan expressed her belief that the noise nuisance was generated from the school children, and not the dogs. Noting the gullies and water, she said the area directly behind her house was very dangerous and the children's fear of the dogs kept them from playing in that section of the school yard. Ms. Garrigan stated that the dogs were kept in the house between the hours of 11:00 p.m. to 7:00 a.m, and only two dogs were allowed in the yard at any one time.

Addressing the issue of the land in West Virginia, Ms. Garrigan explained that she was currently making payments on the land, had installed kennels, installed electricity, and was diligently developing the property.

When Ms. Garrigan indicated that she had not seen the letters in opposition, Mr. Ribble gave her the letters to read. Responding to the allegations in the letters, Ms. Garrigan said the complaining neighbors were seldom home and the dogs provided protection to their premises when they were gone for months at a time. She explained that when she had asked the neighbors to help care for the dogs or find homes for them, the neighbors had refused.

Chairman DiGiulian closed the public hearing.

Mr. Ribble made a motion to deny SP 94-D-041 for the reasons reflected in the Resolution. Mrs. Thonen seconded the motion.

Chairman DiGiulian called for discussion.

Mr. Kelley stated that he was usually the lone voice in support of such cases, but he believed the applicant had too many animals.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-D-041 by SHARON LOUISE GARRIGAN, under Section 8-917 of the Zoning Ordinance to permit modification to the limitations on the keeping of animals to permit five dogs on a lot containing less than 20,000 square feet, on property located at 7108 Thrasher Road, Tax Map Reference 21-3((4))35, Mr. Ribble moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 1, 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 10,500 square feet.
4. It is not the neighbors' responsibility to take care of placing the dogs, walking the dogs, or anything else.
5. The citizen's testimony and the letters of opposition have indicated a noise nuisance, a potential safety problem, and a potential sanitation problem.

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, 2-512 and 8-917 of the Zoning Ordinance.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **DENIED.**

Mrs. Thonen seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1994.

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Page 468, November 1, 1994, (Tape 1), Scheduled case of:

9:30 A.M. LAWRENCE SPIVACK, SP 94-S-027 Appl. under Sect(s). 8-917 of the Zoning Ordinance to permit modifications to the limitations on the keeping of animals to permit four dogs on a lot containing less than 12,500 sq. ft. Located at 9200 Dorothy Ln. on approx. 8,242 sq. ft. of land zoned R-5. Springfield District. Tax Map 88-4 ((12)) 21. (MOVED FROM 9/8/94 AT APPLICANT'S REQUEST)

Page 469, November 1, 1994, (Tape 1), LAWRENCE SPIVACK, SP 94-S-027, continued from Page 468)

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. Spivack replied that it was.

Don Heine, Staff Coordinator, presented the staff report. He stated the applicant was requesting a special permit to keep four dogs on the property. The Zoning Ordinance allows a maximum of two dogs on lots that are less than 12,500 square feet. He said the applicant's statements indicated the dogs will remain indoors when he was not home, and they would be supervised when outdoors.

In conclusion, Mr. Heine said it was staff's belief that, subject to the proposed development conditions, the use would be in harmony with the recommendations of the Comprehensive Plan and would satisfy all the necessary standards. He noted that since the BZA received its board package, an additional eight letters of opposition were submitted.

The applicant, Lawrence Spivack, 9200 Dorothy Lane, Springfield, Virginia, addressed the BZA and requested a short-term special permit. He expressed his belief the materials submitted by the complaints were false and inaccurate. Mr. Spivack stated he complied with the necessary standards and his activities provided a beneficial service to Fairfax County's residents. He provided the BZA with a history of the animals and testified as to his care of needy animals.

In response to Mr. Kelley's question as to when he planned to move, Mr. Spivack said he had accepted a position in Columbia, Maryland, and planned to be moved by February 1995.

Mr. Kelley made a motion to defer SP 94-S-027. Mr. Pammel seconded the motion.

After a brief discussion regarding the deferral, Chairman DiGiulian called for speakers to the deferral only.

The President of the Huntsfield Civic Association, Frederick McCoid, 9218 Dorothy Lane, Springfield, Virginia, addressed the BZA and expressed his opposition to a deferral. He explained that it was a long-standing issue and the community would like to have it settled. Mr. Kelley explained to Mr. McCoid that the BZA would defer the case to a date and time certain.

After a brief discussion regarding the deferral, Mr. Pammel amended the motion to defer the case to March 21, 1995 at 8:00 p.m. Mr. Dively seconded the motion.

Chairman DiGiulian called for additional speakers to the deferral.

William W. Pearsall, Deputy Animal Warden, Fairfax County, addressed the BZA and explained that by virtue of his employment, he was in a unique position. Mr. Pearsall said Animal Control has not had any complaints about Mr. Spivack's animals and would not object to the deferral.

The applicant's attorney, John Bell, 3975 University Drive, Suite 410, Fairfax, Virginia, addressed the BZA. He expressed his belief that it would be in the best interest of the community to defer the case. Mr. Bell said the applicant has bought a home in Maryland and it was just a matter of a few month until the issue would become moot.

In response to Mrs. Thonen's question as to whether the applicant would file an appeal if his plans to move did not materialize, Mr. Bell said the applicant's job and home were in Maryland and he would be moving. He explained that Mr. Spivack's house was under construction and he would move as soon as it was finished.

There being no further speakers to the deferral, Chairman DiGiulian called for the vote.

The motion to defer SP 94-S-027 to March 21, 1995 at 8:00 p.m. carried by a vote of 7-0.

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Page 469, November 1, 1994, (Tape 1 & 2), Scheduled case of:

9:30 A.M. JERRY A. OGDEN, APPEAL 94-V-031 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that appellant is maintaining three separate dwelling units on one lot in violation of Sect. 2-501 of the Zoning Ordinance. Located at 6021 Rixey Dr. on approx. 6,791 sq. ft. of land zoned R-4. Mt. Vernon District. Tax Map 83-3 ((9)) (8) 8.

Chairman DiGiulian noted the appellant had requested a deferral.

William E. Shoup, Deputy Zoning Administrator, addressed the Board of Zoning Appeals (BZA) and noted that citizens were present to speak to the request for deferral.

Chairman DiGiulian called for speakers to the deferral.

The President of the Fairhaven Civic Association, Via Taylor, 2506 Fairhaven Avenue, Alexandria, Virginia, addressed the BZA. She said she was emphatically opposed to a deferral. Ms. Taylor said the issue has an eleven year history and the community deserves to have the case heard and the matter settled.

Page 470, November 1, 1994, (Tape 1 & 2), JERRY A. OGDEN, APPEAL 94-V-031, continued from Page 469)

Mrs. Thonen noted that the BZA has not granted a previous deferral on the appeal. Ms. Taylor said the appellant's attorney had arranged a thirty day delay in the scheduling of the case. She expressed her displeasure with the BZA and staff for allowing the citizens to be inconvenienced when an appellant receives a deferral.

Mr. Hammack stated that one of the attorney's letters acknowledged that three separate dwelling units exist on the property, and the other letter indicated the issue could be resolved. Mr. Shoup said he did not know of any documentation which would indicate the appellant could prove compliance or a nonconforming use.

The appellant's attorney, James E. Pinkowski, 3900 University Drive, Suite 200, Fairfax, Virginia, addressed the BZA. He presented the history of the property and expressed his belief that, with the cooperation of staff, the issue could be resolved. He explained that an inspection of the utility systems would ascertain the date of construction and would verify that the structures were built at the request of the Federal Government during the World War II housing shortage; therefore, it would be grandfathered.

The BZA had a lengthy discussion with Mr. Pinkowski and staff regarding justification for a deferral. Included in the discussion was testimony given by Paul McAdam, Supervising Field Inspector, Zoning Enforcement Branch, OCP, regarding staff's meeting with Mr. Pinkowski.

Mr. Kelley made a motion to defer A 94-V-031 to the morning of January 10, 1995. Mr. Dively seconded the motion which carried by a vote of 6-1 with Mr. Pammel voting nay.

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Page 470, November 1, 1994, (Tape 2), 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 1/26/94 AND 3/8 AT APP.'S REQ. DEF. FROM 4/5 AT APP.'S REQUEST. DEF. FROM 7/12 AT APP.'S REQ. NOTICES NEEDED.)

Chairman DiGiulian noted the appellant's had requested withdrawal.

Mrs. Thonen made a motion to allow the withdrawal of A 93-V-028. Mr. Dively seconded the motion which carried by a vote of 7-0.

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Page 470, November 1, 1994, (Tape 2), Scheduled case of:

9:30 A.M. DAVID ROBERTSON, APPEAL 94-D-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that more than one dwelling unit has been established on appellant's property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 1138 Spring Hill Rd. and 8230 Alvord St. on approx. 4.84 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 20 and 20A. (DEF. FROM 9/13 FOR NOTICES. DEF. FROM 10/25 TO ALLOW APPELLANT'S ATTORNEY TO BE PRESENT.)

Chairman DiGiulian called for the case and the appellant was not present in the Board Room. He noted that, at the previous hearing, the Board of Zoning Appeals had advised the appellant that the case would be heard as scheduled.

Mr. Dively suggested the case be held over to the end of the agenda and Chairman DiGiulian so ordered.

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Page 470, November 1, 1994, (Tape 2), Scheduled case of:

9:00 A.M. LAGUNA AND GUZMAN, INC.,/H. DOUGLAS SMITH, ET. AL., VC 94-Y-099 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit structure to remain 16.0 ft. from front lot line. Located at 4004 Walney Rd. on approx. 0.50 ac. of land zoned C-8, AN, HC and WS. Sully District. Tax Map 34-4 ((1)) 44.

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. Laguna replied that it was.

Jane C. Kelsey, Chief, Special Permit and Variance Branch, presented the staff report which was prepared by Lori Greenlief. She stated that the applicant was requesting a variance to allow the existing building to remain 16.0 feet from the new property line after dedication. The Zoning Ordinance requires a minimum 40.0 foot front yard; therefore, the applicant was requesting a 24.0 foot variance to the minimum front lot line.

In addressing the history of the property, Ms. Kelsey explained that on April 25, 1994, the Board of Supervisors approved SE 93-Y-041 to allow a vehicle light service establishment on the subject property.

The applicant, Juan Laguna, 9909 Main Street, Fairfax, Virginia, addressed the BZA and stated he had nothing further to add to his statement of justification.

Chairman DiGiulian called for speakers in support and the following citizen came forward.

Bryant F. Smith, 4464 Lee Highway, Gainesville, Virginia, addressed the BZA. He said he represented the Smith family and requested approval of the variance. Mr. Smith stated the application would allow both utilization and renovation of a vacant building which was constructed in the late 1940's. He explained that Mr. Laguna planned to open a vehicle light service establishment.

There being no further speakers to the request, Chairman DiGiulian closed the public hearing.

Mr. Pammel stated the case was not only interesting, but unique, in that a voluntary effort to do something for the public benefit resulted in a self-inflected hardship.

Mr. Dively made a motion to grant VC 94-Y-099 for the reasons reflected in the Resolution and subject to the development conditions contained in the staff report dated October 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-Y-099 by LAGUNA AND GUZMAN, INC.,/H. DOUGLAS SMITH, ET. AL., under Section 18-401 of the Zoning Ordinance to permit structure to remain 16.0 feet from front lot line, on property located at 4004 Walney Road, Tax Map Reference 34-4((1))44, Mr. Dively moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of 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 1, 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 C-8, AN, HC, and WS.
3. The area of the lot is 0.50 acres.
4. The case is unique in that the right-of-ways and easements which were granted to the Virginia Department of Transportation 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 of the specific building shown on the plat prepared by Gilbert M. Glaubinger, dated July 1993, and revised May 25, 1994, submitted with this application and is not transferable to other land.

2. If, after the dedication along Walney Road occurs, the building is closer than 16.0 feet to the front lot line, an amendment to this variance application shall be filed.

Mr. Hammack seconded the motion which carried by a vote of 7-0.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 472, November 1, 1994, (Tape 2), Scheduled case of:

9:30 A.M. DAVID ROBERTSON, APPEAL 94-D-024 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that more than one dwelling unit has been established on appellant's property in violation of Sect. 2-501 of the Zoning Ordinance. Located at 1138 Spring Hill Rd. and 8230 Alvord St. on approx. 4.84 ac. of land zoned R-1. Dranesville District. Tax Map 20-3 ((1)) 20 and 20A. (DEF. FROM 9/13 FOR NOTICES. DEF. FROM 10/25 TO ALLOW APPELLANT'S ATTORNEY TO BE PRESENT.)

Chairman DiGiulian called for the case and the appellant was still not present in the Board Room.

Mr. Dively made a motion to dismiss the appeal due to the lack of prosecution. Mr. Pammel seconded the motion.

Mr. Hammack made a motion to uphold the determination of the Zoning Administrator and dismiss the appeal.

Chairman DiGiulian noted that the appellant's attorney, H. Kendrick Sanders, 3905 Railroad Avenue, #200N, Fairfax, Virginia, had submitted a memorandum in support of the appeal.

As there were no speakers to the appeal, Chairman DiGiulian called for the motion.

Mr. Hammack made a motion to uphold the Zoning Administrator's determination in the David Robertson Appeal, A 94-D-024. He stated, in view of the appellant's absence after he had been given full notice that the case would be heard on this date, and after having taken the attorney's memorandum into consideration, it was his belief there was no merit to the appeal. Mr. Hammack then made a motion to dismiss with prejudice.

Mr. Pammel seconded the motion.

Mr. Kelley noted that the appellant had been present at the October 25, 1994 public hearing, and had heard the BZA's discussion regarding the case. Mr. Hammack agreed with Mr. Kelley and said the appellant had been present and knew the case would be heard at the November 1, 1994 public hearing.

The motion carried by a vote of 7-0.

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As there was no other business to come before the Board, the meeting was adjourned at 11:30 a.m.

Helen C. Darby, Associate Clerk
Board of Zoning Appeals

John DiGiulian, Chairman
Board of Zoning Appeals

SUBMITTED: November 22, 1994

APPROVED: November 29, 1994

The regular meeting of the Board of Zoning Appeals was held in the Board Auditorium of the Government Center on November 10, 1994. The following Board Members were present: Vice Chairman John Ribble; Mary Thonen; Paul Hammack; Robert Kelley; and James Pammel. Chairman John DiGiulian and Robert Dively were absent from the meeting.

Vice Chairman Ribble called the meeting to order at 9:00 a.m. and Mrs. Thonen gave the invocation.

Mr. Hammack announced that, the previous day, Vice Chairman Ribble became a grandfather of a healthy grandson named John Fitzpatrick Ribble. Congratulations were heard throughout the Board Room.

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 473, November 10, 1994, (Tape 1), Scheduled case of:

9:00 A.M. SAUL HOLDINGS LIMITED PARTNERSHIP, VC 94-M-107 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot lines and structures to remain 34.4 ft., 34.3 ft. and 7.8 ft. from front lot lines. Located at 6201 Arlington Blvd. on approx. 31.56 ac. of land zoned C-7, HC and SC. Mason District. Tax Map 51-3 ((1)) 29, 29A; 51-3 ((16)) (B) 1-6. (In association W/SE 94-M-047)

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, David S. Houston with the law firm of McGuire, Woods, Battle & Boothe, 8280 Greensboro Drive, McLean, Virginia, replied that it was.

Lorrie Kirst, Staff Coordinator, presented the staff report, stating that the property is located generally east of the Route 7/Route 50 intersection and consists of 8 parcels; 7 parcels are located on the south side of Route 50 and parcel 29A is located on the north side of Route 50. She said that the site contains the main shopping center and 3 freestanding pad sites which consist of a restaurant, a furniture store, and a bank/post office building. Ms. Kirst said that the shopping center was constructed in 1954. She said that a site plan had been submitted to the Department of Environmental Management (DEM) for a 16,000 square foot expansion of the bank/post office building to house some of the existing main shopping center tenants during the main shopping center renovation. She said that the existing buildings and parking spaces for which the variances are being sought met the setback regulations which existed at the time of construction; however, because the existing buildings are required to conform to the current minimum front yard setbacks and the parking spaces are required to meet the current minimum setbacks from road right-of-way, the application was filed to obtain site approval for the expansion.

Ms. Kirst said that the variances were requested, first, to allow the existing parking spaces to be located 0.0 feet from the front lot line abutting both sides of Route 50, where a 10 foot minimum setback is required; the second variance was to allow the existing freestanding eating establishment building to remain 34.4 feet from the front line along Route 50; the third variance was to allow the existing furniture store building to remain 34.3 feet from the front lot line abutting Route 50; the next variance was to allow the existing bank building to remain 32.5 feet and its associated drive-through canopy to be 7.8 feet from the front lot line along Route 7. She said there is a minimum 40-foot front yard setback required in the C-7 District and the canopy is permitted to extend up to 3 feet into the required front yard.

Mr. Houston presented the statement of justification, previously submitted in writing and incorporated into the record. He cited changing times and consumer habits, resulting in new and different enclosed malls, as reasons for requiring renovation of the 7 Corners Shopping Center. Mr. Houston said this is the first step of many planned steps to renovate the Seven Corners Shopping Center; construction has already begun through a site plan waiver obtained last summer and there already are newly-opened stores on the Route 7 side of the shopping center. Mr. Houston advised that a Comprehensive Plan Amendment was approved the previous week by the Board of Supervisors to permit a hotel and one drive-through use on the property. He said there was a site plan pending for a 16,000-square-foot addition to the building housing the bank building, which is part of this variance request. Mr. Houston said they also have a special exception pending for the drive-through use, which should go before the Planning Commission in about a month, and a parking reduction request pending with the Board of Supervisors and DEM because of the fact that they are the largest bus transfer facility in the County for Metro and the Fairfax Connector lines. Mr. Houston said that any new construction on the site would require these variances to allow existing conditions to remain. He said the Comprehensive Plan recommends renovation of the property.

Mr. Houston requested a change to the Proposed Development Condition, prompting Mr. Hammack to ask staff if it was necessary to refer to "specific" parking spaces in the Development Condition and what would happen if the applicant had to re-line for handicapped spaces; would that require the applicant to come back before the Board with another plat to show different parking spaces? Ms. Kirst said that possibility is somewhat low, given that the handicapped parking spaces are located close to the building and the spaces under discussion are as far away from the building as possible. She said that, even if that were to happen, it would probably be considered an engineering change and could be handled administratively. Mr.

Hammack asked if there was any reason the word "specific" could not be omitted to avoid future problems and Ms. Kirst said that would be no problem.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to grant VC 94-M-107 for the reasons set forth in the Resolution, subject to the Proposed Development Condition contained in the staff report dated November 3, 1994, as amended:

1. This variance is approved for the location of the parking spaces located along Route 50 and Route 7 and . . .

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-107 by SAUL HOLDINGS LIMITED PARTNERSHIP, under Section 18-401 of the Zoning Ordinance to permit parking spaces to remain less than 10.0 ft. from front lot lines and structures to remain 34.4 ft., 34.3 ft. and 7.8 ft. from front lot lines, at property located at 6201 Arlington Blvd., Tax Map Reference 51-3((1))29, 29A; 51-3((16))(B)1-6, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 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 31.56 acres.
4. The reasons for approval, set forth by the applicant's agent, are incorporated by reference.
5. The spaces and buildings already exist in an existing shopping center which met all Zoning Ordinance requirements at the time the shopping center was approved.
6. Granting this request will not change the character of the zoning district, it will be in harmony with the intended spirit and purpose of the Ordinance and is being done in conjunction with changes under the Comprehensive Plan.
7. It would be appropriate to modify the Proposed Development Condition.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the parking spaces located along Route 50 and Route 7, and the existing freestanding buildings housing an eating establishment, furniture store, bank and bank canopy as shown on the plat prepared by Walter L. Phillips as revised through October 20, 1994 submitted with this application and is not transferable to other land.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 475, November 10, 1994, (Tape 1), Scheduled case of:

9:00 A.M. WAYNE L. & KATHY A. SCHNEIDER, VC 94-P-100 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition (carport) 2.8 ft. from side lot line. Located at 2633 Bowling Green Dr. on approx. 12,305 sq. ft. of land zoned R-3. Providence District. Tax Map 49-1 ((9)) (L) 9.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Wayne L. Schneider, 2633 Bowling Green Drive, Vienna, Virginia, replied that it was.

Vice Chairman Ribble requested a brief overview of the staff report.

David Hunter, Staff Coordinator, presented the staff report, stating that surrounding lots in the Dunn Loring Woods Subdivision also are zoned R-3 and developed with single family detached dwellings. Mr. Hunter said the applicant proposed to construct a carport.

Mr. Ribble asked Mr. Schneider if the statement of justification was in the staff report and if he wished to add anything. Mr. Schneider said the statement of justification was in the staff report and said that the property was too narrow and there was no other place on the property to locate the addition except behind the house, which would eliminate the back yard. He said the addition would be compatible with the existing dwelling and there are other carports in the neighborhood on properties wider than the applicant's.

Mr. Hammack asked the applicant if he had discussed the development with the owners of Lot 8, immediately adjacent to the proposed addition. Mr. Schneider said he had talked to all the neighbors, adjoining and across the street, and no one had any objection.

Mr. Pammel asked Mr. Schneider why granting this request should be considered an alleviation of a hardship as opposed to providing a convenience or a special privilege. Mr. Schneider said that a single car garage could not accommodate their two cars, which they need because he and his wife both work. He said their girls will probably be driving in a few years and they would probably have to park their cars on the street.

Mrs. Thonen asked the applicant if there was anywhere else on the property where he could build the carport and he said there was not. He said the entrance to the house was on that side and the lot is not wide enough to put the carport on the other side.

Mr. Hammack asked why the carport was going to extend beyond the length of the concrete pad. Mr. Schneider said that the concrete pad had been poured short and the carport would be extended beyond the pad to tie in with the roof line.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Pammel said he always had difficulty with any application which requested an encroachment up to 2.5 feet of the side lot line because there very often is a follow-up application to enclose the carport. He said there was no guaranty that this applicant or subsequent owners of the property would not come before the Board in the future to request permission to

enclose and convert the structure into a garage or another type of addition. Mr. Pammel said he believed this to be more akin to a special privilege or convenience as opposed to a real hardship that would deprive the user of the reasonable use of his property. He said he was not convinced that a variance was the proper solution, given the potential impact to adjacent property owners. Mr. Pammel moved to deny VC 94-P-100 because of the previously stated findings of fact and the fact that the applicant had not presented testimony that a hardship exists such as to justify the granting of a variance.

Mr. Kelley said that he did not believe the Board should make the assumption that, at some future time, the applicant might want to enclose the addition; nor should the Board question the motives of the applicant. He said he believed the request was simple and should be dealt with on its face without assuming what the applicant or a future owner of the property might do in the future. Mr. Pammel said, all else aside, the encroachment would be too great.

Mrs. Thonen noted that the addition could not be enclosed without the property owner coming back before the Board and she asked the maker of the motion to strike that portion of the motion referring to possible future plans. Mr. Pammel said he would delete that commentary because it was just an aside. He noted further that, in the material staff had provided, he could find no instance where a variance had been granted for less than 6.0 feet from the side lot line and that was the thrust of his motion.

Mr. Pammel said that 2.5 feet was just to close to the lot line and moved to deny VC 94-P-100 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 94-P-100 by WAYNE L. & CATHY A. SCHNEIDER, under Section 18-401 of the Zoning Ordinance to permit construction of addition (carport) 2.8 ft. from side lot line, on property located at 2633 Bowling Green Drive, Tax Map Reference 49-1((9))(L)9, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 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 approximately 12,305 square feet.
4. The proposed addition would be too close to the shared property line.
5. The applicant did not present testimony that a hardship exists to an extent that would justify the granting of a variance as requested.

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. Kelley voted nay. Chairman DiGiulian and Mr. Dively were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1994. This date shall be deemed to be the final decision date of this variance.

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Page 477, November 10, 1994, (Tape 1), Scheduled case of:

9:00 A.M. MR. & MRS. DOUG DUNCAN, VC 94-H-104 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 1.1 ft. from side lot line for total side yards of 16.2 ft. Located at 9602 Center St. on approx. 18,479 sq. ft. of land zoned R-2 (Cluster). Hunter Mill District. Tax Map 38-1 ((18)) 163.

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. Jennifer Duncan, 9602 Center Street, Vienna, Virginia, replied that it was.

Vice Chairman Ribble called for a brief staff report.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the property is located in the Barrister's Place Subdivision. It is surrounded on the east, west, and south by properties zoned R-3 and developed with single family detached dwellings and on the north by property zoned R-1 and developed with a public park. The applicant was requesting a variance to the minimum side and total side yard requirements to allow the construction of a garage addition 1.1 feet from the side lot line resulting in a total side yard measurement of 16.2 feet. The minimum side yard requirement in this district is 8.0 feet and the total side yard requirement is 24.0 feet; therefore, the applicant was requesting a variance of 6.9 feet to the minimum side yard requirement and a variance of 7.8 feet to the total side yard requirement.

Mrs. Duncan presented the statement of justification, previously submitted in writing and incorporated into the record. She said they were requesting a garage addition to keep their cars off the street and in the driveway and garage. Mrs. Duncan said that her car was broadsided and totalled several years ago She said the street slopes and curves in front of her house, making it difficult to see any children who might be playing. She said her neighbors were in favor of having them keep their cars off the street because having them on the street reduced the street to a one-way street and raised the potential of hazards for the children as well as the drivers. She said that having their cars on the street represented a hardship. Mrs. Duncan said that converging lot lines, the topography of the property, and a VEPCO easement precluded placing the garage in the rear of the lot.

Mrs. Thonen said she did not believe the applicant had addressed the hardship issue. Mr. Ribble said he believed the applicant had attempted to show hardship by citing converging lot lines toward the street, exceptional topographic conditions, and a VEPCO easement in the back which prohibit her from building a detached garage in the back. Mrs. Thonen noted that the structure would be to within 1.1 feet from the property line.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to grant VC 94-H-104 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 1, 1994.

Mrs. Thonen seconded the motion, stating that she hesitated to ever support a variance so close to the shared lot line; however, she believed the applicant met the hardship requirement.

Mr. Hammack said he would not support the motion, notwithstanding the fact that the property has converging lot lines and that there is a VEPCO easement in the back, because it would still be 1.1 feet from the side lot line. He said that, when anyone walked around the proposed garage, they would have to walk on the neighbor's property. Mr. Hammack noted that there is an existing oversize one-car garage already on the property. He said he did not

believe the applicant met the hardship requirement under the existing standards under which the Board is compelled to make its determination.

Mr. Pammel said he agreed with Mr. Hammmack's remarks.

Vice Chairman Ribble asked for a vote and the motion failed by a vote of 3-2. Mr. Hammack and Mr. Pammel voted nay. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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MOTION TO GRANT FAILED

COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-H-104 by MR. & MRS. DOUG DUNCAN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 1.1 ft. from side lot line for total side yards of 16.2 ft., on property located at 9602 Center Street, Tax Map Reference 38-1((18))163, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 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 18,479 square feet.
4. The lot has converging lot lines toward the street, exceptional topographical conditions in the rear, and a VEPCO easement, which prohibit the applicant from building a detached garage in the back.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.
4. That the strict application of this Ordinance would produce undue hardship.
5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.
6. That:
   A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or
   B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.
7. That authorization of the variance will not be of substantial detriment to adjacent property.
8. That the character of the zoning district will not be changed by the granting of the variance.
9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

Page 479, November 10, 1994, (Tape 1), MR. & MRS. DOUG DUNCAN, VC 94-H-104, continued from Page 478)

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 Dewberry & Davis, dated June 7, 1994, 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. Thonen seconded the motion which **FAILED** by a vote of 3-2. Mr. Hammack and Mr. Pammel voted nay. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1994. This date shall be deemed to be the final approval date of this variance. Since 4 affirmative votes are required to approve an application, the application was denied.

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Page 479, November 10, 1994, (Tape 1), Scheduled case of:

9:00 A.M. DUVAL B. & CAROLYN E. AUSTIN, VC 94-P-105 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line, 7.5 ft. from side lot line, and 7.9 ft. from other side lot line. Located at 2901 Cherry St. on approx. 5,000 sq. ft. of land zoned R-4 and HC. Providence District. Tax Map 50-4 ((8)) 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. Duval B. Austin, 2901 Cherry Street, Falls Church, Virginia, replied that it was.

Marilyn Anderson, Senior Staff Coordinator, presented the staff report, stating that the property is located in the Hillwood Subdivision and is zoned R-4. It is surrounded on the north, east and south by property also zoned R-4 and developed with single family detached dwellings; the property to the west is zoned R-20 and developed with multi-family dwellings. Ms. Anderson said that the applicants were requesting a variance 2.5 feet on the north side, 2.1 feet on the south side and 3.0 feet at the rear to allow construction of an addition.

Vice Chairman Ribble noted that the statement of justification, previously submitted in writing and incorporated into the record, could now be amended if the applicants so wished. Ms. Austin highlighted the request, stating that they wished to be allowed to build an addition straight back to accommodate a bathroom on the first floor due to the hardship of elderly or ill people not being able to manage the steps; they also planned to add another bedroom. She said the deep placement of the house on the lot affects their choice of a building location. Ms. Austin said that other property owners in the area have built similar additions.

Mr. Pammel asked the applicant if the proposed addition would be an extension of the already existing building line and would not come any closer to the side lot lines than the present building. Ms. Austin said that was correct.

Mrs. Thonen asked about the shed and the applicants said it was a metal garden shed.

In answer to a question from Mr. Hammack, Mrs. Duncan said the addition would include a second-floor bedroom, smaller but similar to the one on a house two doors away.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mrs. Thonen moved to grant VC 94-P-105 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 1, 1994.

Mr. Ribble commented that the house was not only placed far back on the lot, but also off to the side on the lot.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-105 by DUVAL B. & CAROLYN E. AUSTIN, under Section 18-401 of the Zoning Ordinance to permit construction of addition 22.0 ft. from rear lot line, 7.5 ft. from side lot line, and 7.9 ft. from other side lot line, on property located at 2901 Cherry Street, Tax Map Reference 50-4((8))7, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 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 5,000 square feet.
4. The hardship is very real.
5. The lot is narrow and the dwelling is set way back into the lot.
6. The applicant is confining the addition to the distance of the existing dwelling from the shared lot line.
7. There is no place else on the lot where the applicant could 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 of the specific addition shown on the plat prepared by Stephen T. Palmer, L.S. dated July 16, 1994, and revised August 12, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and final inspections shall be approved.

3. The addition shall be architecturally compatible with the existing dwelling.

Pursuant to Sect. 18-407 of the Zoning Ordinance, this variance shall automatically expire, without notice, thirty (30) months after the date* of approval unless construction has commenced and has been diligently prosecuted. The Board of Zoning Appeals may grant additional time to commence construction if a written request for additional time is filed with the Zoning Administrator prior to the date of expiration of the variance. The request must specify the amount of additional time requested, the basis for the amount of time requested and an explanation of why additional time is required.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 481, November 10, 1994, (Tape 1), Scheduled case of:

9:00 A.M. JENNY LOZADA, VC 94-M-102 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of dwelling 13.4 ft. from side lot line and 9.0 ft. from other side lot line. Located at 4815 Seminole Ave. on approx. 7,500 sq. ft. of land zoned R-2 and HC. Mason District. Tax Map 72-3 ((8)) (B) 23, 24.

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 husband/agent, Raul F. Lozada, 1015 S. 23rd Street, Arlington, Virginia, replied that it was.

Vice Chairman Ribble requested a brief overview of the staff report.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is located on the east side of Seminole Avenue, within the Weyanoke Subdivision. There is an adjoining alley on the south, with single family detached dwellings on three sides and a vacant lot on the east, all zoned R-2. He said staff had received two letters in opposition to the application. The Board said they had one letter of support and one letter of opposition. There was an exchange to insure that the Board had copies of all letters received. In answer to a question from the Board, Mr. Heine said that the applicant had seen the letters when staff met with the Lozadas a couple of days ago.

Vice Chairman Ribble requested that the applicant address the hardship section of the Ordinance.

Mr. Lozada came to the podium and stated that the application they submitted met all the requirements for a variance in Section 18-404 of the Zoning Ordinance and cited exceptional narrowness, shallowness, size, shape, and topographical conditions. He further cited the extraordinary situation or condition of the property and the extraordinary situation or condition of the use or development of the property immediately adjacent to the subject property. Mr. Lozada went on to cite all other standards listed in Section 18-404.

Mr. Lozada said that the placement of the house adjacent to their proposed dwelling created the same distances from the property lines as those in his proposal. He said they would have a 40-foot front yard; whereas, the adjacent house is 8.7 from the street line, which is too close. He said the proposed dwelling will be 50 feet by 27.6 feet; whereas, the adjacent house is 45 feet by 26.8 feet; they are almost the same size.

Dona Audi, 4831 Seminole Avenue, Alexandria, Virginia, came forward to speak in support of the application, stating that she lives next to the applicant's lot. She presented pictures of the area and stated that the lot presently harbors snakes and rodents such as mice and rats, which overrun surrounding property; it is unsightly and messy, with dead and dying old trees, which detract from her modern house. Ms. Audi said it would be beneficial to everyone to have the property developed and it would also increase surrounding property values.

The following people spoke in opposition to the application: Olga Waters, 4811 Seminole Avenue (Lots 21 and 22), adjacent to the applicant's lot; and Kathleen Chevalier, 4816 Virginia Street, President of the Lincolnia Park Civic Association.

Comments made by those in opposition were: The original lots, 21, 22, and 23, were initially owned by one previous owner and when the house was built in 1935, the lots were separated and caused the adjacent property to fall outside the zoning requirements; most of the existing homes have been built on from two to six lots (photos were provided); the neighbors like the trees and wildlife; the area has always been zoned R-2 and, if this application is approved, it may have a domino affect; developers may buy an older home situated on four lots, tear down the home and build two small homes; this parcel came before the BZA in 1989 as part of VC 88-M-164, and staff conditioned the approval on not creating non-conforming lots, causing the BZA to deny the request.

Mrs. Thonen said that the neighbors who objected to the applicants' proposal necessitating the removal of trees must, themselves, have had trees removed when their own dwellings were built.

Mr. Pammel said the practice of splitting lots and selling non-conforming lots has previously come before the Board and he had previously expressed concern that the County had no provision to preclude property owners from splitting (in this case) a 15,000 square foot lot into two lots of 7,500 square feet and selling them as non-conforming lots. He said he believed this was being done in many areas of the County. Marilyn Anderson, Senior Staff Coordinator, said she had no knowledge of a remedy. Mr. Pammel asked that the issue by passed on to higher authority for review and resolution.

Vice Chairman Ribble asked if staff was aware of VC 88-M-164, referenced by Ms. Chevalier, and Mr. Heine said it was mentioned in the staff report and he had a copy of the Resolution.

Mr. Lozada came back to the podium for rebuttal, stating that they had read the letter to the Board from Ms. Waters. He said they had been to her home and she said she was concerned about selling her house which had been on the market for two months. Mr Lozada said Ms. Waters told them she would like to sell her house before the Lozadas began construction. He said they propose to construct a dwelling like Ms. Waters', the same distance from the side lot lines as her dwelling. Mr. Lozada noted that Ms. Waters said in her letter that the neighborhood is comprised of small, single level homes; however, just around the corner, Dona Audi has a two-story dwelling and, next to Ms. Collins, the Benedict house has two stories.

Ms. Lozada said that, a couple of days ago, she had asked Ms. Chevalier if there had been any complaints about the application and she said that no one had called her to complain. Ms. Lozada submitted this may have been before Ms. Waters had called to complain. She said they had talked with Mr. Cable, one of the gentlemen who signed the petition in opposition, and he stated that he had been mislead to believe that the building would be larger and higher; that was the reason why the applicant had given Mr. Benedict, Mr. Cable, Ms. Audi and everyone in the neighborhood a plan of the house, so they would know what the house would be like, instead of relying on inaccurate rumors circulating in the neighborhood that the house would be very, very long and very, very high, even that it would be four stories high.

In answer to a question from Mr. Pammel, the applicant produced documents stating that the previous request for a variance had been granted and not denied as previously stated. Mr. Ribble said he construed this to mean that staff had researched and found that the property could be split to create a non-conforming lot and the BZA had used the information as a basis for making their decision to grant.

Vice Chairman Ribble asked Mr. Shoup if citizens are allowed to separate property and sell non-conforming lots and build on them. Mr. Pammel presented the history of the existing non-conforming lot. He asked what procedure in the County would allow someone to sell off two lots and reduce the size of the holding in half, to a non-conforming lot, and have it approved. Mr. Shoup said that this was not a subdivision but existing lots of record and the lot lines had not changed. He said that the issue was the definition of "lot" as set forth in the Zoning Ordinance, as well as Section 2-405 of the Zoning Ordinance which allows existing lots of record, that were legally recorded but now do not meet minimum lot size or lot width requirements, to be used for any permitted use in the district. Mr. Shoup further stated that it has been interpreted that buildable lots can be created by consolidating long, narrow lots that were subdivided before the adoption of the Zoning Ordinance. He said that, based upon the definition of "lot," which says that whatever one submits for a building permit is a lot, regardless of lot lines of record, it has been determined that one is allowed to consolidate two existing lots of record under a building permit to constitute a lot and, under Section 2-405, one is permitted to enjoy the use of that lot for any permitted use. Mr. Pammel asked if there was anything in the Ordinance that would preclude a single owner of four lots from selling two of the lots and creating a non-conforming lot. Mr. Shoup said there was nothing to preclude that from happening except, if there was an existing dwelling on a couple of those lots, the lots could be sold, provided that what is remaining satisfies the minimum yard requirement. Mr. Pammel said that may not have happened in this case because the existing dwelling apparently does not meet the side yard requirement. Mr. Shoup said that would be a problem. Mrs. Thonen said that the other issue was that the zoning is currently R-2 and, if the lots are grandfathered, does that mean that any new lots do not need to meet the R-2 zoning requirements. Mr. Shoup said anything that is newly built must meet all current yard requirements, unless a variance is granted.

Mr. Hammack said that his review of the Resolution for the previous variance indicates that it was granted in part, even though that is not stated on the face of it. He said that a 4-foot variance to the north lot line was requested and, in the Resolution which was granted unanimously, only the variance with respect to the south lot line, adjacent to the 10-foot alley, was granted; thus, the BZA effectively denied the variance between Lots 22 and 23 at that time. He said it should be noted that a greater variance was being requested at that time than is currently being requested. Mr. Shoup qualified his previous comments, stating they were based on the assumption that there was a building permit at one time tying all four lots together, which is relevant to the issue. He said that, if there was no building permit, he did not know when the house on the adjoining property was constructed. Vice Chairman Ribble said it might have been before building permits were required and Mr. Shoup said the absence of a building permit could change the situation because, at the time, construction could have been permitted right up to the lot line. Mr. Shoup said that, if there was nothing that tied the four lots together, the removal of two of them would not be bound by the "lot" definition.

There were no other speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack asked if the BZA had the authority to grant this variance, assuming the applicant met the hardship requirements, without regard to the location of the house on Lot 22, which he considered to be the threshhold issue. He said that, in 1988, the BZA was told that the house on Lot 22 did not meet setback requirements and now he is hearing that the report issued in 1988 was not correct. Mr. Shoup said he did not know the background but he believed it was critical to know the status of the house on Lot 22, because, if it requires the subject two lots in order to be in conformance, it would not be appropriate to proceed with the variance. Mr. Ribble said there might be a problem with the house next door, but not this property. Mr. Hammack said that the house was constructed in 1935, before the adoption of the Zoning Ordinance; yet, it was still noted that it caused the existing dwellings on Lots 21 and 22 to be too close to the new side lot lines; now, Mr. Shoup was raising the possibility that staff was in error.

Mr. Ribble said he believed it would be appropriate to defer the case until the situation could be clarified because Mr. Shoup was not familiar with the case and could give the Board a better response in a week or two. Mr. Hammack said he believed the BZA had previously denied the variance because of the impact on Lot 22.

Mr. Pammel said he believed the applicants to be innocent parties and he believed an amendment to the Zoning Ordinance was in order to address the problem as quickly as possible. He said he believed the issue of the variance should be decided now and staff should be asked to provide clarification and an amendment should be proposed to correct the deficit which allows this type of situation to develop.

Mr. Shoup said he believed an answer could be provided to the Board by the following week by researching for a building permit which tied all the lots together.

Mr. Kelley said he did not believe any of the surrounding issues impacted this case.

Mr. Pammel moved to grant VC 94-M-102 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated October 25, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-M-102 by JENNY LOZADA, under Section 18-401 of the Zoning Ordinance to permit construction of dwelling 13.4 ft. from side lot line and 9.0 ft. from other side lot line, on property located at 4815 Seminole Avenue, Tax Map Reference 72-3((8))(B)23, 24, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 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 and HC.
3. The area of the lot is approximately 7,500 square feet.
4. The applicant presented testimony that the property meets the criteria established in the Zoning Ordinance relative to variances.
5. The applicant is an innocent party to any existing conflict.
6. A previous variance was granted for this property with different yard dimensions and the finding then was that a hardship existed.
7. The applicant owns a 7,500 square-foot lot zoned R-2, which is substandard; that in itself is a hardship and the Board should apply standards to that size lot.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. That the subject property was acquired in good faith.
2. That the subject property has at least one of the following characteristics:
   A. Exceptional narrowness at the time of the effective date of the Ordinance;
   B. Exceptional shallowness at the time of the effective date of the Ordinance;
   C. Exceptional size at the time of the effective date of the Ordinance;
   D. Exceptional shape at the time of the effective date of the Ordinance;
   E. Exceptional topographic conditions;
   F. An extraordinary situation or condition of the subject property, or
   G. An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.
3. That the condition or situation of the subject property or the intended use of the subject property is not of so general or recurring a nature as to make reasonably practicable

the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive the user of all reasonable use of the land and/or buildings involved.

NOW, THEREFORE, BE IT RESOLVED that the subject application is **GRANTED** with the following limitations:

1. This variance is approved for the location of the specific dwelling shown on the plat prepared by Alexandria Surveys, Inc., dated July 20, 1994, submitted with this application and is not transferable to other land.

2. A Building Permit shall be obtained prior to any construction and 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 4-1. Mrs. Thonen voted nay. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1994. This date shall be deemed to be the final approval date of this variance.

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Page 484, November 10, 1994, (Tape 1), Scheduled case of:

9:00 A.M. SPRINGHILL FOOD SERVICE, L.C., VC 94-P-103 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit parking to remain less than 10.0 ft. from front lot line. Located at 1524 Spring Hill Rd. on approx. 5.61 ac. of land zoned I-5. Providence District. Tax Map 29-3 ((1)) 60C.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. Mary Jane Keuhn, Agent, c/o Georgelas & Sons, 1410 Spring Hill Road, McLean, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the property is a through lot between Tyco Road on the north and Springhill Road on the south; the property adjoins industrial uses also zoned I-5 on the east and west, an electrical transformer on property zoned R-1 and an office use zoned I-4 on the north, and vacant land and a highrise apartment complex zoned C-4 and R-30, respectively, on the south. Mr. Heine said that the applicant was seeking a variance to allow an existing parking lot to adjoin the front lot lines of the subject property. The Zoning Ordinance requires that off-street parking spaces be located a minimum of 10 feet from any front lot line.

Ms. Keuhn presented the statement of justification, previously submitted in writing and incorporated into the record. She said the variance was being requested in conjunction with an application for a special exception to permit a change in use of one particular tenant space in a multi-tenant industrial building constructed in 1974, at which time construction was in full conformance with all Zoning Ordinance and Building Permit requirements. Ms. Keuhn said there is an existing condition which requires a variance in order to successfully obtain the special exception. She said the Planning Commission had given the application a

favorable recommendation to the Board of Supervisors. Ms. Keuhn said she would proceed to go through the requirements for approval and show compliance; however, Mr. Pammel said he did not believe that would be necessary. He said he believed the applicant had successfully presented the case and that the situation was similar to that at the Seven Corners Shopping Center.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Pammel moved to grant VC 94-P-103 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 1, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-103 by SPRINGHILL FOOD SERVICE, L.C., under Section 18-401 of the Zoning Ordinance to permit parking to remain less than 10.0 ft. from front lot line, on property located at 1524 Spring Hill Road, Tax Map Reference 29-3((1))60C, Mr. Pammel moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1994; and

WHEREAS, the Board has made the following findings of fact:

1. The applicant is the lessee of the land.
2. The present zoning is I-5.
3. The area of the lot is approximately 5.61 acres.
4. The original building permits, as approved by the County at that point in time, were in compliance with 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 of the specific parking lot shown on the plat prepared by Anderson-Cooper-Georgelas, dated March 26, 1994 with parking tabulation dated March 26, 1994 (sheet 2), submitted with this application and is not transferable to other land.

Mr. Kelley seconded the motion which carried by a vote of 4-0. Mr. Hammack was not present for the vote. Chairman DiGiulian and Mr. Dively were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1994. This date shall be deemed to be the final approval date of this variance.

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The Board recessed at 10:50 a.m. and reconvened at 11:00 a.m.

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Page 486, November 10, 1994, (Tape 1), Scheduled case of:

9:30 A.M. BREAKERS BILLIARD CAFE, INC., SPA 93-H-043 Appl. under Sect(s). 4-603 of the Zoning Ordinance to amend SP 93-H-043 for billiard and pool hall to permit change in development conditions and change in applicant. Located at 2445 Centreville Rd. on approx. 32.02 ac. of land zoned C-6. Hunter Mill District. Tax Map 16-3 ((1)) 15B. (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, Lawrence A. McDermott, of Dewberry & Davis, 8401 Arlington Boulevard, Fairfax, Virginia, replied that it was.

Don Heine, Staff Coordinator, presented the staff report, stating that the applicant was requesting a special permit amendment to enlarge, improve and extend the hours of an existing billiard and pool hall within a shopping center. He said the proposed 10,460-square-foot establishment, with a mezzanine, would be located on the top floor of the Clock Tower Building within the 32.02-acre Village Center at Dulles Shopping Center. Mr. Heine said the shopping center is located at the intersection of Centreville and Foxmill Roads and zoned C-6; it is surrounded by vacant land zoned R-1 on the north, vacant land zoned C-8 on the east, vacant land and multi-family uses zoned PDH-16 on the south, and vacant land and industrial uses zoned R-4 on the west. He said the proposed use would contain 22 pool tables, an eating establishment which is a permitted use in the C-6 District, and parking will be integrated into the 1,648 parking spaces within the shopping center. Mr. Heine said the proposed hours of operation would be 10:00 a.m. to 2:00 p.m., 7 days a week. He further said it was staff's position that, by imposing the Proposed Development Conditions, the requested use will be in harmony with the recommendation of the Comprehensive Plan and will satisfy all the General Standards and Standards for Group 5 Uses; staff, therefore, recommended approval.

Mr. McDermott presented the statement of justification, previously submitted in writing and incorporated into the record. He said James McKeever was present to assist him. Mr. McDermott said the request was for an increase in gross floor area of approximately 2,200 square feet which came about because a mezzanine of that size was added. He said they also were requesting a slight change in the hours of operation, reducing the overall occupancy from 256 to 246 persons, and reducing the number of billiard tables from 24 to 22. Mr. McDermott said there is ample parking on site; the FAR is .40 and will be reduced to .22; the use is in conformance with the Comprehensive Plan and staff agreed that the application satisfied all the standards for special permits, as well as the specific standards for Group 5 Uses.

Mr. Kelley said he did not see any extensive difference between this application and the original application, except for the change in hours. Mr. McDermott gave an overview of the change in hours and the reasons for the request and called on Mr. McKeever for a few specifics of the potential use at particular hours.

Mr. McDermott requested a waiver of the eight-day waiting period.

There were no speakers in support of the application and Vice Chairman Ribble asked for speakers in opposition.

Winnifred Meiselman, 2346 Centreville Road, Herndon, Virginia, almost directly across the road from the pool parlor, came forward to speak in opposition to the application. She said she was appalled at having such an establishment anywhere near her home; she did not believe children should be exposed to this type of recreation, which she did not consider to be family-oriented; she believed the type of incidents occurring around pool halls in cities could be researched to prove that increasing the hours to 2:00 a.m. would bring in undesirables and hot-rodders. In answer to a question from Mr. Kelley about a reference to her being robbed, Ms. Meiselman said she could not attribute that to the pool hall. Mr. Kelley questioned why Ms. Meiselman believed statistics from cities and urban areas would apply in this situation and she said that this sort of construction would rapidly result in a

future slum. Mr. Kelley asked why Ms. Meiselman believed the additional hours would have an adverse affect and she said that nothing in Herndon was open until 2:00 a.m. Ms. Meiselman said this was asking for trouble. Mr. Kelley said her comments sounded like they were from the Music Man and asked her to be specific. Ms. Meiselman continued along these lines, stating that this sort of establishment staying open until late hours would attract people looking for trouble.

An ensuing conversation was based on the supposition that the applicant's establishment had been in operation during the past year; however, the applicant's agent said that was not the case.

Ms. Meiselman said she could give some examples of traffic noise late at night and cars flying down the road at excessive speeds, though she had not clocked them. Mr. Hammack asked if she could attribute the adverse sounds and speeds to the patrons of the establishment under discussion and she said she had not set out to monitor that particular business but was speaking of the tradition and history which accompanies this kind of development.

Mr. McDermott came forward for rebuttal remarks, stating that he appreciated Ms. Meiselman's concerns about traffic; however, an existing huge shopping center and multi-family development in the rural setting of Herndon has brought about change in that respect. He said that the pool parlor had not yet opened but would open shortly; however, the modern billiard parlors are oriented toward children and families to play billiards or eat.

There were no other speakers and Vice Chairman Ribble closed the public hearing.

Mr. Kelley moved to grant SPA 93-H-043 for the reasons set forth in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 1, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Amendment Application SPA 93-H-043 by BREAKERS BILLIARD CAFE, INC., under Section 4-603 of the Zoning Ordinance to amend SP 93-H-043 for billiard and pool hall to permit change in development conditions and change in applicant, on property located at 2445 Centreville Road, Tax Map Reference 16-3((1))15B, Mr. Kelley moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 1994; 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.
3. The area of the lot is approximately 32.02 acres.
4. The old fashioned type pool halls as portrayed in some theatre and movie productions no longer exist, particularly in suburban areas where the residents would not tolerate them. Fear of the former type of pool halls operating today are unfounded.

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 Amendment is granted only for the purpose(s), structure(s) and/or use(s) indicated on the special permit plat prepared by Dewberry & Davis, dated September 1, 1994, 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 daily hours of operation shall not exceed 10:00 a.m. to 2:00 a.m.

6. The applicant shall erect a sign in a prominent place which requests customers to use the parking lot on the north side of the Clock Tower building, particularly after 10:00 p.m.

7 Juveniles under seventeen shall be accompanied by an adult after 7:00 p.m.

8 School children shall not be allowed during school hours of the regular school year, not to include summer school.

9. The maximum number of billiard/pool tables on site shall be 22. The eating establishment is permitted within the billiard/pool hall.

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 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

Mr. Kelley moved to waive the eight-day waiting period. Mr. Pammel seconded the motion, which carried unanimously.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 488, November 10, 1994, (Tape 1), Scheduled case of:

9:30 A.M. DANA M. & WENDY M. RIEGER, SP 94-P-042 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 dwelling to remain 7.4 ft. from side lot line. Located at 3326 Holly Ct. on approx. 11,507 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8)) (4) 44. (Concurrent with VC 94-P-106).

9:30 A.M. DANA M. & WENDY M. RIEGER, VC 94-P-106 Appl. under Sect(s). 18-401 of the Zoning Ordinance to permit construction of additions 29.9 ft. from front lot line, 5.9 ft. and 9.6 ft. from one side lot line, 6.5 ft. from other side lot line and fence to remain 7.3 ft. in height. Located at 3326 Holly Ct. on approx. 11,507 sq. ft. of land zoned R-3. Providence District. Tax Map 59-2 ((8)) (4) 44. (Concurrent with SP 94-P-042).

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. Dana and Wendy Rieger, 3326 Holly Court, Falls Church, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Home Run Acres Subdivision; surrounding lots are also zoned R-3 and developed with single family detached dwellings. Ms. Langdon said that the applicants proposed to construct a dining room addition, an addition to the garage, and an office addition.

Mr. Rieger presented the statement of justification, previously submitted in writing and incorporated into the record. Regarding the special permit, he said that the garage was in place when they purchased the property and, in the course of applying for the variance, they were informed that they were not in compliance. Mr. Rieger said a previous variance was granted of 8.3 feet from the side lot line, as noted in the staff report, which was exceeded by more than 10% or 7.4 feet. They were not aware of the non-conformance when they purchased the property.

Mr. Rieger submitted photos relating to the variance request, stating that granting the variance would still leave them, corner to corner, 49 feet from one neighbor and 45 feet from

the other neighbor. He gave an overview of the statement of justification, stating that the property was trapazoidal in shape, with converging lot lines, and was built into the side of a hill. Mr. Rieger said that the neighbors have opted to take advantage of his fence and have phased out their various-sized fences in lieu of his; there have, however, been some variances granted for front yard fences in the neighborhood up to 6 feet high. In answer to questions from the Board, Ms. Langdon advised that the fence height requirement is 6 feet in a rear yard and 4 feet in a front yard. Mr. Rieger said the contractor had told them that 7 feet was the rear yard requirement.

In answer to a question from Mr. Hammack, Mr. Rieger said the architect recommended that the existing garage be extended 3.5 feet as they would cut into the garage to tie the hallway into the front part of the house.

Mr. Hammack asked if there was any other place within the dwelling to put an office and Mr. Rieger said he and his wife currently were using two bedrooms for offices but would like to have children and would then need to use the bedrooms to accommodate children. Mr. and Mrs. Rieger said they did not have clients come to the home and had offices outside the home for dealing with clients; the home offices were for evening work and telecommunications with other time zones.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mr. Hammack moved to grant SP 94-P-106 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions set forth in the staff report dated November 1, 1994, as amended with the date of the revised plat.

Mr. Hammack moved to grant in part VC 94-P-106 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions set forth in the staff report dated November 1, 1994, as amended with the date of the revised plat.

Vice Chairman Ribble noted that revised plats would be required within thirty days of the approval of the applications, reflecting only those variances which had been approved and the height of the fence.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-P-042 by DANA M. & WENDY M. RIEGER, under Section 18-401 of the Zoning Ordinance to permit reduction to minimum yard requirements based on error in building location to permit dwelling to remain 7.4 ft from side lot line, on property located at 3326 Holly Court, Tax Map Reference 59-2((8))(4)44, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 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 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., revised November 16, 1994, 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.

Mr. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 1994, the date that the revised plat was approved by the Board. This date shall be deemed to be the final approval date of this variance.

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COUNTY OF FAIRFAX, VIRGINIA

VARIANCE RESOLUTION OF THE BOARD OF ZONING APPEALS

In Variance Application VC 94-P-106 by DANA M. & WENDY M. RIEGER, under Section 18-401 of the Zoning Ordinance to permit construction of additions 29.9 ft. from front lot line, 5.9 ft. and 9.6 ft. from one side lot line, **6.5 ft. from other side lot line (THE BOARD DENIED THIS PORTION)** and fence to remain 7.3 ft. in height, on property located at 3326 Holly Court, Tax Map Reference 59-2((8))(4)44, Mr. Hammack moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 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 approximately 11,507 square feet.
4. The office portion is denied because it is believed to be a convenience or privilege and does not really satisfy the hardship requirements.
5. The balance of the request is granted because the lot has unusual topographical conditions and converging and irregularly-shaped lot lines.

This application meets all of the following Required Standards for Variances in Section 18-404 of the Zoning Ordinance:

1. **That the subject property was acquired in good faith.**
2. **That the subject property has at least one of the following characteristics:**
   - A. **Exceptional narrowness at the time of the effective date of the Ordinance;**
   - B. **Exceptional shallowness at the time of the effective date of the Ordinance;**
   - C. **Exceptional size at the time of the effective date of the Ordinance;**
   - D. **Exceptional shape at the time of the effective date of the Ordinance;**
   - E. **Exceptional topographic conditions;**
   - F. **An extraordinary situation or condition of the subject property, or**
   - G. **An extraordinary situation or condition of the use or development of property immediately adjacent to the subject property.**
3. **That the condition or situation of the subject property or the intended use of the**

subject property is not of so general or recurring a nature as to make reasonably practicale

the formulation of a general regulation to be adopted by the Board of Supervisors as an amendment to the Zoning Ordinance.

4. That the strict application of this Ordinance would produce undue hardship.

5. That such undue hardship is not shared generally by other properties in the same zoning district and the same vicinity.

6. That:

A. The strict application of the Zoning Ordinance would effectively prohibit or unreasonably restrict all reasonable use of the subject property, or

B. The granting of a variance will alleviate a clearly demonstrable hardship approaching confiscation as distinguished from a special privilege or convenience sought by the applicant.

7. That authorization of the variance will not be of substantial detriment to adjacent property.

8. That the character of the zoning district will not be changed by the granting of the variance.

9. That the variance will be in harmony with the intended spirit and purpose of this Ordinance and will not be contrary to the public interest.

AND WHEREAS, the Board of Zoning Appeals has reached the following conclusions of law:

THAT the applicant has satisfied the Board that physical conditions as listed above exist which under a strict interpretation of the Zoning Ordinance would result in practical difficulty or unnecessary hardship that would deprive 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 structures shown on the plat prepared by Alexandria Surveys, Inc., revised November 16, 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. 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 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on December 1, 1994, the date that the revised plat was approved by the Board. This date shall be deemed to be the final approval date of this variance.

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9:30 A.M. THE FISCHER GROUP, SPA 88-L-042-3 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 at Springfield Mall on approx. 79.01 ac. of land zoned C-7, HC and SC. Lee District. Tax Map 90-2 ((13)) 1-3, 4A1, 5A1, 6.

Vice Chairman Ribble called the applicant to the podium and asked if the affidavit before the Board of Zoning Appeals (BZA) was complete and accurate. The applicant's agent, Greg Riegle, of McGuire, Woods, Battle & Booth, 8280 Greensboro Drive, McLean, Virginia, replied that it was.

Susan Langdon, Staff Coordinator, presented the staff report, stating that the property to the north is zoned R-4 and developed with single family detached dwellings; to the east, the lots are zoned R-1 and C-3 and developed with single family detached dwellings, an elementary school, and vacant land; to the south, the lots are zoned R-1 and C-8 and developed with mixed retail uses and vacant land; and, to the west, the lots are zoned C-7 and C-3 and developed with mixed commercial uses. Ms. Langdon continued as follows:

She said that the applicant was requesting approval of a special permit amendment to allow additional and redistribution of the total sign area at Springfield Mall. The proposed new signage consisted of two free-standing pylon signs, each 50.0 square feet in size, and serving to identify Springfield Mall; a building-mounted sign for a new tenant, "Newberry

Value for Less," consisting of 125 square feet; and an additional building-mounted sign consisting of 80 square feet for a future tenant. The pylon signs were designed to increase visibility of mall entrances and facilitate turning movements; their proposed location is the corner of Franconia Road and Frontier Drive and along Loisdale Road. The maximum allowable square footage of the building-mounted signs at the Mall, with BZA approval, is 7,762.5 square feet. The proposed square footage of building-mounted signs under this application is 7,080.4 square feet, an increase of 205.0 square feet over the previously approved square footage. Additionally, shopping centers are allowed a maximum of two free-standing signs with frontage on two major thoroughfares. Springfield Mall is located within a Sign Overlay District with a maximum sign area for freestanding signs of 40 square feet. The BZA may approve up to a 125% increase of sign area, or up to 50 square feet per sign.

Ms. Langdon said staff concluded that, with the implementation of the Proposed Development Conditions, the proposed use is in harmony with the recommendations of the Comprehensive Plan and will satisfy all the General Standards and Standards for all Group 9 Uses. For those reasons, staff recommended approval of SPA 88-L-042-3 subject to the adoption of the Proposed Development Conditions, dated November 1, 1994.

Mr. Riegle presented the statement of justification, previously submitted in writing and incorporated into the record. He presented an overview of the statement to the Board.

Mr. Pammel moved to grant SPA 88-L-042-3 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 1, 1994.

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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-042-3 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 Springfield Mall, Tax Map Reference 90-2((13))1-3, 4A1, 5A1, 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 November 10, 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.

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 July 19, 1994 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 new signage indicated by the location and size on the special permit plat submitted with this application, as qualified by these conditions and the attached renderings. Not-with-standing the size indicated on the plat, the future pylon signs shall be a maximum of 50 square feet each. 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 installation of new signage shall be coordinated such that at no point in time shall the total amount of building mounted signage at Springfield Mall exceed 7,080.4 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.

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.

Mr. Hammack seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

Mr. Pammel moved to waive the eight-day waiting period. Mr. Hammack seconded the motion, which carried unanimously.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 10, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 493, November 10, 1994, (Tape 1), Scheduled case of:

9:30 A.M. NANCY S. BAKER, SP 94-Y-043 Appl. under Sect(s). 8-913 of the Zoning Ordinance to permit modification to minimum yard requirements to permit construction of addition 15.0 ft. from side lot line. Located at 6102 Hidden Canyon Rd. on approx. 13,000 sq. ft. of land zoned R-C, WS and AN. Sully District. Tax Map 53-1 ((3)) (6) 68.

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. Nancy Baker, 6102 Hidden Canyon Road, Centreville, Virginia, replied that it was.

Vice Chairman Ribble requested a brief presentation of the staff report. Susan Langdon, Staff Coordinator, presented the staff report, stating that the property is located in the Pleasant Hill Subdivision; surrounding lots are also zoned R-C, WS and AN; the lots to the north, south and west are developed with single family detached dwellings; the area to the east is Homeowner Association open space. The applicant proposed modification of minimum yard requirements in the R-C District to permit construction of a porch addition, requiring a variance of 5.0 feet. The property previously was zoned R-2 Cluster, with a minimum side yard requirement of 8.0 feet, with total side yards of 24.0 feet, with which this application is in conformance.

Ms. Baker presented the statement of justification, previously submitted in writing and incorporated into the record. She said that the porch would be an extension of the house and would not be any closer to the property line than the existing structure. Despite the statement in the staff report that the property is flat, the topography is such that runoff will still drain beneath the structure, resulting in little change in the drainage pattern, which will not affect neighbors in any way. Proposed placement of the porch will result in the most efficient use of the yard; the back yard is wooded and the porch will conform to the tree line. Had the applicant been aware of the forthcoming change in zoning, she would have had the porch added before the grandfather clause expired. She was unable to finalize plans before expiration of the clause.

There were no speakers and Vice Chairman Ribble closed the public hearing.

Mrs. Thonen moved to grant SP 94-Y-043 for the reasons outlined in the Resolution, subject to the Proposed Development Conditions contained in the staff report dated November 1, 1994.

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COUNTY OF FAIRFAX, VIRGINIA

SPECIAL PERMIT RESOLUTION OF THE BOARD OF ZONING APPEALS

In Special Permit Application SP 94-Y-043 by NANCY S. BAKER, under Section 8-913 of the Zoning Ordinance to allow modification to minimum yard requirements for an R-C lot to permit construction of addition 15.0 ft. from side lot line, on property located at 6102 Hidden Canyon Road, Tax Map Reference 53-1((3))(6)68, Mrs. Thonen moved that the Board of Zoning Appeals adopt the following resolution:

WHEREAS, the captioned application has been properly filed in accordance with the requirements of all applicable State and County Codes and with the by-laws of the Fairfax County Board of Zoning Appeals; and

WHEREAS, following proper notice to the public, a public hearing was held by the Board on November 10, 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, WS and AN.
3. The area of the lot is approximately 13,000 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 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 Charles P. Johnson & Associates, P.C., dated June 5, 1992, revised by Nancy S. Baker, dated August 8, 1994, 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. Pammel seconded the motion which carried by a vote of 5-0. Chairman DiGiulian and Mr. Dively were absent from the meeting.

*This decision was officially filed in the office of the Board of Zoning Appeals and became final on November 18, 1994. This date shall be deemed to be the final approval date of this special permit.

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Page 495, November 10, 1994, (Tape 1), Scheduled case of:

9:30 A.M. ROBERT D. BAILEY, JASON A. ROBERTSON, APPEAL 94-B-033 Appl. under Sect(s). 18-301 of the Zoning Ordinance. Appeal Zoning Administrator's determination that more than 4 persons not necessarily related by blood or marriage are occupying property at 5206 Pommeroy Dr. in violation of Par. 2 of Sect. 2-502 of the Zoning Ordinance. Located at 5206 Pommeroy Dr. on approx. 11,877 sq. ft. of land zoned R-2. Braddock District. Tax Map 69-3 ((5)) 416.

Vice Chairman Ribble asked if there was a withdrawal request from the appellant. Marilyn Anderson, Senior Staff Coordinator directed the Board's attention to a letter from the appellant addressing the withdrawal of this appeal. William E. Shoup, Deputy Zoning Administrator, stated that the Board had issued an Intent to Withdraw at the previous meeting.

Mrs. Thonen so moved. Mr. Pammel seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 495, November 10, 1994, (Tape 1), Action Item:

Request for Reconsideration
Mary C. Mayo, SP 94-M-039
Special Permit Heard and Denied November 1, 1994

Mr. Kelley moved to deny the request. Mrs. Thonen seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 495, November 10, 1994, (Tape 1), Action Item:

Request for Reconsideration
Sharon Garrigan, SP 94-D-041
Special Permit Heard and Denied November 1, 1994

Mr. Kelley moved to deny the request. Mrs. Thonen seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 495, November 10, 1994, (Tape 1), Action Item:

Approval of Resolutions from November 1, 1994

Mrs. Thonen so moved. Mr. Hammack seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 495, November 10, 1994, (Tape 1), Action Item:

Request for Date and Time
Genuario Construction Co., Inc., Appeal
Morning of January 3, 1995 suggested by Clerk

Mr. Hammack so moved, Mr. Pammel seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 495, November 10, 1994, (Tape 1), Action Item:

Request for Date and Time
Harrington & Lynch Appeal
Morning of January 31, 1995 suggested by Clerk

Mr. Hammack so moved, Mr. Pammel seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 495, November 10, 1994, (Tape 1), Action Item:

Approval of Minutes from October 4, 1994 Hearing

Mrs. Thonen so moved. Mr. Hammack seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 496, November 10, 1994, (Tape 1), Action Item:

Request for Intent-to-Defer
Reston North Point Appeal
Scheduled for November 23, 1994

Mr. Pammel moved for an indefinite deferral. He said the Planning Commission had approved an amendment to the Ordinance which now would go before the Board of Supervisors, at which time the issue would become "moot." Mrs. Thonen seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

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Page 496, November 10, 1994, (Tape 1), Action Item:

Request for Deferral
Mpras Appeal
Scheduled for December 15, 1994

Mr. Kelley remarked on the tone of Mr. Mpras' request. He said he had information to the affect that the appellant would not respond to telephone inquiries by staff. He suggested scheduling the appeal for the next night meeting or deferring decision for a week, in the event that Mr. Mpras might favor staff by returning phone calls. Mrs. Thonen stated that the Board could deny the appeal for lack of interest and Mr. Kelley said that was his first inclination, but he talked with William E. Shoup, Deputy Zoning Administrator, and discovered that there are some mitigating circumstances which may render the appeal "moot."

Mr. Kelley moved to schedule the appeal for December 15, 1994. Mrs. Thonen seconded the motion which carried unanimously. Chairman DiGiulian and Mr. Dively were absent from the meeting.

Mr. Kelley said he would not mind if Mr. Mpras received a transcript of the conversation among the Board members about this appeal. Mr. Hammack said he believed that Mr. Mpras was trying to delay the hearing and he was not sympathetic to the number of requests for deferrals. Mr. Kelley agreed, stating there had been staff visits, the Board was present to hear the appeal, the request for deferral had been denied, and the appellant would not take phone calls from staff. He believed the appellant might be trying to delay the hearing, although there is some indication that he might be out of the country during the week when the hearing is scheduled. Mr. Shoup said that was what the appellant had indicated in a previous letter. Mr. Kelley said he was willing to defer for nine or ten days but not much more. Mrs. Thonen agreed.

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Page 496 November 10, 1994, (Tape 1), Action Item:

Memo requesting to change April 18 meeting date to
either Thursday, April 13 or Thursday April 27, 1995

Mrs. Thonen requested a deferral to the following week to decide this issue and the rest of the Board concurred.

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As there was no other business to come before the Board, the meeting was adjourned at 12:00 Noon.

Geri B. Bepko
Geri B. Bepko, Substitute Clerk
Board of Zoning Appeals

John Ribble
John Ribble, Vice Chairman
Board of Zoning Appeals

SUBMITTED: January 10, 1995

APPROVED: January 17, 1995